



***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- DC Council passes Act 20-278, Vending Regulations Emergency Amendment Act of 2014
- DC Council schedules Fiscal Year 2013-2014 Agency Performance Oversight Hearings
- Department of Health updates certificate of need procedures
- District Department of Transportation modifies regulations for non-Washington Metropolitan Area Transit Authority (WMATA) buses
- Department of Employment Services announces funding availability for the Summer Youth Employment Program
- District Department of the Environment requests comments on the Community Involvement Plan for the Anacostia River Study Area
- Department of Housing and Community Development announces funding availability for multiple grants

# DISTRICT OF COLUMBIA REGISTER

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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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ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-275

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 19, 2014

To approve, on an emergency basis, Modification No. 3 to Contract No. CW23183 with General Services, Inc., for the construction of the Fort Reno Salt Dome and to authorize payment for goods and services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification to Contract No. CW23183 Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification No. 3 to Contract No. CW23183 with General Services, Inc., for construction of the Fort Reno Salt Dome and authorizes payment in the amount of \$1,404,611.10 for services received and to be received under the contract.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer 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.

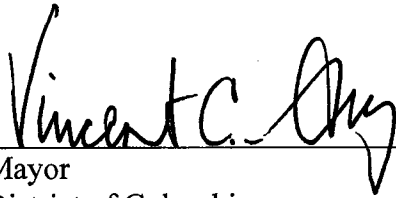
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
February 19, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-276

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To amend, on an emergency basis, due to Congressional review, An Act To create a Department of Corrections in the District of Columbia to clarify the Department of Corrections' authority over the management and operation of the Central Cellblock at 300 Indiana Avenue, N.W., to include persons detained at a medical facility in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Corrections Central Cellblock Management Clarification Congressional Review Emergency Amendment Act of 2014".

Sec. 2. Section 2 of An Act To create a Department of Corrections in the District of Columbia, approved June 27, 1946 (60 Stat. 320; D.C. Official Code § 24-211.02), is amended by adding a new subsection (a-1) to reads as follows:

"(a-1)(1) The Department of Corrections shall have charge of the management and operation of the Central Cellblock, located at 300 Indiana Avenue, N.W., Washington, D.C., and shall be responsible for the safekeeping, care, and protection of all persons detained at the Central Cellblock or detained at a medical facility in the District, by the Metropolitan Police Department, before their initial court appearance.

"(2) Nothing in this subsection shall be construed as:

"(A) Removing any authority from the Metropolitan Police Department to determine where to hold in custody any person arrested and awaiting an initial court appearance;

"(B) Granting any arrest powers to any employee of the Department of Corrections performing any duty at the Central Cellblock; or

"(C) Limiting any powers or authority of the Metropolitan Police Department or the Department of Corrections."

Sec. 3. Applicability.

This act shall apply as of February 18, 2014.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer 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)).

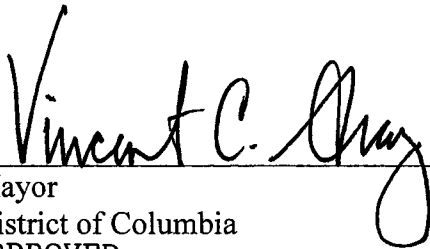
ENROLLED ORIGINAL

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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
February 20, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-277

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To amend, on an emergency basis, due to Congressional review, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to establish a mandatory controlled substance and alcohol testing and criminal background check and background investigation program for applicants, appointees, employees, volunteers, and contractual workers who have a duty station at the Consolidated Forensic Sciences Laboratory.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Controlled Substance, Alcohol Testing, Criminal Background Check and Background Investigation Congressional Review Emergency Amendment Act of 2014”.

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

(a) A new Title XX-E is added to read as follows:

“TITLE XX-E. MANDATORY CONTROLLED SUBSTANCE AND ALCOHOL TESTING FOR PROTECTION-SENSITIVE POSITIONS.

“Sec. 2051. Definitions.

“For the purposes of this title, the term:

“(1) “Applicant” means a person who has filed a written or electronic employment application or résumé, or a person seeking a volunteer appointment, with the District government for a position covered by the provisions of this title.

“(2) “Appointee” means a person who has been made a contingent job offer to a position subject to the provisions of this title.

“(3) “Covered employee” means a District government employee occupying a protection-sensitive position.

“(4) “Drug” means a substance which may have medicinal, intoxicating, performance enhancing or other effects when taken or put into a human body and is not considered a food or exclusively a food.

“(5) “Personnel authority” means an individual or entity authorized by section 406 to implement personnel rules and regulations for employees of an agency or group of

## ENROLLED ORIGINAL

agencies of the District government or persons delegated this authority by such an individual or entity.

“(6) “Post-accident employee” means an employee of the District government, who, while on-duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, of the use of drugs or alcohol on the part of the employee.

“(7) “Protection-sensitive position” means a District government employee, volunteer, or contractual worker in a position having a duty station at the Consolidated Forensic Sciences Laboratory.

“(8) “Reasonable suspicion” means a reasonable belief by a supervisor that an employee in a protection-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee’s ability to perform the employee's job may be impaired.

“(9) “Reasonable suspicion referral” means referral of an employee in a protection-sensitive position for testing by the District government for drug or alcohol use.

“(10) “Volunteer” means an individual who works without monetary or other financial compensation.

“(11) “Vulnerable adult” means an individual 18 years of age or older who has a physical or mental condition which impairs the individual’s ability to provide for the individual's own care or protection.

“Sec. 2052. Drug and alcohol testing for protection-sensitive positions.

“The following individuals shall be tested by the District government for drug and alcohol use:

- “(1) Employees in protection-sensitive positions, on a random basis;
- “(2) Appointees to protection-sensitive positions;
- “(3) Volunteers serving in protection-sensitive positions;
- “(4) Applicants under consideration for voluntary service in protection-sensitive positions;
- “(5) District employees and volunteers in protection-sensitive positions who have had a reasonable suspicion referral; and
- “(6) Post-accident District employees and volunteers in protection-sensitive positions.

“Sec. 2053. Notification of employees.

“(a) All District government employees in protection-sensitive positions shall be given a minimum of 30 days written notice before the implementation of the drug and alcohol testing program set forth by this title. Upon receipt of a written notice of the program, each employee shall be given one opportunity to seek treatment, if the employee has a drug or alcohol problem.

“(b) Upon expiration of the notice period, any confirmed positive drug or alcohol test result, refusal to submit to a drug or alcohol test, or failure to sign the required documents or otherwise cooperate with any part of the drug testing requirements shall result in termination of the employee’s employment in accordance with this title.

“Sec. 2054. Notice to appointees and volunteers.



## ENROLLED ORIGINAL

“(a) Each vacancy announcement for a protection-sensitive position shall include a statement that applicants shall be tested for drug use upon initial appointment and shall be subject to periodic drug and alcohol testing while occupying a protection-sensitive position.

“(b) When a non-competitive recruitment procedure is involved, the Mayor or the personnel authority shall inform the appointee, at the time the contingent job offer is made, that the appointee shall be tested for drugs upon initial appointment, and that the appointee shall be subject to periodic drug and alcohol testing while occupying a protection-sensitive position.

“(c) Before an individual signs a volunteer agreement to perform protection-sensitive functions, the Mayor or the personnel authority shall notify the individual that the individual shall be tested for drug use upon initial appointment, and that the volunteer shall be subject to periodic drug and alcohol testing while performing these functions.

“(d) Upon selection, appointees shall receive written notification prior to testing for drug and alcohol use.

“Sec. 2055. Testing methodology.

“(a) Drug and alcohol analysis shall be performed by an outside contractor at a laboratory certified by the United States Department of Health and Human Services (“HHS”) to perform job-related drug and alcohol forensic testing.

“(b) The drug and alcohol testing sample shall be collected at a location designated by the District government.

“(c) The collector shall split each sample and secure it for transport to the laboratory.

“(d) The laboratory shall perform the confirmation testing on one sample, and store the split of that sample.

“(e) An individual found to have a confirmed positive urinalysis shall be notified of the result. The individual may then authorize that the stored sample be sent to another HHS-certified laboratory of the individual's choice, at the individual's expense, for confirmation testing.

“(f) Reasonable suspicion and post-accident employee or volunteer testing shall follow the same procedures set forth in subsections (a), (b), (c), and (d) of this section. In these cases, the employee or volunteer shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer.

“(g) A blood, breath, or urine test conducted pursuant to this section shall be deemed confirmed positive if the test yields a result that the employee's or volunteer's alcohol content was either .04 grams or more per 210 liters of breath, .04 grams or more per 100 milliliters of blood, or .05 grams or more per 100 milliliters of urine.

“Sec. 2056. Positive test results.

“(a) An individual found to have a positive drug or alcohol test shall be notified in writing of the result. The individual may then authorize that the stored sample be sent to another HHS-certified laboratory of the individual's choice, at the individual's expense, for confirmation testing.

“(b) A positive drug or alcohol test, a refusal to submit to a drug or alcohol test, tampering with a drug or alcohol test, or failure to sign required documents or otherwise cooperate with any part of the drug testing requirements shall result in termination of

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employment, withdrawal of a contingent job offer, termination of a volunteer agreement, or withdrawal of a contingent volunteer service agreement.

“(c) The results of a drug or alcohol test conducted pursuant to this title shall not be turned over to a law enforcement agency without the written consent of the employee, appointee, volunteer or a subpoena or court order.

“Sec. 2057. Coverage of private contractual providers.

“Private entities that contract with the District government to provide contract employees to work in protection-sensitive positions shall establish mandatory drug and alcohol testing policies and procedures that are consistent with the requirements of this subchapter.

“Sec. 2058. Submission of positions subject to mandatory drug and alcohol testing.

“(a) Within 60 days after the effective date of this title, personnel authorities shall submit to the Mayor a list of the positions it has designated as subject to the drug and alcohol testing requirements of this title.

“(b) Within 60 days after the effective date of this title, the Chief Procurement Officer shall submit to the Mayor a list of positions in private entities that contract with the District government and are subject to drug and alcohol testing pursuant to this title.

“(c) Personnel authorities shall submit an updated list of the positions subject to the mandatory drug and alcohol testing of this title no later than December 1 of each year.

“(d) The Chief Procurement Officer shall submit to the Mayor each quarter an updated list of the positions in private entities that contract with the District government that are subject to the drug and alcohol testing of this title.

“Sec. 2059. Applicability.

“(a) If, as of the effective date of this act, a District government agency has its own statutory or regulatory drug and alcohol testing policies and procedures and those policies or procedures are stricter than the provisions of this title, this title shall supplement and not replace the agency’s policies and procedures.

“(b) The provisions of this title shall be in addition to, and shall not repeal, the provisions of section 2051 of the Omnibus Personnel Reform Amendment Act of 1998, effective June 10, 1998 (D.C. Law 12-124; D.C. Official Code § 1-620.11), sections 2021, 2022, 2023, 2024, and 2025 of the Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Amendment Act of 1999, effective April 13, 1999 (D.C. Law 12-227; D.C. Official Code §§ 1-620.21 through 1-620.25), sections 2031, 2032, 2033, 2034, 2035, 2036, and 2037 of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §§ 1-620.31 through 1-620.37), section 18 of the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-217), sections 2, 3, 4, and 5 of the Department of Corrections Employee Mandatory Drug and Alcohol Testing of 1996, effective September 20, 1996 (D.C. Law 11-158; D.C. Official Code §§ 24-211.21 through 24-211.24), and Chapter 39 of Title 6B of the District of Columbia Municipal Regulations (6B DMCR § 3900 *et seq.*), entitled "Testing for the Presence of Controlled Substances and Alcohol."

“Sec. 2060. Rules.

## ENROLLED ORIGINAL

"Within 120 days of the effective date of this title, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title."

(b) A new Title XX-F is added to read as follows:

"TITLE XX-F.

"CRIMINAL BACKGROUND CHECKS AND BACKGROUND INVESTIGATIONS  
FOR PROTECTION-SENSITIVE POSITIONS OF 2012.

"Sec. 2061. Definitions.

"For the purposes of this title, the term:

"(1) "Applicant" means a person who has filed a written or electronic employment application, or résumé, or a person seeking a volunteer appointment, with the District government for a position covered by the provisions of this title.

"(2) "Appointee" means a person who has been made a contingent job offer to a position covered by the provisions of this title.

"(3) "Background investigation" means a thorough inquiry into the past and present conduct and behavior of an applicant, appointee, employee, or volunteer to determine his or her suitability for employment.

"(4) "Covered employee" means a District government employee occupying a protection-sensitive position.

"(5) "Criminal background check" means the investigation of an individual's criminal history through the record systems of the Federal Bureau of Investigation, the Metropolitan Police Department, or other law enforcement agencies.

"(6) "Employee" means an individual who is employed on a full-time, part-time, or temporary basis by the District government.

"(7) "FBI" means the Federal Bureau of Investigation.

"(8) "MPD" means the Metropolitan Police Department.

"(9) "Personnel authority" means an individual or entity authorized by section 406 to implement personnel rules and regulations for employees of an agency or group of agencies of the District government or persons delegated such authority by such an individual or entity.

"(10) "Protection-sensitive position" means any District government employee, volunteer, or contractual worker in a position having a duty station at the Consolidated Forensic Sciences Laboratory.

"(11) "Suitability" means the quality or state of being acceptable for District government employment with respect to the character, reputation, qualification, and fitness of the person under consideration.

"(12) "Supervised" means under the direction of an individual who has received a current, satisfactory background clearance.

"(13) "Volunteer" means an individual who performs a protection-sensitive function without monetary or other financial compensation.

## ENROLLED ORIGINAL

“(14) “Vulnerable adult” means an individual 18 years of age or older who has a physical or mental condition which impairs the individual’s ability from providing for the individual’s own care or protection.

“Sec. 2062. Criminal background checks required for certain individuals.

“(a) Except as set forth in subsection (b) of this section, the following individuals shall be subject to criminal background checks:

“(1) An appointee to, or an applicant for, a protection-sensitive position;

“(2) A volunteer who performs a protection-sensitive function; and

“(3) A District government employee occupying a protection-sensitive position.

“(b) An individual with proof of an active federal security clearance may be subject to a criminal background check under subsection (a) of this section.

“Sec. 2063. Authorization to obtain records and notification requirements.

“(a) For competitive recruitments, each vacancy announcement for a position subject to a criminal background check under this title shall include a statement that applicants shall be subject to a criminal background check and a background investigation upon initial appointment to the position and shall be subject to ongoing criminal background checks while employed in the position.

“(b) When a non-competitive recruitment procedure is involved, the Mayor or the personnel authority shall inform the appointee at the time the contingent job offer is made that the appointee shall be subject to a criminal background check before to employment in the covered position and shall be subject to ongoing criminal background checks while employed in the position.

“(c) Before a volunteer signs a volunteer agreement to perform protection-sensitive functions, the Mayor or the personnel authority shall notify the volunteer that a criminal background check shall be conducted before the volunteer begins his or her volunteer activities and shall be subject to ongoing criminal background checks while performing these functions.

“Sec. 2064. Procedures for criminal background checks.

“(a) In order to conduct a criminal background check on an applicant, appointee, volunteer, or covered employee, the Mayor or the personnel authority shall obtain criminal background records maintained by the FBI, MPD, and any jurisdiction in which the applicant, appointee, volunteer, or covered employee has resided or been employed or may otherwise have a criminal history.

“(b) An applicant, appointee, volunteer, or covered employee subject to a criminal background check shall allow himself or herself to be fingerprinted and shall submit any information necessary or useful to conduct the criminal background check as requested by the Mayor or the personnel authority. The fingerprints shall be available for use by the Mayor or the personnel authority to conduct a criminal background check.

“(c) The Mayor or the personnel authority shall conduct criminal background checks, including the fingerprinting of applicants, appointees, volunteers, and covered employees, in accordance with FBI policies and procedures and in an FBI-approved environment.

“(d) The Mayor or the personnel authority shall conduct a criminal background check once the applicant, appointee, covered employee, or volunteer has provided:

## ENROLLED ORIGINAL

“(1) A complete set of qualified, legible fingerprints, in a form approved by the FBI;

“(2) Written confirmation that the applicant, appointee, covered employee, or volunteer has been informed by the Mayor or the personnel authority that they are authorized to conduct a criminal background check on the applicant, appointee, covered employee, or volunteer;

“(3) Written authorization for the Mayor or the personnel authority to conduct a criminal background check;

“(4) Any additional identification that is required, including the name, social security number, birth date, and gender of the applicant, appointee, covered employee or volunteer;

“(5) A signed affirmation stating whether or not the applicant, appointee, covered employee, or volunteer has been convicted of, entered a guilty plea, including a plea of *nolo contendere* to, or has been found not guilty by reason of insanity of any crime in the District of Columbia or in any other state or territory;

“(6) Written acknowledgment that the Mayor or the personnel authority has notified the applicant, appointee, covered employee, or volunteer of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report; and

“(7) Written acknowledgment that the Mayor or the personnel authority may choose to deny the applicant or appointee employment or a volunteer position, or terminate a covered employee or volunteer, based on the outcome of the criminal background check.

“(e) Fingerprinting for the purposes of this section may be conducted by any person authorized to do so by the Mayor or the FBI.

“Sec. 2065. Background investigations.

“(a) In addition to criminal background checks, the individuals listed in section 2062 may be subject to background investigations.

“(b) A background investigation pursuant to this title shall consist of:

“(1) A credit check of the applicant, appointee, covered employee, or volunteer that adheres to the notification and consent requirements of the Fair Credit Reporting Act, approved October 26, 1970 (Pub. L. 91-508; 15 USC § 1681), and any other applicable law or regulation, as appropriate;

“(2) A traffic record check, as appropriate; and

“(3) The acquisition and consideration of any other information allowed by law that assists in establishing the suitability for employment of an applicant, appointee, covered employee, or volunteer, including employment history checks and reference checks.

“(c) Any other information allowable by law that shall assist in establishing the suitability of an applicant, appointee, volunteer, or covered employee for employment or volunteer work with the District government.

“Sec. 2066. Assessment of information obtained from criminal background checks and background investigations.

## ENROLLED ORIGINAL

“(a) The information obtained from a criminal background check or background investigation shall not create an automatic presumption against employment of an applicant, appointee, covered employee, or volunteer. The Mayor or the personnel authority shall determine whether the applicant, appointee, covered employee, or volunteer is unsuitable for employment because of his or her criminal history and background. In making this determination, the Mayor or the personnel authority shall consider the following factors:

“(1) The specific duties and responsibilities of the covered position;

“(2) The bearing, if any, the criminal offense or background information will have on the fitness or ability of the applicant, appointee, covered employee, or volunteer to perform one or more of such duties or responsibilities;

“(3) The time which has elapsed since the occurrence of the criminal offense or negative background information;

“(4) The age of the applicant, appointee, covered employee, or volunteer at the time of the occurrence of the criminal offense or negative background information;

“(5) The frequency and seriousness of the criminal offense or negative background information;

“(6) Any information provided on behalf of the applicant, appointee, covered employee, or volunteer or provided regarding his or her rehabilitation and good conduct since the occurrence of the criminal offense or negative background information; and

“(7) The public policy that it is beneficial generally for ex-offenders to obtain employment.

“(b) If the Mayor or the personnel authority determines that an applicant, appointee, volunteer, or covered employee shall not remain in his or her position because he or she has been determined unsuitable for employment because of the individual’s criminal history and background, the Mayor or the personnel authority shall inform the applicant, appointee, volunteer, or covered employee in writing.

“Sec. 2067. Appeals.

“(a) A covered employee who the Mayor or the personnel authority has determined shall not remain in his or her position because of being determined unsuitable for employment due to the covered employee’s criminal history or background investigation shall have the following appeal rights:

“(1) A covered employee in a position under the Career Service (non-probationary status), Excepted, Executive, Legal, Management Supervisory Service, or in a non-excluded Educational Service position who is not on probationary status may appeal the decision; or

“(2) A covered employee on probationary status or a volunteer may not appeal the decision.

“(b) The Mayor or the personnel authority shall issue rules setting forth the appeal process for an applicant, appointee, or covered employee who is determined unsuitable for employment because of his or her criminal history and background.

“Sec. 2068. Submission of positions subject to criminal background checks.

## ENROLLED ORIGINAL

“(a) Within 60 days after the effective date of this subchapter, each personnel authority shall submit to the Mayor a list of the positions it has designated as subject to the criminal background check requirements of this subchapter.

“(b) Within 60 days after the effective date of this title, the Chief Procurement Officer shall submit to the Mayor a list of the positions in private entities that contract with the District government that shall be subject to criminal background checks pursuant to this title.

“(c) Personnel authorities shall submit to the Mayor an updated list of the positions subject to the background investigation requirements of this title no later than December 1 of each year.

“(d) The Chief Procurement Officer shall submit to the Mayor quarterly reports listing the positions in private entities that contract with the District government that are subject to the requirements of this title.

“Sec. 2069. Confidentiality of criminal history and background investigation information.

“All criminal history and background information records received by the Mayor or the personnel authority shall be confidential and are for the exclusive purpose of making employment-related determinations under this title. The criminal history and background information records shall not be released or otherwise disclosed to any person except when:

“(1) Required as a component of an application for employment for a position under this title;

“(2) Requested by the Mayor, or his or her designee, during an official inspection or investigation;

“(3) Ordered by a court of competent jurisdiction;

“(4) Authorized by the written consent of the person being investigated; or

“(5) Utilized for a corrective, adverse, or other administrative action in a personnel proceeding related to the position for which the investigation was conducted or any position to which the employee advanced from that position in the District government.

“Sec. 2070. Penalty for providing false information regarding criminal history or background investigations.

“(a) An applicant or appointee under this title who knowingly or through gross negligence provides false information that is material to the conduct of a criminal history check or background investigation shall be denied employment.

“(b) An employee under this title who knowingly or through gross negligence provides false information that is material to the conduct of a criminal history check or background investigation shall be terminated from employment.

“(c) A volunteer under this title who knowingly or through gross negligence provides false information that is material to the conduct of a criminal history check or background investigation shall be prohibited from performing volunteer services for the District government.

“Sec. 2071. Penalties for disclosing confidential criminal history or background investigation information.

“(a) An individual who knowingly discloses criminal history or background investigation information in violation of section 2069 is guilty of a criminal offense and, upon

## ENROLLED ORIGINAL

conviction, shall be fined no more than \$1,000 or imprisoned for not more than 180 days, or both.

“(b) Prosecutions for violations of this title shall be brought in the Superior Court of the District of Columbia by the Office of the Attorney General for the District of Columbia.

“Sec. 2072. Coverage of private contractual entities.

“Private entities that contract with the District government to provide employees to work in protection-sensitive positions shall establish criminal history check and background investigation policies and procedures that are consistent with the requirements of this title.

“Sec. 2073. Applicability.

“(a) If, as of the effective date of this title, a District government agency has its own criminal history check or background investigation policies and procedures, and those existing policies or procedures are stricter than the provisions of this title, this title shall supplement and shall not replace the agency’s policies and procedures.

“(b) The provisions of this title shall be in addition to, and shall not repeal, the provisions of section 522 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1985 (D.C. Law 6-99; D.C. Official Code § 3-1205.22), the Criminal Background Checks for the Protection of Children Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.01 *et seq.*), the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551 *et seq.*), section 2 of the Department of Corrections Criminal Background Investigation Authorization Act of 1998, effective June 19, 1998 (D.C. Law 12-126; D.C. Official Code § 24-211.41), and Chapter 4 of Title 6B of the District of Columbia Municipal Regulations (6B DCMR § 4), entitled "Organization for Personnel Management.”

“Sec. 2074. Rules.

“Within 120 days of the effective date of this title, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title.”

### Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer 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)).

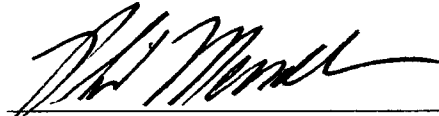
### Sec. 4. Effective date.

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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section



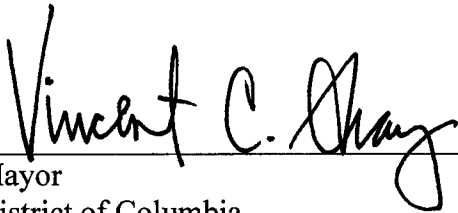
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412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
D.C. Official Code § 1-204.12(a)).



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
February 20, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-278

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To amend, on an emergency basis, the Vending Regulation Act of 2009 and Chapter 5 of Title 24 of the District of Columbia Municipal Regulations to re-establish a criminal penalty provision for violating a regulation implementing the Vending Regulation Act of 2009 and to regulate the sale of tickets from public space.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Vending Regulations Emergency Amendment Act of 2014".

Sec. 2. Section 9 of the Vending Regulation Act of 2009, effective October 22, 2009 (D.C. Law 18-71; D.C. Official Code § 37-131.08), is amended as follows:

(a) The existing text is designated as subsection (a).

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

"(b)(1) In addition to any civil penalties that may be imposed under subsection (a) of this section, any person that violates 24 DCMR § 573.8 shall, upon conviction, be subject to a fine not to exceed \$300, or by imprisonment not to exceed 90 days, or both, for each violation.

"(2) Civil fines, penalties, and fees may be imposed as alternative sanctions for violations under this subsection."

Sec. 3. Chapter 5 of Title 24 of the District of Columbia Municipal Regulations is amended by adding a new section 573.8 to read as follows:

"573.8 No person shall sell or offer to sell any ticket from the sidewalks, streets, or public spaces anywhere in the District of Columbia for any excursion, musical or theatrical performance, opera, sporting event, circus, or any entertainment of any kind; provided, that sales of tickets on public space for sightseeing bus excursions shall comply with the provisions of sections 573.5, 573.6, and 573.7."

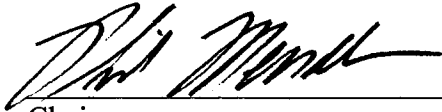
Sec. 4. Fiscal impact statement.

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

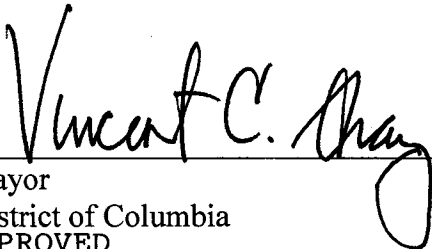
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Sec. 5. Effective date.

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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
February 20, 2014

ENROLLED ORIGINAL

AN ACT  
D.C. ACT 20-279

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 19, 2014

To permit health care practitioners to prescribe prescription drugs without an examination to the sexual partners of a patient diagnosed with a sexually transmitted infection.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Expedited Partner Therapy Act of 2014".

Sec. 2. Definitions.

For the purpose of this act, the term:

(1) "Antimicrobial drug" means a drug identified in the most current guidelines for the treatment of sexually transmitted infections recognized by the Centers for Disease Control and Prevention.

(2) "DOH" means the Department of Health.

(3) "Expedited partner therapy" or "EPT" means when a health care practitioner who has diagnosed a sexually transmitted infection in a patient, prescribes and dispenses antimicrobial drugs to the patient's sexual partner for treatment of that sexually transmitted infection without an examination of the sexual partner.

(4) "Health care practitioner" means a physician, advanced practice registered nurse, or physician's assistant authorized to diagnose and prescribe drugs for sexually transmitted infections.

(5) "STI" means a sexually transmitted infection.

Sec. 3. Expedited partner therapy.

(a)(1) A health care practitioner who diagnoses a chlamydia, gonorrhea or trichomoniasis infection in a patient may prescribe and dispense antimicrobial drugs to the patient's sexual partner for treatment of that STI without an examination of the sexual partner.

(2) The Director of DOH may add to the STIs covered under this act by rulemaking.

(b)(1) A health care practitioner providing EPT shall designate, in writing, on the prescription form:

(A) The phrase "EPT" above the name of the medication and dosage for all prescriptions issued; and

(B) The name, address, and date of birth of the sexual partner, if available.

## ENROLLED ORIGINAL

(2) If the name, address, and date of birth of the sexual partner are not available, the written designation "EPT" shall be sufficient for the pharmacist to fill the prescription.

(3) The health care practitioner shall report to DOH the number of prescribed EPT prescriptions issued, in addition to existing STI reporting requirements.

(c) A health care practitioner that provides a patient with antimicrobial drugs or a prescription in accordance with this act shall give the patient informational materials for the patient to give to his or her sexual partner. The health care practitioner shall counsel the patient to inform his or her sexual partner of the importance of reading the information contained in the materials before the sexual partner takes the medication. The materials shall:

(1) Encourage the sexual partner to consult a health care practitioner for a complete STI evaluation as a preferred alternative to EPT;

(2) Disclose the risk of potentially adverse drug reactions, including allergic reactions, that the antimicrobial drugs could produce and the possibility of dangerous interactions between the antimicrobial drugs and other medications that the sexual partner may be taking;

(3) Inform the sexual partner that he or she may be affected by other STIs that may be left untreated by the delivered antimicrobial drugs;

(4) Inform the sexual partner that if symptoms of a more serious infection are present (such as abdominal, pelvic, or testicular pain; fever, nausea, or vomiting) he or she should seek medical care as soon as possible;

(5) Recommend that a sexual partner who is or could be pregnant should consult a health care practitioner as soon as possible;

(6) Instruct the sexual partner to abstain from sexual activity for at least 7 days after treatment to decrease the risk of recurrent infection;

(7) Inform a sexual partner who is at high risk of co-morbidity with HIV infection that he or she should consult a health care practitioner for a complete medical evaluation, including testing for HIV and other STIs; and

(8) Inform the sexual partner how to prevent repeated chlamydia, gonorrhea, or trichomoniasis infections.

#### Sec. 4. Liability.

(a) A health care practitioner or a pharmacist who reasonably and in good faith renders EPT in accordance with this act or any other District law shall not be subject to civil or criminal liability or be deemed to have engaged in improper professional conduct.

(b) This subsection shall not apply to the donation, distribution, furnishing, or dispensing of an antimicrobial drug by a health care practitioner or pharmacist whose act or omission involves reckless, wanton, or intentional misconduct.

#### Sec. 5. Rules.

Within 60 days of the effective date of this act, the Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act. The

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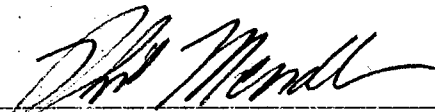
proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved.

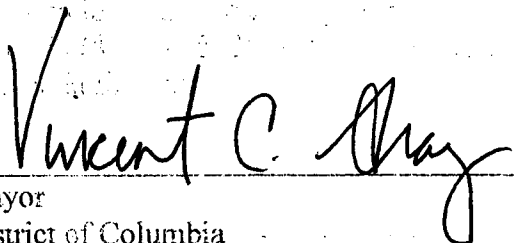
Sec. 6. Fiscal impact statement.

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. 7. Effective date.

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

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
February 19, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-280

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To order the closing of a portion of the public alley in Square 150, bounded by Seaton Street, N.W., Florida Avenue, N.W., V Street, N.W., and 17<sup>th</sup> Street, N.W., in Ward 1.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 150, S.O. 13-10218, Act of 2014".

Sec. 2. Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds that the portion of the public alley in Square 150, as shown on the Surveyor's plat filed under S.O. 13-10218, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

Sec. 3. Transmittal.

The Chairman of the Council shall transmit a copy of this act, upon its effective date, to the Office of the Surveyor and the Office of the Recorder of Deeds.

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

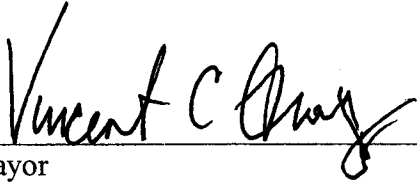
ENROLLED ORIGINAL

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



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
February 20, 2014



ENROLLED ORIGINAL

AN ACT  
D.C. ACT 20-281

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
FEBRUARY 20, 2014

To symbolically designate the 1600 block of Church Street, N.W., between 17<sup>th</sup> Street, N.W., and Stead Park, in Ward 2, as Annie’s Way.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Annie’s Way Designation Act of 2014”.

Sec. 2. Pursuant to sections 401 and 403a of the Street and Alley Closing Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01 and 9-204.03a), the Council symbolically designates the 1600 block of Church Street, N.W., between 17<sup>th</sup> Street, N.W., and Stead Park, in Ward 2, as “Annie’s Way”.

Sec. 3. Transmittal.

The Chairman of the Council shall transmit a copy of this act, upon its effective date, to the District Department of Transportation.

Sec. 4. Fiscal impact statement.

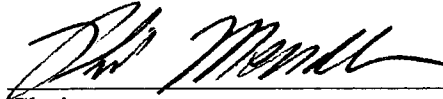
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

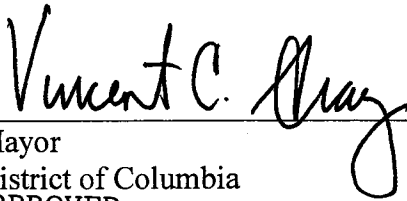
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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  
February 20, 2014

ENROLLED ORIGINAL

AN ACT  
D.C. ACT 20-282

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To amend, on an emergency basis, 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, 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 Emergency 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. 4. Fiscal impact statement.

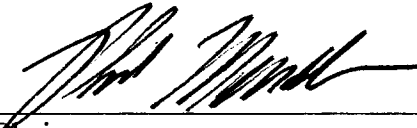
The Council adopts the fiscal impact statement in the committee report for the Procurement Practices Reform Exemption Amendment Act of 2014, signed by the Mayor on January 23, 2014 (D.C. Act 20-271), as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, 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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

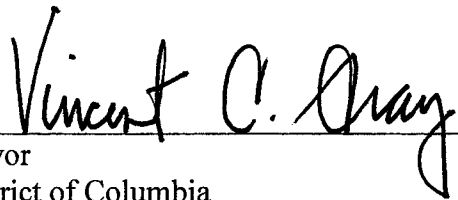
ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
D.C. Official Code § 1-204.12(a)).



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
February 20, 2014

## ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-283

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To amend, on an emergency basis, due to Congressional review, section 47-1801.04 of the District of Columbia Official Code to clarify that the base year for cost-of-living adjustments related to the personal income tax standard deduction and exemption is 2011.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Cost-of-Living Adjustment Personal Income Tax Standard Deduction and Exemption Technical Clarification Congressional Review Emergency Act of 2014".

Sec. 2. Section 47-1801.04(11) of the District of Columbia Official Code is amended to read as follows:

“(11) (A) "Cost-of-living adjustment" means an amount, for any calendar year, equal to the dollar amount set forth in paragraph (44)(A) and (B) of this section or § 47-1806.02(f)(1)(A) and (i) multiplied by the difference between the Consumer Price Index for the preceding calendar year and the Consumer Price Index for the calendar year beginning January 1, 2011, divided by the Consumer Price Index for the calendar year beginning January 1, 2011.

“(B) For the purposes of this paragraph, the Consumer Price Index for any calendar year is the average of the Consumer Price Index for the Washington-Baltimore Metropolitan Statistical Area for all-urban consumers published by the Department of Labor, or any successor index, as of the close of the 12-month period ending on July 31 of such calendar year.”.

Sec. 3. Applicability.

Section2 shall apply for taxable years beginning after December 31, 2010.

Sec. 4. Fiscal impact statement.

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

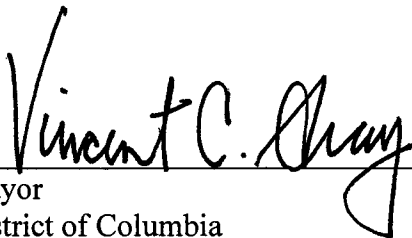
ENROLLED ORIGINAL

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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
February 20, 2014

## ENROLLED ORIGINAL

## AN ACT

D.C. ACT 20-284

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To order, on an emergency basis, the closing of a portion of the public alley in Square 150, bounded by Seaton Street, N.W., Florida Avenue, N.W., and 17<sup>th</sup> Street, N.W., in Ward 1.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 150, S.O. 13-10218, Emergency Act of 2014".

Sec. 2. Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds that the portion of the public alley in Square 150, as shown on the Surveyor's plat filed under S.O. 13-10218, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

Sec. 3. Transmittal.

The Chairman of the Council shall transmit a copy of this act, upon its effective date, to the Office of the Surveyor and the Office of the Recorder of Deeds.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Closing of a Public Alley in Square 150, S.O. 13-10218, Act of 2014, passed on 2<sup>nd</sup> reading on February 4, 2014 (Enrolled version of Bill 20-439), 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.

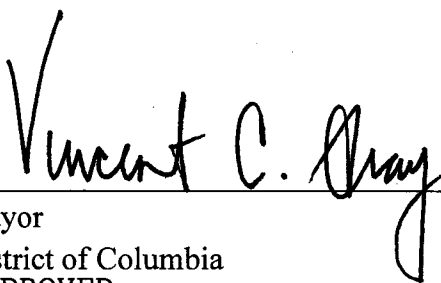
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section



ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
D.C. Official Code § 1-204.12(a)).

  
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Chairman  
Council of the District of Columbia

  
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Mayor  
District of Columbia  
APPROVED  
February 20, 2014

## ENROLLED ORIGINAL

## AN ACT

D.C. ACT 20-285

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To amend, on an emergency basis, due to Congressional review, the District of Columbia Administrative Procedure Act to exempt from disclosure certain critical infrastructure information.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Critical Infrastructure Freedom of Information Congressional Review Emergency Amendment Act of 2014".

Sec. 2. Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D. C. Official Code § 2-531 *et seq.*), is amended as follows:

(a) Section 204(a) (D.C. Official Code § 2-534 (a)) is amended as follows:

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

(2) Paragraph (14) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (15) is added to read as follows:

"(15) Any critical infrastructure information or plans that contain critical infrastructure information for the critical infrastructures of companies that are regulated by the Public Service Commission of the District of Columbia."

(b) The text of section 209 (D.C. Official Code § 2-539) is amended to read as follows:

"For the purposes of this title:

"(1) The terms "Mayor," "Council," "District," "agency," "rule," "rulemaking," "person," "party," "order," "relief," "proceeding," "public record," and "adjudication" shall have the same meanings as provided in section 102.

"(2) The term "critical infrastructure" means existing and proposed infrastructure systems and assets, whether physical or virtual, so vital to the District of Columbia or the United States that the incapacity or destruction of such infrastructure system or asset could jeopardize the physical security, economic security, health, safety, or welfare of the public.

"(3) The term "critical infrastructure information" means information not customarily in the public domain that is related to the security of critical infrastructure of companies that are regulated by the Public Service Commission of the District of Columbia,

## ENROLLED ORIGINAL

including:

“(A) Actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates federal or District of Columbia laws, harms interstate commerce of the United States or the economy of the District of Columbia, or threatens public health or safety;

“(B) The ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation, risk-management planning, or risk audit; or

“(C) Any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.”.

Sec. 3. Paragraph 32 of section 8 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 24, 1913 (37 Stat. 982; D.C. Official Code § 34-902), is amended as follows:

(a) The existing text is designated as subsection (a).

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

“(b) The Commission shall publish rules and regulations for the administration of the provisions of section 204(a)(15) of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a)(15)).”.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

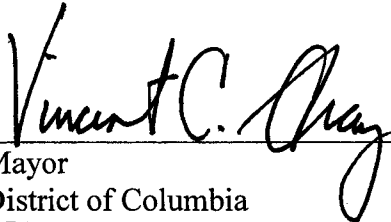
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
February 20, 2014

## ENROLLED ORIGINAL

AN ACT  
D.C. ACT 20-286IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
FEBRUARY 20, 2014

To amend, on an emergency basis, due to Congressional review, the District of Columbia Election Code of 1955 to permit the election of officials of political parties during any regularly scheduled primary election and to extend the deadline local party committees can file written communication with the Board of Elections identifying the offices to be filled during the April 1, 2014 primary election.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Party Officer Elections Congressional Review Emergency Amendment Act of 2014”.

Sec. 2. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

(a) Section 8(l)(1) (D.C. Official Code § 1-1001.08(l)(1)) is amended by striking the number “180” and inserting the number “130” in its place.

(b) Section 10(a)(1) (D.C. Official Code § 1-1001.10(a)(1)) is amended by striking the phrase “, on either the 2nd Tuesday in February of each presidential election year or the 1st Tuesday in April of each presidential election year if there is” and inserting the word “during” in its place.

Sec. 3. Applicability.

This act shall apply as of February 5, 2014.


Sec. 4. Fiscal impact statement.

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

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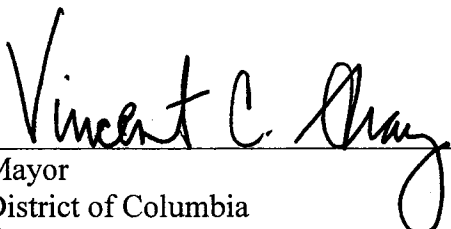
Sec. 5. Effective date.

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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
February 20, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-287

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 20, 2014

To amend, on an emergency basis, due to Congressional review, the District of Columbia Election Code of 1955 to establish that each nominating petition circulator must make and sign an affidavit that states that he or she is a qualified petition circulator as that term is defined in the Election Code.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Board of Elections Nominating Petition Circulator Affidavit Congressional Review Emergency Amendment Act of 2014”.

Sec. 2. Section 8(b)(3) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 701; D.C. Official Code § 1-1001.08(b)(3)), is amended by striking the phrase “circulator is a registered voter” and inserting the phrase “circulator is a qualified petition circulator” in its place.

Sec. 3. Applicability.

This act shall apply as of February 5, 2014.

Sec. 4. Fiscal impact statement.


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

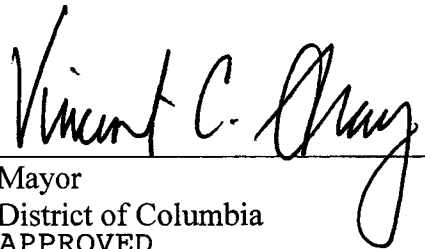
Sec. 5. Effective date.

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), and shall remain in effect for no longer than

ENROLLED ORIGINAL

90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

  
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Chairman  
Council of the District of Columbia

  
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Mayor  
District of Columbia  
APPROVED  
February 20, 2014



ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

20-162

THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2014

To recognize and celebrate the exceptional life achievements and the 100<sup>th</sup> birthday of District of Columbia resident Min Parson.

WHEREAS, Min Parson is a native Washingtonian, born on the 5<sup>th</sup> day of March in 1914 at George Washington Hospital;

WHEREAS, Min Parson is a testament to the strength of the District of Columbia Public Schools system, having graduated from Cardozo Senior High School, known then as Central High School;

WHEREAS, Min Parson was the owner and operator of GH Shulze Pharmacy, a local business and anchor of the surrounding community;

WHEREAS, Min Parson married Ben Parson in 1936 at the Sixth & I Historic Synagogue and she is the proud mother of Seena Parson and Richard Parson; and

WHEREAS, Min Parson's family continues to make contributions to the District, including her grandson, Brett Parson, who serves as a Sergeant with the Metropolitan Police Department and works daily to ensure the safety of District residents.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Min Parson Recognition Resolution of 2014".

Sec. 2. The District of Columbia is grateful for Min Parson's commitment to our city and her decision to make the District her lifelong home.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-163

THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2014

To recognize and honor the Hillcrest Community Civic Association.

WHEREAS, the Hillcrest Community Civic Association (“HCCA”) will celebrate its 25<sup>th</sup> anniversary in September of 2014;

WHEREAS, Belva T. Simmons was the founder and 1st president of the HCCA;

WHEREAS, the idea for the HCCA was conceived on the front lawn of Dennis and Gloria Logan on August 8, 1989, which was National Night Out Against Crime;

WHEREAS, Hillcrest is bounded by Pennsylvania Avenue, S.E., to the northeast, Southern Avenue to the southeast, and 32nd Street to the west; Branch Avenue, Pennsylvania Avenue, Alabama Avenue, and Suitland Road, S.E., are its main thoroughfares;

WHEREAS, Hillcrest is a neighborhood in the southeast quadrant of the District of Columbia in Ward 7, east of the Anacostia River;

WHEREAS, Hillcrest residents have included former Mayor Marion Barry, current Mayor Vincent C. Gray, former Police Chief Isaac Fullwood, former U.S. Marshall James Palmer, and other notable public figures, teachers, doctors, lawyers, government workers, civic leaders, professionals, retirees, and blue-collar workers;

WHEREAS, Hillcrest was formerly referred to as part of East Washington Heights;

WHEREAS, the Hillcrest Community Civic Association has adopted Beers, Randle Highlands, and Winston Elementary Schools;

WHEREAS, Hillcrest is a great neighborhood in the City of Washington, with great civic leaders and community activism, and embodies diversity; and

WHEREAS, HCCA has historically formed a collaboration through shared interest in the various arts such as performing arts, the visual arts, and the culinary arts—with the establishment of the HCCA’s Chili Cook off, held annually, in which The Palisades Citizens’ Association

**ENROLLED ORIGINAL**

(“PCA”) participates and HCCA reciprocates by participating in PCA’s annual 4<sup>th</sup> of July Parade.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “25<sup>th</sup> Anniversary of the Hillcrest Community Civic Association Recognition Resolution of 2014”.

Sec. 2. The Council of the District of Columbia recognizes and commends the Hillcrest Community Civic Association on the occasion of its 25<sup>th</sup> anniversary.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-164

THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2014

To recognize and honor Xavier Hawkins for his long-standing commitment to the Ward 8 community.

WHEREAS, Xavier Hawkins has shown by example the art of being a steadfast servant as he has relentlessly served the Ward 8 community for many years;

WHEREAS, Xavier Hawkins is an employee of Interstate, a 70-year-old company of 3 generations of Morrissettes originally from the Barry Farm community in Ward 8, that for the past 22 years has delivered toys to the more than 800 children of Barry Farm on Christmas Eve as a way to give back to the community where it got its start;

WHEREAS, Xavier Hawkins has volunteered to be “Santa” for the past 8 years and, despite having been shot by a pellet gun while delivering toys to the children of Barry Farm last Christmas Eve, intends to continue serving the children of Barry Farm through this effort next year;

WHEREAS, Xavier Hawkins brings integrity, compassion, and commitment to all endeavors in which he engages on behalf of the Ward 8 community, vividly illustrating true model citizenship and compassion; and

WHEREAS, Xavier Hawkins provides a source of energy to us all as he represents a shining example of the good and decent citizens that reside throughout this city and Ward 8 is very fortunate to have his service.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Xavier Hawkins Recognition Resolution of 2014”.

Sec. 2. The Council of the District of Columbia recognizes and honors the tireless service of Xavier Hawkins in the Ward 8 community.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-165

THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2014

To recognize and honor 25 years of service by D.C. Central Kitchen, a nonprofit organization that offers culinary training to unemployed and homeless persons, and distributes nutritious meals to low-income and at-risk individuals in the District of Columbia.

WHEREAS, the D.C. Central Kitchen was founded in 1989 in the District by Robert Egger, and has since provided over 27 million meals to homeless shelters, transitional homes, and social service organizations;

WHEREAS, the D.C. Central Kitchen has served more than 2.5 million healthy, locally sourced meals to students in District schools;

WHEREAS, each day, the D.C Central Kitchen saves 3,000 pounds of leftover food that can be made into 5,000 nutritious meals, reducing hunger and waste in the District;

WHEREAS, in total, the D.C. Central Kitchen has used 22 million pounds of leftover food to feed individuals in need;

WHEREAS, throughout its existence, the D.C. Central Kitchen has provided culinary job training to over 1,200 unemployed, underemployed, and previously incarcerated persons, as well as homeless adults, and prepared them for careers in the food services industry;

WHEREAS, the D.C. Central Kitchen’s job training program has consistently succeeded in placing enrollees into full-time employment at local restaurants, hotels, caterers, and other hospitality businesses, changing the lives of numerous men and women;

WHEREAS, the D.C. Central Kitchen has created more than 140 jobs for District residents that pay a living wage and provide full benefits;

WHEREAS, the D.C. Central Kitchen has engaged more than 100,000 volunteers, instilling in them the value of community service;

**ENROLLED ORIGINAL**

WHEREAS, the D.C. Central Kitchen has inspired and opened 34 affiliate Campus Kitchens nationwide, which have prepared 2 million meals;

WHEREAS, through its Healthy Corners program, the D.C. Central Kitchen has provided fresh fruits and vegetables to corner stores in low-income areas of the District in an effort to water the District’s food deserts;

WHEREAS, through its achievements in fighting hunger and poverty, promoting good nutrition and health, and providing job training for disadvantaged residents, the D.C. Central Kitchen serves as a national model and an inspiration for community kitchens across the country; and

WHEREAS, the D.C. Central Kitchen is celebrating its 25th anniversary in 2014.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “D.C. Central Kitchen 25th Anniversary Recognition Resolution of 2014”.

Sec. 2. The Council of the District of Columbia recognizes and honors D.C. Central Kitchen for its 25 years of outstanding service to the District of Columbia and its residents.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-166

THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2014

To recognize and honor the 125 years of service to the District provided by Engine Company No. 8 of the Fire and Emergency Medical Services Department.

WHEREAS, on January 21, 1889, Engine Company No. 8 was formed as a new company within the District of Columbia Fire Department, comprised of 10 employees, 2,450 feet of fire hose, and an 1884 Clapp and Jones steam fire engine pulled by 2 horses and capable of 450 gallons per minute;

WHEREAS, on January 22, 1889, the station located at 637 North Carolina Avenue, S.E., went into active service, and within the first 6 months Engine Company No. 8 raised 12 ladders responding to 4 local alarms, 16 first alarms, one 2nd alarm, and provided 3 transfers to other stations;

WHEREAS, in 1905, the Chief Engineer of the Fire Department recommended erection of a fire training tower at Engine Co. No. 8, a tower was later erected on the site, and the training tower remained there until the Fire Department’s training school was moved to Blue Plains in 1960;

WHEREAS, in 1914, construction began on a 2-bay repair shop next to Engine Company No. 8, replacing the Fire Department’s small machinist shop, where the repair shop remained until it was moved to its current location at 1101 Half Street, S.W., in 1961;

WHEREAS, on March 25, 1964, after 75 years, Engine Company No. 8 moved to its new quarters at 1520 C Street, S.E., and, after 50 years, this location remains the site of Engine Company No. 8;

WHEREAS, Engine Company No. 8 currently operates a 2006 Seagrave pumper capable of 1,250 gallons per minute, and is home to Battalion Fire Chief 2, EMS 2, Medic 8, Air 2, Mass Decontamination; and

WHEREAS, on January 25, 2014, the District of Columbia Fire and Emergency Medical Services Department celebrated the anniversary of 125 years of service to the District of Columbia for Engine Company No. 8.

**ENROLLED ORIGINAL**

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “125<sup>th</sup> Anniversary of the Fire and Emergency Medical Services Department Engine Company No. 8 Recognition Resolution of 2014”.

Sec. 2. The Council of the District of Columbia recognizes and honors the 125 years of continuous service to District residents provided by the men and women at Fire and Emergency Medical Services Department Engine Company No. 8.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.



ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-167

THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2014

To posthumously honor the life of Carolyn C. Gray, and to declare December 22, 2013, as “Carolyn C. Gray Day” in the District of Columbia.

WHEREAS, Ms. Gray was born in the District of Columbia on January 29, 1957;

WHEREAS, Ms. Gray was raised in the Clay Terrace section of Ward 7 in Northeast;

WHEREAS, Ms. Gray attended Richardson Elementary School, Evans Junior High School, and Howard D. Woodson Senior High School in Ward 7;

WHEREAS, in 1978, Ms. Gray began her lifelong career at the District of Columbia Office of Tax and Revenue (“OTR”);

WHEREAS, during Ms. Gray’s tenure as an accounting technician at OTR, she received several certificates, awards, and letters of recognition from District of Columbia residents as well as Mayor Marion Barry;

WHEREAS, in 2007, Ms. Gray delivered a powerful speech at a District of Columbia Breast Cancer Awareness Month event;

WHEREAS, Ms. Gray retired from OTR after learning of a second diagnosis of cancer; and

WHEREAS, Ms. Gray fought for her life until her last days, passing away at the age of 55 on December 22, 2012.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Carolyn C. Gray Posthumous Recognition Resolution of 2014”.

Sec. 2. The Council of the District of Columbia recognizes and honors the life of Carolyn C. Gray and declares December 22, 2013, as “Carolyn C. Gray Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-168

THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 4, 2014

To declare the month of February 2014 as “American Heart Month” in the District of Columbia, recognize and support the American Heart Association’s Go Red For Women movement, and urge citizens to show their support for women and the fight against heart disease and stroke by commemorating February through the wearing and presentation of the color red.

WHEREAS, cardiovascular diseases are the nation’s leading cause of death and costliest disease with direct and indirect costs estimated to be \$312.6 billion;

WHEREAS, cardiovascular diseases cause one – in – three women’s deaths each year, killing approximately one woman every minute;

WHEREAS, heart disease is the No. 1 killer of women, yet only one in five American women believes that heart disease is her greatest health threat;

WHEREAS, while progress has been significant in reducing deaths from heart disease, it is still the No. 1 killer of both women and men; stroke is the No. 3 cause of death for females in the District, accounting for 138 female deaths in 2012; and heart disease and stroke account for 33.1% of all female deaths in the District;

WHEREAS, on average, nearly 2 women die from heart disease and stroke in the District each day;

WHEREAS, since 1984, more women than men have died each year from heart disease and the gap between men and women’s survival continues to widen;

WHEREAS, ninety percent of women have one or more risk factors for developing heart disease;

WHEREAS, women comprise only 24 percent of participants in all heart-related studies;

**ENROLLED ORIGINAL**

WHEREAS, women are less likely to call 911 for themselves when experiencing symptoms of a heart attack than they are if someone else were having a heart attack;

WHEREAS, the American Heart Association's Go Red for Women movement has focused on cardiovascular disease's effect on woman for the past 10 years;

WHEREAS, the Go Red for Woman Campaign has saved more than 627,000 women's lives with 330 fewer women dying every day;

WHEREAS, between 1999 and 2009, the rate of deaths from cardiovascular diseases fell 32.7 percent, but still accounted for nearly one in three deaths in the nation;

WHEREAS, by increasing awareness, speaking up about heart disease, empowering women to reduce their risk for cardiovascular disease, and recognizing the critical importance of tools and skills that will increase survival rates from cardiac arrest (and incorporating these tools into aggressive programs), thousands of lives can be saved each year;

WHEREAS, efforts of the American Heart Association encourage citizens to help save lives by calling 9-1-1 if symptoms occur, become trained in CPR, and encourage comprehensive automated external defibrillator programs in their communities; and

WHEREAS, the American Heart Association is celebrating February 2014 as American Heart Month and promoting education and awareness by encouraging citizens to learn the warning signs of heart attack and stroke.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "American Heart Month Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia recognizes and supports the American Heart Association's Go Red For Women movement, urges citizens to show their support for women and the fight against heart disease and stroke for women and men by commemorating February through the wearing and presentation of the color red, and declares the month of February 2014 as "American Heart Month" in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.



<b>COMMITTEE OF THE WHOLE</b>		<b>Chairman Phil Mendelson</b>
<b>WEDNESDAY, FEBRUARY 5, 2014; COUNCIL CHAMBER (Room 500)</b>		
<b>Time</b>	<b>Subject</b>	
9:30 a.m. - End	Committee of the Whole Public Briefing on the Fiscal Year 2013 Comprehensive Annual Financial Report (CAFR)	

<b>COMMITTEE ON GOVERNMENT OPERATIONS</b>		<b>Chairperson Kenyan McDuffie</b>
<b>MONDAY, FEBRUARY 10, 2014; COUNCIL CHAMBER (Room 500)</b>		
<b>Time</b>	<b>Agency</b>	
10:00 a.m. - End	Office of the Chief Technology Officer	
	Board of Ethics and Government Accountability	
	Office of Risk Management (Disability Compensation Fund)	

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, [rgulstone@dccouncil.us](mailto:rgulstone@dccouncil.us) or by calling 202-478-2456.

<b>COMMITTEE ON HUMAN SERVICES</b>		<b>Chairperson Jim Graham</b>
<b>MONDAY, FEBRUARY 10, 2014; Room 412</b>		
<b>Time</b>	<b>Agency</b>	
11:00 a.m. - End	Children and Youth Investment Trust Corporation	

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-724-8191.

<b>COMMITTEE ON ECONOMIC DEVELOPMENT</b>		<b>Chairperson Muriel Bowser</b>
<b>TUESDAY, FEBRUARY 11, 2014; COUNCIL CHAMBER (Room 500)</b>		
<b>Time</b>	<b>Agency</b>	
10:00 a.m. - End	Department of Housing and Community Development	
	Office of the Deputy Mayor for Planning and Economic Development	

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Judah Gluckman, [jgluckman@dccouncil.us](mailto:jgluckman@dccouncil.us) or Rob Hawkins, [rhawkins@dccouncil.us](mailto:rhawkins@dccouncil.us) or by calling 202-724-8052.

<b>COMMITTEE OF THE WHOLE</b>		<b>Chairman Phil Mendelson</b>
<b>WEDNESDAY, FEBRUARY 12, 2014; COUNCIL CHAMBER (Room 500)</b>		
<b>Time</b>	<b>Agency</b>	
2:30 p.m. - End	Committee of the Whole Public Briefing on the Recommendation of the Tax Revision Commission	

<b>COMMITTEE ON HUMAN SERVICES</b>		<b>Chairperson Jim Graham</b>
<b>WEDNESDAY, FEBRUARY 12, 2014; Room 412</b>		
<b>Time</b>	<b>Agency</b>	
2:00 p.m. - End	Child and Family Services Agency	

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-724-8191.

<b>COMMITTEE ON BUSINESS, CONSUMER &amp; REGULATORY AFFAIRS</b>		<b>Chairperson Vincent Orange</b>
<b>WEDNESDAY, FEBRUARY 19, 2014; COUNCIL CHAMBER (Room 500)</b>		
<b>Time</b>	<b>Agency</b>	
10:00 a.m. - End	Department of Consumer and Regulatory Affairs	
	Department of Insurance, Securities and Banking	
	Office of Tenant Advocate	
	Alcoholic Beverage Regulatory Administration	

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Faye Caldwell, [fcaldwell@dccouncil.us](mailto:fcaldwell@dccouncil.us) (please cc: [gfisher@dccouncil.us](mailto:gfisher@dccouncil.us)) or by calling 202-727-6683.

**COMMITTEE ON ECONOMIC DEVELOPMENT** **Chairperson Muriel Bowser**

<b>WEDNESDAY, FEBRUARY 19, 2014; Room 412</b>	
Time	Agency
10:00 a.m. - End	Washington Metropolitan Area Transit Authority
	Office of Cable Television
	Housing Authority
	Housing Finance Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Judah Gluckman, [jgluckman@dccouncil.us](mailto:jgluckman@dccouncil.us) or by calling 202-724-8052.

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT** **Chairperson Mary Cheh**

<b>WEDNESDAY, FEBRUARY 19, 2014; Room 123</b>	
Time	Agency
11:00 a.m.	Taxicab Commission
1:00 p.m.	Department of Parks and Recreation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE ON EDUCATION** **Chairperson David Catania**

<b>WEDNESDAY, FEBRUARY 19, 2014; Room 120</b>	
Time	Agency
10:00 a.m. - End	State Board of Education
	Office of the Deputy Mayor for Education
	Public Library System

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, [jjordan@dccouncil.us](mailto:jjordan@dccouncil.us) or by calling 202-724-8061.

**COMMITTEE ON HUMAN SERVICES** **Chairperson Jim Graham**

<b>THURSDAY, FEBRUARY 20, 2014; Room 412</b>	
Time	Agency
12:00 p.m.	Department of Youth Rehabilitation Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-724-8191.

**COMMITTEE ON GOVERNMENT OPERATIONS** **Chairperson Kenyan McDuffie**

<b>THURSDAY, FEBRUARY 20, 2014; Room 123</b>	
Time	Agency
10:00 a.m. - End	Office of the Inspector General
	Public Employees Relations Board
	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, [rgulstone@dccouncil.us](mailto:rgulstone@dccouncil.us) or by calling 202-478-2456.

**COMMITTEE OF THE WHOLE** **Chairman Phil Mendelson**

<b>MONDAY, FEBRUARY 24, 2014; COUNCIL CHAMBER (Room 500)</b>	
Time	Agency
10:00 a.m. - 4:00 p.m.	Office of Contracting and Procurement
	Innovation Fund

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Evan Cash, [ecash@dccouncil.us](mailto:ecash@dccouncil.us) or by calling 202-724-8196.

**COMMITTEE ON GOVERNMENT OPERATIONS**

**Chairperson Kenyan McDuffie**

<b>MONDAY, FEBRUARY 24, 2014; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Advisory Neighborhood Commission
	Office of the City Administrator
	Executive Office of the Mayor
	- Office of Policy and Legislative Affairs
	- ServeDC
	- Office of Community Affairs
	- Advisory Commission on Caribbean Community Affairs
	- Advisory Committee to the Office of GLBT Affairs
	- Commission on African Affairs
	- Commission on African American Affairs
	- Commission on Asian and Pacific Islander Affairs
	- Commission for Women
	- Commission on Latino Community Development
	- Interfaith Council
	- Office of Asian and Pacific Islanders Affairs
	- Office of Gay, Lesbian, Bisexual, and Transgender Affairs
- Office of Partnerships and Grants Services	
- Office of Veteran's Affairs	
- Office on African Affairs	
- Office on Latino Affairs	

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, [rgulstone@dccouncil.us](mailto:rgulstone@dccouncil.us) or by calling 202-478-2456.

**COMMITTEE ON EDUCATION**

**Chairperson David Catania**

<b>MONDAY, FEBRUARY 24, 2014; Room 123</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Office of State Superintendent of Education
	Education Licensure Commission
	Healthy Youth and Schools Commission
	Public Charter School Credit Enhancement Fund Committee

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, [jjordan@dccouncil.us](mailto:jjordan@dccouncil.us) or by calling 202-724-8061.

**COMMITTEE ON HEALTH**

**Chairperson Yvette Alexander**

<b>TUESDAY, FEBRUARY 25, 2014; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Office on Aging
	Deputy Mayor for Health and Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, [rsmith@dccouncil.us](mailto:rsmith@dccouncil.us) or by calling 202-741-2111.

**COMMITTEE OF THE WHOLE**

**Chairman Phil Mendelson**

<b>TUESDAY, FEBRUARY 25, 2014; Room 412</b>	
<b>Time</b>	<b>Agency</b>
11:00 a.m. - 6:00 p.m.	University of the District of Columbia
	University of the District of Columbia Community College

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Christina Setlow, [csetlow@dccouncil.us](mailto:csetlow@dccouncil.us) or by calling 202-724-8196.

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT** **Chairperson Mary Cheh**

<b>TUESDAY, FEBRUARY 25, 2014; Room 123</b>	
Time	Agency
1:00 p.m. - End	Washington Aqueduct
	District of Columbia Water and Sewer Authority (DCWater)
	Department of the Environment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE ON HUMAN SERVICES** **Chairperson Jim Graham**

<b>WEDNESDAY, FEBRUARY 26, 2014; COUNCIL CHAMBER (Room 500)</b>	
Time	Agency
11:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-724-8191.

**COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS** **Chairperson Vincent Orange**

<b>WEDNESDAY, FEBRUARY 26, 2014; Room 412</b>	
Time	Agency
10:00 a.m. - End	Department of Small & Local Business Development
	Department of Employment Services
	Workforce Investment Council
	Office of Motion Picture & Television Development

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Faye Caldwell, [fcaldwell@dccouncil.us](mailto:fcaldwell@dccouncil.us) (cc: [gfisher@dccouncil.us](mailto:gfisher@dccouncil.us)) or by calling 202-727-6683.

**COMMITTEE ON EDUCATION** **Chairperson David Catania**

<b>WEDNESDAY, FEBRUARY 26, 2014; Room 123</b>	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, [jjordan@dccouncil.us](mailto:jjordan@dccouncil.us) or by calling 202-724-8061.

**COMMITTEE ON HEALTH** **Chairperson Yvette Alexander**

<b>WEDNESDAY, FEBRUARY 26, 2014; Room 120</b>	
Time	Agency
10:00 a.m. - End	Health Benefit Exchange Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, [rsmith@dccouncil.us](mailto:rsmith@dccouncil.us) or by calling 202-741-2111.

**COMMITTEE ON FINANCE AND REVENUE** **Chairperson Jack Evans**

<b>THURSDAY, FEBRUARY 27, 2014; COUNCIL CHAMBER (Room 500)</b>	
Time	Agency
10:00 a.m. - End	Office of Chief Financial Officer
	D.C. Lottery
	Real Property Tax Appeals Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, [sloy@dccouncil.us](mailto:sloy@dccouncil.us) or by calling 202-724-8058.



**COMMITTEE ON EDUCATION**

**Chairperson David Catania**

THURSDAY, FEBRUARY 27, 2014; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, [jjordan@dccouncil.us](mailto:jjordan@dccouncil.us) or by calling 202-724-8061.

**COMMITTEE ON HUMAN SERVICES**

**Chairperson Jim Graham**

THURSDAY, FEBRUARY 27, 2014; Room 123 (Continuation from 2/12/14)	
Time	Agency
2:00 p.m. - End	Child and Family Services Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-724-8191.

**COMMITTEE ON GOVERNMENT OPERATIONS**

**Chairperson Kenyan McDuffie**

THURSDAY, FEBRUARY 27, 2014; Room 120	
Time	Agency
10:00 a.m. - End	Public Service Commission
	Office of People's Counsel
	Office of Employee Appeals
	Secretary of the District of Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, [rgulstone@dccouncil.us](mailto:rgulstone@dccouncil.us) or by calling 202-478-2456.

**COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

**Chairperson Tommy Wells**

FRIDAY, FEBRUARY 28, 2014; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Sentencing and Criminal Code Revision Commission
	Metropolitan Police Department
	District of Columbia National Guard
	Office of the Attorney General
	Homeland Security and Emergency Management Agency
Office of the Attorney General	

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Tawanna Shuford, [tshuford@dccouncil.us](mailto:tshuford@dccouncil.us) or by calling 202-724-7808.

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT**

**Chairperson Mary Cheh**

FRIDAY, FEBRUARY 28, 2014; Room 412	
Time	Agency
11:00 a.m.	Department of Motor Vehicles
1:00 p.m.	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE OF THE WHOLE**

**Chairman Phil Mendelson**

FRIDAY, FEBRUARY 28, 2014; Room 120	
Time	Agency
Noon - 4:00 p.m.	Metropolitan Washington Airports Authority
	Metropolitan Washington Council of Governments
	District of Columbia Auditor
	Office of Budget and Planning
	Office of Labor Relations & Collective Bargaining

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Renee Johnson, [rjohnson@dccouncil.us](mailto:rjohnson@dccouncil.us) or by calling 202-724-8196.

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT**

**Chairperson Mary Cheh**

MONDAY, MARCH 3, 2014; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Pedestrian Advisory Council
	Bicycle Advisory Council
	Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE ON FINANCE AND REVENUE**

**Chairperson Jack Evans**

<b>MONDAY, MARCH 3, 2014; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:30 a.m. - End	Commission on the Arts and Humanities
	Washington Convention and Sports Authority (Events DC)
	Destination DC

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, [sloy@dccouncil.us](mailto:sloy@dccouncil.us) or by calling 202-724-8058.

**COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY**

**Chairperson Tommy Wells**

<b>MONDAY, MARCH 3, 2014; Room 123</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Commission on Judicial Disabilities and Tenure
	Department of Corrections
	Office of Returning Citizen Affairs
	Corrections Information Council
	Office of Human Rights
	Office of the Chief Medical Examiner

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Tawanna Shuford, [tshuford@dccouncil.us](mailto:tshuford@dccouncil.us) or by calling 202-724-7808.

**COMMITTEE OF THE WHOLE**

**Chairman Phil Mendelson**

<b>WEDNESDAY, MARCH 5, 2014; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
9:30 a.m. - 6:00 p.m.	Contract Appeals Board
	Retirement Board
	Retiree Health Contribution
	Teacher's Retirement System
	Police Officers' and Firefighters' Retirement System
	Office of Zoning
	Office of Planning

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jessica Jacobs, [jjacobs@dccouncil.us](mailto:jjacobs@dccouncil.us) or by calling 202-724-8196.

**COMMITTEE ON HEALTH**

**Chairperson Yvette Alexander**

<b>WEDNESDAY, MARCH 5, 2014; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Behavioral Health
	Not-for-Profit-Hospital Corporation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, [rsmith@dccouncil.us](mailto:rsmith@dccouncil.us) or by calling 202-741-2111.

**COMMITTEE ON HUMAN SERVICES**

**Chairperson Jim Graham**

<b>WEDNESDAY, MARCH 5, 2014; Room 123</b>	
<b>Time</b>	<b>Agency</b>
11:00 a.m.	Office of Disability Rights
2:00 p.m.	Department of Disability Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-724-8191.

**COMMITTEE ON GOVERNMENT OPERATIONS**

**Chairperson Kenyan McDuffie**

<b>THURSDAY, MARCH 6, 2014; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Human Resources
	Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, [rgulstone@dccouncil.us](mailto:rgulstone@dccouncil.us) or by calling 202-478-2456.

**COMMITTEE ON EDUCATION**

**Chairperson David Catania**

<b>THURSDAY, MARCH 6, 2014; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Public Charter School Board
	Public Charter Schools

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, [jjordan@dccouncil.us](mailto:jjordan@dccouncil.us) or by calling 202-724-8061.

**COMMITTEE ON HEALTH**

**Chairperson Yvette Alexander**

<b>THURSDAY, MARCH 6, 2014; Room 120</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Healthcare Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, [rsmith@dccouncil.us](mailto:rsmith@dccouncil.us) or by calling 202-741-2111.

**COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

**Chairperson Tommy Wells**

<b>FRIDAY, MARCH 7, 2014; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Judicial Nomination Commission
	Fire and Emergency Medical Services
	Office of Police Complaints
	Criminal Justice Coordinating Council
	Deputy Mayor for Public Safety and Justice

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Tawanna Shuford, [tshuford@dccouncil.us](mailto:tshuford@dccouncil.us) or by calling 202-724-7808.

**COMMITTEE ON HEALTH**

**Chairperson Yvette Alexander**

<b>FRIDAY, MARCH 7, 2014; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m.	Department of Health
	Department of Health Professional Licensing Boards

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, [rsmith@dccouncil.us](mailto:rsmith@dccouncil.us) or by calling 202-741-2111.

**COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

**Chairperson Tommy Wells**

<b>WEDNESDAY, MARCH 12, 2014; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - 5:00 p.m.	Office of Victim Services
	Justice Grants Administration
	Office of Unified Communications
	Office of Administrative Hearings
	Department of Forensic Sciences

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Tawanna Shuford, [tshuford@dccouncil.us](mailto:tshuford@dccouncil.us) or by calling 202-724-7808.

Council of the District of Columbia  
Committee on Human Services  
**NOTICE OF PUBLIC ROUNDTABLE**  
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

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**THE COMMITTEE ON HUMAN SERVICES  
COUNCILMEMBER JIM GRAHAM, CHAIR**

**ANNOUNCES A PUBLIC ROUNDTABLE ON**

**PR 20-650, "SENSE OF THE COUNCIL FOR ENDING CHRONIC HOMELESSNESS  
RESOLUTION OF 2014"**

**MARCH 11, 2014 AT 11:00 A.M.  
ROOM 123, THE JOHN A. WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004**

Councilmember Jim Graham, Chair of the Committee on Human Services, announces a Public Roundtable on PR 20-650, "Sense of the Council for Ending Chronic Homelessness Resolution of 2014" The hearing will be held on Tuesday, March 11, 2014 , at 11:00 a.m. in Room 123 of the John A. Wilson Building.

PR 20-650 would declare the sense of the Council that the District seeks to end chronic homelessness in the District no later than 2020 and that the Mayor shall plan and fund a sufficient number of permanent supportive housing resources to achieve this goal.

Those who wish to testify should contact Mr. Malcolm Cameron of the Committee on Human Services by email at [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by telephone at (202) 724-8191. Email contacts to Mr. Cameron should include the residential ward, full name, title, and affiliation -- if applicable -- of the person(s) testifying. Witnesses should bring 15 copies of their written testimony to the hearing. Individuals will be permitted 3 minutes for oral presentation -- individuals representing organizations or groups will be permitted 5 minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be emailed to Mr. Malcolm Cameron at [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or submitted to the Committee on Human Services at 1350 Pennsylvania Avenue, N.W., Suite 117, Washington, D.C. 20004, by no later than 6:00 p.m., March 21, 2014, when the official record will close.

**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

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**Reprog. 20-161:** Request to reprogram \$7,910,030 of Capital funds budget authority and allotment within the Fire and Emergency Medical Services Department (FEMS) was filed in the Office of the Secretary on February 21, 2014. This reprogramming is needed to upgrade and rehabilitate historic Engine Company #16 is brought up to current building codes and meets FEMS operational requirements.

RECEIVED: 14 day review begins February 24, 2014

**Reprog. 20-162:** Request to reprogram \$96,868,000 of Capital funds budget authority and allotment from the Department of General Services (DGS), the Office of the Deputy Mayor for Planning and Economic Development (DMPED), and the Office of the Deputy Mayor for Education (DME) to DGS was filed in the Office of the Secretary on February 25, 2014. This reprogramming is to support the cost of school modernization, phased modernizations, and small capital projects.

RECEIVED: 14 day review begins February 26, 2014

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
2/28/2014**

Notice is hereby given that:

License Number: ABRA-071088

License Class/Type: C Nightclub

Applicant: M Street Management Group

Trade Name: 1819 Club

ANC: 2B06

Has applied for the renewal of an alcoholic beverages license at the premises:

**1819 M ST NW, WASHINGTON, DC 20036**

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

**4/14/2014**

HEARING WILL BE HELD ON

**4/28/2014**

AT 10:00 AM, 2000 14th Street, NW, 4th Floor, Washington, DC 20009

**ENDORSEMENTS:**

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	4 pm - 2 am	4 pm -2 am	-
Monday:	11:30 am - 2 am	11:30 am - 2 am	-
Tuesday:	11:30 am - 2 am	11:30 am - 2 am	-
Wednesday:	11:30 am - 2 am	11:30 - 2 am	-
Thursday:	11:30 am - 2 am	11:30 - 2 am	-
Friday:	11:30 am - 3 am	11:30 am - 3 am	-
Saturday:	11:30 am - 3 am	11:30 am - 3 am	-

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, MARCH 5, 2014  
2000 14<sup>TH</sup> 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

**Protest Hearing (Status)** **9:30 AM**  
**Case # 13-PRO-00150;** Superclub Ibiza, LLC, t/a Ibiza, 1222 1st Street NE  
License #74456, Retailer CN, ANC 6C  
**Renewal Application**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 13-PRO-00171;** Taste International, Inc., t/a Taste, 1812 Hamlin Street  
NE, License #86011, Retailer CT , ANC 5C  
**Renewal Application**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 13-PRO-00137;** 1825 18th Hospitality, t/a Bar Charley's, 1825 18th  
Street NW, License #92461, Retailer CT, ANC 2B  
**Substantial Change (request to change hours of operation and sales)**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 13-PRO-00169;** Barcode Corporation, t/a Barcode, 1101 17th Street NW  
License #82039, Retailer CT, ANC 2B  
**Renewal Application**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 13-CC-00062;** Jim Dolan's Inc., t/a Kelly's Irish Times, 14 F Street NW  
License #939, Retailer CR, ANC 6C  
**Sale to Minor, Failed to Take Steps Necessary to Ascertain Legal Drinking  
Age, Permitted the Sale or Delivery of Alcohol to Intoxicated Persons**

Board's Calendar  
March 5, 2014

**10:00 AM**

**Show Cause Hearing\***

**Case # 13-CMP-00104;** Mimi & D, LLC, t/a Vita Restaurant and Lounge/Penthouse Nine, 1318 9th Street NW, License #86037, Retailer CT ANC 2F, **Violation of Settlement Agreement**

**11:00 AM**

**Show Cause Hearing\***

**Case # 12-CMP-00187(NCBO);** Mimi & D, LLC, t/a Vita Restaurant and Lounge/Penthouse Nine, 1318 9th Street NW, License #86037, Retailer CT ANC 2F, **Failed to Comply With the Terms of its Offer in Compromise Dated October 24, 2012**

**BOARD RECESS AT 12:00 PM  
ADMINISTRATIVE AGENDA**

**1:00 PM**

**1:30 PM**

**Fact Finding Hearing\***

**Case # 14-251-00044;** Backdoor Inc., t/a Backelors Mill/Backdoor Pub 1104 8<sup>th</sup> Street SE, License #11277, Retailer CT, ANC 6B  
**Assault Inside and Outside of the Establishment**

**2:30 PM**

**Protest Hearing\***

**Case # 13-PRO-00066;** Pure Hospitality, LLC, t/a Bandolero, 3241 M Street NW, License #75631, Retailer CR, ANC 2E  
**Renewal Application**

**\*The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Official Code §2-574(b)(13).**



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

Posting Date: February 28, 2014  
Petition Date: April 14, 2014  
Roll Call Hearing Date: April 28, 2014  
Protest Hearing Date: June 18, 2014

License No.: ABRA-094362  
Licensee: Numana LLC  
Trade Name: Campono  
License Class: Retailer's Class "D" Restaurant  
Address: 600 New Hampshire Avenue NW  
Contact: Stephen O'Brien, Esq., 202-625-7700

WARD2

ANC 2A

SMD 2A04

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 14<sup>th</sup> 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 June 18, 2014 at 1:30pm.

**NATURE OF OPERATION**

New upscale authentic pizzeria with background music. Total occupancy is 96. Summer Garden with seating for 60 patrons.

**HOURS OF OPERATION FOR INSIDE PREMISES AND SUMMER GARDEN**

Sunday through Saturday 7am-11pm

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR INSIDE PREMISES AND SUMMER GARDEN**

Sunday through Saturday 8am-11pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: February 28, 2014  
Petition Date: April 14, 2014  
Hearing Date: April 28, 2014  
Protest Hearing Date: June 18, 2014

License No.: ABRA-094321  
Licensee: Colony Club, LLC  
Trade Name: TBD  
License Class: Retailer’s Class “C” Tavern  
Address: 3118 Georgia Avenue, NW  
Contact: Stephen J. O’Brien 202-625-7700

WARD 1                      ANC 1A                      SMD 1A10

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 14<sup>th</sup> 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 June 18, 2014 at 1:30pm.

**NATURE OF OPERATION**

This is a new “C” Tavern with a Summer Garden. The establishment will serve coffee, small dishes and alcoholic beverages, while offering ping pong tables for use by patrons. Establishment will offer entertainment from DJs and musicians. No nude performances.

**HOURS OF OPERATION/ SUMMER GARDEN**

Sunday through Thursday 7am to 2am, Friday and Saturday 7am to 3am

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION/SUMMER GARDEN**

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

**HOURS OF LIVE ENTERTAINMENT**

Sunday through Thursday 5pm to 2am, Friday and Saturday 5pm to 3am

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

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

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

Posting Date: February 28, 2014  
Petition Date: April 14, 2014  
Hearing Date: April 28, 2014  
Protest Hearing Date: June 18, 2014

License No.: ABRA-094079  
Licensee: JINJUNG WINE & SPRITS INC  
Trade Name: TBD  
License Class: Retailer's Class "A"  
Address: 3228 Pennsylvania Avenue SE  
Contact: Jermaine Matthews 240-838-1622

WARD 7

ANC 7B

SMD 7B04

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 14<sup>th</sup> 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 June 18, 2014 at 1:30pm.

**NATURE OF OPERATION**

This is a new Retail Class "A" store.

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

Sunday through Saturday 9am to 10pm

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

Posting Date: February 28, 2014  
Petition Date: April 14, 2014  
Hearing Date: April 28, 2014  
Protest Hearing Date: June 18, 2014

License No.: ABRA-094313  
Licensee: Alexander Market, Inc.  
Trade Name: Newton Market  
License Class: Retailer's Class "B"  
Address: 3600 12<sup>th</sup> Street NE  
Contact: Alexander Anenia 202-635-0926

WARD 5

ANC 5B

SMD 5B02

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 14<sup>th</sup> 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 June 18, 2014 at 1:30 pm.

**NATURE OF OPERATION**

This is new Retail Class "B" Full Service Grocery Store

**HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES**

Sunday through Saturday 7 am to 9 pm

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

Posting Date: February 28, 2014  
Petition Date: April 14, 2014  
Hearing Date: April 28, 2014

License No. ABRA-081238  
Licensee: The Public Group, LLC  
Trade Name: Public Bar  
License Class: Retailer's Class "C" Tavern  
Address 1214B 18<sup>th</sup> Street NW

WARD: 2

ANC: 2B

SMD: 2B06

The Alcoholic Beverage Regulation Administration (ABRA) provides notice that the licensee has filed a petition to amend or terminate the settlement agreement or settlement agreements attached to its license.

**The current parties to the agreement(s) are: ANC 2B and The Public Group, LLC**

The petition may be obtained by contacting ABRA's Public Information Office at 202-442-4423.

Any objectors are entitled to be heard before the granting of such a request on the Hearing Date at 1:30 pm, 2000 14<sup>th</sup> Street, N.W., 400 South, Washington, D.C., 2000. Petitions or requests to appear before the Board must be filed on or before the Petition Date.

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: February 28, 2014  
Petition Date: April 14, 2014  
Hearing Date: April 28, 2014  
Protest Hearing Date: June 18, 2014

License No.: ABRA-094391  
Licensee: Ris at Union Market, LLC  
Trade Name: Ris at Union Market  
License Class: Retailer’s Class “D” Tavern  
Address: 1309 5<sup>th</sup> Street, NE Unit 650  
Contact: Stephen O’Brien 202-625-7700

WARD 5                      ANC 5D                      SMD 5D01

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 14<sup>th</sup> 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 June 18, 2014 at 1:30 pm.

**NATURE OF OPERATION**

Serving certain prepared foods (on/off premise) customarily served at Ris Restaurant and operation of a market larder selling specialty foods products such as stocks, soups, sauces, condiments, dressings, tea, coffee, cheese, pottery bowls, cookies, dry goods, Ris Restaurant branded hats and books. Total # of seats is 0 and the occupancy load is 2. Total # of seats in the summer garden is 64.

**HOURS OF OPERATION**

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

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION/ SUMMER GARDEN**

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

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: February 28, 2014  
Petition Date: April 14, 2014  
Hearing Date: April 28, 2014

License No.: ABRA-092705  
Licensee: SANDOVAN INC.  
Trade Name: SANDOVAN RESTAURANT & LOUNGE  
License Class: Retail Class "C" Restaurant  
Address: 4809 Georgia Avenue NW  
Contact: Ronald Alston 202-829-6120

WARD 4

ANC 4D

SMD 4D06

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 14<sup>th</sup> 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 "C" Restaurant license to Class "C" Tavern license

**HOURS OF OPERATION**

Sunday through Thursday 8am to 2am, Friday and Saturday 7am to 3am

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

Sunday through Saturday 11am to 2am, Friday and Saturday 11am to 3am

**HOURS OF LIVE ENTERTAINMENT OCCURING OR CONTINUING AFTER 6PM**

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

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date:	February 28, 2014
Petition Date:	April 14, 2014
Roll Call Hearing Date:	April 28, 2014
Protest Hearing Date:	June 18, 2014
License No.:	ABRA-094089
Licensee:	Cornerstone Bar Group LLC
Trade Name:	The Pub and the People
License Class:	Retailer's Class "C" Tavern
Address:	1648 North Capitol Street NW
Contact:	Matthew Murphy, 202-236-3268

WARD 5

ANC 5E

SMD 5E06

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 14<sup>th</sup> 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 June 18, 2014 at 1:30pm.

**NATURE OF OPERATION**

New Tavern serving high-quality American Fare with entertainment for special events, live music, karaoke and community speaking events. Total occupancy is 99. Sidewalk Café with seating for 125 patrons.

**HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE,  
CONSUMPTION FOR INSIDE PREMISES AND SIDEWALK CAFE**

Sunday through Thursday 10am-2am, Friday & Saturday 10am-3am

**HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES AND SIDEWALK  
CAFÉ**

Sunday through Thursday 6pm-2am, Friday & Saturday 6pm-3am



**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
TUESDAY, APRIL 29, 2014  
441 4<sup>TH</sup> 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**

18741            **Application of BB&H Joint Venture**, pursuant to 11 DCMR § 3104.1,  
ANC-3F            for a special exception to continue an accessory parking lot under section  
214, in the R-1-B District at premises 4422 Connecticut Avenue, N.W.  
(Square 1971, Lot 822).

**WARD FOUR**

18742            **Application of Northeast Holy Trinity Church**, pursuant to 11 DCMR §  
ANC-4D            3103.2, for a variance to convert an existing one-family dwelling into  
a flat (two-unit dwelling) under section 320.3, in the R-3 District at  
premises 4920 Illinois Avenue, N.W. (Square 3009, Lot 84).

**WARD SIX**

18743            **Application of Maggot Funk, LLC**, pursuant to 11 DCMR § 3104.1, for  
ANC-6E            a special exception under subsection 2003.1, to allow the conversion of a  
nonconforming use to a café/restaurant (first floor and cellar) in the R-4  
District at premises 621 P Street, N.W. (Square 445, Lot 158).

**WARD SIX**

**THIS APPLICATION WAS POSTPONED FROM THE SEPTEMBER 17, 2013,  
NOVEMBER 19, 2013 AND DECEMBER 17, 2013, PUBLIC HEARING  
SESSIONS:**

18595            **Application of Eva R. Sanchez**, pursuant to 11 DCMR § 3103.2, for a  
ANC-6A            variance from the definition of yard under section 199, to allow a rear  
deck addition to a row dwelling occupying more than fifty (50%) percent  
of the rear yard area in the R-4 District at premises 620 9<sup>th</sup> Street, N.E.  
(Square 913, Lot 846).

BZA PUBLIC HEARING NOTICE

APRIL 29, 2014

PAGE NO. 2

**WARD FOUR****THIS APPEAL WAS POSTPONED FROM THE SEPTEMBER 24, 2013, AND NOVEMBER 15, 2013, PUBLIC HEARING SESSIONS:**

18618            **Appeal of Ginia L. Avery, et al**, pursuant to 11 DCMR §§ 3100 and  
ANC-4B            3101, from a, decision by the Department of Consumer and Regulatory  
                         Affairs, to issue a building permit (#B1202925, dated April 9, 2013)  
                         allowing the construction of a retail store in the C-3-A District at premises  
                         5929 Georgia Avenue, N.W. (Square 2986, Lot 38).

**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](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> 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, MARNIQUE HEATH, 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 POSTPONED<sup>1</sup> PUBLIC HEARING**

**TIME AND PLACE:** Thursday, March 13, 2014, @ 6:30 P.M.  
Jerrily R. Kress Memorial Hearing Room  
441 4<sup>th</sup> Street, N.W., Suite 220-South  
Washington, D.C. 20001

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**Z.C. Case No. 13-10 (ZP Georgia, LLC - Consolidated PUD & Related Map Amendment @ Square 2892, Lots 102-105, 879 & 910)**

**THIS CASE IS OF INTEREST TO ANC 2F**

On October 23, 2013, the Office of Zoning received an application from ZP Georgia, LLC (the "Applicant"). The Applicant is requesting approval of a consolidated planned unit development and related map amendment for Lots 102, 103, 104, 105, 879, 910, and a portion of a public alley to be closed, all of which are in Square 2892 (the "Subject Property").

The Office of Planning provided a report on November 27, 2013. At its public meeting on December 9, 2013, the Zoning Commission voted to set the application down for a public hearing. The Applicant provided its prehearing statement on December 23, 2013.

The Subject Property has a combined land area of approximately 16,756 square feet, with approximately 116.67 linear feet of frontage on Georgia Avenue. Square 2892 is located in the northwest quadrant of the City and is bounded by Lamont Street to the north, Georgia Avenue to the east, Kenyon Street to the south, and Sherman Avenue to the west. The Subject Property is located in Ward 1 and within the boundaries of Advisory Neighborhood Commission ("ANC") 1A.

The proposed project is a mixed-use development that includes approximately 3,816 square feet of gross floor area devoted to retail uses, and approximately 96,000 square feet of gross floor area devoted to 105 residential units (plus or minus 10%). The project will have a building height of approximately 87 feet, and an overall density of 5.95 FAR. The project also includes 36 off-street parking spaces, with 34 spaces located in a below-grade parking garage and two surface spaces located at the rear of the building.

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

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<sup>1</sup> This case was previously scheduled for March 3, 2014.

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**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 § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at [dcoz@dc.gov](mailto: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) intends to participate at the hearing, the ANC shall submit the written report described in § 3012.5 no later than seven (7) days before the date of the hearing. The report shall contain the information indicated in § 3012.5 (a) through (i).**

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](mailto:donna.hanousek@dc.gov)), or by calling (202) 727-0789.

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

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

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4. Individuals 3 minutes each

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to [zsubmissions@dc.gov](mailto:zsubmissions@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.**

## 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 adoption of an amendment to Section 1913, entitled “One-Time Transitional 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 one-time transitional 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. One-time transitional services are one-time, non-recurring start-up expenses for persons in the ID/DD Waiver who are transitioning from an institution or provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for their own living expenses. These rules amend the previously published final rules by: (1) specifying the service authorization requirement for one-time transitional services; and (2) specifying the documents to be maintained for audits and monitoring reviews.

A Notice of Emergency and Proposed rulemaking was published in the *DC Register* on January 10<sup>th</sup>, 2014 at 61 DCR 00249. No comments were received and no changes were made. The Director adopted these rules as final on February 18, 2014, and they shall become effective on the date of publication of this notice in the *DC Register*.

**Section 1913 (One-Time Transitional Services) of Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29, PUBLIC WELFARE of the DCMR is deleted in its entirety and amended to read as follows:**

**1913 ONE-TIME TRANSITIONAL SERVICES**

1913.1 This section establishes the conditions of participation for Medicaid providers enumerated in § 1913.6 (“Medicaid Providers”) to provide one-time transitional (OTT) services to persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).

- 1913.2 OTT services are one-time, non-recurring start-up expenses for persons enrolled in the ID/DD Waiver who are transitioning from an institution or provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for their own living expenses.
- 1913.3 In order to be eligible for reimbursement, each Medicaid provider shall obtain prior authorization from the Department on Disability Services (DDS) prior to providing OTT services. The request for prior authorization shall include a written justification that demonstrates how the services will aid the person in transitioning to their own living arrangements and that the person is unable to pay for the expenses or that the service cannot be obtained from other sources.
- 1913.4 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 when OTT funds were provided; and
  - (b) A description and amount of each expense as described in § 1913.5.
- 1913.5 Medicaid reimbursable OTT services may include the following:
- (a) Security deposits that are required to obtain a lease for an apartment or home;
  - (b) Essential household furnishings and expenses required to occupy or maintain an apartment or home;
  - (c) Start-up fees or deposits for utility or service access, including telephone, gas, electricity, and water;
  - (d) Services necessary for the person's health, safety and wellbeing, such as pest eradication and one-time cleaning prior to occupancy;
  - (e) Home accessibility adaptations including carpeting, one-time general home repair, including roof repair, painting and fence repair; and
  - (f) Moving expenses related to transporting personal belongings.
- 1913.6 Medicaid reimbursable OTT services shall be provided by the following types of providers who possess a human care agreement with DDS:
- (a) A provider of supported living services as described under Section 1934 of Chapter 19 of Title 29 of the DCMR; and

- (b) A provider of residential habilitation services as described under Section 1929 of Chapter 19 of Title 29 of the DMCR.
- 1913.7 Each provider of Medicaid reimbursable OTT services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.
- 1913.8 Each provider of Medicaid reimbursable OTT services shall maintain the following documents for monitoring and audit reviews:
- (a) Copy of receipts documenting the date, item, amount expended, and any related warranty; and
- (b) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.
- 1913.9 Each provider of Medicaid reimbursable OTT services shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1913.10 Medicaid reimbursement for OTT services shall not be available for:
- (a) Monthly rental or mortgage expenses;
- (b) Food;
- (c) Regular utility charges;
- (d) Household appliances or items that are intended for purely recreational purposes (*e.g.*, television, cable or satellite installation for television programming, stereo or other audio equipment, or computerized gaming equipment);
- (e) Environmental accessibility adaptation services that are of direct medical or remedial benefit to the person including specialized electric and plumbing systems necessary to accommodate medical equipment and supplies; and
- (f) Any durable medical equipment.
- 1913.11 Medicaid reimbursement for OTT services shall be limited to a maximum of five thousand dollars (\$5,000) per person for the duration of the ID/DD Waiver period as a one-time, non-recurring expense.



## 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 adoption of an amendment to Section 1917 (Live-In Caregiver), of Chapter 19 (Home and Community-based Waiver Services for Individuals with Intellectual and Developmental Disabilities), Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of shared living services provided to participants in the Home and Community-Based Waiver Services 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. Shared living services are supports provided in a person's home by a principal care provider who lives as a roommate to enable the person to live in the community independently and without constant supervision. These rules amend the previously published final rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) establishing that the Waiver provider shall have twenty-four (24) hour responsibility for arranging and overseeing the delivery of the service; (3) mandating that the provider shall provide initial and periodic inspections of the waiver person's home, at a frequency to be determined by the provider, to determine his/her wellbeing; and (4) specifying that the shared living service agreement shall also specify the training the roommate would receive to effectively support the person, and payment for both parties' personal needs, utilities, and food.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on September 27, 2013 at 60 DCR 13410. A Notice of Second Emergency and Proposed Rulemaking was published in the *D.C. Register* on January 17, 2014 at 61 DCR 00453. No comments were received and no changes were made. The final rules were adopted on February 21, 2014 and will become effective on the date of publication of this notice in the *D.C. Register*.

**Section 1917 (Live-In Caregiver) of Chapter 19 (Home and Community Based Services for Individuals with Intellectual and Developmental Disabilities) of Title 29, (Public Welfare) of the DCMR is amended to read as follows:**

**1917 SHARED LIVING SERVICES**

- 1917.1 The purpose of this section is to establish standards governing Medicaid eligibility for shared living services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers who deliver shared living services.
- 1917.2 Shared living services are supports provided in a person's home by a principal care provider who lives as a roommate to enable the person to live in the community independently and without constant supervision. The roommate provides support as needed to meet the physical and social needs of the person that naturally occur during the course of a day.
- 1917.3 In order to receive Medicaid reimbursement for shared living services, a person shall:
- (a) Currently reside in a home that they own or lease;
  - (b) Not require twenty-four (24) hour constant supervision or support; and
  - (c) Have habilitation or individual support needs.
- 1917.4 Medicaid reimbursable shared living services shall be:
- (a) Provided in the person's own home, by a roommate who lives there in exchange for room and board; and
  - (b) Identified as a support in the person's Individual Support Plan (ISP) and Plan of Care.
- 1917.5 Each Waiver provider shall execute a written Shared Living Services Agreement, (hereinafter referred to as the "Agreement"), developed as part of the person's Plan of Care, that defines at a minimum the shared responsibilities between the roommate and the person receiving waiver services, including activities provided by the roommate, a typical weekly schedule, and payment for both parties' personal needs, utilities and food, and indicating that the roommate may secure employment apart from his/her prescribed role.
- 1917.6 Each Waiver provider shall recruit, or assist the person desiring the service to recruit, the roommate. The roommate providing the actual support shall be referred to as the provider for the agency.
- 1917.7 In order to be eligible for Medicaid reimbursement, the Waiver provider shall:
- (a) Execute the Agreement between the person receiving services and the provider for the agency, prior to the initiation of services;

- (b) Revise the Agreement in accordance with the recommendations of the person, his/her support team, the Waiver provider, and the provider for the agency;
- (c) Participate in the development of the ISP by describing the duties of the provider agency;
- (d) Propose modifications to the ISP and Plan of Care, as appropriate;
- (e) Provide emergency services as needed;
- (f) Provide the person receiving shared living with up to fourteen (14) days of respite per year;
- (g) Have twenty-four (24) hour responsibility for arranging and overseeing the delivery of services;
- (h) Contact the provider for the agency at least once per month; and
- (i) Provide initial and periodic inspections, with a frequency determined by the provider, of the person's home to ensure their health, safety, and wellbeing.

1917.8

In order to be eligible for Medicaid reimbursement, each provider for the agency shall provide habilitative and personal supports as described in the Agreement and outlined in the ISP and Plan of Care, which may include, but is not limited to, the following:

- (a) Assisting with activities of daily living and instrumental activities of daily living, such as meal preparation, laundry, shopping, money management, banking, and general housekeeping;
- (b) Fostering the development of social and adaptive skills to enable the person to participate successfully in the community;
- (c) Assisting with accessing community resources to increase the person's community inclusion and integration;
- (d) Improving the person's skills related to health and safety; and
- (e) Supervising and supporting the person as described in the ISP and Plan of Care.

1917.9

In order to be eligible for Medicaid reimbursement, each Waiver provider shall meet all of the following criteria:

- (a) Comply with the DDS Provider Certification Review;

- (b) Have experience with providing Supported Living, Residential Habilitation, Host Home, In-Home Supports, Respite, or other relevant services; and
- (c) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19, Title 29 of the DCMR.

1917.10 The provider for the agency shall:

- (a) Be chosen by the person, with support from his or her support team;
- (b) Have a written agreement with the Waiver provider agency;
- (c) Participate in the development of the person's ISP and Plan of Care;
- (d) Comply with any additional requirements identified by the Waiver provider agency; and
- (e) Comply with the requirements described under Section 1906 (Requirements for Direct Support Professionals) of Chapter 19, Title 29 of the DCMR.

1917.11 Services shall only be authorized for Medicaid reimbursement if the following conditions are met:

- (a) DDS shall provide a written service authorization before the commencement of services;
- (b) The service name and Waiver provider delivering services shall be identified in the ISP and Plan of Care;
- (c) The ISP and Plan of Care, and Summary of Supports and Services shall document the supports and services to be received including that the provider for the agency shall be responsible for no more than four (4) hours of support per day; and
- (d) Services shall not conflict with the service limitations described under Section 1917.15.

1917.12 Each Waiver provider of shared living services shall comply with the requirements described under Sections 1908 (Reporting Requirements), 1909 (Records and Confidentiality of Information) and 1911 (Individual Rights) of Chapter 19, Title 29 of the DCMR.

1917.13 Shared living services shall not be billed on the same day as residential habilitation, supported living, in-home supports, or host home services.

- 1917.14 Shared living services shall not be provided by a spouse, parent of a minor child, or guardian, or any other legally responsible individual who would customarily perform, or be responsible for performing supports on behalf of the person. A family member who is not legally responsible for the person and meets all other requirements shall be eligible to administer shared living services.
- 1917.15 A provider for the agency shall be responsible for no more than four (4) hours of support per day.
- 1917.16 The reimbursement rate shall be one thousand eight hundred thirty three dollars and thirty-three cents (\$1,833.33) per month for each person based on the Agreement.

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

**Provider for the agency** – The roommate of the person receiving waiver supports, who is hired as a contract employee by the Waiver provider to provide shared living supports to the individual.

## 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 937, entitled “Behavioral Support Services”, and adoption, of a new Section 1919, entitled “Behavioral Support Services” of Chapter 19 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

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

The 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. These rules amend the previously published final rules by: (1) deleting Section 937 and codifying the rules in Section 1919; (2) specifying the eligibility criteria for the utilization of one-to-one behavioral support services; (3) establishing guidelines for the submission of annual diagnostic updates to amend the DAR and accompanying behavioral referral worksheet; (4) establishing record maintenance and reporting guidelines; (5) amending the annual service utilization limits for activities related to behavioral support services; (6) clarifying words and/or phrases to reflect more person-centered language and to simplify interpretation of the rule; and (7) clarifying that orders for one-to-one behavioral supports associated with a medical condition and attaining informed consent forms shall meet the requirements of DDS policies and procedures.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 29, 2013 at 60 DCR 16321. Comments were received and considered. No substantive changes were made. The Director adopted these rules as final on February 5, 2014 and they shall become effective on the on the date of publication of this notice in the *D.C. Register*.

**Section 937 (Behavioral Support Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.**

**A new Section 1919 (Behavioral Support 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:**

**1919 BEHAVIORAL SUPPORT SERVICES**

- 1919.1 The purpose of this section is to establish standards governing Medicaid eligibility for behavioral support services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver), and to establish conditions of participation for providers of behavioral support services.
- 1919.2 Behavioral support services are designed to assist persons who exhibit behavior that is extremely challenging and frequently complicated by medical or mental health factors.
- 1919.3 To qualify for Medicaid reimbursable behavioral support services, the person shall have specific behavioral support needs that jeopardize their health, safety, and wellbeing and/or interfere with their ability to gain independence and acquire community living skills.
- 1919.4 Medicaid reimbursable behavioral support services shall:
- (a) Be recommended by the person's support team;
  - (b) Be identified in the person's ISP and Plan of Care;
  - (c) Be prior authorized by DDS before the commencement of services; and
  - (d) Be recommended by a physician or Advanced Practice Registered Nurse (APRN) if the services are one-to-one behavioral supports related to a medical condition.
- 1919.5 To qualify for Medicaid reimbursable one-to-one behavioral supports, a person shall meet one (1) of the following characteristics:
- (a) Exhibit elopement resulting in serious risk to the safety of self or others;
  - (b) Exhibit behavior that is life threatening to self and others;
  - (c) Exhibit destructive behavior causing serious property damage;
  - (d) Exhibit sexually predatory behavior; or
  - (e) Have a medical condition that requires one-to-one services.
- 1919.6 In order to be eligible for Medicaid reimbursement, a physician or APRN shall issue an order for one-to-one behavioral supports associated with a medical condition which shall meet the requirements of DDS's policies and procedures and shall include and not be limited to the following information::

- (a) A specific time period or duration for the delivery of services;
- (b) A description of the medical condition that causes the person's health or safety to be at risk ; and
- (c) The responsibilities of each staff person delivering supports; and
- (d) A justification for the need for one-to-one behavioral supports.

1919.7 Medicaid reimbursable behavioral support services shall consist of the following activities:

- (a) Development of a Diagnostic Assessment Report (DAR) in accordance with the requirements described under Section 1919.16;
- (b) Development of a Behavior Support Plan (BSP) in accordance with the requirements described under Sections 1919.17 through 1919.19;
- (c) Implementation of positive behavioral support strategies and principles based on the DAR and BSP;
- (d) Training of the person, their family, and support team to implement the BSP;
- (e) Evaluation of the effectiveness of the BSP by monitoring the plan at least monthly, developing a system for collecting BSP-related data, and revising the BSP;
- (f) Counseling and consultation services for the person and their support team; and
- (g) Participating in the person's quarterly medication review.

1919.8 Within ninety (90) days of service authorization, a provider of Medicaid reimbursable behavioral supports services shall:

- (a) Administer the diagnostic assessment;
- (b) Complete the DAR based on the results of the diagnostic assessment and the accompanying behavioral support referral worksheet ("worksheet"); and
- (c) Complete the BSP when recommended by the DAR.



- 1919.9 The DAR shall be effective for three (3) years except as indicated in Section 1919.10, or for persons receiving one-to-one behavioral supports, which shall be updated annually. The behavioral supports provider shall submit a diagnostic update to amend the DAR and accompanying worksheet to the Department on Disability Services (DDS) Service Coordinator.
- 1919.10 When a person experiences changes in psychological or clinical functioning, the behavioral supports provider shall submit a diagnostic update to amend the DAR and accompanying worksheet to the DDS Service Coordinator at any time during the three (3) year period, upon the recommendation of the support team.
- 1919.11 The worksheet accompanying the DAR shall include the number of hours requested for professional and paraprofessional staff services to address recommendations in the DAR.
- 1919.12 The diagnostic update shall include a written clinical justification supporting the reauthorization of services.
- 1919.13 The diagnostic update shall be reviewed by the person and their support team in consultation with behavioral supports staff.
- 1919.14 The BSP shall be effective for one (1) calendar year which shall correspond with the person's ISP year, unless revised or updated in accordance with the recommendations of the DAR and accompanying worksheet.
- 1919.15 To be eligible for Medicaid reimbursement, the diagnostic assessment shall include the following activities:
- (a) Direct assessment techniques such as observation of the person in the setting in which target behaviors are exhibited, and documentation of the frequency, duration, and intensity of challenging behaviors;
  - (b) Indirect assessment techniques such as interviews with the person's family members and support team, written record reviews, and questionnaires; and
  - (c) A written evaluation of the correlation between the person's environmental, psychological, and medical influences and the occurrence of behavioral problems.
- 1919.16 To be eligible for Medicaid reimbursement, the DAR shall include the following:
- (a) The names of individuals to contact in the event of a crisis;
  - (b) A summary of the person's cognitive and adaptive functioning status;

- (c) A full description of the person's behavior including background, and environmental contributors;
- (d) The counseling and problem-solving strategies used to address behavioral problems and their effectiveness;
- (e) A list of less restrictive interventions utilized, the results, and an explanation of why the interventions were unsuccessful;
- (f) A list of proposed goals for achieving changes in target behaviors; and
- (g) The recommendations to initiate, continue, or discontinue behavioral support services.

1919.17 In order to be eligible for Medicaid reimbursement, the BSP shall be developed utilizing the following activities:

- (a) Interviews with the person and their support team;
- (b) Observations of the person at his/her residence and in the community; and
- (c) Review of the person's medical and psychiatric history including laboratory and other diagnostic studies, and behavioral data.

1919.18 In order to be eligible for Medicaid reimbursement, the behavioral supports staff that develops the BSP shall be responsible for:

- (a) The coordination of the delivery of behavioral support services in the person's residential and day activity settings; and
- (b) Obtaining the person's written informed consent and the approval of the person's substitute decision-maker, the support team, the provider's human rights committee, and DDS, when required by DDS's policies and procedures .

1919.19 In order to be eligible for Medicaid reimbursement, the BSP shall include the following:

- (a) A clear description of the targeted behavior(s) that is consistent with the person's diagnosis;
- (b) The data reflecting the frequency of target behaviors;
- (c) A functional behavioral analysis of each target behavior;
- (d) A description of techniques for gathering information and collecting data;

- (e) The proactive strategies utilized to foster the person's positive behavioral support;
- (f) The measurable behavioral goals to assess the effectiveness of the BSP;
- (g) If restrictive techniques and procedures are included, the rationale for utilizing the procedures and the development of a fade-out plan; and
- (h) Training requirements for staff and other caregivers to implement the BSP.

1919.20 Each provider of behavioral support services shall comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment) of Chapter 19 of Title 29 of the DCMR and consist of one (1) of the following provider types:

- (a) A professional service provider in private practice as an independent clinician, as described in Section 1904 (Provider Qualifications) of Chapter 19 of Title 29 DCMR;
- (b) A Mental Health Rehabilitation Services agency (MHRS) certified in accordance with the requirements of Chapter A-34 of Title 22 of the DCMR;
- (c) A home health agency as described in Section 1904 (Provider Qualifications), of Chapter 19 of Title 29 DCMR; or
- (d) A HCBS Provider, as described under Section 1904 (Provider Qualifications), of Chapter 19 of Title 29 DCMR.

1919.21 In order to be eligible for Medicaid reimbursement, each MHRS shall agency serve as a clinical home by providing a single point of access and accountability for the provision of behavioral support services and access to other needed services.

1919.22 Individuals authorized to provide professional behavioral support services without supervision shall consist of the following professionals:

- (a) Psychiatrist;
- (b) Psychologist;
- (c) APRN or Nurse-Practitioner (NP) ; and
- (d) Licensed Independent Clinical Social Worker (LICSW).

- 1919.23 Individuals authorized to provide paraprofessional behavioral support services under the supervision of qualified professionals described under Section 1919.22 shall consist of the following behavior management specialists:
- (a) Licensed Professional Counselor;
  - (b) Licensed Social Worker (LISW);
  - (c) Licensed Graduate Social Worker (LGSW);
  - (d) Board Certified Behavior Analyst;
  - (e) Board Certified Assistant Behavior Analyst; and
  - (f) Registered Nurse.
- 1919.24 In order to receive Medicaid reimbursement, the minimum qualifications to draft a BSP shall be master's level degree psychologist working under the supervision of a psychologist or a LICSW.
- 1919.25 In order to receive Medicaid reimbursement, the minimum qualifications for providing consultation are a master's level psychologist, APRN, LICSW, LGSW or licensed professional counselor, with at least one (1) year of experience in serving people with developmental disabilities. Knowledge and experience in behavioral analysis shall be preferred.
- 1919.26 In order to receive Medicaid reimbursement, a LGSW may provide counseling under the supervision of an LICSW or a LISW in accordance with the requirements set forth in Section 3413 of Chapter 34 of Title 22 of the DCMR.
- 1919.27 In order to receive Medicaid reimbursement, each DSP providing behavioral support services and/or one-to-one behavioral supports shall meet the following requirements:
- (a) Comply with Section 1906 (Requirements for Persons Providing Direct Services) of Chapter 19 of Title 29 DCMR;
  - (b) Possess specialized training in physical management techniques where appropriate, positive behavioral support practices, and all other training required to implement the person's specific BSP; and
  - (c) When providing one-to-one supports, the DSP shall not be assigned other duties so that he/she can ensure the person's safety, health, and well-being.

- 1919.28 Each provider of Medicaid reimbursable behavioral support services shall meet the requirements established under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1919.29 In order to be eligible for Medicaid reimbursement, each provider of Medicaid reimbursable behavioral supports services shall maintain the following documents for monitoring and audit reviews:
- (a) A copy of the DARs and accompanying worksheets;
  - (b) A copy of the BSPs;
  - (c) A current copy of the behavioral support clinician's professional license to provide clinical services;
  - (d) The documentation and data collection related to the implementation of the BSP;
  - (e) The records demonstrating that the data was reviewed by appropriate staff; and
  - (f) The documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.
- 1919.30 Medicaid reimbursement for behavioral support services shall be limited on an annual basis as set forth below. Services provided that exceed the limitations shall not be reimbursed except as provided in Section 1919.31:
- (a) Development of a new BSP shall be limited to ten (10) hours;
  - (b) Reviewing and updating the existing BSP shall be limited to six (6) hours;
  - (c) Training of the person, their family, the support team, and residential and day staff, shall be limited to twelve (12) hours;
  - (d) On-site counseling, consultation and observations shall be limited to twenty-six (26) hours;
  - (e) Participation in behavioral review or treatment team meetings, delivering notes including emergency case conferences, hospital discharge meetings, interagency meetings, pre-ISP and ISP meetings, and human rights meetings shall be limited to twelve (12) hours;
  - (g) Quarterly medication reviews, reports and monthly data monitoring shall be limited to eight (8) hours; and

- (h) Participation in psychotropic medication review meetings to deliver notes shall be limited to three (3) hours.
- 1919.31 In order to be eligible for Medicaid reimbursement, requests for additional hours beyond the annual limits described in Section 1919.30 may be approved by the DDS upon the submission of a diagnostic update to amend the DAR and accompanying worksheet.
- 1919.32 In order to be eligible for Medicaid reimbursement, requests for counseling as a behavioral support service shall be approved by a DDS designated staff member and shall be limited to counseling services that are not available under the District of Columbia State Plan for Medical Assistance.
- 1919.33 Medicaid reimbursable one-to-one behavioral support services provided by a DSP shall not be provided concurrently with day habilitation one-to-one services.
- 1919.34 The Medicaid reimbursement rate for each diagnostic assessment shall be two-hundred and forty dollars (\$240.00) and shall be at least three (3) hours in duration, and include the development of the DAR and accompanying worksheet.
- 1919.35 The Medicaid reimbursement rate for behavioral support services provided by professionals identified in Section 1919.21 shall be one-hundred and three dollars and twenty cents (\$103.20) per hour. The billable unit for fifteen (15) minutes is twenty-five dollars and eighty cents (\$25.80) per fifteen (15) minute billable increment for at least eight (8) continuous minutes.
- 1919.36 The Medicaid reimbursement rate for behavioral support services provided by paraprofessionals identified in Section 1919.22 shall be sixty dollars (\$60.00) per hour. The billable unit for fifteen (15) minutes is fifteen dollars (\$15.00) for each fifteen (15) minute billable increment for at least eight (8) continuous minutes.
- 1919.37 The Medicaid reimbursement rate for one-to-one behavioral support services provided by DSPs shall be twenty-one dollars (\$21.00) per hour. The billable unit for fifteen (15) minutes is five dollars and twenty-five cents (\$5.25) per fifteen (15) minute billable increment for at least eight (8) continuous minutes.

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

**Advance Practice Registered Nurse (APRN) or Nurse-Practitioner (NP)** - An individual who is licensed to practice nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*), or licensed to practice nursing in the jurisdiction where the services are being provided.

**Behavior Management Specialist** - An individual who has the training and experience in the theory and technique of changing the behavior of individuals to enhance their learning of life skills and adaptive behaviors,

and to decrease maladaptive behaviors, and who works under the supervision of a licensed practitioner.

**Board Certified Behavior Analyst** - An individual with at least a Master's Degree and a certificate from the Behavioral Analyst Certification Board (BCABA), in the jurisdiction where the credential is accepted.

**Board Certified Assistant Behavior Analyst** - An individual with at least a Bachelor's Degree and a certificate from the Behavioral Analyst Certification Board (BCABA), in the jurisdiction where the credential is accepted.

**Fade-out plan** - A plan used by providers to ensure that the restrictive technique or processes utilized are gradually and ultimately eliminated in the person's plan of care.

**Functional Behavioral Analysis** – A comprehensive and individualized process for identifying events that precede and follow a target behavior in order to develop hypotheses regarding the purpose of the target behavior and identify positive changes to be made.

**Licensed Independent Clinical Social Worker** - An individual who is licensed to practice social work pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1208 *et seq.*) or licensed to practice social work in the jurisdiction where the services are being provided.

**Licensed Graduate Social Worker** - An individual who is licensed to practice social work pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1208 *et seq.*) or licensed to practice social work in the jurisdiction where the services are being provided.

**Licensed Independent Social Worker** - An individual who is licensed to practice social work pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1208 *et seq.*) or licensed to practice social work in the jurisdiction where the services are being provided.

**Licensed Professional Counselor** - An individual who is licensed to practice counseling pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1207 *et seq.*) or licensed to practice counseling in the jurisdiction where the services are being provided.

**Positive behavioral support strategies** – An alternative to traditional or punitive approaches for managing challenging behaviors that focuses on changing the physical and interpersonal environment and increasing skills so that the person is able to get his/her needs met without having to resort to challenging behavior.

**Proactive strategies** – Specific interventions such as staff actions or environmental modifications that prevent the occurrence of target behaviors.

**Psychiatrist** - An individual licensed to practice psychiatry pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as a psychiatrist in the jurisdiction where the services are being provided.

**Psychologist** - An individual licensed to practice psychology pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as a psychologist in the jurisdiction where the services are being provided.

**Registered Nurse-** An individual who is licensed to practice nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*), or licensed to practice nursing in the jurisdiction where the services are being provided.

**Sensorimotor** - Functioning in both sensory and motor aspects of bodily activity.

**Target behavior** - The challenging behaviors to be addressed by staff.



## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the State Health Planning and Development Agency with the Department of Health (SHPDA), pursuant to the authority set forth in § 22 of the Health Services Planning Program Re-establishment Act of 1996 (Act), effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-421 (2012 Repl.)), hereby gives notice of the adoption of the following amendments to Chapters 40 (Certificates of Need), 41 (Certificate of Need Review), 42 (Application for Certification of Need Review), 43 (Certificate of Need Review Procedures), and 45 (Long-Range Plans and Data Reporting) and repeal of Chapter 46 (Revised Special Certificate Of Need Procedures, Considerations And Criteria For Review Of Magnetic Resonance Imaging (MRI) Scanners) of Subtitle B (Public Health & Medicine), Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rule is to update procedures for applying for, reviewing, renewing, withdrawing, reconsidering, and submitting reports for a Certificate of Need. These changes are necessary to comply with amendments to the Act.

A Notice of Proposed Rulemaking was published June 7, 2013, at 60 DCR 8600. In response to the Notice of Proposed Rulemaking the SHPDA received comments from four commenters. Those comments and the Director's responses are as follows:

Comment: SHPDA should reconsider requiring CON approval before receiving approval for any other license.

Response: This is a statutory requirement of D.C. Official Code § 44-415 and cannot be altered by rulemaking.

Comment: The criteria in proposed Subsection 4012.34 for establishing reasonable availability of a proposed service by a HMO is not sufficiently clear.

Response: The commenter did not offer any alternative language for the rule, and the Director believes that the rule, including an example is sufficiently clear.

Comment: SHPDA should update the monetary thresholds that trigger the need for CON review.

Response: While the SHPDA has authority to change the monetary threshold, the aim of the rulemaking was to update procedures to comply with the latest amendments to the authorizing statute. SHPDA recognizes that the thresholds and the fees, which may also be changed through rulemaking, should be updated; however, the SHPDA plans to update both the thresholds and the fees in a later rulemaking after consulting with stakeholders.

Comment: SHPDA should eliminate the requirement to report capital expenditure less than the threshold amount for CON review.

Response: SHPDA needs to know what the capital expenditure will be so that the SHPDA will be able to determine whether the intended capital expenditure, when viewed together with any related capital expenditure would trigger CON review.

Comment: The Director should not be able to unilaterally determine whether a new service or technique requires a CON.

Response: D.C. Official Code § 44-406(a) requires all persons proposing to offer a new institutional health service to first obtain a CON, unless there is an exemption under D.C. Official Code § 44-407. The decision whether to allow the new service is based on need determined by staff research, the applicant's application and testimony at a hearing, public comment, and input from the Statewide Health Coordinating Council.

Comment: The rules should be reorganized to make them easier to use and understand.

Response: The rules cover a multitude of health care services and a multitude of standards for different health care providers. The SHPDA has done its best, with input from stakeholders prior to publication of the proposed rules, and remains open to specific changes to the rules within the constraints of its statutory authority. The commenter did not provide specific suggestions for change.

Comment: The rules should include language to establish what interlocutory filings, if any, are proper and further define *ex parte* communications.

Response: *Ex parte* contact's meaning is stated clearly in the authorizing statute at D.C. Official Code § 44-409(i), and it also addresses interlocutory filing.

Comment: The lead time for a letter of intent should be reduced from 60 to 30 days.

Response: SHPDA considered changing the lead time for a letter of intent and decided to keep the 60-day period because experience shows that both the applicant and the SHPDA need that amount of time to gather more information about the subject matter of the application.

Comment: The \$5,000 fee for projects funded through the Medical Homes DC Initiative should be expanded to all community health centers.

Response: The \$5,000 fee for projects funded through the Medical Homes DC Initiative was statutorily required by a 2008 amendment to the authorizing statute.

Comment: SHPDA should consider excluding grantees funded under Section 330 of the Public Health Service Act from CON requirements for new services or facilities when it is predominantly focused on primary care and the grantee has already obtained federal approval.

Response: Exemptions to CON requirements are established by statute.

Comment: Community health centers and other primary care clinicians should be excluded from the requirement to obtain approval from SHPDA to close the facilities when the space is rented.

Response: The primary purpose of the provision is to obtain notice of closures to ensure that patients are properly discharged or transferred before the closure.

Comment: SHPDA should limit the need to obtain a CON for acquisitions to those that either increase or decrease the ability of residents currently being served to access the health service.

Response: The requirement to obtain a CON for acquisitions is statutorily mandated by D.C. Official Code § 44-406.

Comment: SHPDA should clarify the requirements for neighborhood health center reporting to ensure outpatient primary care facilities to report by organization.

Response: SHPDA carefully considered its reporting requirements needs to minimize the burdens on health care providers while still meeting its needs for gathering relevant information for health care planning and development.

Pursuant to § 22 of the Act, the proposed rules were transmitted to the Council of the District of Columbia, and were deemed approved on September 28, 2013, after the expiration of the forty-five (45) day period of Council review. The rules will become final upon of publication of this notice in the *D.C. Register*.

**Title 22-B DCMR (Public Health & Medicine) is amended by repealing Chapter 46, striking Chapters 40 through 43 and 45 in their entirety, and inserting new Chapters 40 through 43 and 45 to read as follows:**

## **CHAPTER 40 CERTIFICATES OF NEED**

### **4000 GENERAL PROVISIONS**

4000.1 The provisions of Chapters 40 through 45 shall apply to a review of an application for a Certificate of Need (CON) required under Section 7 of the District of Columbia Health Services Planning Program Re-Establishment Act of 1996 as amended (Act), effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-406).

4000.2 No person shall undertake any activity for which a CON is required if:

- (a) The original term of the CON has expired and the person has not obtained an extension pursuant to Section 4007; or
- (b) The Director has revoked the CON pursuant to Section 4010 or Section 4308 of this title.

4000.3 A CON shall be valid for up to three (3) years.

4000.4 A CON shall be valid upon its issuance. However, because the Director may revoke or modify a CON after reconsideration or an appeal decision, a CON holder proceeds solely at its own risk during the period when reconsideration or appeal may be requested and during any period that any reconsideration or appeal is in process.

4000.5 The issuance of a CON, if required under the Act, shall be a condition precedent to the issuance of any license, permit, or any other type of official approval (except zoning approval) by any agency or officer or employee of the District government that is necessary for the project in addition to the CON.

- 4000.6 A CON shall be for a specific site, except that a proposed change of site within the same Advisory Neighborhood Commission shall not require further CON review if the change is made before the project is implemented. Any proposed change in the location of an approved service or facility outside the same Advisory Neighborhood Commission shall require application for a new CON.
- 4000.7 For the purpose of Subsection 4000.6, the term "official approval" shall mean final approval by the District government subject only to appeal.
- 4000.8 SHPDA shall not be required to issue a CON before an administrative budget review body approves a budget request that is under consideration by the Council because the project relies on the appropriation of funds from the District budget.
- 4000.9 For the purposes of Chapters 40 through 45 the term "major medical equipment" includes:
- (a) Equipment used for providing medical or health services acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a health care facility, or by or on behalf of any private group practice of diagnostic radiology or radiation therapy, for which the fair market value exceeds one million five hundred thousand dollars (\$1,500,000) adjusted from time to time to reflect changes in the Consumer Price Index; or
  - (b) A single piece of diagnostic or therapeutic equipment acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a physician or group of physicians, or an independent operator of the equipment, for which the fair market value exceeds two hundred and fifty thousand dollars (\$250,000) adjusted from time to time to reflect changes in the Consumer Price Index.
- 4000.10 For the purposes of Chapters 40 through 45 the term "major medical equipment" excludes medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services when it is independent of a physician's office or a hospital and satisfies the requirements of § 1861(s)(10) and (11) of the Social Security Act, approved August 14, 1935 (49 Stat. 420; 42 U.S.C. 1395x(s)).
- 4000.11 For the purposes of Chapters 40 through 45 an entity is "acquiring effective control" if it does any of the following:
- (a) Transferring, assigning, or otherwise disposing of fifty percent (50%) or more of the stock, voting rights thereunder, ownership interest, or operating assets of a corporation or other entity that is a health care facility (HCF) or is the operator or owner of an HCF;
  - (b) Engaging in a transaction that results in any person, or any group of persons acting in concert, owning or controlling, directly or indirectly, fifty percent (50%) or more of the stock, voting rights thereunder,

ownership interest, or operating assets of a corporation or other entity that is an HCF;

- (c) Engaging in a transaction that results in any person, or any group of persons acting in concert, having the ability to elect or cause the election of a majority of the board of directors of a corporation that is an HCF; or
- (d) Engaging in a conversion that results in the selling, transferring, leasing, exchanging, conveying, or otherwise disposing of, directly or indirectly, all the assets or a material amount of the assets, of a nonprofit HCF to a for-profit entity, whether a corporation, mutual benefit corporation, limited liability partnership, general partnership, joint venture, or sole proprietorship, including an entity that results from, or is created in connection with, the conversion.

4000.12 For the purposes of Chapters 40 through 45 a facility is considered a “diagnostic health care facility” if the facility is not operated by a hospital and is not the offices of a private physician or dentist, unless one (1) or more pieces of major medical equipment is located within the office, and is:

- (a) A diagnostic imaging center accredited by the American College of Radiology whose primary business is providing diagnostic imaging services to the public;
- (b) A cardiac catheterization laboratory;
- (c) A radiation therapy facility; or
- (d) An independent diagnostic laboratory whose primary business is providing diagnostic imaging services to the public at which at least three (3) of the following are performed:
  - (1) Magnetic resonance imaging;
  - (2) CAT scan;
  - (3) Nuclear medicine;
  - (4) Ultrasound;
  - (5) X-ray; or
  - (6) Mammography.

**4001 STATE HEALTH PLANNING AND DEVELOPMENT AGENCY AND STATEWIDE HEALTH COORDINATING COUNCIL**

- 4001.1 The project application and review files of SHPDA shall be open for public inspection and review during regular business hours.
- 4001.2 SHPDA shall duplicate CON documents for any person upon request and upon payment of the reasonable costs of duplicating the requested documents. SHPDA shall restrict access of the general public to portions of applications or supporting documents that contain detailed descriptions of security systems, medical record systems, controlled storage systems, or proprietary financial information.
- 4001.3 The Director shall provide information on the status of any review or on the status of any outstanding CON upon request.
- 4001.4 The Director may establish charges for all SHPDA studies, reports, data compilations, publications, or other types of documents. The charges shall be reasonably related to the costs of preparing, developing, retrieving, duplicating, and paying postage, where applicable.
- 4001.5 The review meetings of SHPDA and the Statewide Health Coordinating Council (SHCC) shall be open to the public.
- 4001.6 SHCC shall:
- (a) Assist SHPDA with developing the Health Systems Plan (HSP);
  - (b) Review and make recommendations to SHPDA on the HSP; and
  - (c) Make recommendations to SHPDA on CON applications.

**4002 PRE-APPLICATION CONSULTATION WITH PROSPECTIVE APPLICANT**

- 4002.1 A prospective applicant for a CON may consult with a designated member of SHPDA staff before submitting a Letter of Intent for any project and during the application process.
- 4002.2 The Director shall assign a staff person to assist each applicant for a CON. The applicant shall consult with the assigned SHPDA staff person throughout the application process, except during any period for which *ex parte* contacts are prohibited under Section 4305 and D.C. Official Code § 44-409(i).
- 4002.3 SHPDA staff shall:
- (a) Review with the applicant the procedures and criteria that SHPDA will follow during the application review;

- (b) Provide technical assistance on information required in the application;
- (c) Provide a tentative schedule for review of the application; and
- (d) Provide other assistance that may be helpful to the applicant.

4002.4 Consulting with SHPDA staff before applying for a CON shall not relieve an applicant from the requirement to file a formal Letter of Intent pursuant to Section 4003. Pre-application consultation shall not commit SHPDA to issuing a CON and shall not represent SHPDA's official position concerning an application submitted subsequent to the consultation.

### **4003 LETTER OF INTENT AND PUBLIC NOTICE**

4003.1 Before submitting a formal application for a CON, an applicant shall submit a Letter of Intent to the Director for the purposes of notifying SHPDA that an application for a CON will be forthcoming and providing SHPDA sufficient time to prepare for application review. The Letter of Intent shall contain the following information:

- (a) The name, address, and telephone number of the applicant;
- (b) The name of an individual authorized to respond to SHPDA staff questions regarding the application;
- (c) The proposed location for the health care facility, health service, or other entity; and
- (d) A brief description of the proposed health care facility, health service, or other entity, including its cost and the projected date of implementation.

4003.2 The applicant's chief executive officer or a person authorized to act on behalf of the chief executive officer shall sign the Letter of Intent.

4003.3 An applicant shall provide notice to the community of its intent to file a CON application by publishing a notice in a newspaper of general distribution within the District of Columbia that generally describes the proposed project and states that the Letter of Intent will be filed with SHPDA.

4003.4 An applicant shall submit the Letter of Intent to SHPDA at least sixty (60) days but not more than one hundred eighty (180) days before filing the application for a CON and shall include with the Letter of Intent a copy of the notice required by Section 4003.3.

4003.5 An applicant may submit an application after consulting with SHPDA staff.

4003.6 The Director shall designate a SHPDA staff member to assist the applicant upon filing of a Letter of Intent.

- 4003.7 If an applicant has not submitted a CON application within one hundred eighty (180) days after submitting the Letter of Intent, the Letter of Intent shall be void unless the applicant requests and receives written approval for an extension to file the CON application.
- 4003.8 An applicant may request one (1) extension of not more than one hundred eighty (180) days. The request shall be made in writing before the initial one hundred eighty (180) day period expires. The Director shall respond to the request in writing and may grant an extension of one hundred eighty (180) days or less.
- 4003.9 SHPDA may use the period of time after receiving a Letter of Intent and before receiving a formal application for a CON to do the following:
- (a) Answer inquiries concerning the requirements for a CON;
  - (b) Advise the applicant on appropriate joint planning with other HCFs, HMOs, and affected parties; and
  - (c) Advise the applicant on the involvement of other community and public agencies, providers, and consumers in the long and short-range planning of the applicant.
- 4003.10 SHPDA shall provide technical assistance to individuals and public and private entities for obtaining and completing the form necessary for preparing an application.

#### **4004 CONDITIONAL CERTIFICATES OF NEED**

- 4004.1 SHPDA may require an applicant to comply with certain conditions when granting a CON, provided that the conditions relate directly to an adopted SHPDA review criteria.
- 4004.2 The expiration date, if any, of each condition shall be specified in the CON.
- 4004.3 If a CON holder violates a condition of a CON, the Director shall issue the CON holder written notice of the violation and may revoke the CON using the procedure for noncompliance with the CON, as specified in Section 4010.
- 4004.4 If the Director determines that the applicant has violated a condition and is not permitted to begin full operation, the applicant may appeal in the same manner as with any decision to issue or not issue a CON.
- 4004.5 The completed application for a CON and related documentation shall be considered to be a part of any CON issued after review and approval of the application.



4004.6 The CON holder shall proceed only in compliance with the CON and the related application and documentation that the Director has approved.

4004.7 In the case of an application approved for a CON with conditions, SHPDA may (if no licensing or operating approval is required by any other District agency) grant the CON holder the authority to begin "conditional operation" while the CON holder demonstrates its compliance with the conditions attached to the CON.

#### **4005 PROPOSED CHANGES IN APPROVED PROJECTS**

4005.1 The Director shall specify in the CON the maximum amount of capital expenditure that may be obligated under the CON.

4005.2 A CON holder shall report a proposed change in the project budget that will result in an expenditure greater than the maximum capital expenditure specified in the CON.

4005.3 A CON holder shall request the Director's approval for a proposed change in the project budget that will result in an expenditure that is twenty-five per cent (25%) or more larger than the approved capital expenditure specified in the CON. The Director shall issue a decision on a proposed change in not more than thirty (30) days after receiving a request to modify the project budget. A CON holder shall not commence work on the proposed changes that are twenty-five per cent (25%) or more than the maximum capital expenditure before the Director approves the modification.

4005.4 A CON holder shall report cumulative costs of individual budget changes to the Director for review and approval as part of the CON holder's regular, periodic reports. A CON holder shall submit a new application for any proposed change that exceeds the proposed budget by more than fifty per cent (50%) of the approved capital expenditure.

4005.5 Except for routine construction change orders, the purpose of which is to correct architectural or engineering errors or to compensate for errors in "as built" drawings of existing buildings, errors in surveys, or similar types of errors, all proposed changes to an approved project budget shall be promptly reported to SHPDA.

4005.6 A CON holder shall report routine construction change orders when the CON holder reports completion of the project.

4005.7 If the Director determines that a proposed non-budgetary change will not affect patient care, the Director may approve the change (subject to reconsideration and appeal) without referring the change to SHCC for review. If the Director approves a change pursuant to this subsection, the Director shall notify SHCC of the change at the next monthly meeting of SHCC.

- 4005.8 If patient care is not significantly affected, and, if either of the following conditions is met, SHPDA shall approve or disapprove the change without referral to SHCC, and shall notify SHCC at the next scheduled SHCC meeting:
- (a) The cost increase is directly related to inflation, unforeseen construction difficulties, or changes in building plans in the nature of routine change orders consistent with the CON application approved by SHPDA; or
  - (b) The cost increase involves changes in acquisition plans from lease or similar arrangements to purchase or vice versa (if the change is economically justifiable as determined by SHPDA).
- 4005.9 If a new CON is required pursuant to Subsection 4005.4, the Director shall consider the date of issuance of the original CON to be the date of issuance of the consolidated CON for all SHPDA purposes, including quarterly reports and extension schedules.
- 4005.10 A CON holder shall report each proposed change to the specifications (as stated in the approved CON) of a project. This report shall include any service, any equipment, and any other type of change whatsoever to the specifications of an approved project.
- 4005.11 If the Director determines that a proposed non-budgetary change will not significantly affect patient care, the Director may issue a decision that the change may be made (subject to reconsideration and appeal) without prior approval of the SHCC.
- 4005.12 SHPDA shall update its files concerning the nature of the change and shall notify the SHCC at the next scheduled SHCC meeting.
- 4005.13 If the Director finds that a proposed non-budgetary change would substantially affect patient care, the Director shall require the CON holder to apply for and receive a new CON before the proposed change may be implemented.
- 4005.14 If a new CON is required under Subsection 4005.13, SHPDA shall consider the date of issuance of the original CON to be the date of issuance of the consolidated CON for all SHPDA purposes, including quarterly reports and extension schedules.
- 4005.15 A proposed change in a completed project associated with a capital expenditure for which SHPDA has previously issued a CON shall require review and issuance of a new CON if the change is proposed within two (2) years after the date the activity for which the expenditure was approved is undertaken. (For example, if a hospital receives approval to construct a new wing, the hospital will “undertake the activity” when it begins to provide services in the wing. If, in the two (2) years after undertaking the activity, the hospital decides to increase the number of beds in the wing by a number that would not otherwise trigger a review, a review would still be required.). For the purposes of this section, a CON holder has

undertaken an activity when it begins to provide services under the CON.

- 4005.16 The provisions of Subsection 4005.15 shall apply to a change associated with capital expenditures that are subject to review under this title.
- 4005.17 SHPDA review and approval shall be required regardless of whether a capital expenditure is associated with the proposed change.
- 4005.18 A “change in a project” shall include, at a minimum, any change in the bed capacity of a facility or the addition or termination of a health service.

#### **4006 PRE-OPERATIONAL INSPECTION**

- 4006.1 A CON holder shall not begin operation of an approved project until SHPDA has conducted a preoperational inspection and has determined that the project is in compliance with the CON requirements.
- 4006.2 For a large project that may be completed in phases, the Director may approve the project in phases as the phases are completed and after a CON holder requests phased implementation of the project in writing.
- 4006.3 Not later than thirty (30) days before the date that the CON holder proposes beginning operation, the CON holder shall inform the Director in writing of the proposed date for operation of the facility or service (or a part of the facility) approved under a CON.
- 4006.4 After the notification required by Subsection 4006.3, SHPDA shall conduct an on-site pre-operational inspection and review for compliance with all CON requirements.
- 4006.5 The CON Holder shall make all portions of the facility or service available for inspection and shall produce all records, including cost records, SHPDA deems necessary to determine compliance with the specifications of the approved CON.
- 4006.6 The CON holder shall not begin operation without a Letter of Completion. If, after inspection, the Director determines that a project, or an operational portion of a project, is substantially complete, and that the CON holder has satisfied all requirements and specifications of the CON, the Director shall issue a Letter of Completion for that project or an operational portion of the project.
- 4006.7 If all phases of a project are completed, receipt of the Letter of Completion issued under Subsection 4006.6 terminates the CON review process, provided that all conditions included in the CON that have continuing applicability shall remain in effect.
- 4006.8 If the Director determines that a project, or an operational portion of a project, is not substantially complete or is not in compliance with all requirements of the CON, the Director shall notify the CON holder in writing of the deficiencies.

- 4006.9 A notice of deficiency issued pursuant to Subsection 4006.8 shall:
- (a) Identify the parts of the project that are not complete;
  - (b) Identify any deficiencies regarding the requirements for the project; and
  - (c) Identify the steps necessary for the CON holder to complete the project or correct deficiencies.

4006.10 A CON holder may request reconsideration of, and appeal, a notice of deficiency as if the notice was a denial of a CON, pursuant to Chapter 43 of this title.

#### **4007 ISSUANCE AND EXTENSION OF CERTIFICATE OF NEED**

4007.1 A CON shall be issued for a period of up to three (3) years as the Director determines to be appropriate. An applicant may request, and the Director may grant, an applicant's written request for a CON period of less than three (3) years.

4007.2 The Director may grant an extension of an expiring CON for a period of up to four (4) years, including the original term and excluding any administrative extensions that may have been granted, upon a written showing of substantial progress or a justification for lack of progress.

4007.3 For purposes of this section, the phrase "substantial progress" means reasonable compliance with SHPDA-approved schedule for the project.

4007.4 For purposes of this section, the phrase "justification for lack of progress" means an explanation acceptable to the Director for the CON holder's non-compliance with the SHPDA-approved schedule, and may include factors beyond the control of the CON holder.

4007.5 SHPDA shall extend or deny an extension of a CON based on the quarterly progress reports filed by the CON holder under Section 4008 and any additional information required by this chapter.

4007.6 The "SHPDA-approved schedule" shall be the latest of the following:

- (a) The final schedule submitted for approval in the applicant's CON application;
- (b) The schedule required by SHPDA in any condition of a CON; or
- (c) The schedule approved by SHPDA in an extension.

4007.7 If the applicant has not made substantial progress, SHPDA shall issue a ninety (90) day administrative extension of the CON for the purpose of allowing SHPDA to commence proceedings for revoking the CON under the provisions of Section

4010.

- 4007.8 If an applicant has made substantial progress but there has been a deviation from another aspect of the approved application, and the Director intends to grant an extension, SHPDA may require the applicant to comply with the previously approved requirements or a SHPDA-approved modification of those requirements.
- 4007.9 The Director's decision to extend or not extend a CON may be appealed under the provisions of Chapter 43 of this title.
- 4007.10 The Director may grant an administrative extension of the validity of a CON for up to ninety (90) days for good cause, which may include a showing that the project is within ninety (90) days of completion.
- 4007.11 A CON that is not extended shall be void.
- 4007.12 A CON holder requesting extension of a CON beyond a total of four (4) years shall submit a new application for a CON for the project to SHPDA no later than six (6) months before the current CON expires.
- 4007.13 If a CON holder provides written assurance that the project will be completed within six (6) months after the expiration of its current CON, including any extension up to but not exceeding a total of four (4) years, SHPDA may grant an additional administrative extension for up to six (6) months without the need for an applicant to submit a new CON application.

#### **4008 PROGRESS REPORTS**

- 4008.1 A CON holder shall make quarterly progress reports to SHPDA.
- 4008.2 A progress report shall include the following information, if applicable:
- (a) Original CON registration number;
  - (b) Status of the project, including current estimated completion date, in relation to the SHPDA-approved construction schedule, and any revised construction schedule reported in previous quarterly progress reports but not yet approved by SHPDA;
  - (c) Reasons for not progressing at the rate contemplated in the most recently approved schedule, if applicable;
  - (d) Any events that might delay or halt future progress, and actions to be taken in response to these events, if applicable;
  - (e) Any changes in the proposed schedule and justification for those changes;

- (f) Changes in the scope of the project or program approved in the CON (if there are changes, submit copies of revised construction drawings, specifications, leases, or other relevant documentation);
- (g) An itemization of any changes in the project's cost from those approved by SHPDA, and as modified in previous quarterly progress reports;
- (h) A statement of the current means of financing the project, and the continued adequacy of the financing;
- (i) Any foreseeable events that might jeopardize financing, and the proposed response to an event that could jeopardize financing;
- (j) A description of efforts made toward complying with any conditions of the CON; and
- (k) Other pertinent supplemental information the CON holder wishes to bring to the Director's attention or other information the Director specifically requests that relates to the project.

4008.3 The Director may request additional information after receiving a progress report if the Director determines that the report is not complete.

4008.4 The Director may approve or deny a request for a CON extension without submitting the extension request to the SHCC, unless the request would require submission of a new application and full review.

4008.5 SHPDA staff shall prepare a memorandum of the progress made by the CON holder receiving the complete progress report for the third (3rd) quarter of each CON year. The analysis shall include the following:

- (a) The project's rate of progress according to the most recent SHPDA-approved schedule for the project;
- (b) Whether any reported delay is beyond the control of the CON holder;
- (c) Whether the CON holder will complete the project on schedule;
- (d) Whether any change in the proposed schedule is reasonable with respect to the health requirements of District residents and visitors;
- (e) Whether any cost changes exceed the rate of inflation for construction projects in the District;
- (f) Whether the CON holder has minimized costs;
- (g) Whether financing for the project continues to be adequate;

- (h) Whether the CON holder is continuing to comply with any conditions of the CON; and
- (i) Whether the project continues to be adequate with respect to all review criteria, except those for need and conformance to the State Health Plan.

4008.6 SHPDA staff shall make a recommendation to the Director about whether to issue an extension for a CON under Section 4007 or to take action under Section 4010 to revoke a CON.

#### **4009 SALE OR TRANSFER OF EFFECTIVE CONTROL**

4009.1 Pursuant to D.C. Official Code § 44-411 a CON may not be sold or transferred. The sale or transfer of effective control over a project for which a current CON has been granted shall cause the CON to be subject to review and approval by SHPDA. The process for reviewing a CON resulting from transfer of effective control is subject to the requirements of D.C. Official Code § 44-406(b) and this section. For the purpose of this section, a current CON means authorization from SHPDA that has not been fully implemented.

4009.2 For purposes of this section the term “effective control” includes:

- (a) The ability of any person, by reason of a direct or indirect ownership interest, whether of record or beneficial, in a corporation, partnership, or other entity that holds a CON, to direct or cause the direction of the management or policies of that corporation, partnership, or other entity; and
- (b) Creation of a new legal entity regardless of whether the owners remain the same.

4009.3 If a current CON is held by a partnership, either general or limited, the addition of a general partner who was not identified as a general partner in the certificate of partnership on file with SHPDA at the time the original CON was issued, or the succession of a general partner who was named as a general partner by another person at any time after issuance of the original CON, shall be reviewed and approved by SHPDA, or shall cause withdrawal of the CON, effective as of the time at which the addition or succession of a general partner occurs.

4009.4 Any transfer, assignment, or other disposition of ten per cent (10%) of the stock or voting rights thereunder of a corporation or other entity that operates a health care facility, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of the corporation or other entity that results in the ownership or control of more than ten percent (10%) of the stock or voting rights of the corporation or other entity by any person shall, when that corporation or entity holds a current CON, shall cause the CON to be subject to review and approval by SHPDA.

- 4009.5 For a partnership, ten percent (10%) of the stock or voting rights shall include the following:
- (a) The obligation of any partner to provide ten percent (10%) or more, including property and services, of the total capital contribution of the partnership, as reflected in an amendment of the original certificate of partnership;
  - (b) The right of any partner to receive distribution of ten percent (10%) or more of the profits of the partnership, as reflected in an amendment of the original certificate of partnership; or
  - (c) The right of any partner, upon dissolution of the partnership, to receive ten percent (10%) or more of partnership assets remaining after payment of all partnership debts, as reflected in an amendment of the original certificate of partnership.
- 4009.6 A party proposing to gain effective control of a project for which a CON has been granted, or of an entity that holds a CON, shall apply for a new CON. No Letter of Intent shall be required in this circumstance.
- 4009.7 The criteria and standards normally applicable to a CON application shall apply to a sale or transfer of effective control. SHPDA shall also weigh the qualifications of the party proposing to gain effective control to effectively operate the project.
- 4009.8 SHPDA shall review a CON application under this section by examining the financial responsibility and business interests of the person or entity seeking to obtain the effective control in addition to any other prescribed and published SHPDA review criteria.
- 4009.9 Under D.C. Official Code § 44-416(e), failure to obtain a new CON before effecting the sale, transfer, assignment, or other disposition of effective control over, or the acquisition of ten per cent (10%) or more of stock or voting rights, in the holder of record of a current CON shall cause the automatic revocation of the current CON, effective as of the time at which the acquisition, sale, transfer, assignment, or other disposition occurs.

#### **4010 ENFORCEMENT AND REMEDIES FOR NONCOMPLIANCE**

- 4010.1 The Director may request that the Office of the Attorney General enjoin the activities of a person offering, developing, or operating a health care facility in violation of the Act, as specified in D.C. Official Code § 44-416(b).
- 4010.2 The Director may revoke a current CON, after holding a hearing to ascertain the facts. If the Director finds that a person has violated a provision of the Act or 22 DCMR Chapters 40 through 45, the Director may take action to revoke a current CON even though action has been initiated to criminally prosecute, sue for



injunctive relief, or impose a civil fine, penalty, or fee for a violation of the Act or Title 22 Chapters 40 through 45.

4010.3 The Director may revoke a current CON for lack of substantial progress under this chapter.

4010.4 Before revoking a CON, the Director shall publish a notice of alleged violation or lack of substantial progress in a newspaper of general circulation in the District, and shall notify all interested parties, including the CON holder.

4010.5 The notice shall include a detailed description of the alleged violation or lack of substantial progress and shall provide the time and location of a public hearing to consider the alleged violation.

4010.6 The public hearing shall be held no sooner than fourteen (14) days from the date of the notice and no later than thirty (30) days from that date.

4010.7 The hearing shall be conducted according to the procedures specified in chapter 43 of this title for reconsideration hearings, except that the SHPDA staff person in charge of a CON review, or a designee, shall have up to one (1) hour to present the details of the alleged violation or lack of substantial progress. Following this presentation, the CON holder may question the SHPDA staff person.

4010.8 The CON holder shall have up to one (1) hour to make its presentation, after which SHPDA staff may ask questions of the CON holder. Other persons may then testify.

4010.9 Following all testimony, the CON holder may make a ten (10) minute closing statement.

4010.10 The Director shall decide whether to revoke a CON within thirty (30) days following the close of the public hearing. The Director's decision shall be:

- (a) Written;
- (b) Based on the complete record of the withdrawal action; and
- (c) Include findings of fact and conclusions of law.

4010.11 There shall be no *ex parte* contacts between the CON holder and SHPDA staff or the SHCC following the public hearing and before the Director issues a decision.

4010.12 The Director's decision to revoke a CON may be appealed to the Office of Administrative Hearings without further reconsideration by the Director.

#### **4011 NOTICE OF CERTAIN CAPITAL EXPENDITURES**

4011.1 A health care facility or service (except an HMO exempt under D.C. Official

Code § 44-407(c) and 22 DCMR 4109) shall notify SHPDA that it intends to obligate an expenditure of two million five hundred thousand dollars (\$ 2,500,000) or more for construction, repairs, or renovation of facilities, when that action requires issuance of any type of permit from the District government notwithstanding that the capital expenditure intended is less than the CON review threshold.

- 4011.2 A health care facility or service shall submit with the notice either of the following:
- (a) A summary of the project, including total estimated capital expenditure; or
  - (b) A copy of the required permit application filed with the appropriate District government agency or agencies.
- 4011.3 The notice shall contain a description of any related capital construction repairs or renovations that the facility may consider undertaking within two (2) years of the completion of the work for which notification is presently being given.
- 4011.4 The health care facility or service shall file notice with SHPDA at least ninety (90) days before undertaking the construction, repairs, or renovation in question.
- 4011.5 A health care facility or service, except an HMO exempt under Chapter 41, shall notify SHPDA of its intention to obligate an expenditure to acquire by lease, donation, or other transfer, any major equipment. Notice shall be given not less than thirty (30) days before acquiring the equipment.
- 4011.6 A health care facility or service, except an HMO exempt under Chapter 41, shall notify SHPDA of its intention to acquire by lease, donation, or other transfer, diagnostic or medical treatment equipment (including the replacement of parts of existing equipment that enhance the original capabilities of the equipment), whether a single unit or system with related functions, the fair market value of which is under one million five hundred thousand dollars (\$1,500,000). Notice shall be given not less than thirty (30) days before acquiring the equipment.
- 4011.7 The notice required by Subsections 4011.5 and 4011.6 shall include:
- (a) The purchase price or fair market value of each item of equipment to be obtained;
  - (b) Each item's function;
  - (c) The services and locations within the facility that will be affected by the equipment acquisition; and
  - (d) A description of functionally related equipment extensions or enhancements that the facility may consider purchasing within two (2) years of putting the equipment described in the notice into operation.

- 4011.8 If the Director determines that the activity described in the notice is related to subsequent action to be taken within the two (2) year period and should be considered a single project, a CON review shall be required when the total cost of the present and subsequent actions exceeds the capital expenditure threshold for CON review.
- 4011.9 If a health care facility or service, except an HMO exempt under Chapter 41, intends to undertake related construction, repairs, or renovations, or intends to acquire functionally related equipment, extensions or enhancements to equipment not describe in a notice to SHPDA, the additional activities or equipment shall be subject to CON review when the total cost within a given two (2) year period exceeds the capital expenditure threshold for CON review.
- 4011.10 SHPDA shall conduct an expedited review of a CON application required under this section, and the applicant shall not be required to file a letter of intent.
- 4011.11 The Director's determination under this section that intended action by a health care facility or service is subject to CON review may be appealed by an affected person to the District of Columbia Office of Administrative Hearings.

#### **4012 GENERAL CRITERIA AND STANDARDS FOR REVIEW**

- 4012.1 Whenever a criterion or standard requires proof of a fact, the applicant shall have the burden of affirmatively proving that fact.
- 4012.2 The criteria and standards set forth in this section shall apply to every CON application other than an application that relates to acquiring an existing health care facility.
- 4012.3 Each project shall conform to the general provisions, defined priorities, goals, objectives, recommended actions, criteria, and standards contained in the State Health Systems Plan (HSP) and the Annual Implementation Plan (AIP) for the development of health facilities or services, if applicable.
- 4012.4 Each project shall be consistent with the applicant's long range development plan.
- 4012.5 Each project shall be consistent with non-health sector plans for the service area of the proposed facility or service. The applicant shall demonstrate consistency by providing evidence and assurances that:
- (a) It has considered other plans adopted or endorsed by the District, including public and private transportation, housing, and economic development that will impact the area the facility or service serves; and
  - (b) The proposal is consistent with those plans specified in subsection (a).
- 4012.6 Each applicant shall demonstrate the need for the project on a health care system

wide basis (for those projects that substantially affect patient care). The applicant shall demonstrate need by meeting the following standards:

- (a) The applicant shall provide evidence and assurances that the project is needed to meet service or facility levels required for the District as specified in the HSP. If a proposal serves a geographic area larger than the District, the applicant shall document that the project is needed to meet the service or facilities requirements of the larger area as specified in the HSP.
- (b) If the HSP does not specify need, the applicant shall provide evidence and assurances that the project is needed based on a special analysis of the District or larger area service and facility needs. This study shall consider the utilization rates of the same or similar services of the applicant and other providers.
- (c) If the application involves new technology, the applicant shall provide evidence and assurances of the developmental level of the technology and the extent to which it has been proven to be beneficial in controlled trials comparing its use with the use of conventional techniques or equipment. Applications involving new technology that has not been proven to the satisfaction of the Director to be beneficial in controlled trials shall not be considered needed unless the applicant proposes to conduct the trials in addition to providing patient care.
- (d) An application involving new technology that has been proven to the satisfaction of the Director to be generally accepted by the scientific community as beneficial in controlled trials shall also demonstrate that other actual or potential applicants that might more appropriately be given approval for acquisition of the new technology:
  - (1) Already have the technology or have SHPDA approval for its acquisition and that an additional need for the technology to meet patient requirements exists; or
  - (2) Will not seek approval to acquire the new technology within (12) months of the application date. The applicant shall identify other actual or potential applicants considering the following:
    - (A) The number of beds operated;
    - (B) Teaching programs;
    - (C) Research programs;
    - (D) Current or approved specialized units or specialized services provided; and

- (E) Current or approved special capabilities in terms of equipment and personnel skills.
  - (e) The Director shall consider the special needs and circumstances of an applicant, as documented by the applicant, for an application from an entity that provides a substantial portion of its services or resources, or both, to individuals from outside the metropolitan area.
- 4012.7 Each applicant shall demonstrate need for the project on an institutional basis by providing evidence and assurances that the project is required to meet institutional needs.
- 4012.8 Each applicant shall satisfy the criterion of availability of training opportunities by meeting the following standards:
- (a) An applicant shall provide evidence and assurances that the proposed project will not negatively impact opportunities for health professional training if a health profession school or program asserts, and the Director agrees, that training opportunities are necessary; and
  - (b) If the Director finds that a project is not otherwise needed under the criteria in Subsections 4012.5 and 4012.6, an applicant may provide evidence that the project is needed to provide reasonable access to training opportunities in operating services.
- 4012.9 Each applicant shall satisfy the criterion for requirements of research projects and programs by meeting the following standards:
- (a) An applicant shall provide evidence and assurances that the proposed project will not negatively impact the availability of facilities and equipment needed for biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages, as determined by the Director; and
  - (b) If the Director finds that a project is not otherwise needed, an applicant may provide evidence that a project is essential to meeting the reasonable needs of biomedical or behavioral research projects that are designed to meet a national need and for which local conditions offer special advantages, as determined by the Director.
- 4012.10 Each applicant shall satisfy the criterion for the schedule for project implementation by providing evidence and assurances that the proposal, if approved, will be implemented in a prompt and orderly fashion consistent with the approved schedule and public need for the service or facility and cost containment in project implementation.
- 4012.11 Each applicant shall satisfy the criterion for the effect of operating policies, personnel capabilities, and the physical structure on the proposed project's care of

patients, patient accessibility to medical care, and patient understanding of medical care by meeting the following standards:

- (a) An applicant shall provide evidence and assurances that the project will not negatively impact services available to the following:
  - (1) Service area ethnic populations who speak a language other than English;
  - (2) Low-income residents;
  - (3) Persons with physical or mental disabilities;
  - (4) Racial and ethnic minorities;
  - (5) Women;
  - (6) Elderly persons;
  - (7) Persons whose care is paid for by Medicaid, Medicare, public medical assistance programs, or other public programs;
  - (8) Persons uninsured or who have limited insurance coverage; and
  - (9) Other under-served groups.
- (b) An applicant shall provide evidence and assurances that access to care is not unreasonably restricted by its admissions policies, requirements, or hours of operation. If an application is for major medical equipment, unless otherwise specified in the HSP for specific types of equipment, not otherwise exempt, the standard for this criterion shall not be considered met unless the equipment is regularly scheduled for operation at least fifty (50) hours per week, fifty-two (52) weeks per year and is available for emergency use at all other times, if the equipment is of a type reasonably expected to be necessary for emergency care.

4012.12 Each applicant shall satisfy the criterion for compliance with uncompensated care and community service requirements. The standard for satisfying this criterion is by providing evidence and assurances of compliance with applicable provisions of § 11 of the Act (D.C. Official Code § 44-410) as well as the following:

- (a) An applicant that has not previously held a CON shall provide assurances of prospective compliance; and
- (b) An applicant that has previously held a CON shall provide evidence of past compliance and assurances of prospective compliance.

- 4012.13 Each applicant shall satisfy the criterion for involvement of the community in the process of project planning and development. The standard for satisfying this criterion is by providing evidence and assurances of opportunities for community participation in the preparation and development of the project through the following:
- (a) Public notice of the project to affected Advisory Neighborhood Commissions (ANC's); and
  - (b) Consideration of comments received from community agencies, groups, and individuals.
- 4012.14 Each applicant shall satisfy the criterion for impact of the proposed project on the health system and the health of District residents and visitors. The standard for satisfying this criterion is by providing evidence and assurances that the project, if it involves a direct patient care service, will not adversely impact the health care system and the health of the public in terms of health status as measured by industry standards, such as hospital admissions, emergency room visits, length of stay, and other relevant measures.
- 4012.15 Each applicant shall satisfy the criterion for observance of rights of patients. The standard for satisfying this criterion is by providing evidence and assurances of the applicant's mechanism for guaranteeing patient's rights. Minimal compliance with this standard requires compliance with all federal and District laws and regulations regarding patient rights.
- 4012.16 Each applicant shall satisfy the criterion for assurance that the care to be provided is of acceptable quality. The standard for satisfying this criterion is by providing evidence and assurances that it will meet professional and community standards of quality care. The applicant shall document compliance with this standard by showing that the project conforms to the requirements of District and federal regulatory agencies and recognized accreditation bodies including the Joint Commission on the Accreditation of Health Care Organizations and the Commission on Accreditation of Rehabilitation Facilities.
- 4012.17 Each applicant shall satisfy the criterion for compliance with building and equipment requirements. The standard for satisfying this criterion is by providing evidence and assurances that all new construction meets the standards contained in minimum requirements of latest edition of *Guidelines for Design and Construction of Health Care Facilities*, and District construction and licensing codes and regulations, as applicable to the type of project proposed. A remodeling project shall satisfy as many of these requirements as are reasonably practical, as determined by the Director, acting in consultation with District licensing and construction authorities.
- 4012.18 Each applicant shall satisfy the criterion for selection of the best of alternative means of providing the project's services. The standard for satisfying this criterion is by providing a description of the alternatives the applicant considered,

and the findings that led the applicant to select the proposed approach rather than an alternative approach. The applicant shall select the most favorable alternative available by evaluating and comparing the final selected plan with the following alternative means:

- (a) If shared services are not proposed, the applicant shall demonstrate why shared services are not practical or cost effective;
- (b) If a merger is not proposed, the applicant shall demonstrate why a merger agreement is not desirable or practical;
- (c) The applicant shall demonstrate that the proposed method for providing services, whether provided in-house or contracted out, is more desirable than the alternative. Where applicable, the estimated costs for both contract and in-house services should be presented;
- (d) The applicant shall demonstrate that the option of taking no action is not desirable; or
- (e) The applicant shall demonstrate that it considered other alternatives and demonstrate why they were considered less desirable.

4012.19 Each applicant shall satisfy the criterion for the effect of operational costs of the project on general costs, rates, or consumer charges. The standard for satisfying this criterion is by providing evidence and assurances that the project will reduce costs or charges for the service in question and for related services to the maximum practical extent or increase cost and charges to the minimum practical extent, consistent with benefits provided, if any. Unless a different standard is adopted in the HSP for a specific service, projects that are projected to operate at less than eighty percent (80%) utilization of available capacity in their third (3rd) year of operation, given operating hours determined by the Director to be reasonable, shall be deemed not to meet this standard. The Director may consider special circumstances concerning utilization for teaching and research in determining compliance with the utilization rate standard.

4012.20 Each applicant shall satisfy the criterion for the effect of operational costs of the project on the applicant's budget. The standard for satisfying this criterion is by providing evidence and assurances that the applicant's operating cost and revenue analysis show that the project will not substantially negatively affect the applicant's continuing financial operational viability, given reasonable revenue and volume projections.

4012.21 Each applicant shall satisfy the criterion for adoption of energy conservation techniques. The standards for satisfying this criterion are as follows:

- (a) If a project is designed to conserve energy, the applicant shall provide evidence and assurances that the proposal is the most cost effective and practical means available and that over the life cycle of the facility the



proposal will result in reduced costs; and

- (b) If a project is not designed primarily to conserve energy, if construction or equipment replacement is involved in the project, the applicant shall provide evidence and assurances that the project incorporates the most cost effective and practical energy conservation techniques over the life cycle of the project.

4012.22 Each applicant shall satisfy the criterion for effect on competition. The standards for satisfying this criterion are as follows:

- (a) If a new service does not involve capital expenditures of an amount that would otherwise require a CON review, the applicant shall provide evidence and assurances that the project will positively affect competitive factors and result in a more appropriate supply of services at lower charges or at charges no higher than is justified by the benefits of its more appropriate availability, quality, and other features; and
- (b) For all other projects, including acquisitions, the applicant shall provide evidence and assurances that the project will not adversely affect competition or an adequate supply of services.

4012.23 Each applicant shall satisfy the criterion for efficiency and effectiveness of existing services. The standards for satisfying this criterion are as follows:

- (a) If an application proposes to modernize a service, to replace equipment, or to expand a service, an applicant shall provide evidence and assurances that the results of the proposed modernization, service expansion, or equipment replacement cannot be achieved by reasonable increases in the applicant's efficiency or effectiveness, including reasonable changes in operating hours, more efficient use of other equipment, use of revised procedures, better scheduling of services, or referral to other providers; and
- (b) For a proposed new service, an applicant shall provide evidence and assurances that the proposal is the most efficient, effective, and practical manner of providing needed services, considering not only alternatives that the applicant might offer but also the operations or potential operations of other providers.

4012.24 Each applicant shall satisfy the criterion for construction plan design and specification alternatives. The standard for satisfying this criterion is by providing evidence and assurances that the construction methods and material specifications selected are the most cost effective over the life cycle of the proposed project, taking construction, energy, operating, and maintenance costs into consideration.

4012.25 Each applicant shall satisfy the criterion for financial viability of project

operation. The standard for satisfying this criterion is by providing evidence and assurances that sufficient financial resources are available, not only to complete the project but also to sustain operations for at least two (2) years. Financial resources that may be used to meet this requirement include:

- (a) Reserves for start-up costs; and
- (b) Patient revenue, based on estimated patient volume, payer mix, and reimbursements the Director determines to be reasonable. Reimbursements and projected patient volume are not reasonable if the projections are based, in whole or in part, providing services that are inconsistent with the criterion and standard specified in Subsection 4012.27.

4012.26 Each applicant shall satisfy the criterion for availability of required capital. The standard for satisfying this criterion is by providing evidence and assurances that the proposed source of funds, including loans, are fully described, to the extent possible at the time of proposal submission for the project review. Each proposed loan agreement shall be accompanied by information on duration and repayment terms. The applicant shall provide evidence and assurances that more favorable financial arrangements cannot be obtained. The financial arrangements shall be reasonable when compared to those for other similar projects.

4012.27 Each applicant shall satisfy the criterion for compatibility with the reimbursement policies of third-party payers, where applicable. The standard for satisfying this criterion is by providing evidence and assurances that the applicants proposed services are reimbursable by third-party payers (including Medicare and Medicaid) if the third-party payers reimburse other providers in the District for providing the same services.

4012.28 Each applicant shall satisfy the criterion for availability of personnel. The standard for satisfying this criterion is by providing evidence and assurances that the proposal includes adequate qualified personnel and that the required personnel can be obtained without substantial negative effects on other services the applicant or other providers offer.

4012.29 Each applicant shall satisfy the criterion for management capability. The standard for satisfying this criterion is by providing evidence and assurances of a stable and competent background in the administration and conduct of existing programs, if any, and demonstrating the ability to conduct the proposed program in a competent and effective manner.

4012.30 Each applicant shall satisfy the criterion for availability of ancillary services, as required. The standard for satisfying this criterion is by providing evidence and assurances that required ancillary or support services necessary for operation of a proposed facility or service shall be available within the applicant's existing operation, through supply agreement with another provider, or as a part of the proposal.

- 4012.31 Each applicant shall satisfy the criterion for relationship of the project to the health care system. The standard for satisfying this criterion is by providing evidence and assurances that clearly define the relationship of the proposed project to existing services and facilities in the health care system, and the effect of the project on other facilities and services, including those of other providers. The applicant shall demonstrate appropriate linkages to ensure continuity of care.
- 4012.32 The general criteria set forth in Subsections 4012.33 and 4012.34 shall be applicable to applications submitted by HMOs.
- 4012.33 Each HMO applicant shall satisfy the criterion for need for the project to meet the needs of enrolled members of the HMO (or combination of HMOs) and to meet the needs of reasonably anticipated new members. The standard for satisfying this criterion is by providing evidence and assurances that the proposed project is reasonably required to meet the health care needs of the HMO members or future members who can be expected to use the proposed service or facility.
- 4012.34 Each HMO applicant shall satisfy the criterion for reasonable availability of the proposed service or facility only through direct provision by the applicant HMO. A proposed service or facility is presumed not to be reasonably available to an HMO other than by direct provision by the HMO (or group of HMOs) unless the Director determines that the proposed facility or service:
- (a) Would be available to the HMO under a contract, lease, or similar arrangement of at least five (5) years duration;
  - (b) Would be reasonably available and conveniently accessible through physicians and other health professionals associated with the HMO (for example, HMO physicians having full staff privileges at a non-HMO hospital);
  - (c) Would not cost appreciably more than if the facility or service was provided directly by the HMO; and
  - (d) Would be available in a manner that is administratively feasible to the HMO.
- 4012.35 The general criteria set forth in Subsections 4012.36 through 4012.40 shall apply to applications proposing decreases in bed capacity or closure of services.
- 4012.36 If the Director determines that a proposed closure of beds or of a service does not comply with life safety, or licensure codes, the proposed closure shall satisfy the criterion of financial capability of the applicant to bring the facility, beds, or service into compliance with life safety and licensure standards. The standard for satisfying this criterion is by providing evidence and assurances that the applicant is financially incapable of taking actions necessary to bring the beds or service into code or standards compliance.

- 4012.37 When a proposed closure of beds or of a service is based on the applicant's claim of financial infeasibility of continued operations, the proposed closure shall satisfy the criterion for financial feasibility of continued operations. The standard for satisfying this criterion is by providing evidence and assurances that, despite operation of the facility in accordance with recognized management procedures and reasonable levels of efficiency, continued operation of the beds or service would produce continuing significant long term financial losses.
- 4012.38 For proposed bed reductions or service closures not subject to Subsections 4012.36 or 4012.37, the proposed reduction or closure shall satisfy the criterion for consistency of the proposed bed reduction or service closure with the goals of the HSP and AIP. The standard for complying with this criterion is by providing evidence and assurances that the project complies with the goals of the HSP and AIP.
- 4012.39 For proposed bed reductions or service closures not subject to Subsections 4012.36 or 4012.37, the proposed reduction or closure shall satisfy the criterion for degree of patient impact. The standard for complying with this criterion is by providing evidence and assurances that a proposed reduction or closure will not negatively affect consumers of health care services by causing any of the following:
- (a) Substantially increasing the cost of health care;
  - (b) Substantially reducing the quality of health care;
  - (c) Substantially reducing the availability of health care;
  - (d) Substantially reducing the acceptability of health care;
  - (e) Substantially reducing continuity of health care; or
  - (f) Substantially reducing the accessibility of health care.

### **4013 FEES**

- 4013.1 Pursuant to D.C. Official Code § 44-420(a), SHPDA shall collect application fees for a CON request. SHPDA may collect fees for data, analyses, and reports published by SHPDA. SHPDA shall also collect an annual user fee for private hospitals in lieu of a CON application fee. SHPDA may also establish user fees for other classes of facilities. All fees collected under this section shall be non-refundable.
- 4013.2 Pursuant to D.C. Official Code § 44-420(a), SHPDA may adjust user fees periodically to reflect changes in the Consumer Price Index. User fees stated in this section reflect changes in the Consumer Price Index through 2009. SHPDA may make further adjustments to the user fees by publishing notice of the revised

fee in the *D.C. Register*, and the change shall become effective upon publication of the notice.

4013.3 The schedule of fees for application for CON and user fees shall be as follows:

- (a) The CON application fee shall be the greater of three percent (3%) of the proposed capital expenditure for a proposed project or five thousand dollars (\$5,000);
- (b) The annual user fees for private hospitals shall be four dollars (\$4.00) per inpatient admission; and
- (c) The CON application fee for a project receiving funds through the Medical Homes DC Initiative, operated by the District of Columbia Primary Care Association shall be five thousand dollars (\$5,000).

4013.4 SHPDA may adjust the annual user fee required of private hospitals under § 4013.3(b) to reflect changes in the Consumer Price Index issued by the Bureau of Labor Statistics by publishing the change in fee in the *D.C. Register*.

4013.5 The schedule of fees for data, analyses, and reports published by SHPDA shall be as follows:

- (a) RESERVED.
- (b) RESERVED.

## 4099 DEFINITIONS

4099.1 When used in Chapters 40 through 45 of this title, the following terms and phrases shall have the meanings ascribed:

**Act**—the Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Official Code § 44-401 *et seq.*).

**Acute long-term care**—services provided by a hospital in a separate unit set aside for patients requiring hospital level care for periods longer than thirty (30) days.

**Ambulatory care facility or clinic**—

- (1) An institution, place, or building devoted primarily to providing health care services to outpatients through any organizational arrangement other than solely through the private practice of one (1) or more physicians acting as a sole practitioner or a group practice. A group practice shall not include any arrangement in which one (1) or more physicians are hired as employees, as contractors, or other comparable arrangement to provide health services. This term does not include facilities maintained by

employers solely to provide first aid or primary health care services to their employee during the employee's hours of work. This term does not include a health fair that continues for less than seven (7) days;

- (2) An entity that received federal grant support, a block grant, or other program for the operation of a community or neighborhood health center; or
- (3) An entity that receives donations for providing health services to outpatients.

**Ambulatory surgical facility**—a facility that is not a part of a hospital that provides surgical treatment to patients not requiring hospitalization and that is licensed or proposed to be licensed as an ambulatory surgical treatment center by the District under 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.).

**Annual Implementation Plan or AIP**—the annual plan prepared by SHPDA and SHCC to specify actions that will achieve the goals and objectives of the State Health Systems Plan.

**Applicant**—a person who consults with SHPDA before applying for a CON or a person who applies for a CON.

**Certificate of Need or CON**—the documentation demonstrating approval from SHPDA that is required before a person may offer or develop a new institutional health service or obligate a capital expenditure to obtain an asset.

**Director**—the Director of the SHPDA of the Department of Health.

**Ex parte contact**—an oral or written communication not on the official record where reasonable contemporaneous notice to all parties is not given.

**Freestanding hemodialysis facility**—a kidney disease treatment facility, not located within a hospital, that provides chronic maintenance hemodialysis services.

**General hospital**—an institution that primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and that is licensed or proposed to be licensed as a hospital by the District government.

**Health care facility or HCF**—a private general hospital, psychiatric hospital,

other specialty hospital, rehabilitation facility, skilled nursing facility, intermediate care facility, ambulatory care center or clinic, ambulatory surgical facility, kidney disease treatment center, freestanding hemodialysis facility, diagnostic health care facility, home health agency, hospice, or other comparable health care facility that has an annual operating budget of at least five hundred thousand dollars (\$500,000). This term shall not include Christian Science sanitariums, operated, listed, and certified by the First Church of Christ Scientist, Boston, Massachusetts; the private office facilities of a health professional or group of professionals, where the health professional or group of health professionals provides conventional office services limited to medical consultation, general non-invasive examination, and minor treatment, or a health facility licensed or to be licensed as a community residence facility, or an Assisted Living Residence.

**Health Maintenance Organization or HMO**—a private organization that is a qualifying HMO under federal regulations or has been determined to be an HMO under 22 DCMR Chapters 40 through 45.

**Health service**—a medical or clinical related service, including a service that is diagnostic, curative, or rehabilitative, and those related to alcohol abuse, drug abuse, inpatient mental health services, home health care, hospice care, medically supervised day care, and renal dialysis. This term shall not include services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice.

**Health Systems Plan or HSP**—the comprehensive health plan prepared by SHPDA and the SHCC according to the requirements of the Act.

**Home health agency**—a public agency or private organization, or a subdivision of an agency or organization, that is primarily engaged in providing skilled nursing services and at least one (1) other therapeutic service to individuals in their residences, that has at least one (1) employee in addition to the proprietor if the agency is a sole proprietorship. This term does not include an entity that provides only housekeeping services.

**Inpatient**—the provision of health care services over a period of twenty-four (24) consecutive hours or longer.

**Intermediate care facility or ICF**—an institution that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility provides, but who, because of their mental or physical condition, require health-related care and services (above the level of room and board), that is licensed or proposed to be licensed as an intermediate care facility by the District government.

**Other specialty hospital**—an institution primarily engaged in providing to inpatients diagnosis and treatment for the limited category of illness or illnesses for which the institution is or proposes to be licensed as a “special hospital” by the District government. The term does not include a psychiatric hospital, rehabilitation facility, or rehabilitation hospital.

**Outpatient**—the provision of health care services over less than twenty-four (24) consecutive hours.

**Psychiatric hospital**—an institution that primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment, and rehabilitation of mentally ill and emotionally disturbed persons, that is licensed or proposed to be licensed as a hospital by the District government.

**Rehabilitation facility or rehabilitation hospital**—a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision, and that, if it serves inpatients, is licensed or proposed to be licensed as a “special hospital” by the District government.

**Skilled nursing facility or SNF**—an institution or a distinct part of an institution that primarily provides to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, that is licensed or proposed to be licensed as a skilled nursing facility by the District government.

**Year**—unless otherwise indicated, any period of three hundred sixty-five (365) consecutive days.

## CHAPTER 41      CERTIFICATE OF NEED REVIEW

### 4100      NEW HEALTH SERVICES

4100.1      Except for a new institutional health service offered solely for research, no person shall construct, develop, or otherwise establish a new institutional health service including a new health care facility, health care service, or home health or nursing service without first obtaining a CON. A person establishing a new institutional health service solely for research shall notify SHPDA in writing of its intent to do so and the purpose of the new institutional health service.

4100.2      The following shall be institutional health services for purposes of this title:

- (a)      Acute medical-surgical services not otherwise specified;
- (b)      Cardiac catheterization services;



- (c) Cardiac surgery services;
- (d) Coronary care services;
- (e) Computed tomography services;
- (f) Neonatal intensive care services;
- (g) Newborn services;
- (h) Obstetric services;
- (i) Pediatric services;
- (j) Pediatric cardiac surgery services;
- (k) Physical medicine and rehabilitation services;
- (l) Psychiatric care services, short-term;
- (m) Psychiatric care services, long-term;
- (n) Emergency medical services;
- (o) Physical therapy services;
- (p) Occupational therapy services;
- (q) Home health services;
- (r) Hospice care;
- (s) Diagnostic radiology and ultrasound services;
- (t) Radiation therapy services;
- (u) Burn services;
- (v) Ambulatory surgery services;
- (w) Primary care centers' services;
- (x) Alcoholism-chemical dependency services
- (y) Acute long-term services;
- (z) Skilled nursing services;

- (aa) Acute dialysis services, including inpatient hemodialysis and inpatient intermittent peritoneal dialysis;
- (bb) Outpatient staff-assisted in-facility chronic maintenance hemodialysis services;
- (cc) Outpatient self-care in-facility chronic maintenance hemodialysis services, including training;
- (dd) Outpatient self-care in-facility intermittent peritoneal dialysis services, including training;
- (ee) Training for home intermittent peritoneal dialysis;
- (ff) Training and follow-up services for continuous ambulatory peritoneal dialysis;
- (gg) Renal dialysis services based on dialysis technologies not otherwise specified;
- (hh) Renal transplantation services;
- (ii) New technology as determined by SHPDA;
- (jj) Transplant services; and
- (kk) Open heart surgery.

4100.3 The Director may periodically assess and update the list set forth in Subsection 4100.2, as warranted by changes in medical technology and practice, and may add a health service to the list when, in his or her judgment, a new medical technique is of a highly specialized nature.

#### **4101 NEW HEALTH SERVICES DETERMINATIONS**

4101.1 A person shall request a determination from SHPDA as to whether a new technique constitutes a new institutional health service subject to review before offering any new medical technique of a highly specialized nature not appearing on SHPDA list of health services.

4101.2 No person shall offer any new medical technique, other than for research or emergency purposes, before receiving a final determination from SHPDA that the technique does or does not constitute a new health service.

4101.3 The Director shall make a determination whether a medical technique constitutes a new health service within one hundred twenty (120) days after receiving the request. SHPDA may request additional documentation from the person in support of the request to assist SHPDA in making its determination.

**4102 CAPITAL EXPENDITURES**

- 4102.1 Except for a capital expenditure made solely for research, no person shall make or obligate a capital expenditure for a health service or facility before first obtaining a CON if:
- (a) The capital expenditure is two million five hundred thousand dollars (\$2,500,000) or more;
  - (b) The capital expenditure is for major medical equipment valued at one million five hundred thousand dollars (\$1,500,000) or more; or
  - (c) The capital expenditure is for a single piece of diagnostic equipment for which the cost or value is two hundred fifty thousand dollars (\$250,000) or more.
- 4102.2 A person intending to make a capital expenditure solely for the purpose of research shall notify SHPDA of its intent in writing and describe the nature of the capital expenditure to be made for research purposes.
- 4102.3 For the purposes of this section, capital expenditure includes the cost of any studies, surveys, designs, plans, working drawings, specifications, or other services (including staff effort) associated with the capital expenditure.
- 4102.4 A capital expenditure unrelated to patient care valued at eight million dollars (\$8,000,000) or more, by an existing health facility shall require CON review unless the facility or activity is specifically exempted from CON review.
- 4102.5 A capital expenditure by a non-health facility component of a larger institution that also includes a hospital or other health facility or service (such as those made by a university or medical school that operates a hospital) shall not be treated as relating to the health service or facility unless either of the following applies:
- (a) Any part of the capital expenditure is made by or represents an obligation of the health facility or service component; or
  - (b) The expenditure actually or potentially directly affects patient charges or the cost of providing care.
- 4102.6 An obligation for a capital expenditure shall be considered to be incurred by or on behalf of a health care facility:
- (a) On the date that a health care facility, or another entity on behalf of the HCF, enters into a contract enforceable under law for the construction, acquisition, lease, or financing of a capital asset;
  - (b) On the date that the governing board of the health care facility takes

formal action to commit its own funds for a construction project undertaken by the HCF as its own contractor; or

(c) On the date on which the gift is completed, when the property is donated.

4102.7 An obligation for a capital expenditure that is contingent on the issuance of a CON shall be considered not to be incurred until SHPDA issues the CON.

4102.8 The provisions of Subsection 4102.1 shall not limit any form of preliminary budget approval for inclusion in the budget by the applicant's administrative review authority.

4102.9 Budget inclusion shall be a prerequisite for submitting a complete application for a CON.

#### **4103 MAJOR MEDICAL EQUIPMENT**

4103.1 Except for the acquisition of major medical equipment solely for research, no person or HCF shall acquire (in whole or in part) through lease, rental, donation, or any comparable arrangement, or put into operation, major medical equipment (a single unit or system with related functions) without first obtaining a CON.

4103.2 A HCF acquiring major medical equipment solely for research shall notify SHPDA in writing of its intent to acquire the equipment and describe the use to be made of the major medical equipment.

4103.3 If major medical equipment is acquired by a lease or comparable arrangement, or any other type of transfer by two (2) or more persons acting in concert, and if the aggregate cost of the acquisition would be one million five hundred thousand dollars (\$1,500,000) or more, or two hundred fifty thousand dollars (\$250,000) or more for a single piece of diagnostic equipment, if the acquisition had been by purchase at fair market value, the acquisition shall be deemed an acquisition of major medical equipment requiring CON review, notwithstanding that the cost or value to each participating person of that acquisition may be less than the monetary threshold for major medical equipment.

#### **4104 REVIEW OF PROPOSALS: BEDS**

4104.1 No person shall increase, decrease, or redistribute among health service categories the bed capacity of a HCF by ten percent (10%) or ten (10) beds, whichever is less, in any two (2) year period.

4104.2 The distribution of bed types shall use the following categories:

(a) Medical-surgical;

(b) Coronary care;

- (c) Obstetrics-gynecology;
- (d) Obstetrics-gynecology;
- (e) Normal nursery and neonatal intermediate care;
- (f) Neonatal Intensive care;
- (g) Pediatrics;
- (h) Alcoholism, chemical dependency;
- (i) Rehabilitation;
- (j) Extended acute long-term care;
- (k) Medical-surgical or skilled nursing;
- (l) SNF;
- (m) ICF; and
- (n) Skilled nursing or intermediate care (swing in a facility licensed as both a SNF and ICF).

4104.3 A person may lawfully close a bed without obtaining a CON under the following circumstances:

- (a) A HCF has not staffed or otherwise held the bed ready for immediate use by patients for twelve (12) consecutive months; and
- (b) The bed, when taken together with the sum of all other beds closed and opened does not represent a net change of more than ten (10) beds or ten percent (10%) of the total number of beds authorized in the HCF or particular service during the twenty-four (24) month period preceding the closure.

4104.4 The date on which the HCF removes the last patient from a recognized unit shall begin the consecutive twelve (12) month period under Subsection 4104.3(a) for every bed in the unit proposed for closure.

4104.5 Reopening one (1) or more beds by re-staffing it and otherwise holding it ready for immediate use, while at the same time removing staff and otherwise removing the same or a similar number of other beds of the same general type from immediate use by patients shall not constitute the beginning of another consecutive twelve (12) month period.

4104.6 Rotating short-term suspensions of individual beds or units shall not be used to

circumvent the consecutive twelve (12) month period specified in Subsection 4104.3(a).

**4105 REVIEW OF PROPOSALS: NEW SERVICES**

4105.1 No person shall offer an institutional health service by or through an HCF that was not offered by the same HCF on a regular basis within the twelve (12) month period before the time the service would begin without first obtaining a CON.

4105.2 For purposes of this section, the term “offer a service on a regular basis” shall mean being staffed and otherwise prepared to deliver the service at all times or on a regularly scheduled basis. Inability to deliver a service as scheduled for reasons beyond the control of the provider in emergency situations of short duration shall not affect a provider’s offering of a service on a regular basis.

4105.3 A service offered “through” an HCF or an HMO includes a service that is offered to a substantial extent (as determined by SHPDA) on behalf of that institution by others and not offered physically in the institution subject to review.

4105.4 A service offered at a different facility shall not satisfy the requirement that the service has been offered on a regular basis.

**4106 REVIEW OF PROPOSALS: RENAL DIALYSIS**

4106.1 No person shall increase the number of renal dialysis stations in an HCF or health service or move stations from one HCF to another without first obtaining a CON.

4106.2 For purposes of this section, a “renal dialysis station” means a station certified for participation in the Federal End Stage Renal Disease (ESRD) Program under Medicare, or an equivalent station.

4106.3 Renal dialysis stations shall be categorized into the following types, with each type considered a separate health care service:

- (a) Acute dialysis services, including inpatient hemodialysis and inpatient intermittent peritoneal dialysis;
- (b) Outpatient staff-assisted, in-facility, chronic maintenance hemodialysis services;
- (c) Outpatient self-care, in-facility, chronic maintenance hemodialysis services, including training;
- (d) Outpatient self-care, In-facility, Intermittent peritoneal dialysis services, including training;
- (e) Training for home intermittent peritoneal dialysis; and

(f) Any other dialysis service approved by the Director.

4106.4 An increase in renal dialysis services not involving stations may be subject to CON review under other provisions of Chapters 40 through 45 of this title.

**4107 REVIEW OF PROPOSALS: CLOSURES**

4107.1 No person shall permanently close a health care facility or health service, without notifying SHPDA, in writing and obtaining its approval.

4107.2 For purposes of this section, the phrase “permanently close a health care or service” means removing staff or equipment necessary to operate a facility or service for a period longer than twelve (12) consecutive months.

4107.3 Removing equipment shall include allowing equipment that is not operational to remain in place.

4107.4 The date of the removal for inpatient facilities is the date that the last patient is removed from the facility and shall be the beginning of the twelve (12) consecutive month period under Subsection 4107.2.

4107.5 An HCF shall maintain nurse staffing schedules, daily patient census, and other relevant records so that compliance with the requirements of this section may be readily demonstrated, and shall permit SHPDA inspection of those records upon request.

4107.6 A person proposing to permanently close an HCF or health service shall notify SHPDA of the proposed closing not later than ninety (90) days before the proposed closing.

4107.7 The notice required by Subsection 4107.6 shall include the following information:

- (a) A description of what is to be closed;
- (b) The name of the owner of the HCF or health service to be closed;
- (c) The expected date of closure;
- (d) The number, type, and condition of patients affected;
- (e) The provisions that the provider is making for the continuing care of the affected patients; and
- (f) A detailed explanation for the closure.

4107.8 SHPDA shall provide assistance for an orderly transition of patient care to the extent possible.

**4108 ACQUISITIONS**

- 4108.1 No person shall acquire an existing HCF by purchase, lease, or other arrangement to acquire effective control over a facility without first obtaining a CON.
- 4108.2 For purposes of this section, the phrase “acquire effective control” includes:
- (a) A transfer, assignment or other disposition of fifty per cent (50%) or more of the stock, voting rights thereunder, ownership interest, or operating assets of the corporation or entity;
  - (b) A transaction resulting in a person, or a group of persons acting in concert, owning or controlling, directly or indirectly, fifty per cent (50%) or more of the stock, voting rights thereunder, ownership interest, or operating assets of the corporation or entity;
  - (c) A transaction resulting in a person, or a group of persons acting in concert, having the ability to elect or cause the election of a majority of the board of directors of a corporation or entity; or
  - (d) A conversion that results in selling, transferring, leasing, exchanging, conveying, or otherwise disposing of, directly or indirectly, all the assets or a material amount of the assets of a nonprofit HCF to a for-profit entity, whether a corporation, mutual benefit corporation, limited liability partnership, general partnership, joint venture, or sole proprietorship, including an entity that results from, or is created in connection with, the conversion.

**4109 HEALTH MAINTENANCE ORGANIZATIONS**

- 4109.1 A Health Maintenance Organization (HMO), or combination of HMOs, shall obtain a CON before undertaking any activity for which a CON is required unless it applies for and receives an exemption from SHPDA under this section.
- 4109.2 In its application for exemption, the HMO, or combination of HMOs, shall provide information to demonstrate the following:
- (a) The facility in which the service will be provided is or will be geographically located in a place that is reasonably accessible to the enrolled individuals; and
  - (b) At least seventy-five percent (75%) of the patients who can reasonably be expected to receive the health service will be individuals enrolled in the HMO (or HMOs in combination).
- 4109.3 SHPDA shall grant a HMO an exemption under this section after a review of not more than fifteen (15) days if it has not begun to provide health care services on the date an application is submitted for an exemption and it satisfies the criteria in



Subsection 4109.2.

4109.4 Any decision by SHPDA to approve or deny an application for an HMO exemption shall be based solely on the record established in the administrative proceedings held with respect to the application.

4109.5 No exemption shall be granted solely because SHPDA failed to reach a decision within the fifteen (15) day review period.

#### **4199 DEFINITIONS**

4199.1 The provisions of Section 4099 of this title, and the definitions set forth in that section shall apply to this chapter.

### **CHAPTER 42 APPLICATION FOR CERTIFICATE OF NEED REVIEW**

#### **4200 SUBMISSION OF APPLICATIONS**

4200.1 An applicant shall submit an application for a CON in writing on a form prescribed by SHPDA. The form shall contain the information that SHPDA uniformly prescribes and publishes as requirements for a CON.

4200.2 An application for major medical equipment or a capital expenditure shall specify the applicant's proposed timetable to make that service or equipment available and to complete the project, as well as other information SHPDA shall require for evaluating the application under the appropriate review criteria, the State Health Plan, and the requirements of the District of Columbia Health Services Planning Program Re-Establishment Act of 1996, (D.C. Official Code § 44-401 *et seq.*).

4200.3 SHPDA shall use a single form for each type of application, except transfer of ownership, even though not all questions on the form may be relevant for a particular type of application. SHPDA, in a pre-application meeting between the applicant and an assigned SHPDA staff member, shall specify for each applicant the questions that require responses for that application.

4200.4 If SHPDA determines that an application is incomplete, and that additional information is needed to evaluate the application, SHPDA shall request additional information from the applicant pursuant to the requirements of Subsections 4200.5 through 4200.7. The information requirements may vary according to the purpose of the review or the type of health service being reviewed.

4200.5 A request from SHPDA for information from the applicant pursuant to § 4200.4 and in connection with a CON review shall be in writing and limited to the information that is necessary for SHPDA and SHCC to perform their reviews.

4200.6 SHPDA shall notify the applicant in writing when it has determined that the application is complete.

4200.7 SHPDA may review an application that has not been determined to be complete if the applicant has declined to provide further information and shall base its findings on the information available from the applicant that will demonstrate that the application complies with the HSP or the applicable criteria and standards for the service or HCF.

**4201 RESERVED**

**4202 REVIEW PROCESS**

4202.1 SHPDA shall begin a review at the beginning of one (1) of twelve (12) review cycles to be held each calendar year.

4202.2 The regular or expedited review cycles for an application shall be determined by the day on which the application is complete or deemed complete upon refusal of the applicant to supply further information. The review cycle for a CON application shall begin on the twentieth (20th) day of each month, or on the first (1st) business day following, if that day falls on a weekend or holiday. The review period for a regular review shall end ninety (90) days after the beginning of the review cycle. The review period for an expedited review shall end thirty (30) days after the beginning of the review cycle.

4202.3 SHPDA shall complete the review within the time period specified in Subsection 4202.2 unless the applicant requests, and SHPDA approves, an extended review period.

4202.4 If SHPDA fails to approve or deny an application within the applicable time period, the applicant may, within a reasonable period of time following expiration of the applicable time period, bring an action in Superior Court to require SHPDA to approve or deny the application. No CON shall be issued solely because SHPDA failed to reach a decision within the specified review period.

4202.5 An applicant may request in writing to SHPDA that either the regular ninety (90) day review period or the thirty (30) day expedited review period be extended for up to twelve (12) months. SHPDA may grant an extension of the review period for a period of time that is not longer than the applicant's request.

4202.6 For a batched review, a request for extension of the review period shall affect each application in the batched review. The request for extension of time to complete the review shall not be granted unless there is agreement to the extension of time from each applicant involved in that particular batched review.

4202.7 If SHPDA denies an extension of time for a batch review, the requesting party may:

- (a) Go forward with the batch review;
- (b) Request review of the application at a later date; or

(c) Withdraw the application.

4202.8 If SHPDA or SHCC requires additional information necessary to performing the review after the review period has begun, an applicant shall have fifteen (15) days to provide the information. The applicant's response time shall extend the ninety (90) day review period.

4202.9 If SHPDA finds it impractical to complete a review within ninety (90) days, SHPDA may extend the review period for the following administrative reasons:

(a) When an application modification is extensive but not so substantial as to require withdrawal and resubmission under Subsections 4203.1 and 4203.3;

(b) When the SHCC or a SHCC committee requests that SHPDA perform additional staff analysis of an application modified as described in paragraph (a) of this subsection and in accordance with § 4202.9 after the staff has substantially completed the initial analysis;

(c) When there is a sudden or unexpected major disruption of normal SHPDA operations, including those resulting from utility failure, natural disasters, and equipment failure; or

(d) When a public hearing is held during the review period.

4202.10 When there is an administrative extension of the review process as provided in Subsection 4202.9, SHPDA shall complete the review as expeditiously as is reasonable in the circumstances, and shall inform the applicant and other affected persons of the projected timetable for completing the review.

### **4203 SUBSTANTIAL MODIFICATION OF APPLICATION**

4203.1 When an applicant proposes a substantial modification of a CON application the applicant may be required to withdraw the original application and submit a new application reflecting the modifications.

4203.2 The new application constitutes a wholly separate application and is subject to all elements of the review process, including submission of a Letter of Intent for the new application. SHPDA shall waive the sixty (60) day waiting period following the submission of a Letter of Intent for the submission of a new application when the application results from substantial modification of an original application.

4203.3 For purposes of this section, the term "substantial modification" includes:

(a) A change in the location of the facility to a different Advisory Neighborhood Commission, service, or the type of facility or service;

- (b) A change in the proposed capital expenditure budget of thirty percent (30%) or more;
- (c) A change increasing or decreasing patient load or units of service by forty percent (40%) or more from the capacity originally proposed; or
- (e) A change in the ownership or effective control of the entity seeking to obtain a CON that, if the entity already held a valid CON, would cause the revocation of the CON under Section 4009 of this title.

#### **4204 MORATORIUM ON APPLICATIONS**

- 4204.1 If SHPDA determines that it needs additional time to develop and adopt CON application review criteria and standards for specific types of facility or service, SHPDA may impose a moratorium on consideration of all applications for that specific type of facility or service for which a review has not begun.
- 4204.2 For the purposes of this section, development and adoption of CON application review criteria and standards shall include development and adoption of, or revision of, the HSP if the HSP will contain the required criteria and standards.
- 4204.3 A moratorium imposed pursuant to Subsection 4204.1 shall last for not more than one hundred twenty (120) days in a twelve (12) month period.
- 4204.4 SHPDA shall give general notice in a newspaper of general circulation within the District of Columbia and on the Department of Health website of the terms and conditions of the moratorium within fifteen (15) days after a decision to declare a moratorium on a specific type of facility or service. SHPDA shall also give specific notice within 15 days to:
- (a) The SHCC; and
  - (b) Every person who has submitted a Letter of Intent.

#### **4299 DEFINITIONS**

- 4299.1 The provisions of § 4099 of Chapter 40 of this title, and the definitions set forth in that section, shall apply to this chapter.

### **CHAPTER 43 REVIEW SCHEDULES**

#### **4300 GENERAL PROVISIONS**

- 4300.1 An application that SHPDA determines to be complete by the tenth (10th) day of any month shall be reviewed during the review that begins on or after the twentieth (20th) day of the same month.
- 4300.2 An application that SHPDA determines to be complete after the tenth (10th) day

of any month shall be reviewed during the next regular review that begins on or after the twentieth (20th) day of the following month.

4300.3 SHPDA shall conduct batched reviews for the types of applications specified in the following schedule:

<b>APPLICATION TYPE</b>	<b>MONTHS</b>
Alcoholism/chemical dependency services	January, July
Diagnostic radiology and ultrasound services	February, August
Home health services	April, October
Renal disease services	March, September

**4301 REGULAR AND EXPEDITED REVIEWS**

4301.1 SHPDA shall review each CON application by either a regular or an expedited process.

4301.2 Except as provided in Subsection 4301.3, the expedited review process shall be used for each application that proposes major medical equipment or a new institutional health service for which there is an explicit finding of need in the HSP.

4301.3 SHPDA shall not conduct an expedited review for an otherwise qualified project related to a service for which the HSP states there is an excess of capacity or that has not been included in the HSP.

4301.4 SHPDA shall review an application through the regular review process at the request of an applicant even though the application qualifies for expedited review.

4301.5 The Director shall render a written decision regarding a request for expedited review. A person may request reconsideration of the decision in writing upon providing good cause. A request for reconsideration shall not be referred to the SHCC.

4301.6 The results of an expedited review shall be reported to the SHCC at the next regularly scheduled SHCC meeting.

4301.7 SHPDA shall use the same criteria and standards that apply to projects reviewed by the regular process for an application that will receive expedited review, and designation for expedited review shall in no way imply automatic approval of the application by SHPDA.

4301.8 The expedited review process differs from the regular review process as follows:

- (a) An application reviewed through the expedited process shall not be referred to the SHCC for review and comment before the Director approves or denies an application; and

- (b) An expedited review shall be completed within thirty (30) days after receipt of a completed application.

## **4302 PUBLIC HEARINGS**

4302.1 SHPDA may call a public hearing on its own initiative on an application during the first thirty (30) days of the CON application review period.

4302.2 SHPDA shall also call a public hearing at the request of an affected person. The request for public hearing shall be in writing and submitted no later than thirty (30) days after the beginning of the review period or the date of notice required pursuant to Subsection 4302.6, whichever is later.

4302.3 For the purposes of this section, an affected person includes:

- (a) The applicant;
- (b) A person who participated in the proceedings before SHPDA or the Office of Administrative Hearings;
- (c) A person who is a recipient of the types of services proposed in the CON application;
- (d) A person who resides within the boundaries of the Advisory Neighborhood Commission where the facility or service will be located or provide services;
- (e) An HCF or HMO located in the health service area in which the project is proposed to be located that provides services similar to the services of the facility under review;
- (f) An HCF or HMO that, prior to SHPDA's receipt of the proposal being reviewed, has formally indicated an intention to provide similar services in the future;
- (g) A third party payer who reimburses an HCF for services in the health service area in which the project is proposed to be located; and
- (h) A person who regularly uses an HCF within the geographic area where the facility or service is to be located or provided.

4302.4 An affected person shall have the right to be represented by counsel and to present oral or written testimony and evidence relevant to the matter that is the subject of the public hearing.

4302.5 SHPDA shall maintain a verbatim electronic record of the public hearing.

4302.6 RESERVED

4302.7 The notice shall include:

- (a) The name of the applicant;
- (b) The service to be provided;
- (c) The proposed location of the service to be provided;
- (d) The date, time, and location of the meeting;
- (e) The planned hearing agenda; and
- (f) A description of matter to be discussed.

4302.8 SHPDA shall hold the public hearing no sooner than fourteen (14) days after the date of the notice of the public hearing.

4302.9 SHPDA shall not charge a fee to hold a public hearing.

**4303 STATEWIDE HEALTH COORDINATING COUNCIL**

4303.1 Unless SHPDA has determined that it cannot complete a regular review within ninety (90) days for a reason specified in § 4200 or the Applicant has requested postponement of the review, SHPDA shall forward to the members of the appropriate SHCC committee or the entire SHCC, as directed by the SHCC, a staff analysis of an application being reviewed under the regular review process no later than fifty-five (55) days after the beginning of the regular review process.

4303.2 SHPDA analysis under Subsection 4303.1 shall include positive and negative aspects of the application in relation to the HSP and adopted criteria.

4303.3 After SHCC receives SHPDA staff analysis, the SHCC shall review and comment on the application pursuant to the SHCC by-laws.

4303.4 A SHCC member who has a conflict of interest concerning an application shall follow the provisions of the SHCC by-laws regarding conflicts of interest.

4303.5 During the SHCC review and before the SHCC adopts a formal recommendation, the SHCC may require a public hearing on the application.

4303.6 The Director shall schedule a public hearing required by the SHCC pursuant to Subsection 4303.5 pursuant to the procedures specified in Section 4302. The Director shall provide notice for meetings of the SHCC according to the procedures set forth in Subsections 4302.5 through 4302.7. The Director shall make the minutes and hearing record available according to the requirements set for in Subsection 4302.10.

4303.7 If the SHCC fails to make a recommendation concerning an application within eighty (80) days after receiving the SHPDA staff analysis, the Director may render a decision on the CON application without the advice of the SHCC.

4303.8 The Director shall consider a timely made recommendation of the SHCC in making a decision.

#### **4304 INSPECTION OF RECORDS**

4304.1 Except as provided in Subsection 4304.3, a person may inspect a CON application and other information contained in SHPDA project files during regular business hours.

4304.2 A person may receive a copy of a document subject to inspection upon the payment of a reasonable fee to cover the cost of reproduction.

4304.3 A person shall not inspect or copy a portion of a CON application or other document related to a CON application that contains detailed technical descriptions of proprietary financial information, security systems, medical records systems, or controlled substance storage systems if SHPDA designates that portion of an application as “restricted”.

4304.4 SHPDA may designate a portion of a CON application as “restricted” by the following procedures:

- (a) The applicant shall make a written request to SHPDA to restrict the material at the time the applicant submits the application;
- (b) SHPDA shall maintain the material to be categorized as “restricted” separate from the remainder of the CON application retained in SHPDA files until it renders a decision about whether the material should be restricted;
- (c) The SHPDA staff person in charge of the CON review shall make a determination whether the information in question would provide information for a person to violate the security of the system in question or reveal proprietary information that would give a competitor an unfair advantage; and
- (d) If SHPDA agrees to restrict material, the applicant shall provide a non-restricted and non-technical summary of the “restricted” material and submit the original information printed on paper, other than white or blue, and marked on each page at top and bottom with the statement “Restricted Security System Information; Not for Public Inspection.”

4304.5 If the applicant disagrees with the SHPDA staff person in charge of the CON review concerning a request for classifying material as “restricted,” the applicant



may appeal the decision by making a written request for a meeting to review the matter with the Director, who shall make the final decision.

4304.6 An applicant shall not submit medical records that identify individual patients to SHPDA. Any patient record the applicant provides to SHPDA that includes personal identifying information, such as copies of driver's licenses, social security cards, that is submitted inadvertently shall not be available for public inspection.

#### **4305 EX PARTE CONTACTS**

4305.1 There shall be no *ex parte* contacts between:

- (a) A person acting on behalf of the applicant or a CON holder, or any person opposed to or in support of issuing or modifying a CON or in favor of withdrawing a CON; and
- (b) A person in SHPDA who exercises responsibility for reviewing the application or withdrawing the application.

4305.2 There shall be no oral *ex parte* contacts after the commencement of a hearing for an application for a CON, a proposed modification, or withdrawal of a CON and until SHPDA makes a decision. An interested person, including the applicant, may make written *ex parte* contacts to the SHPDA after commencement of the hearing if SHPDA keeps the hearing record open after the hearing.

4305.3 When SHPDA will not hold a hearing for a CON, a proposed modification, or a withdrawal, there shall be no oral *ex parte* contacts after the conclusion of the project review committee meeting for that application. An interested person, including the applicant, may make written *ex parte* contacts after the conclusion of the project review committee meeting if the project review committee allows additional time for an interested party to supply additional information.

4305.4 If a SHPDA staff person or SHCC member receives an *ex parte* contact prohibited under this section, he or she shall, within forty-eight (48) hours after first having reason to believe that there was a prohibited contact, prepare and deliver a written statement summarizing the substance of an oral contact or the written communication, or a copy, to the Director's designee, or deliver to the person the Director designates.

4305.5 The Director or his or her designee shall make the statements or contacts available for inspection by placing them in a file separate from the public record of the application or proposed withdrawal under review.

4305.6 If a member of SHCC occupies an employment, fiduciary, consulting, or other similar relationship (as described in the SHCC by-laws provision governing conflict of interest) with an applicant or a CON holder, the SHCC member shall

be considered to be acting on behalf of the applicant or CON holder; and any contact between the SHCC member and SHPDA staff, Director, or other SHCC members occurring in the period specified in Subsection 4305.2 shall be subject to the *ex parte* contacts prohibition of this section, provided that the contacts are related to the matter in question.

4305.7 For purposes of this section, the phrase “SHPDA staff” shall include the Director, staff, and the SHCC.

4305.8 A request for information concerning the status of a review made in accordance with Section 4201 shall not be considered an *ex parte* contact.

#### **4306 CLOSING THE PROJECT RECORD**

4306.1 The record for a decision on issuing or modifying a CON shall close at the end of the second (2nd) business day following the meeting of a Committee of the SHCC at which the Committee makes the initial recommendation on the application; provided, that the record shall include those proceedings of the SHCC during which the application was considered, concluding with the final SHCC vote taken on the application.

4306.2 When SHPDA conducts an expedited review the record shall close five (5) business days before the date of decision.

4306.3 The Director may order that the record remain open for a longer period of time if the Director determines that keeping the record open is necessary to ensure an adequate record.

4306.4 The SHCC and the Director shall not consider information received from a person after the date specified in the notice (unless the Director extends the record) to make a recommendation or render a decision on an application.

#### **4307 CONSIDERATIONS AND CRITERIA FOR REVIEW**

4307.1 SHPDA and the SHCC, shall develop, adopt, and use general criteria and standards set forth in Section 4012 of this title and the specific considerations and criteria in this section to conduct a CON review. The applicant shall bear the burden of producing evidence and assurances sufficient to persuade the Director that the applicant can satisfy the requirements of each applicable criterion or standard.

4307.2 SHPDA shall evaluate an HMO, an ambulatory care facility, or HCF that is controlled, directly or indirectly, by an HMO or combination of HMOs, by the criteria and considerations set forth in Subsection 4307.15.

4307.3 A review may consider the relationship between the health services being proposed and the applicable AIP and HSP. Each decision of SHPDA, or the appropriate judicial or administrative review body, to issue a CON shall be

consistent with the HSP, except in emergency circumstances that pose an imminent threat to public health.

- 4307.4 A review may consider the availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.
- 4307.5 A review may consider the immediate and long-term financial feasibility of the proposal, and the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the service.
- 4307.6 A review may consider the need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, particularly low income persons, racial and ethnic minorities, women, persons with disabilities, the elderly, or other underserved groups, are likely to have access to those services.
- 4307.7 A review may consider the contribution of the proposed service in meeting the health related needs of members of medically underserved groups that have traditionally experienced difficulties in obtaining equal access to health services (such as low income persons, racial and ethnic minorities, women, and persons with disabilities), particularly those needs identified in the applicable AIP and HSP as deserving priority.
- 4307.8 SHPDA may consider the following for the purpose of determining accessibility of the proposed service:
- (a) The rate at which medically underserved populations currently use the applicant's services as compared to the percentage of the population in the applicant's service area that is medically underserved, and the rate at which medically underserved populations are expected to use the proposed services;
  - (b) The applicant's performance with meeting its obligation, if any, under any applicable federal and District regulations requiring the applicant to provide uncompensated care, community service, or access by minorities, and persons with disabilities to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);
  - (c) The rate at which the applicant serves Medicare, Medicaid, District program and medically indigent patients; and
  - (d) The extent to which the applicant offers a range of means for a person to access its services (*e.g.*, outpatient services, admission by house staff, admission by personal physicians).
- 4307.9 A review may consider the relationship of the services proposed to be provided to

the existing health care delivery system.

- 4307.10 A review may consider the availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for providing the services proposed to be provided and the need for alternative uses for those resources as identified by the applicable AIP and HSP.
- 4307.11 A review may consider the relationship of the health services proposed to be provided to ancillary or support services.
- 4307.12 A review may consider the effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area where the services are to be provided.
- 4307.13 A review may consider the special needs and circumstances of those entities that provide a substantial portion of their services or resources, or both, to individuals not residing in the District or in an adjacent health service area. Those entities may include medical and other health professions schools, multidisciplinary clinics, and specialty centers.
- 4307.14 A review may consider the special needs and circumstances of HMOs. Those needs and circumstances shall be limited to the following:
- (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health services proposed to be provided by the organization; and
  - (b) The availability of the new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner that is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, SHPDA shall consider only whether the services from these providers would meet the following requirements:
    - (1) The services shall be available under a contract of at least five (5) years' duration;
    - (2) The services shall be available and conveniently accessible through physicians and other health professionals associated with the HMO (such as, whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);
    - (3) The services shall cost no more than if the services were provided by the HMO; and
    - (4) The services shall be available in a manner that is administratively feasible to the HMO.

- 4307.15 A review may consider the special needs and circumstances of biomedical and behavioral research projects that are designed to meet a national need and for which local conditions offer special advantages.
- 4307.16 A review of a construction project may consider the following:
- (a) The costs and methods of the proposed construction, including the costs and methods of providing energy;
  - (b) The probable impact of the construction project under review on the costs of providing health services by the applicant and on the costs and charges to the public of providing health services by other persons; and
  - (c) Compliance with applicable General Services' Administration guidelines.
- 4307.17 If proposed health services are to be available in a limited number of facilities, a review may consider the extent to which the health professional schools in the area will have access to the services for training purposes.
- 4307.18 A review may consider the special circumstances of an HCF with respect to the need for conserving energy.
- 4307.19 A review may consider the effect of competition on the supply of the health services being reviewed.
- 4307.20 A review may consider improvements or innovations in financing and delivering health services that foster competition and serve to promote quality assurance and cost effectiveness.
- 4307.21 A review may consider the efficiency and appropriateness of using existing services and facilities similar to the health services or facilities proposed to be provided.
- 4307.22 A review may consider the quality of care provided by existing facilities for a review of existing services or facilities.
- 4307.23 When an osteopathic or allopathic facility applies for a CON to construct, expand, or modernize an HCF, acquire major medical equipment, or add services, SHPDA may consider the need for that construction, expansion, modernization, acquisition of equipment, or addition of services based on the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. SHPDA may consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.
- 4307.24 Criteria used for reviews in accordance with this section may vary according to the purpose for which a particular review is being conducted or the type of health

service reviewed.

4307.25 SHPDA may adopt or revise review criteria and standards for all applications or particular types of applications.

4307.26 SHPDA may establish or revise criteria and standards by including them in an adopted HSP.

4307.27 The criteria and standards adopted by SHPDA under Subsections 4307.25 and 4307.27 shall be incorporated in this title by reference.

**4308 REVIEW DECISIONS**

4308.1 The Director’s decision to approve, deny, modify, or revoke a CON shall be in writing and shall be based on the following:

- (a) The review conducted pursuant to the Act and rules promulgated pursuant to the Act; and
- (b) The record established in an administrative proceeding related to a CON application review, reconsideration, or a SHPDA proposal to revoke or modify a CON application. For the purposes of this section the record shall include SHPDA staff research, testimony from a public hearing, and the information the applicant has provided.

4308.2 The written decision shall state the findings of fact related to the CON, including:

- (a) Whether the project is needed;
- (b) Whether the project will meet SHPDA’s CON application review criteria and standards; and
- (c) Whether the applicant has complied or will be able to comply with uncompensated care requirements.

4308.3 SHPDA shall provide a copy of the written decision to the applicant and make a copy available to any other person upon request.

4308.4 If SHPDA approves the CON application the CON shall constitute the decision document.

4308.5 The Director shall not issue a CON unless the Director finds that the applicant has satisfied all of the requirements specified in Subsection 4308.2.

**4309 NOTIFICATION OF REVIEW DECISIONS**

4309.1 The Director shall notify the applicant of a review decision by issuing a CON or notifying the applicant by regular mail of findings denying the CON application.

4309.2 The Director shall provide the notice required by this section no later than the end of the review period, including any extension, established for the application.

**4310 RECONSIDERATION OF REVIEW DECISIONS**

4310.1 An affected person may request reconsideration of the review decision within thirty (30) days after the date of decision.

4310.2 The Director shall grant a request for reconsideration and shall hold a public hearing, if good cause is shown.

4310.3 For purposes this section “good cause” may be demonstrated as follows:

- (a) By presenting significant and relevant information not previously considered by SHPDA. Information that could have been presented during the course of review with reasonable diligence shall not be considered good cause for the purpose of this section;
- (b) By demonstrating that there has been a significant change in a factor or circumstance the Director relied on to reach a review decision. Those factors may include the opening or closure of other facilities, changes in reimbursement policies of major third party payers, or changes in SHPDA’s criteria or standards or the HSP after the date of the review decision (but before expiration of the period to request reconsideration);
- (c) By demonstrating that SHPDA materially failed to follow its review procedures as specified in the Act and this title. A “material failure” is one that may reasonably be believed to have affected the outcome of the Director’s review decision, that prevented the presentation of relevant information in time to be considered by the Director, or that involves an alleged violation of the prohibition on *ex parte* contacts specified in D.C. Official Code § 44-409(i); or
- (d) By presenting other information that leads the Director to conclude that “good cause” is shown and a public hearing for reconsideration is in the public interest.

4310.4 If the Director finds good cause and grants reconsideration, the Director shall convene a public hearing within forty-five (45) days after a finding of good cause.

4310.5 The Director shall give notice of the hearing to the person requesting the hearing, the applicant for the CON in question, SHCC, and the general public.

4310.6 Notice of the public hearing shall be published in a newspaper of general distribution within the District.

- 4310.7 There shall be no *ex parte* contacts between any party and any member of SHPDA staff or SHCC related to the decision after the reconsideration hearing adjourns.
- 4310.8 A reconsideration public hearing is an informational hearing at which the CON applicant and any other person may submit oral or written testimony. The hearing is not a “contested case” hearing as that term is defined in D.C. Official Code § 2-502.
- 4310.9 A person proposing to give oral testimony at a public hearing for reconsideration (except the person requesting the hearing and the applicant or CON holder being reconsidered) shall schedule testimony with SHPDA at least one (1) business day before the hearing.
- 4310.10 A person who does not schedule oral testimony in advance shall be permitted to testify after all scheduled testimony has been presented.
- 4310.11 The person who requested reconsideration and the CON holder (if different from the person requesting reconsideration) shall each have one (1) hour to make a presentation. One (1) or more persons may present testimony on behalf of the applicant or the person who requested the reconsideration.
- 4310.12 Any other person or group shall be permitted to present oral testimony for up to ten (10) minutes.
- 4310.13 A member of SHPDA staff may address questions, at the discretion of the hearing officer, to a person presenting oral testimony.
- 4310.14 The time spent asking and responding to questions shall not count against the time limit of the person testifying.
- 4310.15 A person may submit written testimony to SHPDA before the hearing, at the hearing, or at any time before the hearing record closes.
- 4310.16 The hearing officer may close the record at the end of all oral testimony or hold the record open for a period of time not to exceed fourteen (14) days following the end of oral testimony.
- 4310.17 The Director or the hearing officer may, under special circumstances, extend the time limits for presentations prescribed in this section.
- 4310.18 The Director may limit the scope of the hearing as follows:
- (a) To the matters for which “good cause” was demonstrated in the reconsideration request;
  - (b) To issues of substantial progress or justification for lack of progress for a



CON proposed to be withdrawn because of lack of progress; or

- (c) To evidence of subsequent occurrences or information not previously available.

4310.19 SHPDA shall maintain a verbatim record of the hearing by making a sound recording or by making a transcription of the proceeding.

4310.20 SHPDA shall make a copy of the recorded hearing available upon payment of a reasonable fee to cover the cost of duplication.

4310.21 The Director shall issue a written decision, including findings of fact and conclusions of law, within thirty (30) days following the close of the hearing record.

4310.22 The Director may affirm, modify, or reverse the original SHPDA decision.

4310.23 The Director's decision shall constitute the final decision of SHPDA for all purposes.

#### **4311 APPEAL OF REVIEW DECISIONS**

4311.1 The Director's finding regarding a showing of "good cause" and the final decision resulting from a reconsideration review may be further appealed to the Office of Administrative Hearings by any person directly affected, including the applicant, the person who requested reconsideration, previously appearing parties, and the SHCC, within fifteen (15) days of the date of Director's finding or decision.

4311.2 A person adversely affected by a SHPDA decision may appeal the decision to the District of Columbia Court of Appeals after exhausting all administrative remedies including an appeal to the Office of Administrative Hearings.

#### **4312 APPLICATION FEES**

4312.1 Notwithstanding any other provision of Chapters 40 through 45 of this title, SHPDA shall not accept an application for CON review until the applicant first pays a non-refundable application fee in the amount specified in D.C. Official Code § 44-420(a). Acceptable forms of payment include a certified check or money order for the application fee made payable to the "D.C. Treasurer".

4312.2 A CON holder shall not be required to pay an application fee for an extension of a CON pursuant to Section 4007. A CON holder seeking extension beyond a fourth (4<sup>th</sup>) year, except for an administrative extension, shall submit a new CON application pursuant to Subsection 4007.14 and pay the applicable fee.

4312.3 An applicant shall not pay an application fee after withdrawing and resubmitting an application as a result of a substantial modification of an application pursuant to Section 4203, provided that the new application is submitted to SHPDA and

judged to be complete by SHPDA within six (6) months of the date of withdrawal. If the applicant fails to re-submit an application within six (6) months, the application shall be deemed void, and any further request for CON review shall require the payment of a new application fee. If the resubmitted application requires a fee higher than that charged for the initial (withdrawn) application, the applicant shall pay the difference between the fee previously paid and the fee that would apply if the resubmitted application had been originally submitted.

#### **4399 DEFINITIONS**

4399.1 The provisions of § 4099 of Chapter 40 of this title, and the definitions set forth in that section, shall apply to this chapter.

### **CHAPTER 45 DATA REPORTING**

#### **4500 REPORTS**

4500.1 Pursuant to D.C. Official Code §44-405(b), a HCF or a person holding a CON under the Act shall submit to SHPDA periodic data reports related to the development of proposals subject to CON review.

4500.2 The requirements of this chapter may be supplemented, from time to time, with requirements for additional data when the data is reasonably necessary for SHPDA to carry out its mission under the Act. When the Director requires additional data from an HCF, the Director shall give written notice of the requirement not less than sixty (60) days before implementing the requirement. The notice required by this section shall include the basis for the requirements.

#### **4501 DATA REPORTING**

4501.1 An HCF subject to the requirements of Subsection 4500.1 shall submit to SHPDA, or to a data processing agent specified by SHPDA, the data described in this chapter, or other similar data that SHPDA may request.

4501.2 A person or entity required to file a report under this chapter shall report the data in the form and format and according to the schedule SHPDA designates. The data shall be submitted on a form prescribed by SHPDA.

4501.3 An annual report required by this chapter shall be submitted not later than ninety (90) days after the end of the report period.

4501.4 Data due less often than annually shall be submitted no later than sixty (60) days following the end of the report period.

#### **4502 REPORT CATEGORIES**

4502.1 A report submitted pursuant to Sections 4506 and 4507 of this chapter shall use the following age categories:

- (a) Eighteen (18) years of age and younger; and
- (b) Over (18) years.

4502.2 A report that requires listing a patient's residence under Sections 4506, 4507, and 4511 of this chapter shall use the following categories:

- (a) District of Columbia;
- (b) Maryland--Calvert County;
- (c) Maryland--Charles County;
- (d) Maryland--Montgomery County;
- (e) Maryland--Prince George's County;
- (f) Maryland--St. Mary's County;
- (g) Maryland--other counties;
- (h) Virginia--Alexandria City;
- (i) Virginia--Arlington County;
- (j) Virginia--Fairfax County (including Fairfax City and Falls Church);
- (k) Virginia--Loudon County;
- (l) Virginia--Prince William County (including Manassas and Manassas Park);
- (m) Virginia--other counties;
- (n) Other states and foreign countries; and
- (o) Residence unknown.

### **4503 FINANCIAL REPORTS**

4503.1 An HCF or health service shall submit to SHPDA, not later than one-hundred and twenty (120) days following the end of the fiscal year being reported upon, a copy of its audited financial report.

4503.2 The audited financial report and supplemental data supplied with the report shall include the following information, as applicable:

- (a) Balance sheet;
- (b) Income statement;
- (c) Cash flow schedule;
- (d) Costs statement, including payroll costs, inpatient care costs, outpatient care costs, capital costs, and operating costs;
- (e) Per Diem rates for inpatient room types;
- (f) Rate structure;
- (g) Average cost per patient day;
- (h) Average cost and average charge per outpatient visit;
- (i) Average cost and average charge per emergency room visit; and
- (j) Revenues, including specification of Medicaid revenue, Medicare revenue, other third-party revenue, and self-pay revenue.

#### **4504 ANNUAL REPORTS**

4504.1 A hospital of any type, unless specifically exempted by SHPDA, shall provide annually, the data required in Subsection 4504.2 for each of the following services:

- (a) Total medical-surgical services (including intensive care beds, and cardiac care services);
- (b) Intensive care service;
- (c) Coronary care service;
- (d) Obstetrics service;
- (e) Obstetrics-gynecology swing service;
- (f) Nursery service;
- (g) Intermediate neonatal and neonatal intensive care services;
- (h) Pediatric service;
- (i) Psychiatric service;
- (j) Rehabilitation service;

- (k) Alcoholism-chemical dependency service;
- (l) Diagnostic imaging;
- (m) Emergency service;
- (n) Radiation therapy; and
- (o) Any other service that SHPDA specifies after giving notice to the hospital at least thirty (30) days before the beginning of the period for which the data is required.

## 4504.2

A hospital subject to § 4504.1 shall submit a report including the following information for each service specified in that subsection:

- (a) The number of patients admitted during the reporting period for the purpose of receiving inpatient nursing care; in the nursery service, the number of admissions refers to newborn infants admitted to the hospital following birth and infants admitted following transfer from home or another hospital; in the intensive and coronary care units, the number of admissions include only those patients directly admitted to the units; patients initially admitted to the medical-surgical service and later transferred to intensive care shall be reported as intra-hospital transfers to those units;
- (b) The number of deliveries, the complete expulsion or extraction from its mother of a product of conception, regardless of the duration of pregnancy (excludes induced abortions); the number of deliveries includes live births and fetal deaths; multiple births shall be counted as one (1) delivery;
- (c) The number of emergency room registrants, including the sum of visits to the emergency room and psychiatric emergency services that result in the acceptance of the patient for the purpose of receiving inpatient nursing care within the hospital;
- (d) The number of deaths that occur before the complete expulsion or extraction from its mother of a product of conception; death is indicated by the fact that after separation from the mother, a fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles (excludes induced abortions);
- (e) The number of patients receiving surgical procedures that are performed exclusively on an outpatient basis;
- (f) The number of live births, which is the complete expulsion or extraction from its mother of a product of conception (regardless of the duration of

pregnancy) that, after separation from its mother, breathes or shows any other evidence of life (such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles) whether or not the umbilical cord has been cut or the placenta is attached;

- (g) The number of bassinets or cribs regularly maintained for use by infants as of the last day of the reporting period;
- (h) The number of beds regularly maintained for use by inpatients as of the last day of the reporting period;
- (i) The number of patients who registered to receive care in an organized outpatient department;
- (j) The total number of patient days of care rendered during the reporting period (*i.e.*, the cumulative sum of the number of occupied beds in a particular service on each day of the reporting period); and
- (k) Other data that SHPDA may require.

#### **4505 ANNUAL DISCHARGE DATA REPORTS**

4505.1 Each hospital, unless specifically exempted by SHPDA, shall provide annually, in a form, format, and medium designated by SHPDA, a hospital discharge data set including the following information for each patient:

- (a) Age;
- (b) Sex;
- (c) Race;
- (d) Major hospital service;
- (e) Disposition;
- (f) Patient residence;
- (g) Admission date;
- (h) Discharge date;
- (i) Expected source of payment;
- (j) Principal diagnosis and other diagnoses;
- (k) Principal procedure and other procedures;

- (l) Hospital identification;
- (m) Patient sequence number (assigned in a way unrelated to the medical record number);
- (n) Birth weight in grams (neonates only);
- (o) Financial data;
- (p) Ward; and
- (q) Other data that SHPDA may require.

4505.2 Hospital discharge data shall be submitted not later than one-hundred and twenty (120) days following the end of the year being reported upon.

#### **4506 HEART SURGERY REPORTS**

4506.1 Each hospital, unless specifically exempted by SHPDA, shall report annually the number of open heart surgery operations performed by patient age and patient residence categories for each of the following:

- (a) Congenital heart disease;
- (b) Valvular heart disease;
- (c) Coronary heart disease; and
- (d) Other.

4506.2 Each hospital, unless specifically exempted by SHPDA, shall report annually the number of closed heart surgery operations and the number of all other cardiac operations not reported under Subsection 4506.1, reported by the patient age and patient residence categories specified in Section 4502, performed for the following:

- (a) Congenital heart disease;
- (b) Valvular heart disease; and
- (c) Other.

4506.3 Each hospital, unless specifically exempted by SHPDA, shall report annually the cardiac surgery operative mortality (the number of deaths within thirty (30) days) reported by the patient age categories specified in Section 4502, for the following:

- (a) Open heart surgery - coronary bypass;

- (b) Open heart surgery - all others;
- (c) Closed heart surgery; and
- (d) Other cardiac surgery.

4506.4 For the purposes of this section, the term “open heart surgery” includes an operation that uses a mechanical pump to temporarily perform the function of circulation during surgery.

4506.5 For the purposes of this section, the term “closed heart surgery” includes an operation that does not require the use of a mechanical pump during surgery. Closed heart surgery shall include the following:

- (a) Valve commissurotomy;
- (b) Thoracic aneurysm repair or transection;
- (c) Systemic pulmonary shunt;
- (d) Ligation/division of patent ductus arteriosus;
- (e) Resection of coarctation of aorta;
- (f) Pulmonary artery banding; and
- (g) Valvulotomy.

4506.6 For the purposes of this section, pacemaker implantations and implants of pulsation balloons are excluded from the category of operations defined as “closed heart surgery.”

#### **4507 CARDIAC CATHETERIZATION REPORTS**

4507.1 Each hospital, unless specifically exempted by SHPDA, shall report annually the number of procedures performed in the cardiac catheterization laboratory in the categories specified below by the patient age and patient residence categories specified in Section 4502 (the procedure includes all diagnostic studies, angiographic and physiologic, performed on a patient during one (1) session in the laboratory):

- (a) Right heart catheterizations (with and without angiography);
- (b) Left heart catheterizations without coronary angiography;
- (c) Left heart catheterizations with coronary angiography;
- (d) Combined right and left heart catheterizations without angiography;



- (e) Combined right and left heart catheterizations with angiography (other than coronary angiography);
- (f) Combined right and left heart catheterizations with coronary angiography;
- (g) Permanent pacemaker implantation;
- (h) Other cardiac procedures (includes temporary pacemakers);
- (i) Electrophysiological studies (*e.g.*, HIS Bundle);
- (j) Percutaneous transluminal coronary angioplasty (PTCA);
- (k) Streptokinase thrombolysis; and
- (l) Other non-cardiac angiographic procedures.

4507.2 Each hospital, unless specifically exempted by SHPDA, shall report annually the number of cardiac catheterization patients in the following categories by each patient age and patient residence category specified in Section 4502:

- (a) Number of cardiac patients studied;
- (b) Number of non-cardiac patients studied;
- (c) Number of patients studied with pre-catheterization diagnosis of the following:
  - (1) Coronary artery disease;
  - (2) Coronary artery and valvular or congenital disease;
  - (3) Valvular or congenital disease only; and
  - (4) Other diseases.

4507.3 Each hospital, unless specifically exempted by SHPDA, shall report annually the cardiac catheterization mortality (the number of deaths when mortality occurs during or immediately following surgery), reported by the patient age and patient residence categories specified in Section 4502.

#### **4508 EMERGENCY ROOM REPORTS**

4508.1 Each hospital, unless specifically exempted by SHPDA, shall report annually, on the basis of a one (1) week sample survey, the number of emergency room encounters that were judged not to require emergency service.

- 4508.2 SHPDA shall notify a hospital at least three (3) months in advance of the selected week for the survey required in Subsection 4508.1.
- 4508.3 Each hospital, unless specifically exempted by SHPDA, shall report quarterly the data listed below:
- (a) Average daily hours of operation;
  - (b) Average daily hours on diversion;
  - (c) Average daily hours closed;
  - (d) Average daily number of patients; and
  - (e) Severity quotient;

**4509 REPORTS OF OTHER FACILITIES**

- 4509.1 Each SNF and each ICF shall provide the following data annually:
- (a) The number of operating (staffed and otherwise held ready for occupancy) beds, by bed category (*i.e.*, SNF and ICF);
  - (b) The number of patient days by bed category;
  - (c) The jurisdiction of residence of patients at the time of admission, by bed category (using the jurisdiction categories specified in Section 4502);
  - (d) The number of admissions by bed category;
  - (e) The number of discharges by bed category;
  - (f) The average length of stay by bed category;
  - (g) Payment source by days of care by bed category; and
  - (h) Long-term acute care.
- 4509.2 Each renal dialysis facility shall report annually, by jurisdiction of patient residence (using the categories as specified in Section 4502), the number of patients regularly receiving each type of service the facility offers, the number of treatments given by type, and the facility's hours of operation.
- 4509.3 Each home health agency and each home care hospice shall report annually the number of patients serviced, and the number of visits provided, by type and major payment source (Medicaid, Medicare, other third party, and self-pay) and any other information SHPDA may request.

4509.4 Each ambulatory surgical facility, neighborhood health center, drug treatment center, alcohol treatment clinic, and other freestanding medical facility subject to CON requirements, shall report annually the number of patients serviced, the number of patient encounters, and, if applicable, the number of enrollees by major payment source.

4509.5 Each HMO shall annually report the number of enrollees by the following categories:

- (a) Jurisdiction of residence as specified Section 4502;
- (b) The number of ambulatory visits;
- (c) The number of hospital admissions (by hospital); and
- (d) The number of inpatient days of care (by hospital and service).

**4599 DEFINITIONS**

4599.1 The provisions of § 4099 of Chapter 40 of this title, and the definitions set forth in that section shall apply to this chapter.

**Chapter 46 (Revised Special Certificate Of Need Procedures, Considerations And Criteria For Review Of Magnetic Resonance Imaging (MRI) Scanners), is repealed in its entirety.**

## DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation (Department), pursuant to the authority set forth in Sections 4(5)(A) (assigning authority to coordinate and manage public right-of-way permits and records to the Department Director), 5(4)(A) (assigning duty to review and approve public right-of-way permit requests to the Department Director), and 6(b) (transferring the public right-of-way maintenance function previously delegated to the Department of Public Works under Section III(F) of Reorganization Plan No. 4 of 1983 to the Department) of the Department of Transportation Establishment Act of 2002 (DDOT Establishment Act), effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.03(5)(A)(2012 Repl.), 50-921.04(4)(A)(2012 Repl. & 2013 Supp.), and 50-921.05(b)(2012 Repl.)), and Section 604 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.04 (2013 Repl.)), which was delegated to the Director of the Department of Public Works pursuant to Mayor's Order 96-175, dated December 9, 1996, and subsequently transferred to the Director of the Department in Section 7 of the DDOT Establishment Act of 2002 (transferring to the Director of the Department all transportation-related authority previously delegated to the Director of the Department of Public Works), effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.06 (2012 Repl.)), hereby gives notice of the adoption of the following amendments to Chapter 33 (Public Right-of-Way Occupancy Permits) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

A Notice of Proposed Rulemaking was published in the *D.C. Register* on March 15, 2013, at 60 DCR 3788. Comments were received and in response to the comments, amendments were made to Chapter 33 (Public Right-of-Way Occupancy Permits) to modify the regulations for non-Washington Metropolitan Area Transit Authority (WMATA) buses to correspond with the new intercity bus regulations.

A Notice of Second Proposed Rulemaking was published in the *D.C. Register* on August 16, 2013 at 60 DCR 11973. Comments were received from one commenter. They raised earlier concerns reviewed and addressed in the Notice of Second Proposed Rulemaking. One new comment raised a concern with the application process when multiple companies want to share one sign and split the annual sign fee and another dealt with the need for a more simple application process for annual permit renewal applications. DDOT has already addressed both concerns by designing an online permit application process that will allow only one applicant to apply for a group sign on behalf of the entire group. The application may be edited as needed up until the time full payment for the permit is received by DDOT.

A Notice of Third Proposed Rulemaking was published in the *D.C. Register* on December 20, 2013 at 60 DCR 17038. The only change made in the third proposed rulemaking was to extend the deadline by which bus companies must have permits for their signs in public space.

Three comments were received in response to the Third Proposed Rulemaking, but no changes were made because the comments were either not relevant to the rulemaking or were already addressed in the rulemaking.

DDOT adopted the rules as final on February 14, 2014. The rules will go into effect upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*.

**Chapter 33, PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS, of Title 24, PUBLIC SPACE AND SAFETY, of the DCMR is amended as follows:**

**Section 3301, OCCUPATION OF PUBLIC SIDEWALKS WITH PERSONALIZED PAVERS, Subsection 3301.6, is amended to read as follows:**

3301.6 All terms and conditions set forth in § 3310 of this chapter shall apply to Public Rights-of-Way Occupancy Permits issued for personalized pavers, with the exception of §§ 3310.9, 3310.11, 3310.12, and 3310.16.

**Section 3304, OCCUPANCY OF THE PUBLIC RIGHT-OF-WAY BY TOUR BUSES, is repealed.**

**Section 3306 is amended to read as follows:**

**3306 DESIGNATION OF PASSENGER PICK-UP AND DROP-OFF SITES WITH APPROVED SIGNAGE IN THE RIGHT-OF-WAY FOR COMMUTER, SHUTTLE, SIGHTSEEING, AND TOUR BUSES**

3306.1 A bus operator that seeks to occupy a public right-of-way by stopping to pick up or discharge passengers in the public right-of-way shall obtain an annual Bus Right-of-Way Occupancy permit from the Department.

3306.2 At each location where a bus operator is authorized to occupy public right-of-way to stop to pick up or discharge passengers, the bus operator must post a sign in the public right-of-way notifying the public where the bus will stop to pick up or discharge passengers. No sign may be posted by a bus operator unless the posting of the sign has been approved as part of a Bus Right-of-Way Occupancy permit issued by the Department.

3306.3 A bus operator shall provide one (1) of the following four (4) services to be eligible for a Bus Right-of-Way Occupancy permit from the Department:

- (a) Commuter bus service;
- (b) Shuttle bus service;
- (c) Sightseeing bus service; or

(d) Tour bus service.

3306.4 Multiple bus operators may obtain permission to post a single sign designating a stop in public right-of-way at which any of the bus operators may stop to pick up or discharge passengers. The fee for an individual shared sign shall not exceed the fee for an individual single operator sign. The fee for a shared sign shall be apportioned on a pro rata basis among the multiple bus operators who have been permitted to post the sign. No shared sign may be posted until the entire fee has been paid by all bus operators permitted to post the sign.

3306.5 The application fee for the Bus Right-of-Way Occupancy permit shall be the application fee established in § 225 of this title. Except for a Public Transit Agency, a permittee shall also pay an annual permit fee for each bus sign posted in public right-of-way in the following amounts:

- (a) Sign affixed to an existing pole or structure in public right-of-way, or a freestanding or portable sign: Two hundred fifty dollars (\$250) per sign;
- (b) Sign affixed to a new pole or structure in public right-of-way as proposed by permittee (new pole or structure to be provided and installed by permittee after receipt of permit): Five hundred dollars (\$500) per sign.

3306.6 In addition to the permit fee specified in § 3306.3, the permittee shall pay a technology fee in the amount of ten percent (10%) of the permit fee paid.

3306.7 A bus operator seeking an annual Bus Right-of-Way Occupancy permit shall file an application on a form provided by the Department. The form shall include the following information:

- (a) Information on the bus operator, including:
  - (1) The name of the bus operator;
  - (2) The mailing and physical addresses of the bus operator; and
  - (3) The phone number, fax number, email address, and website of the bus operator; and
- (b) Information on the proposed occupancy of the public right-of-way, including:

- (1) The location of all stops in the District of Columbia at which passengers will be picked up or dropped off in the public right-of-way;
  - (2) The route(s) that the buses will take between any stops within the District of Columbia;
  - (3) The hours and days for which the bus operator proposes occupying the public right-of-way for the loading and unloading of passengers;
- (c) Information on the signs to be posted in public right-of-way at each stop identified in Paragraph (b)(1) of this subsection, including:
- (1) A site plan showing the locations of the poles or structures to which proposed signs will be affixed and the locations on the sidewalk where freestanding or portable signs will be placed;
  - (2) The size, material, and specifications for a new pole, if required;
  - (3) If the sign is proposed to be affixed to an existing pole or structure, a description of the signs currently affixed to the existing pole or structure;
  - (4) An actual-size sample of the proposed sign that shall not be larger than twelve inches by eighteen inches (12" x 18"); and
  - (5) A description of how the sign will be affixed to the pole or structure in public right-of-way; and
- (d) Such other information as may be required by the Department.

3306.8 No sign may include an advertisement other than the name and logo of the bus company.

3306.9 No bus sign may be posted on a Metrobus pole nor may any bus sign be posted in a marked Metrobus Zone.

3306.10 Notwithstanding §§ 3306.5 and 3306.9, a bus operator operating a commuter bus service may attach a sign on a Metrobus pole or install a sign in a marked Metrobus Zone at no cost, provided the bus operator obtains:

- (a) A bus right-of-way occupancy permit; and
- (b) Approval from the Washington Metropolitan Area Transit Authority (WMATA).

- 3306.11 No bus sign may be posted in any public right-of-way space reserved for metered public parking.
- 3306.12 An application for a Bus Public Right-of-Way Occupancy permit shall be reviewed for conformance with District of Columbia traffic safety requirements, transportation network policies, and streetscape design elements. In determining whether to grant a Bus Right-of-Way Occupancy permit, the Department shall consider the following factors:
- (a) The direct impact on pedestrian and vehicular traffic, including bicycle and other non-motorized vehicular traffic;
  - (b) The bus service schedule, peak hour(s) concentration, and anticipated traffic conditions;
  - (c) The number of passengers expected to board or disembark at any given time;
  - (d) The anticipated impact on nearby public transit systems; and
  - (e) Any other effect of the proposed operations in public right-of-way on public health or safety and the efficient and safe operation of the existing transportation network, including pedestrian, vehicle, and all other modes of transportation.
- 3306.13 Payment in full of the annual permit fee shall be made to the District prior to the issuance of the Bus Right-of-Way Occupancy permit.
- 3306.14 A Bus Right-of-Way Occupancy permit shall expire one (1) year after its effective date. A permittee that seeks to continue to occupy the public right-of-way after the one (1)-year period shall submit a new permit application at least thirty (30) days before the expiration date of the current permit. If all of the information required by § 3306.5 remains unchanged from the most recent application, the new permit application need only contain a statement confirming there have been no changes. If any of the information has changed, the application shall include the information required by § 3306.5 that has changed, along with a statement confirming that there have been no other changes.
- 3306.15
- (a) Except as provided for in paragraph (b) of this subsection, no bus operator may occupy public right-of-way to stop and pick up or discharge passengers except in the stops approved as part of a Bus Right-of-Way Occupancy permit.
  - (b) Notwithstanding paragraph (a) of this subsection, a bus operator may occupy the public right-of-way to stop to pick up or discharge passengers



at the nearest reasonable location closest to a stop approved as part of a Bus Right-of-Way Occupancy permit, when the curbside where the approved stop is closed due to one of the following special circumstances:

- (1) A special event approved by the Mayor's Special Events Task Force;
- (2) A Temporary Public Space Occupancy permit issued by the Department; or
- (3) An order of the Metropolitan Police Department or other law enforcement or emergency response agency of competent jurisdiction.

- (c) The bus operator must return to use the approved stop to pick up or discharge passengers as soon as the curbside location closed pursuant to paragraph (b) of this subsection reopens to public use.

3306.16 When occupying public right-of-way at an approved stop, the bus operator must be in the process of actively loading or unloading bus passengers and must otherwise abide by all other existing and applicable curbside regulations.

3306.17 The Department may revoke a bus operator's Bus Right-of-Way Occupancy permit and require the permittee to remove its signs and poles from the public right-of-way if the bus operator:

- (a) Fails to pay in full its annual permit renewal fee, including fees for any signs; or
- (b) Violates any other requirement listed in this section.

3306.18 A bus operator already providing service in the District on the effective date of this chapter shall have until March 1, 2014 to apply for and receive a Bus Right-of-Way Occupancy permit.

3306.19 Each sign posted in the public right-of-way by a bus operator, and its associated pole or structure, if installed by the bus operator, that does not receive a Bus Right-of-Way Occupancy permit by March 1, 2014, must be removed by the bus operator.

3306.20 Starting March 1, 2014, a sign posted in the public right-of-way by a bus operator that does not have a Bus Right-of-Way Occupancy permit or has a Bus Right-of-Way Occupancy permit that has been revoked, may be removed by the Department. The bus operator shall be liable to the Department for the costs of any such removal.

3306.21 The District shall not incur any liability for removing a bus operator’s signs or poles. The company whose signs or poles are removed shall be liable to the Department for the costs of the removal.

**Section 3310, GENERAL TERMS AND CONDITIONS, Subsection 3310.2 is amended by striking the phrase “and 3304” where it appears, so that the provision reads as follows:**

3310.2 The duration of Public Rights-of-Way Occupancy Permits is as follows, with provisions for renewal thereafter:

- (a) Permits issued pursuant to Section 3302 shall be valid for twenty (20) years;
- (b) Permits issued pursuant to Sections 3303 shall be valid for not more than one (1) year; and
- (c) All other Permits shall be valid for terms not to exceed ten (10) years.

**Section 3399, DEFINITIONS, is amended to read as follows:**

3399.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed below:

**Act** – Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*).

**Bus** – a public or private vehicle having a seating capacity of more than fifteen (15) passengers, exclusive of the driver.

**Bus operator** – a person that operates a bus service, whether directly or through contractors.

**Commuter bus service**- a bus that is used to transport passengers to and from worksites; provided, that this definition shall not include any vehicle owned or operated by the Washington Metropolitan Area Transit Authority.

**Component device** - communications equipment which alone, or as part of a communications network, is used to record, receive, store, or transmit information or data.

**Department** - District Department of Transportation

**Director** - Director of the District Department of Transportation.

**Mobile storage container** - a moveable container that is temporarily placed on the public right-of-way and is used for short-term storage of items, including but not limited to, clothing, equipment, goods, household or office fixtures or furnishings, materials, and merchandise.

**Occupy** - to use public right-of-way, public rights of way, or public structures by installing, constructing, reconstructing, excavating, repairing, maintaining, or operating any structure, equipment, vehicle, facility, or other object (including but not limited to pipes, stand-alone conduits, tunnels, posts, or wires), in, over, under, along, through, on, across, or above the public rights-of-way under the jurisdiction of the District of Columbia government for any purpose.

**Person** - an individual, utility, firm, partnership, association, corporation, company, entity, or organization of any kind.

**Personalized paver** - an engraved sidewalk treatment that is inscribed with the name or likeness of an individual or entity.

**Public right-of-way** – the surface, the airspace above the surface (including air space immediately adjacent to a private structure located in a public right-of-way), and the area below the surface of any public street, bridge, tunnel, highway, lane, path, alley, sidewalk or boulevard.

**Public Transit Agency** - a municipal corporation or government agency (and its agents) that operates a bus, train, van, streetcar, trolley, subway, or rail vehicle for use by the general public.

**Shuttle bus service**– a van or bus that is used to transport passengers between worksites.

**Sightseeing bus service**- a bus used for sightseeing and touring purposes, traveling a regular route at scheduled times and with specific stop(s), which is available to the general public for boarding or discharging at any stop, and used to transport passengers principally between multiple destinations of historic, cultural, architectural, or societal interest within the District of Columbia.

**Stand-alone conduit** - conduit that is not housed inside other conduit.

**Tour bus service** - a bus used for sightseeing and touring purposes, and used to transport passengers principally from one (1) destination to another and back to the original destination.

**Van** - a public or private vehicle having a seating capacity of between eight (8) and fifteen (15) passengers, exclusive of the driver.

**HEALTH BENEFIT EXCHANGE AUTHORITY**

**NOTICE OF PROPOSED RULEMAKING**

The Executive Board of the District of Columbia Health Benefit Exchange Authority (“Authority”), pursuant to the authority set forth in § 18 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 4, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 *et seq.*) (“Act”), hereby gives notice of the intent to adopt the following rules, which will establish a new Subtitle D (Health Benefit Exchange) of Title 26 (Insurance, Securities, and Banking) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* and upon the completion of the thirty (30) day Council period of review, if the Council does not act earlier to adopt a resolution approving the rules.

These rules were adopted by the Executive Board on February 12, 2014 and establish an assessment upon health carriers to fund the operations of the Authority. Pursuant to § 31-3171.03 of the Act, the Authority is authorized, through rulemaking, to charge user fees, licensing fees, or other assessments on health carriers. In the first year, the Authority believes the assessment will be 1% or slightly under 1%.

**A new Subtitle D, Health Benefit Exchange, is added to Title 26, Insurance, Securities, and Banking, of the District of Columbia Municipal Regulations, as follows:**

**A new Chapter 1, titled “Health Carrier Assessments,” is added to read as follows:**

**100 ASSESSMENTS**

100.1 The DC Health Benefit Exchange Authority (“Authority”) shall assess annually, through a “Notice of Assessment,” each health carrier doing business in the District with direct gross receipts of \$50,000 or greater in the preceding calendar year an amount based on a percentage of its direct gross receipts for the preceding calendar year.

100.2 The Authority shall adjust the assessment rate in each assessable year. The amount assessed shall not exceed reasonable projections regarding the amount necessary to support the operations of the Authority.

100.3 Each health carrier shall pay to the Authority the amount stated in the Notice of Assessment within thirty (30) business days of receipt of the Notice of Assessment.

100.4 Any failure to pay the assessment shall subject the health carrier to D.C. Official Code § 31-1204.

A new Chapter 99, “Definitions”, is added to read as follows:

**9900            DEFINITIONS**

9900.1            When used in this chapter, the following words terms shall have the meanings ascribed:

**“Authority”** means the District of Columbia Health Benefit Exchange Authority established pursuant to D.C. Official Code § 31-3171.02.

**“Direct gross receipts”** means all policy and membership fees and net premium receipts or consideration received in a calendar year on all health insurance risks originating in or from the District of Columbia.

**“Health carrier”** has the same meaning as provided in D.C. Official Code § 31-3171.01(6).

**“Net premium receipts or consideration received”** means gross premiums or consideration received less the sum of premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.

Comments on this rule should be submitted, in writing, to Mary Beth Senkewicz, DC Health Benefit Exchange Authority, 1100 15th Street, NW, Eighth Floor, Washington, D.C. 20005, or to [mary.senkewicz@dc.gov](mailto:mary.senkewicz@dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available Monday through Friday between the hours of 8:30 a.m. and 4:00 p.m., DC Health Benefit Exchange Authority, 1100 15th Street, NW, Eighth Floor, Washington, D.C. 20005.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2012 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of his intent to amend Title 17 (Business, Occupations & Professions) with a new Chapter 91 (Graduate Professional Counselor) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendment is to establish regulations for the practice of the profession “graduate professional counselor”, which was established pursuant to the Practice of Professional Counseling and Addiction Counseling Amendment Act of 2009, effective July 7, 2009 (D.C. Law 18-0013; D.C. Official Code § 3-1201.02, *et seq.*(2012 Repl.)).

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

**Title 17 (Business, Occupations & Professions) is amended as follows:**

**The table of contents is amended as follows:**

**CHAPTER 91 GRADUATE PROFESSIONAL COUNSELOR**

- 9100 General Provisions
- 9101 Term of License
- 9102 Transition from Licensure as a Graduate Professional Counselor to Professional Counselor
- 9103 Educational Requirements
- 9104 Waiver of Educational and Experiential Requirements for Licensure
- 9105 Supervised Experience Requirements
- 9106 Applicants Educated in Foreign Countries
- 9107 National Examination
- 9108 Licensed Graduate Professional Counselor Practice
- 9109 [Reserved]
- 9110 [Reserved]
- 9111 Standards of Conduct
- 9199 Definitions

**A new Chapter 91 is added to read as follows:**

**CHAPTER 91 GRADUATE PROFESSIONAL COUNSELOR**

**9100 GENERAL PROVISIONS**

9100.1 This chapter shall apply to applicants for and holders of a license to practice as a graduate professional counselor.

9100.2 Chapters 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) of this title shall supplement this chapter.

### **9101 TERM OF LICENSE**

9101.1 A license issued pursuant to this chapter shall be valid for no greater than five (5) years from the date of issuance provided that the period may be extended for good cause shown. The license shall expire at 12:00 midnight on the date of expiration.

### **9102 TRANSITION FROM LICENSURE AS A GRADUATE PROFESSIONAL COUNSELOR TO PROFESSIONAL COUNSELOR**

9102.1 A graduate professional counselor pursuing licensure as a professional counselor shall furnish proof satisfactory to the Board that he or she has completed the following:

- (a) At least three thousand five hundred (3,500) hours of post-Master's or postdoctoral experience pursuant to 17 DCMR § 6603.1(b);
- (b) Sixty (60) graduate semester hours of a counseling program as set forth at to 17 DCMR § 6602.2(a); and
- (c) Licensure as a graduate professional counselor or its substantial equivalent.

9102.2 If an applicant for licensure as a professional counselor does not meet the requirements of § 9102.1(a) and the applicant elects to complete his or her supervised practice requirements in the District of Columbia, the applicant shall first obtain licensure as a graduate professional counselor or its equivalent and work under the immediate and direct supervision of a professional counselor, psychologist, psychiatrist, or independent social worker, who is licensed in the District of Columbia under the Act.

### **9103 EDUCATIONAL REQUIREMENTS**

9103.1 Except as otherwise provided in this chapter, an applicant for a license shall furnish proof satisfactory to the Board, in accordance with § 710 of the Act, D.C. Official Code § 3-1207.10, of the following:

- (a) That the applicant has received a Master's degree or higher from an institution of higher education which was accredited, at the time the degree was conferred, by an accrediting body recognized by the Secretary of the United States Department of Education, the Council on Postsecondary Accreditation, or its successor;

- (b) That the Master's program is accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) or is deemed by the board to be substantially equivalent to a CACREP approved program; and
- (c) That the applicant has completed a minimum of forty eight (48) semester hours or the equivalent number of quarter or trimester hours converted into semester hours in counseling or related field of study after earning a bachelor's degree.

9103.2 For the purpose of meeting the requirements of § 9103.1, the following shall apply:

- (a) All courses earned in a graduate degree program in counseling shall be counted toward the required forty eight (48) semester hours. Courses earned outside of a counseling degree program shall be evaluated individually by the Board.
- (b) The fields of study related to counseling that are acceptable to the Board include:
  - (1) Social science;
  - (2) Psychology;
  - (3) Social work;
  - (4) Human service;
  - (5) Behavioral science;
  - (6) Psychiatric nursing;
  - (7) Rehabilitation counseling;
  - (8) Family counseling;
  - (9) Individual and family development;
  - (10) Student counseling and personnel service;
  - (11) Mental health and human service;
  - (12) Addiction;



- (13) Family and community service; and
- (14) Creative arts therapy.

9103.3 In order to obtain credit for the courses, the content of an applicant's degree program and courses shall include, at a minimum, the following:

- (a) Counseling theory and practice;
- (b) Human growth and development;
- (c) Lifestyle and career development;
- (d) Group counseling;
- (e) Appraisal, assessment, and testing of individuals;
- (f) Principles of etiology, diagnosis, treatment planning, and prevention of mental and emotional disorders and dysfunctional behavior;
- (g) Social and cultural foundations including multicultural counseling;
- (h) Marriage and family counseling;
- (i) Research and program evaluation;
- (j) Professional orientation and ethics; and
- (k) Counseling practicum or internship.

9103.4 An applicant shall submit to the Board, along with the completed application, certified transcripts of the applicant's educational records from each educational institution from which credits were earned that are relevant to the licensure application. Transcripts shall only be accepted if they are mailed directly by the educational institution from which credits were earned.

9103.5 The applicant shall provide the Board with course descriptions detailing the subject matter of the courses listed on the applicant's certified transcript if the subject matter of the courses differs from those listed in Subsection 9103.2.

9104 **WAIVER OF EDUCATIONAL AND EXPERIENTIAL REQUIREMENTS FOR LICENSURE**

9104.1 The Board shall waive the educational requirements of § 9102.1(b) and the supervised experience requirements of § 9105 provided that:

- (a) The applicant has received a Master's degree on or before the date these regulations have been published as final rulemaking; or
- (b) The applicant is currently enrolled in a Master's program at the time of publication of these regulations as final rulemaking; and
- (c) An application for licensure is submitted within one (1) year from the date these regulations have been published as final rulemaking.

## **9105 SUPERVISED EXPERIENCE REQUIREMENTS**

- 9105.1 An applicant for a license shall furnish proof satisfactory to the Board that he or she has completed, in a university-approved counseling setting, a one hundred (100) hour face-to-face supervised practicum followed by a six hundred (600) hour face to face supervised internship.
- 9105.2 Pursuant to § 9105.1, at least forty (40) hours of the one hundred (100) hours of supervised practicum shall be in the form of direct service to clients.
- 9105.3 Pursuant to § 9105.2, an applicant shall have acquired at least one (1) hour per week of individual or triadic face-to-face supervision provided by a program faculty member, student supervisor, or a site supervisor working in biweekly consultation with a program faculty member in accordance with a supervision contract.
- 9105.4 In addition to individual or triadic supervision, the applicant shall receive one and one-half (1.5) hours per week of group supervision during the practicum by a program faculty member or a student supervisor.
- 9105.5 Pursuant to § 9105.1, at least two hundred forty (240) hours of the six hundred (600) hours of supervised internship shall be in direct service to clients.
- 9105.6 Pursuant to § 9105.5, one (1) hour per week of individual or triadic face-to-face supervision shall be provided to the applicant by an on-site supervisor and one and one-half (1.5) hours per week of group supervision shall be provided by a program faculty member.
- 9105.7 A graduate professional counselor under supervision shall identify himself or herself as such at all times when practicing professional counseling.
- 9105.8 A supervisor or supervisee shall within two (2) weeks of commencing supervision submit to the Board a supervised practice form which supplies the Board with the following information:
- (a) The supervisor's name, address, state of licensure, and license number;

- (b) The supervisee’s name;
- (c) The expected period of supervision (start and ending dates); and
- (d) The nature and location of the supervision.

**9106 APPLICANTS EDUCATED IN FOREIGN COUNTRIES**

9106.1 The Board may grant a license to practice professional counseling to an applicant who completed an educational program in a college or university in a foreign country which is not accredited in accordance with § 9103 if the applicant meets the following requirements:

- (a) Meets all requirements of this chapter except for § 9103.1; and
- (b) Demonstrates to the satisfaction of the Board that the applicant’s education and training are substantially equivalent to the requirements of this chapter and the Act in ensuring that the applicant is qualified to practice professional counseling by submitting the documentation required by Subsection 9106.2 of this section.

9106.2 An applicant under this section shall, in lieu of meeting the requirements of § 9103.1, submit one of the following:

- (a) Proof satisfactory to the Board that the applicant has received a master’s degree or higher from a foreign institution which was accredited, at the time the degree was conferred, by an accrediting body recognized by the national government of the country in which the institution is located; or
- (b) A certification from a private education evaluation service approved by the Board that the applicant’s foreign education is substantially equivalent to the education provided in an accredited program.

9106.3 The Board may interview an applicant under this section to determine whether the applicant’s education or training meets the requirements of the Act and this chapter.

9106.4 If a document required by this chapter is in a language other than English, an applicant shall arrange for its translation into English by a translation service acceptable to the Board and shall submit a translation signed by the translator attesting to its accuracy.

**9107 NATIONAL EXAMINATION**

9107.1 To qualify for a license, an applicant shall receive a score on the National Counselor Examination designated by the National Board for Certified

Counselors as a passing score for that administration of the National Counselor Examination.

- 9107.2 An applicant who, prior to applying for a license, has taken and passed an examination administered by a professional counselor licensure board in another jurisdiction in the United States, by the Commission for Certified Rehabilitation Counselors, or by the National Academy of Certified Mental Health Counselors (now a specialty within the National Board for Certified Counselors), will not be required to take the National Counselor Examination. An applicant relying on an alternative examination shall submit to the Board the applicant's examination results which have been certified or validated by the entity that administered the examination.

## **9108 LICENSED GRADUATE PROFESSIONAL COUNSELOR PRACTICE**

- 9108.1 A licensed graduate professional counselor shall only practice under the general and immediate supervision of a professional counselor, psychologist, psychiatrist, or independent clinical social worker licensed in the District of Columbia under the Act.
- 9108.2 A person who has been denied a license or disciplined in the District of Columbia or other jurisdiction in the United States shall not practice pursuant to this section unless authorized by the Board in writing to do so.
- 9108.3 A supervisor shall be responsible for all supervised practice by a graduate during the period of supervision, and is subject to disciplinary action for any violation of the Act or this chapter by the graduate.
- 9108.4 A graduate professional counselor shall be subject to disciplinary action for any violation of the Act or this chapter. The Board may deny an application for a license by a graduate who is found to have violated the Act or this chapter, in accordance with Chapter 41 of this title.

**9109 [RESERVED]**

**9110 [RESERVED]**

## **9111 STANDARDS OF CONDUCT**

- 9111.1 Graduate professional counselors shall not discriminate against clients because of age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, marital status, or socioeconomic status.
- 9111.2 Graduate professional counselors shall inform clients, preferably in writing, regarding the counseling process and counseling relationship at or before the time counseling begins and throughout the relationship.

- 9111.3 Graduate professional counselors shall make every effort to avoid dual relationship with clients that could impair their professional judgment or increase the risk of harm to clients. When a dual relationship cannot be avoided, graduate professional counselors shall take appropriate steps to ensure that their judgment is not impaired and that no exploitation occurs.
- 9111.4 Graduate professional counselors shall not engage in any type of sexual intimacies with current clients and shall not engage in sexual intimacies with former clients within a minimum of two years after terminating the counseling relationship. Graduate professional counselors who engage in such a relationship after two years following termination shall have the responsibility to thoroughly examine and document that such relations did not have an exploitative nature.
- 9111.5 Graduate professional counselors shall take reasonable precautions to protect clients from physical or psychological trauma resulting from interactions during group work.
- 9111.6 Graduate professional counselors shall explain to clients, prior to their entering the counseling relationship, financial arrangements related to professional services.
- 9111.7 Graduate professional counselors shall assist in making appropriate arrangements for the continuation of treatment of clients, when necessary, following termination of counseling relationship.
- 9111.8 Graduate professional counselors shall avoid entering or immediately terminate a counseling relationship if it is determined that they are unable to be of professional assistance to a client. The counselors shall assist in making an appropriate referral to the client.
- 9111.9 Graduate professional counselors shall keep information related to counseling services confidential unless disclosure is in the best interest of clients, is required for the welfare of others, or is required by law.
- 9111.10 Graduate professional counselors shall take measures to ensure that subordinates maintain client privacy and confidentiality.
- 9111.11 Graduate professional counselors shall not disclose information about one family member in counseling to another family member without prior consent.
- 9111.12 Graduate professional counselors shall maintain appropriate confidentiality in creating, storing, accessing, transferring and disposing of counseling records.
- 9111.13 Graduate professional counselors shall obtain prior consent from clients in order to electronically record or observe sessions.

- 9111.14 Except as provided in § 9109.9, graduate professional counselors shall obtain client consent to disclose or transfer records to third parties.
- 9111.15 Graduate professional counselors shall disguise the identity of the client when using data for training, research or publication.
- 9111.16 Graduate professional counselors shall practice only within the boundaries of their competence.
- 9111.17 Graduate professional counselors shall engage in continuing education to maintain their professional competence.
- 9111.18 Graduate professional counselors shall refrain from offering professional services when their personal problems or conflicts may cause harm to a client or others.
- 9111.19 Graduate professional counselors shall accurately represent their credentials and services when advertising.
- 9111.20 Graduate professional counselors shall claim or imply only professional credentials possessed and shall correct any known misrepresentation of their credentials by others.
- 9111.21 Graduate professional counselors shall not engage in sexual harassment.
- 9111.22 With the consent of the client, graduate professional counselors shall inform other mental health professionals serving the same client that a counseling relationship between the counselor and client exists.
- 9111.23 Graduate professional counselors shall alert their employers when the employer's institutional policies may be potentially disruptive or damaging to counselors' professional responsibilities or that may limit their effectiveness or deny clients' rights.
- 9111.24 Graduate professional counselors shall select competent staff and shall assign responsibilities compatible with staff skills and experiences.
- 9111.25 Graduate professional counselors shall not engage in exploitative relationships with individuals over whom they have supervisory, evaluative, or instructional control or authority.
- 9111.26 Graduate professional counselors shall not accept fees or other remuneration for consultation with persons entitled to such services through the counselors' employing agency or institution.
- 9111.27 Graduate professional counselors shall not accept referral fees.

- 9111.28 Graduate professional counselors shall perform only testing and assessment services for which they are competent.
- 9111.29 Graduate professional counselors shall not allow the use of psychological assessment techniques by unqualified persons under their supervision.
- 9111.30 Graduate professional counselors shall use assessment instruments in the manner for which they were intended.
- 9111.31 Graduate professional counselors shall provide explanations to clients prior to assessment about the nature and purposes of assessment and the specific uses of results.
- 9111.32 Graduate professional counselors shall ensure that accurate and appropriate interpretations accompany any release of testing and assessment information.
- 9111.33 Graduate professional counselors shall not base their assessment or intervention decisions or recommendations on data or test results that are obsolete or outdated for the current purpose.
- 9111.34 Graduate professional counselors shall give credit to students or supervisees for their contributions to research and scholarly projects.
- 9111.35 Graduate professional counselors who offer clinical supervision services shall be trained and prepared in supervision methods and techniques.
- 9111.36 Graduate professional counselors shall clearly state to students and supervisees in advance of training, the levels of competency expected, appraisal methods, and timing of evaluations. Graduate professional counselors shall provide students and supervisees periodic performance appraisals and evaluation feedback throughout the training program.
- 9111.37 Graduate professional counselors shall make every effort to ensure that the rights of peers are not violated when students and supervisees are assigned to lead counseling groups or provide clinical supervision.
- 9111.38 Graduate professional counselors shall assist students and supervisees in securing remedial assistance, when needed, and shall dismiss from the training program students and supervisees who are unable to provide competent services due to academic or personal limitations.
- 9111.39 Graduate professional counselors who lead experiential trainings for students or supervisees shall not be influenced by the students' and supervisees' self disclosure when assigning grades.

- 9111.40 Students and supervisees preparing to become graduate professional counselors shall adhere to the American Counseling Association's Code of Ethics and the Standards of Practice of counselors.
- 9111.41 Graduate professional counselors shall avoid causing physical, social or psychological harm or injury to subjects of research.
- 9111.42 Graduate professional counselors shall keep confidential information obtained about research participants.
- 9111.43 Graduate professional counselors shall report all variables and conditions known to the investigators that may affect research data or outcomes.
- 9111.44 Graduate professional counselors shall not distort or misrepresent research data or fabricate or intentionally bias research results.
- 9111.45 Graduate professional counselors shall give appropriate credit to those who have contributed to research and publications.
- 9111.46 Graduate professional counselors shall take appropriate action when they reasonably believe that counselors or other mental health professionals are acting in an unethical manner.
- 9111.47 Graduate professional counselors shall not initiate, participate in, or encourage the filing of ethical complaints that are unwarranted, or intended to harm a mental health professional rather than to protect clients or the public.

## 9199 DEFINITIONS

- 9199.1 When used in these regulations, the following terms shall have the following meanings ascribed:

**Act** – the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*), as amended.

**Face-to-face supervision** – supervision that is live, interactive, and visual. Video supervision is permitted as long as the session is synchronous (real time) and involves verbal and visual interaction during the supervision.

**General supervision** – supervision in which the supervisor is available to the person supervised, either in person or by a communications device.

**Graduate professional counselor** - a person licensed under the Act to practice as a graduate professional counselor.



**Immediate supervision** – supervision in which the supervisor is physically present with the person supervised and either discussing or observing the person’s practice.

**Practice of professional counseling** – means engaging in counseling or psychotherapy activities, including cognitive behavioral therapy or other modality, with or without compensation, to facilitate human development and to identify and remediate mental, emotional, or behavioral conditions and associated difficulties that interfere with mental health and wellness. The practice of professional counseling includes: the processes of conducting interviews, tests, and other forms of assessment for the purpose of diagnosing individuals, families, and groups, as outlined in the Diagnostic and Statistical Manual of Disorders or other appropriate classification schemes, and determining treatment goals and objectives; and assisting individuals, families, and groups through a professional relationship to achieve long-term effective mental, emotional, physical, spiritual, social, educational, or career development and adjustment.

**Triadic supervision** – supervision composed of a supervisor and two (2) counseling students.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent to the Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5<sup>th</sup> Floor, Washington, D.C., 20002. In addition comments may be sent to [Van.Brathwaite@dc.gov](mailto:Van.Brathwaite@dc.gov), (202) 442-4899. Copies of the proposed rules may be obtained from the Department of Health at the same address during the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding holidays.

## THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (“DCHA”), pursuant to the District of Columbia Housing Authority Act of 1999, as amended, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), hereby gives notice of its intent to adopt the following proposed amendments to Chapter 61 (Public Housing: Admission and Recertification) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the proposed rulemaking is to amend existing regulations with respect to DCHA’s housing for vulnerable, special needs populations and ensure such residents’ access to housing with critical supportive services.

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

**Chapter 61 (Public Housing: Admission and Recertification), of Title 14 (Housing), is amended as follows:**

**Section 6113 (Tenant Admission and Occupancy: Redeveloped and Special Needs Properties) is amended as follows:**

**Subsection 6113.1 (Scope) is amended to read as follows:**

6113.1 Scope.

Redeveloped Properties are mixed-finance communities owned by private entities which communities are created through HOPE VI or other public funding combined with private financing, which have some or all of their units assisted by operating funds provided by DCHA. Special Needs Properties are DCHA-owned or privately owned units assisted with operating funds provided by DCHA and managed by DCHA or third parties, which provide and/or oversee the delivery of services for residents with special needs.

**Subsection 6113.2 (Overview) is amended to read as follows:**

6113.2 Overview.

- (a) Pursuant to the MTW Agreement between DCHA and the U.S. Department of Housing and Urban Development, dated July 25, 2004, as amended by an Agreement dated September 29, 2010, and as such agreement may be further amended, DCHA may, notwithstanding certain provisions of the Housing Act of 1937 and regulations issued pursuant

thereto, adopt local rules for the governance of its public housing and housing choice voucher programs. Accordingly, Section 6113 sets forth the applicable rules for properties officially designated as Redeveloped or Special Needs Properties by the DCHA Board of Commissioners, including, in the case of Special Needs Properties, any applicable District and/or federal statutes or regulations which govern any Special Needs Property, and/or its program or services.

- (b) Section 6113 sets forth the regulatory framework for Special Needs Properties, with their targeted resident populations and related special services, type of occupancy and need to coordinate with service providers and Redeveloped Properties, with the unique nature of their substantial private funding and/or private ownership or management, including the applicability of site-based rules and ongoing DCHA oversight or approvals governing: occupancy and re-occupancy; transfers; selection criteria; screening criteria; application processing; waiting lists; lease provisions; income determinations; and grievance procedures. .

**Subsection 6113.3 is amended to read as follows:**

6113.3 Selection Criteria.

- (a) In the case of a Redeveloped Property or Special Needs Property owned by parties other than DCHA, the selection criteria, including all priorities and preferences for applicants for initial occupancy, including by reason of transfer or re-occupancy, shall be those incorporated in a regulatory and operating agreement by and between the owner (or operator) and DCHA after consultation with representatives of the community and former and/or prospective residents. These selection criteria are hereinafter referred to herein as the “General Selection Criteria”.
- (b) In the case of a Special Needs Property owned by DCHA, the selection criteria shall be set forth in a regulatory and operating agreement and/or in a DCHA-approved Management Plan.
- (c) For purposes of this Section 6113, the term “Management Plan” shall mean a written plan, approved by DCHA, which provides: the services that are to be provided by the Management Agent and/or its contractors; the roles and responsibilities for providing services and oversight; and the policies under which the Management Agent will operate the Special Needs Property or Redevelopment Property, in accordance with 14 *DCMR* § 6113, other applicable regulations and HUD requirements.
- (d) When used in this Section 6113, the term “Management Agent” shall mean a third party that is responsible for managing the Redeveloped Property or Special Needs Property, as applicable, and/or (in the case of

Special Needs Properties) for providing services, either directly or by engaging a service provider, according to the terms of an approved Management Plan, Management Agreement, and/or Regulatory and Operating Agreement.

- (e) While the General Selection Criteria may vary by property, selection and screening criteria for all properties shall include the mandatory federal standards with respect to certain types of criminal activity as specified in federal statute.
- (f) For UFAS-Accessible Units, besides the General Selection Criteria, occupancy of the Units shall be to a household qualified for the available bedroom size of the Unit and a verified need for the features of a UFAS-Accessible Unit in the following order of priority, with date and time of application or transfer request where there are multiple applicants within any one priority:
  - (1) First, to a qualified returning resident who previously resided in one of the developments being redeveloped.
  - (2) Second, to a qualified applicant referred by DCHA from its list of households designated in 2006 for interim assistance in accordance with the provisions of the Amended VCA.
  - (3) Third, to a qualified applicant referred by DCHA from its list of households designated in 2007 for interim assistance in accordance with the provisions of the Amended VCA.
  - (4) Fourth, to a qualified DCHA resident on DCHA's Transfer List;
  - (5) Fifth, to a qualified public housing applicant on DCHA's Waiting List.
  - (6) Sixth, to a qualified Housing Choice Voucher.

**Subsections 6113.4 (a) and (c) (Application Process) are amended to read as follows:**

- (a) Application forms for transferring or returning residents and applicants are developed by the owner for the redeveloped property and shall be subject to review and approval by DCHA.
- (c) The occupancy and re-occupancy application and selection process shall be monitored by DCHA's Office of Asset Management.

**Subsection 6113.6 is amended by adding the following paragraph (c) in its entirety, as follows:**

- (c) At certain Special Needs Properties, tenants may be required to execute other documents connected with tenant's participation in the program of services offered at the Special Needs Property. These documents may include a Contract of Participation, as defined in Section 6113.9, and may be incorporated into tenant's lease.

**Section 6113 is amended by adding the following Subsection 6113.8 (Rent Calculation and Rent Collection at Certain Special Needs Properties) in its entirety, as follows:**

6113.8 Rent Calculation and Rent Collection at Certain Special Needs Properties.

- (a) The Owner and/or its Management Agent shall establish tenant rent as set forth at 14 DCMR § 6200, except as provided in Subsections 6113.8(b) and 6113.8(c).
- (b) For purposes of calculating adjusted income, as defined in 14 DCMR § 6099, to establish tenant rent for certain Special Needs Properties, any amount that a Family is required to pay to participate in programming made available at the Special Needs Property shall be considered to be medical expenses and shall be deducted, in full, from the Family's annual income, as set forth in DCHA's approved MTW Plan. In the event that adjusted income is zero dollars (\$0.00) or less, then rent shall equal zero dollars (\$0.00). Minimum rent, as defined by 14 DCMR § 6210, for Special Needs Properties, if any, shall be established by DCHA or the owner.
- (c) Payments or allowances to residents of certain Special Needs Properties, for incidental living expenses under the provisions of the applicable Special Needs Property program may be excluded from annual income for the purpose of calculating tenant rent.
- (d) The Lease for certain Special Needs Properties will include an itemized list of all fees, how they are calculated and allowances or payments for incidental living expenses.
- (f) Unpaid fees payable by participating Families residing at Special Needs Properties will be converted to rent if they become more than thirty (30) days past due.

**Section 6113 is amended by adding the following Subsection 6113.9 (Special Needs Properties - Contract of Participation) in its entirety, as follows:**

6113.9 Special Needs Properties - Contract of Participation.

- (a) For purposes of this Section 6113, the term "Contract of Participation" shall mean an agreement entered into between the Lessee(s) and Owner

and/or Management Agent, which sets forth the terms and conditions governing participation in the Special Needs Properties programs. The Contract of Participation may include Individual Service Plans (ISPs) to be completed by the participating household members.

- (b) Upon execution, the Contract of Participation and related documents will become part of the Dwelling Lease. Participating Families must comply with the terms and conditions of the Dwelling Unit Lease Agreement, Addenda, the Contract of Participation and any related documents.
- (c) Failure to abide by the terms of the Contract of Participation and related documents shall be considered a violation of the Dwelling Lease Agreement.

**Chapter 6113 is amended by adding the following Subsection 6113.10 (Special Needs Properties - Transfers) in its entirety, as follows:**

6113.10 Special Needs Properties - Transfers.

- (a) A request by a Family currently residing in conventional public housing, or a non-DCHA-owned unit, which receives Federal or local assistance through DCHA, to transfer to a Special Needs Property, in accordance with 14 DCMR § 6400, will be deemed “a tenant initiated transfer” request if the Family accepts the offer of a unit at a Special Needs Property.
- (b) If a Family, which transferred from conventional public housing to a DCHA-owned Special Needs Property, or which moved into a DCHA-owned Special Needs Property as a result of a referral from the DCHA selection pool, no longer wishes to participate in the program available at the Special Needs Property, but remains compliant with the Lease and otherwise passes the screening criteria for Public Housing, then the Family will receive up to two (2) transfer offers of Conventional Public Housing units, in writing.
- (c) A Family residing in a Special Needs Property unit that receives a written offer to transfer into a new dwelling unit may refuse the offer on the basis of evidence, satisfactory to DCHA, that acceptance of the offered unit would cause undue hardship, as set forth in subsection 6111.9, and such refusal shall not count against one of tenant’s allowable offers under Subsection 6113.10 (b).
- (d) If a Family and refuses a second offered unit without good cause, DCHA shall issue a “Notice to Cure or Vacate”, in accordance with Subsection 6113.11.

- (d) Unless otherwise specified in the applicable Management Plan, in the event of any transfer to or from a Special Needs Property to or from a conventional public housing unit as set forth in Subsection 6113.10 (b), then the Family will be responsible for relocation costs.
- (e) If a Family residing in a non-DCHA-owned Special Needs Property, no longer qualifies for such residence (including program requirements) or no longer wishes to participate in the program available at the Special Needs Property, the Family will not be transferred to a DCHA owned public housing and any other potential transfer or relocation shall be addressed in the approved Management Plan.

**Chapter 6113 is amended by adding the following Subsection 6113.11 (Special Needs Properties - Termination) in its entirety, as follows:**

6113.11 Special Needs Properties - Termination.

- (a) DCHA shall not terminate the lease of the Family residing in any DCHA-owned Special Needs Property other than for serious or repeated violation of material terms of the Lease. Violations of an obligation of tenancy refer only to those obligations which are contained in a valid, written lease, including any addenda or Special Needs program requirement agreement, incorporated therein, or in the federal or local regulations pertaining to public housing tenants, or to the Special Needs Property, or to the program offered at the Special Needs Property or in the D.C. Housing Code, or other applicable federal or District statutes governing the applicable Special Needs services. There is no time limitation on bringing an action based on a breach of the lease.
- (b) If DCHA determines that a Family residing in a DCHA-owned Special Needs Property is in violation of the Dwelling Lease, except for lease violations predicated on the performance of an illegal act, DCHA shall issue to the Lessee a notice to cure or vacate, stating in writing the violation(s) which provides the basis for the termination the lessee's right to cure the violations and instructions on how to cure the violations, provided that such notice and any requirement that tenant vacate the Special Needs Property shall be subject to requirements of any applicable District or federal statute or regulation including those governing the Special Needs Property or its services or programs.
- (c) The notice shall inform the Family of its right to file an administrative complaint in accordance with Subsection 6113.12, and any other administrative rights to which Tenant may be entitled by virtue of any District or federal regulation or statute governing the Special Needs Property or its services.

- (d) If a Lessee has filed a complaint requesting an administrative determination of his or her rights, in accordance with Subsection 6113.12, in response to service of a notice to cure or vacate or a notice of lease termination in the case of failure to pay rent, and or such other notice required by District or federal regulation or statute to which the Special Needs Property may be subject, and has not prevailed, the Lessee shall be issued a notice to vacate, as the time to cure has past and the Lessee shall be subject to legal action to gain possession of the unit (eviction).
- (e) If DCHA determines that a Family's violation of the Lease results from a change in circumstance which renders the Family ineligible for the services offered at the Special Needs Property, which change is not at the fault or initiative of the Tenant, then DCHA may, subject to availability and applicable requirements, transfer the Family to a unit in conventional public housing, in accordance with Subsection 6113.10.
- (f) In the event of any lease violations, predicated on criminal activity that threatens residents' health, safety or right to peaceful enjoyment of the Special Needs Property or drug related criminal activity on or off the Leased Premises or the Special Needs Property, DCHA shall issue a notice to vacate, together with such other notice required by District or federal regulation or statute to which the Special Needs Property or its programs or services may be subject.
- (g) DCHA will not issue a notice to cure or vacate, or notice to vacate, where DCHA has determined that the head of household responsible for the dwelling unit under the Dwelling lease is deceased and there are no remaining household members.
- (h) Terminations of tenancies at non-DCHA-owned Special Needs Properties shall be handled in accordance with applicable District and federal law and regulations, including District and federal statutes and regulations applicable to the Special Needs Property, and its services and programs, as set forth in the applicable Regulatory and Operating Agreement, Management Plan, the Lease and any applicable addenda.

**Chapter 6113 is amended by adding the following Subsection 6113.12 (Grievances) in its entirety, as follows:**

6113.12 Grievances.

- (a) Each Redeveloped and Special Needs Property shall establish grievance procedures that are consistent with the requirements of 24 C.F.R. § 966.50, *et seq.*, and with any District and federal statutes and/or regulations, which impose grievance requirements on any Special Needs Property and/or its programs or services. The procedures shall be outlined



in the regulatory and operating agreement for the property and/or Management Plan and incorporated into the Dwelling Lease, as set forth in Management Plan and incorporated into the Dwelling Lease, as set forth in 24 C.F.R. § 966.4(n).

- (b) The grievance procedures shall include provisions that:
- (1) allow the tenant to request an informal settlement conference;
  - (2) describe how the results of that conference will be documented;
  - (3) describe the conditions under which a tenant may make a request for a formal hearing, including the requirements for the content and method of submission of such requests;
  - (4) describe the method for selecting a Hearing Officer; and
  - (5) set forth tenant's right to dispose of the grievance through an appropriate judicial proceeding.

Interested persons are encouraged to submit comments regarding this Proposed Rulemaking to DCHA's Office of General Counsel. Copies of this Proposed Rulemaking can be obtained at [www.dcregs.gov](http://www.dcregs.gov), or by contacting Karen Harris at the Office of the General Counsel, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599 or via telephone at (202) 535-2835. All communications on this subject matter must refer to the above referenced title and must include the phrase "Comment to Proposed Rulemaking" in the subject line. There are two methods of submitting Public Comments:

1. Submission of comments by mail: Comments may be submitted by mail to the Office of the General Counsel, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599.
2. Electronic Submission of comments: Comments may be submitted electronically by submitting comments to Karen Harris at: [PublicationComments@dchousing.org](mailto:PublicationComments@dchousing.org).
3. No facsimile will be accepted.

Comments Due Date: March 30, 2014

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with Section 954 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.54(b) (2012 Repl.)), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following amendments to Chapter 38, "Management Supervisory Service," of Subtitle B of Title 6, "Government Personnel," of the District of Columbia Municipal Regulations (DCMR).

The purpose of these rules is to amend Subsection 3813.3 to include new provisions for awarding severance pay in accordance to D.C. Official Code § 1-609.54(b); and to amend Subsection 3813.5 to include that employees with "Educational" Service status may retreat within three (3) months of the effective date of the termination. Additionally, a non-substantial change was made to Subsection 3813.6 of the chapter.

Upon adoption, these rules will amend Chapter 38, Management Supervisory Service, of Title 6B of the DCMR, published at 48 DCR 2812 (March 30, 2001) and amended at 50 DCR 7747 (September 12, 2003), 51 DCR 9707 (October 15, 2004), 52 DCR 1314 (February 11, 2005), 52 DCR 1913 (February 25, 2005 – Errata Notice), 52 DCR 6840 (July 22, 2005), May 4, 2007 (54 DCR 4186), 55 DCR 007974 (July 25, 2008), 56 DCR 002724 (April 10, 2009), and 57 DCR 005455 (June 25, 2009).

**Chapter 38, "Management Supervisory Service," of Subtitle B of Title 6, "Government Personnel", of the District of Columbia Municipal Regulations is amended as follows:**

**Section 3813, "Employee Rights Upon Termination," is repealed and replaced with:**

**3813 EMPLOYEE RIGHTS UPON TERMINATION**

3813.1 An appointment to the Management Supervisory Service is an at-will appointment. A person appointed to a position in the Management Supervisory Service serves at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen-day (15-day) notice prior to termination.

3813.2 No termination action shall be initiated under this chapter unless first authorized by the agency head (or designee) and the Director, D.C. Department of Human Resources (DCHR), or independent personnel authority, as applicable; except that a termination of a Management Supervisory Service employee in the DCHR shall be first authorized by the Director, DCHR (or designee), and the Chief of Staff for the Mayor.

3813.3 In accordance with Section 954 of the CMPA (D.C. Official Code § 1-609.54 (b)), at the discretion of the agency head, an employee in the Management Supervisory Service may be paid severance pay upon termination for non-disciplinary reasons according to his or her length of employment in the District government, as follows:

Length of Employment	Maximum Severance
Up to 6 months	2 weeks of the employee’s basic pay
6 months to 1 year	4 weeks of the employee’s basic pay
1 to 3 years	8 weeks of the employee’s basic pay
More than 3 years	10 weeks of the employee’s basic pay

3813.4 Severance pay shall not be paid to any individual who has accepted an appointment to another position in the District government without a break in service.

3813.5 At the discretion of the personnel authority, an employee in the Management Supervisory Service who separates may within three (3) months of the effective date of the termination retreat to a vacant position within the agency to which he or she was promoted and for which he or she qualified; provided, he or she has Career or Educational Service status or Excepted Service status (only applicable to appointments as attorneys in the Excepted Service).

3813.6 A retreat in accordance with Subsection 3813.5 of this section shall be to a position in the service in which the person acquired status.

3813.7 Terminations from the Management Supervisory Service are not subject to administrative appeals.

Comments on these proposed regulations should be submitted, in writing, within thirty (30) days of the date of the publication of this notice to Ms. Eboni Z. Gatewood-Crenshaw, Associate Director, Policy and Compliance Administration, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W., Suite 330, Washington, D.C. 20001, or via email at [eboni.gatewood-crenshaw@dc.gov](mailto:eboni.gatewood-crenshaw@dc.gov). Additional copies of these proposed regulations are available at the above address.

## DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF THIRD EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Behavioral Health (“the Department”), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the “Fiscal Year 2014 Budget Support Act of 2013”, effective December 24, 2013, D.C. Law 20-0061, 61 DCR 000962, hereby gives notice of the adoption, on an emergency basis, of a new Chapter 53 entitled “Treatment Planning Services Provided to Department of Behavioral Health Consumers in Institutional Settings - Description and Reimbursement”, of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The Department certifies mental health providers to provide mental health rehabilitation services (MHRS) to Department consumers in the community. Occasionally, some consumers are hospitalized or placed in some other type of institutional setting. The public mental health providers need to work with the consumers and the institution treatment team to assist in the consumer’s transition to and continuity of care while in the institutional setting, and later in the development of a mental health service plan; that is, a plan to address discharge, treatment, and other services for the consumer after discharge to the community, and for the consumer to develop skills to transition to the community. These necessary services, when provided while the consumer is in an institutional setting, cannot be billed as a Medicaid service, which has caused consumers to go without this necessary service due to the providers having concerns about payments. Therefore, the proposed and emergency rules establish the non-Medicaid reimbursement requirements and rates for those providers who provide treatment planning services to Department consumers hospitalized or in certain other institutional settings at the time of receiving the service.

Pursuant to 1 DCMR § 311.4(e), emergency rulemakings are undertaken only for the immediate preservation of the public peace, health, safety, welfare, or morals. Issuance of these rules on an emergency basis is necessary to ensure the provision of these critical services to consumers who are in an institutional setting. Without the establishment of these codes and reimbursement rates, providers may be unable to provide the necessary coordination and treatment planning with the consumer and institutional staff to ensure continuity of care while the consumer is in the institutional setting, and for the consumer’s successful transition back into the community. Thus, emergency action is necessary for the immediate preservation of the health, welfare, and safety of adults and children, youth, and their families with mental illness in need of mental health services.

The original Emergency and Proposed Rulemaking was adopted by the Director of the Department of Mental Health, the predecessor to the Department of Behavioral Health, and became effective on June 19, 2013; it was published in the *D.C. Register* on July 5, 2013 at 60 DCR 9910. A Second Emergency and Proposed Rulemaking, which amended the first rulemaking to clarify the applicability of certain services, was adopted and became effective on October 11, 2013, and was published in the *D.C. Register* on November 29, 2013 at 60 DCR 16313. The rules were also changed to reflect the new name of the agency, the Department of Behavioral Health. This Third Emergency and Proposed Rulemaking is issued to incorporate

changes to the reimbursement rates which, as a result of a detailed review process, were determined to be needed to ensure providers could continue to provide these services. All of the rates except for H0037, CPS-Rehab Day, were significantly increased; CPS-Rehab Day was decreased. The Third Emergency Rulemaking was adopted on February 7, 2014, and will remain in effect for one hundred twenty (120) days or until May 14, 2014, unless superseded by publication of another rulemaking notice in the *D.C. Register*, whichever comes first.

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

**Title 22-A (Mental Health) of the District of Columbia Municipal Regulations is amended by adding a new Chapter 53 to read as follows:**

**CHAPTER 53: TREATMENT PLANNING SERVICES PROVIDED TO DEPARTMENT OF BEHAVIORAL HEALTH CONSUMERS IN INSTITUTIONAL SETTINGS - DESCRIPTION AND REIMBURSEMENT**

**5300 PURPOSE**

5300.1 This chapter establishes the reimbursement rates for the treatment planning and supportive treatment services provided by certified Mental Health Rehabilitation Services (MHRS) providers to Department of Behavioral Health (Department) consumers while the consumer is in an institutional setting. Establishment of these reimbursement rates will allow the Department to reimburse providers using non-Medicaid local funds for continuity of care services, discharge treatment planning and transitional services while the consumer is in an institutional setting.

5300.2 Institutional settings in which these services shall be provided and may be reimbursed pursuant to this rule include: an Institute for Mental Disease (IMD); a hospital; a nursing facility (nursing home or skilled nursing facility); a rehabilitation center; a Psychiatric Residential Treatment Facility (PRTF); a Residential Treatment Center (RTC); or a correctional facility for defendants or juveniles.

5300.3 Nothing in this chapter grants to an MHRS provider the right to reimbursement for costs of providing services to a consumer in an institutional setting. Eligibility for reimbursement for these services provided by an MHRS provider to a consumer in one of the institutional settings listed in Subsection 5300.2 is determined solely by the Human Care Agreement (HCA) contract between the Department and the MHRS provider and is subject to the availability of appropriated funds. Claims for reimbursement pursuant to this chapter must be submitted in accordance with the Department billing policy.

**5301 DESCRIPTION OF REIMBURSABLE SERVICES**

- 5301.1 Reimbursable “Mental Health Service – Continuity of Care Treatment Planning, Institution” services (MHS-CTPI) are services to assist consumers in institutional settings. MHS-CTPI is to be used for any mental health service not for discharge treatment planning or Rehab/Day purposes provided by an MHRS provider to any consumer, including those enrolled in Assertive Community Treatment (ACT) or Community-Based Intervention (CBI) services, in an institutional setting.
- 5301.2 In order to be eligible for reimbursement, MHS-CTPI shall only be provided by an MHRS provider through a mental health professional or credentialed worker to a Department consumer who is in an institutional setting listed in Subsection 5300.2.
- 5301.3 Mental Health Service – Discharge Treatment Planning, Institution (MHS - DTPI) is a service to develop a mental health service plan for treating a consumer after discharge from an institutional setting. It includes modifying goals, assessing progress, planning transitions, and addressing other needs, as appropriate.
- 5301.4 In order to be eligible for reimbursement, MHS-DTPI shall only be provided by an MHRS provider through a mental health professional or credentialed worker to a Department consumer who is in an institutional setting who is not enrolled in Assertive Community Treatment (ACT) or Community-Based Intervention (CBI).
- 5301.5 In order to be eligible for reimbursement, MHS-DTPI (ACT) shall be provided only by a member of an MHRS Assertive Community Treatment (ACT) team to a consumer who is enrolled in ACT services and preparing for discharge from the institution setting.
- 5301.6 In order to be eligible for reimbursement, MHS-DTPI (CBI) shall be provided only by a member of an MHRS Community-Based Intervention (CBI) Team, all levels, to a child or youth who is enrolled in CBI and preparing for discharge from the institutional setting.
- 5301.7 Community Psychiatric Supportive Treatment Program – Rehab/Day Services (CPS-Rehab/Day) is a day treatment program provided in the community designed to acclimate the consumer to community living.
- 5301.8 In order to be eligible for reimbursement, CPS-Rehab/Day Services shall only be provided by a certified MHRS Rehabilitation/Day Services provider.
- 5301.9 All services must be provided in accordance with Department policies regarding care to consumers to be eligible for reimbursement.

**5302 REIMBURSEMENT RATE**

5302.1 The rates for reimbursement are as set forth below:

<b>CODE</b>	<b>SERVICE</b>	<b>RATE</b>	<b>UNIT</b>	<b>UNITS AUTHORIZED</b>
H0032HK	Mental Health Service – Continuity of Care Treatment Planning, Institution for all MHRS consumers (MHS-CTPI)	\$21.97	15 minutes	Up to 24 units within 180 days without prior authorization for continuity of care services
H0032	Mental Health Service – Discharge Treatment Planning, Institution for all consumers except those in ACT or CBI (MHS-DTPI)	\$21.97	15 minutes	Based on medical necessity at time of authorization, for discharge planning.
H0046HT	Mental Health Service – Discharge Treatment Planning, Institution - ACT consumers (MHS-DTPI(ACT))	\$38.04	15 minutes	Based on medical necessity at time of authorization for discharge planning.

CODE	SERVICE	RATE	UNIT	UNITS AUTHORIZED
H0046HTHA	Mental Health Service – Discharge Treatment Planning, Institution – CBI consumers (MHS-DTPI (CBI))	\$35.74	15 minutes	Based on medical necessity at time of authorization for discharge planning.
H0037	Community Psychiatric Supportive Treatment Program – Rehab/Day Services (CPS – Rehab/Day)	\$123.05	Per day, at least 3 hours	Based on medical necessity at time of authorization; only within sixty (60) days of discharge unless pursuant to court order.

**5303 ELIGIBILITY**

- 5303.1 Only a certified MHRS provider with an HCA that has provided one of these identified services to a Department consumer may be reimbursed for services billed to the Department under this chapter.
- 5303.2 Reimbursement for MHS-CTPI requires prior authorization from the Department after 24 units billed within 180 days.
- 5303.3 Reimbursement for MHS-DTPI, MHS-DTPI (ACT), MHS-DTPI (CBI) and CPS-Rehab/Day requires prior authorization from the Department.

**5304 SUBMISSION OF CLAIM**

- 5304.1 In order for claims to be eligible for reimbursement, the MHRS provider shall:
  - (a) Submit claims through the Department’s electronic billing system pursuant to this chapter, the Department billing policy, and the terms of the HCA between the Department and the MHRS provider; and
  - (b) Complete appropriate documentation to support all claims under its HCA with the Department and shall retain such documentation for a minimum



of six (6) years or longer if necessary to ensure the completion of any audit.

- 5304.2 The Department will reimburse an MHRS provider for a claim that is determined by the Department to be eligible for reimbursement pursuant to the terms of this chapter, applicable Department policies, and the HCA between the Department and the MHRS provider, subject to the availability of appropriated funds.

## 5305 AUDITS

- 5305.1 An MHRS provider shall, upon the request of the Department, cooperate in any audit or investigation concerning claims for the provision of these services. Failure to cooperate or to provide the necessary information and documentation shall result in recoupment of the reimbursement and may result in other actions available to the Department pursuant to applicable policies and the HCA.

## 5399 DEFINITIONS

- 5399.1 When used in this chapter, the following terms shall have the meaning ascribed:

**Assertive Community Treatment** or “**ACT**” - Intensive, integrated rehabilitative, crisis, treatment, and mental health rehabilitative community support provided by an interdisciplinary team to adults with serious and persistent mental illness by an interdisciplinary team. ACT is provided with dedicated staff time and specific staff to consumer ratios. Service coverage by the ACT team is required twenty-four (24) hours per day, seven (7) days per week. ACT is a specialty service.

**Consumer** - Adult, child, or youth who seeks or receives mental health services or mental health supports funded or regulated by the Department.

**Community-Based Intervention** or “**CBI**” - Time-limited, intensive mental health services delivered to children and youth ages six (6) through twenty-one (21) and intended to prevent the utilization of an out-of-home therapeutic resource or a detention of the consumer. CBI is primarily focused on the development of consumer skills to promote behavior change in the child or youth's natural environment and empower the child or youth to cope with his or her emotional disturbance.

**Continuity of Care services** – Coordination of services towards the stability of consumer-provider relationships over time.

**Correctional facility** - A prison, jail, reformatory, work farm, detention center, or any similar facility maintained by either federal, state or local authorities for the purpose of confinement or rehabilitation of adult or juvenile criminal offenders or suspected offenders.

**Hospital** - A facility equipped and qualified to provide inpatient care and treatment for a person with a physical or mental illness by, or under, the supervision of physicians to patients admitted for a variety of medical conditions.

**Institute for Mental Disease or “IMD”** - A hospital, nursing facility, or other institution with more than 16 beds which is primarily engaged in providing diagnosis, treatment or care of persons with mental illnesses, including medical attention, nursing care and related services.

**Mental Health Rehabilitation Services or “MHRS”** - Mental health rehabilitative or palliative services provided by a Department-certified community mental health provider to consumers in accordance with the District of Columbia State Medicaid Plan, the provider’s Human Care Agreement with the Department, and Chapter 34 of this title.

**MHRS provider** - An organization certified by the Department to provide MHRS. MHRS provider includes CSAs, sub-providers, and specialty providers.

**Nursing facility** - A facility that primarily provides to residents skilled nursing care and related services for the rehabilitation of injured, disabled or sick persons, or on a regular basis, health-related care services above the level of custodial care to other than individuals with developmental disabilities.

**Psychiatric Residential Treatment Facility or “PRTF”** - A psychiatric facility that (1) is not a hospital and (2) is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the state in which it is located and (3) provides inpatient psychiatric services for individuals under the age of twenty-two (22) and meets the requirements set forth in §§ 441.151 through 441.182 of Title 42 of the Code of Federal Regulations, and is enrolled by the District of Columbia Department of Health Care Finance (DHCF) to participate in the Medicaid program.

**Rehabilitation facility** – An inpatient facility that provides comprehensive rehabilitation services under the supervision of a physician to inpatients with physical disabilities. Services include physical therapy, occupational therapy, speech pathology, social or psychological services, and orthotics or prosthetics services.

**Residential Treatment Center or “RTC”** - A facility which houses youth with significant psychiatric or substance abuse problems who have proven to be

too ill or have such significant behavioral challenges that they cannot be housed in foster care, day treatment programs, and other nonsecure environments but who do not yet merit commitment to a psychiatric hospital or secure correctional facility.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Suzanne Fenzel, Deputy Director, Office of Strategic Planning, Policy and Evaluation, Department of Behavioral Health, at 64 New York Ave., NE, 3rd Floor, Washington, D.C. 20002, or e-mailed to [Suzanne.Fenzel@dc.gov](mailto:Suzanne.Fenzel@dc.gov). Copies of the proposed rules may be obtained from [dmh.dc.gov](http://dmh.dc.gov) or from the Department of Behavioral Health at the address above.

## DEPARTMENT OF BEHAVIORAL HEALTH

**NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Behavioral Health (Department), pursuant to the authority set forth in Sections 5113, 5115, 5117, and 5118 of the “Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013”, signed November 8, 2013 (D.C. Act 20-0204, 60 DCR 15341 (November 8, 2013), and any similar succeeding legislation, hereby gives notice of the adoption, on an emergency basis, of a new Chapter 62, “Reimbursement Rates for Services Provided by the Department of Behavioral Health-Certified Substance Abuse Providers” to Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of these proposed and emergency rules is to set forth the reimbursement rates for services provided to eligible District residents by Department-certified substance abuse treatment facilities and programs which have an active Human Care Agreement with the Department to provide such services. This Notice of Second Emergency and Proposed Rulemaking makes one change to the original Notice of Emergency and Proposed Rulemaking adopted on October 1, 2013, and published in the *D.C. Register* on October 18, 2013 at 60 DCR 014839, by including the reimbursement rate for two (2) Family Counseling services.

Issuance of these rules on an emergency basis is necessary to ensure the continued provision of essential substance abuse treatment services under a uniform rate structure. The Department was created effective October 1, 2013 by a merger between the Department of Mental Health and the Addiction, Prevention and Recovery Administration of the Department of Health in order to allow for better integrated services for individuals with mental health and substance abuse issues. The merger required changes in provider Human Care Agreements and the development of uniform rates to avoid disparate rates across the provider network. Delay in promulgating the published reimbursement rates would result in interruption of substance abuse services. Therefore, emergency action is necessary for the immediate preservation of the critical substance abuse treatment services that will ensure the health, welfare, and safety of individuals with substance abuse disorders.

The first Notice of Emergency and Proposed Rulemaking was adopted on October 1, 2013 effective for services rendered on or after October 1, 2013, and expired January 28, 2014. This Notice of Second Emergency and Proposed Rulemaking was adopted on January 29, 2014 and is effective for services rendered on or after January 29, 2014. These emergency rules will remain in effect for one hundred twenty (120) days or until May 23, 2014, unless superseded by publication of another rulemaking notice in the *D.C. Register*.

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

**Subtitle A (Mental Health) of Title 22 (Health) of the DCMR is amended by adding a new Chapter 62 to read as follows:**

**CHAPTER 62 REIMBURSEMENT RATES FOR SERVICES PROVIDED BY THE DEPARTMENT OF BEHAVIORAL HEALTH CERTIFIED SUBSTANCE ABUSE PROVIDERS**

**6200 PURPOSE**

6200.1 This chapter establishes the reimbursement rate for services provided to eligible District residents by Department of Behavioral Health (Department) certified substance abuse providers, as this term is defined in Chapter 23 (Certification Standards for Substance Abuse Treatment Facilities and Programs) of Title 29 (Public Health) of the District of Columbia Municipal Regulations (DCMR).

6200.2 Nothing in this chapter grants to a certified substance abuse provider the right to reimbursement for costs of substance abuse services and supports. Eligibility for reimbursement is determined solely by the Human Care Agreement between the Department and the certified substance abuse provider, and reimbursement is subject to the availability of appropriated funds.

**6201 REIMBURSEMENT RATE**

6201.1 Reimbursement for substance abuse services shall be as follows:

<b>SERVICE</b>	<b>CODE</b>	<b>RATE per UNIT</b>
<b>Breathalyzer Urinalysis</b>	<b>H0003</b>	<b>15.00</b>
<b>Breathalyzer Specimen Collection</b>	<b>H0048</b>	<b>8.80</b>
<b>Case Management</b>	<b>H0006</b>	<b>20.02</b>
<b>Case Management (HIV)</b>	<b>H0006V8</b>	<b>20.02</b>
<b>Treatment Planning</b>	<b>T1007</b>	<b>22.00</b>
<b>Treatment Planning - Complex IP</b>	<b>T1007TG</b>	<b>24.00</b>
<b>Counseling Group</b>	<b>H0005</b>	<b>10.45</b>
<b>Counseling Group - Psycho-educational</b>	<b>H2027</b>	<b>3.51</b>
<b>Counseling Group - Psycho-educational (HIV)</b>	<b>H2027V8</b>	<b>3.51</b>

SERVICE	CODE	RATE per UNIT
Counseling On-site - Behavioral Health Therapy	H0004	20.31
Counseling, Family with Client	H0004HR	20.31
Counseling, Family without Client	H0004HS	20.31
Crisis Intervention	H0007HF	33.57
CS Peer Support Group - Substance Abuse	H0038HFHQ	8.67
CS Peer Support - Substance Abuse	H0038HF	19.19
Detoxification - Outpatient - Ambulatory	H0014	24.53
Detoxification - Residential - Acute care	H0010	605.00
Behavioral Health Screening - Determine eligibility	H0002HF	85.00
Behavioral Health Screening - Evaluate Risk Rating	H0002TG	140.00
Diagnostic Assessment - Community-Based	H0001HF	425.00
Diagnostic Assessment - Ongoing - Modify Tx Plan	H0001TS	385.00
Diagnostic Assessment - In- depth Exam - Youth	H0001HA	240.00
Diagnostic Assessment - Ongoing Follow-up - Youth	H0001HATS	85.00

SERVICE	CODE	RATE per UNIT
Intensive Outpatient - All Inclusive	H0015	74.25
Intervention - Substance Abuse Recognition	H0022	27.17
Dose - Methadone - Clinic or Take-Home	H0020	8.58
Medication Assisted Therapy	H0020HF	8.58
Medication Management - Adult	H0016HF	35.72
Medication Management - Youth	H0016HAHF	38.96
Outpatient Therapy - Intensive	H0015HA	164.61
Prenatal Care, at-risk Assessment	H1000	142.56
Prenatal Care, at-risk enhanced service - Ante- partum Management	H1001	80.08
Prenatal Care, at-risk enhanced service - Care Coordination	H1002	80.08
Prenatal Care, at-risk enhanced service - Education	H1003	80.08
Prenatal Care, at-risk enhanced service - follow- up Home Visit	H1004	100.76
Residential - Long term Therapeutic	H0019	132.55

SERVICE	CODE	RATE per UNIT
Residential - Long term Room & Board	H0043	72.90
Residential Treatment - Inclusive	H0018	136.84
Residential Treatment - Women w/1 child	H0019UN	210.00
Residential Treatment - Women w/2 children	H0019UP	215.00
Residential Treatment - Women w/3 children	H0019UQ	220.00
Residential Treatment - Women w/4 or more children	H0019UR	225.00

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of General Counsel for the Department of Behavioral Health at 64 New York Avenue, N.E., 3rd Floor, Washington, D.C. 20002, or e-mailed to Matthew Caspari, General Counsel, at [Matthew.Caspari@dc.gov](mailto:Matthew.Caspari@dc.gov), or at telephone (202) 673-7505. Copies of the proposed rules may be obtained from [dbh.dc.gov](http://dbh.dc.gov) or from the Department of Behavioral Health at the address above.



## 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 adoption, on an emergency basis, of an amendment to Section 1910 (Personal Care 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 emergency and proposed rules establish standards governing reimbursement of personal care services provided to participants in the Home and Community-Based Waiver Services 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. Personal care services assist waiver participants with activities of daily living including bathing, toileting, transferring, dressing, eating, feeding, and assisting with incontinence. These rules amend the previously published rules by: (1) specifying the service authorization requirements for personal care services; (2) establishing service utilization and monitoring criteria by identifying documents to be maintained for audit reviews; (3) establishing plan of care development criteria; and (4) establishing criteria by which a home care agency may subcontract with a staffing agency to provide personal care services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of personal care services. The ID/DD Waiver serves some of the District's most vulnerable residents. Many of the persons enrolled in the ID/DD Waiver receive personal care services. Under current service utilization and delivery requirements there are insufficient safeguards in place to ascertain that providers are taking the necessary steps to ensure that beneficiaries are receiving high quality and appropriate services from qualified providers. In addition, specifying criteria and administrative procedures for providers in the event that a person chooses to transfer to another provider ensures that there will be no lapse in care. Therefore, in order to ensure that the ID/DD Waiver enrollees' health, safety, and welfare are not threatened by the lapse in access to personal care services under the waiver, it is necessary that that these rules be published on an emergency basis.

The emergency rulemaking was adopted on February 4, 2014, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until June 3, 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 1910, PERSONAL CARE SERVICES, of Chapter 19, HOME AND COMMUNITY-BASED WAIVER SERVICES FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29, PUBLIC WELFARE, of the DCMR, is amended as follows:**

**1910 PERSONAL CARE SERVICES**

- 1910.1 The purpose of this Section is to establish standards governing Medicaid eligibility for personal care services for individuals enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver) and to establish conditions of participation for providers of personal care services.
- 1910.2 Personal care services are the activities that assist the person with activities of daily living including bathing, toileting, transferring, dressing, eating, feeding, and assisting with incontinence.
- 1910.3 To be eligible for Medicaid reimbursement for personal care services under the ID/DD Waiver, the person shall:
- (a) Exhaust all available personal care services provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving personal care services under the ID/DD Waiver;
  - (b) Be unable to independently perform one or more activities of daily living for which personal care services are needed;
  - (c) Be in receipt of a written order for PCA services by a physician in accordance with Subsections 5006.1 and 5006.2 of Title 29 DCMR; and
  - (d) Be authorized for personal care services based on a comprehensive assessment of the person's support needs and risk screening using the DDA Level of Need Assessment and Screening Tool (LON), or its successor, and reflected in the person's Individual Support Plan (ISP) and Plan of Care.
- 1910.4 Persons eligible for personal care services under the ID/DD Waiver shall be exempt from the requirement to obtain an authorization for services from DHCF or its agent under Section 5003 of Chapter 50 of Title 29 of the DCMR.

- 1910.5 Personal care services eligible for Medicaid reimbursement shall include, but not be limited to the activities identified under Subsection 5006.7 of Chapter 50 of Title 29 of the DCMR.
- 1910.6 Medicaid reimbursable personal care services shall not include:
- (a) Services that require the skills of a licensed professional as defined by the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*);
  - (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the beneficiary and shopping for items not used by the person receiving services ; and
  - (c) Money management.
- 1910.7 Personal care services delivered by a personal care aide shall be supervised by a registered nurse. The registered nurse shall review the person's health management care plan, if available, in order to make the initial assessment for personal care services
- 1910.8 The registered nurse shall conduct an initial assessment with the person enrolled in the ID/DD Waiver within seventy two (72) hours of receiving authorization for personal care services from DDS.
- 1910.9 A plan of care for the delivery of personal care services shall be developed in accordance with Subsection 5005.2 of Chapter 50 of Title 29 of the DCMR.
- 1910.10 In order to be eligible for Medicaid reimbursement for personal care services, the provider shall review the plan of care at least once every sixty (60) days, and shall update or modify the plan of care as needed. The registered nurse shall notify the person's physician of any significant change in the beneficiary's condition.
- 1910.11 If an update or modification to the plan of care requires any change in the frequency, duration, or scope of personal care services provided to the person enrolled in the ID/DD Waiver, the provider shall obtain an updated authorization for personal care services from DDS in accordance with § 1910.3(d).
- 1910.12 To be eligible for Medicaid reimbursement for personal care services, a provider shall:
- (a) Be a home care agency licensed pursuant to the requirements for home care agencies as set forth in the Health Care and Community Residence Facility, Hospice and Home 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.* (2005 Repl. & 2012 Supp.)), and implementing rules;

- (b) Be enrolled as a Medicare home health agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891 (e) of the Social Security Act and 42 CFR § 484; and
- (c) Comply with the requirements under Section 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1910.13 A home care agency shall meet the requirements described under Section 5008 (Staffing) and Section 5010 (Staffing Agencies) of Chapter 50 of Title 29 of the DCMR.

1910.14 In order to be eligible for Medicaid reimbursement, each direct support professional (DSP) including personal care aides providing personal care services shall comply with Section 1906 (Requirements of Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1910.15 In order to be eligible for Medicaid reimbursement, each personal care services provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1910.16 In order to be eligible for Medicaid reimbursement, each personal care services provider shall comply with the record maintenance requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR, and Section 5013 of Chapter 50 of Title 29 of the DCMR.

1910.17 In order to be eligible for Medicaid reimbursement, each provider of personal care services shall comply with the denial, suspension, reduction or termination of services requirements under Section 5007 of Chapter 50 of Title 29 of the DCMR.

1910.18 In order to be eligible for Medicaid reimbursement, each provider of personal care services shall develop contingency staffing plans to provide coverage for a person receiving personal care services if the assigned personal care aide cannot provide the service or is terminated by the provider.

1910.19 If person receiving personal care services seeks to change providers, the DDS service coordinator shall assist the person in selecting a new provider. In order to be eligible for Medicaid reimbursement for personal care services, the current provider shall continue to provide services until the transfer to the new provider has been completed.

- 1910.20 Personal care services shall not be provided in a hospital, nursing facility, intermediate care facility, or other living arrangement that includes personal care as part of the reimbursed service.
- 1910.21 Personal care services may be provided by family members other than the person's spouse, parent, guardian, or any other individual legally responsible for the person receiving services who ordinarily would perform or be responsible for performing services on the person's behalf.
- 1910.22 Family members who provide personal care services, with the exception of those listed under Subsection 1910.21, shall meet the requirements for direct support professionals referenced under Subsection 1910.14.
- 1910.23 In order to be eligible for Medicaid reimbursement, personal care services shall not be provided concurrently with the following ID/DD Waiver services:
- (a) Residential Habilitation;
  - (b) Supported Living;
  - (c) Host Home; and
  - (d) Shared Living.
- 1910.24 The Medicaid reimbursement rate for personal care services shall be four dollars and eight cents (\$4.08) per fifteen (15) minutes and sixteen dollars and thirty two cents (\$16.32) per hour for Personal Care services.

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 4<sup>th</sup> Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-9115, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://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.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the District Department of Transportation (“Department”), pursuant to the authority set forth in Sections 5(2)(N), 5(3)(D) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.04(2)(N), (3)(D) (2012 Repl. & 2013 Supp.)); and Section 11r of the District Department of Transportation DC Streetcar Amendment Act of 2012, effective April 20, 2013 (D.C. Law 19-268; § 50-921.76), and Mayor’s Order 2013-198 (October 24, 2013), hereby gives notice of the adoption, on an emergency basis, of the following rulemaking to add a new Chapter 16 (DC Streetcar) to, and amend Chapter 24 (Stopping, Standing, Parking, and Other Non-Moving) and Chapter 26 (Civil Fines for Moving and Non-Moving Infractions) of, Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to prohibit parking vehicles in a way that impedes the operation of the DC Streetcar system.

This emergency rulemaking is necessitated by the immediate and continuing need to address the threat to the traveling public of vehicles blocking passage of the streetcar. Without these regulations, it will be difficult for the streetcar to begin safe operations. The emergency rulemaking will allow the Department to begin testing the functionality of the streetcar in the public right of way and begin preparations to accommodate passengers in the coming months.

This emergency rulemaking was adopted on December 6, 2013, and became effective immediately on that date. The emergency rulemaking will expire one hundred and twenty (120) days after that date, on April 5, 2014, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

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

**Title 18, VEHICLES AND TRAFFIC, of the DCMR is amended as follows:**

**A new Chapter 16, DC STREETCAR, is added to read as follows:**

**CHAPTER 16 DC STREETCAR**

**1600 GENERAL PROVISIONS**

1600.1 This chapter establishes regulations related to the operation of the DC Streetcar system, a passenger light rail transit service within the District of Columbia.

**1601 IMPEDING THE STREETCAR SYSTEM**

1601.1 It shall be unlawful to park, stop, or stand a vehicle:

- (a) on a streetcar guideway; or
- (b) adjacent to a streetcar platform.

1601.2 A vehicle in violation of this section shall be subject to removal or impoundment at the vehicle owner’s expense, pursuant to Section 2421 of this title.

**1699 DEFINITIONS**

1699.1 When used in this chapter, the following terms shall have the meaning ascribed:

**DDOT** – District Department of Transportation

**Streetcar** – a car other than a railroad train that is operated on rails for the purposes of transporting persons.

**Streetcar platform** – the public right of way designated for public use as an embarkation/disembarkation or waiting area for the streetcar; the stairways, ramps, and sidewalks that provide direct access to the embarkation/disembarkation or waiting area; and all equipment and fixtures, including streetcar shelters, in the embarkation/disembarkation or waiting area.

**Streetcar guideway** – the area where streetcars operate, including the streetcar track, overhead wiring, and the airspace between, above, and surrounding the streetcar tracks through which the streetcar or its appurtenances will pass while operating on the streetcar track. A streetcar guideway includes the concrete slab the tracks are resting on.

**Chapter 24, STOPPING, STANDING, PARKING, AND OTHER NON-MOVING, is amended as follows:**

**Section 2405, STOPPING, STANDING, OR PARKING PROHIBITED: NO SIGN REQUIRED, is amended as follows:**

**Subsection 2405.1 is amended to read as follows:**

2405.1 Notwithstanding any other parking regulations, no person shall stop, stand, or park a motor vehicle or trailer in any of the following places, except when necessary to avoid conflict with other traffic, or at the direction of a police officer or traffic control device:

- (a) Within an intersection;
- (b) On a crosswalk;
- (c) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

- (d) Upon any bridge, viaduct, or other elevated structure, freeway, highway tunnel, or ramps leading to or from such structures, or within a highway tunnel;
- (e) On any median, channelizing island, or safety zone, whether made of concrete, grass, or other material and with curbs or otherwise delineated by solid yellow or white lines;
- (f) In any driveway, alley entrance, or other way when stopping, standing or parking would obstruct the flow of pedestrians or other lawful traffic upon any sidewalk;
- (g) In a bicycle lane;
- (h) On the sidewalk; provided, that a motor-driven cycle may be parked on the sidewalk if it:
  - (1) Is outside of the Central Business District, as defined by Subsection 9901.1 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 9901.1);
  - (2) Is not attached to any tree, tree box, or planting area; and
  - (3) Does not block the path of pedestrians and maintains an ADA compliant clearance from any other obstruction, as defined in Section 4.3 of the ADA Accessibility Guidelines; or
- (i) On the streetcar guideway or adjacent to a streetcar platform, as defined by Subsection 1699.1 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 1699.1).

**Chapter 26, CIVIL FINES FOR MOVING AND NON-MOVING INFRACTIONS, is amended as follows:**

**Section 2601, PARKING AND OTHER NON-MOVING INFRACTIONS, is amended as follows:**

**Subsection 2601.1 is amended by adding the following infraction after the infraction “Stop sign, within 25 feet of [§ 2405.2(d)]”:**

INFRACTION (DCMR Citation)	FINE
Streetcar – parking, stopping or standing a vehicle in the streetcar guideway or adjacent to a streetcar platform.	\$ 100.00



[§§ 1601.1,  
2405.1(i)]

All persons interested in commenting on the subject matter of this proposed rulemaking should file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Samuel Zimbabwe, District of Columbia Department of Transportation, 55 M Street, S.E., 5<sup>th</sup> Floor, Washington, D.C. 20003. You may also send comments electronically to [publicspace.policy@dc.gov](mailto:publicspace.policy@dc.gov). Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation's website at [www.ddot.dc.gov](http://www.ddot.dc.gov).

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2014-026  
February 04, 2014

**SUBJECT:** Designation of Special Event Area – BET Honors 2014

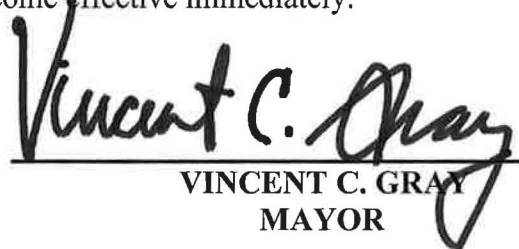
**ORIGINATING AGENCY:** Office of Motion Picture and Television Development


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, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2012 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. The following public space areas as identified below shall be designated as a Special Event Area to accommodate activities associated with the 2014 BET Honors:
  - a. Commencing Wednesday, February 5, 2014 at 12:00 a.m. until Sunday, February 9, 2014, at 6:00 a.m., the east and west curb lane of 12<sup>th</sup> Street NW between E and F Streets.
  - b. Commencing Wednesday, February 5, 2014 at 12:00 a.m. until Sunday, February 9, 2014, at 6:00 a.m., the east curb lane of 13<sup>th</sup> Street NW between E and F Streets.
  - c. Commencing Wednesday, February 5, 2014 at 12:00 a.m. until Friday, February 7, 2014, at 11:59 p.m., the north curb lane of E Street NW between 12<sup>th</sup> and 13<sup>th</sup> Streets, except Zone B parking spaces.
  - d. Commencing Saturday, February 8, 2014 at 12:00 a.m. until Sunday February 9, 2014, at 6:00 a.m., the north and south curb lanes, both sidewalks, and all travel lanes of E Street NW between 12<sup>th</sup> and 13<sup>th</sup> Streets.
  - e. Commencing Saturday, February 8, 2014 at 12:00 p.m. until Sunday February 9, 2014, at 6:00 a.m., the east sidewalk, east and west curb lanes, and all travel lanes of 13<sup>th</sup> Street NW between Pennsylvania Ave and F Street.

- f. Commencing Saturday, February 8, 2014 at 12:00 p.m. until Sunday February 9, 2014, at 6:00 a.m., the north and south curb lanes of Pennsylvania Ave (upper)/E Street NW between 13<sup>th</sup> and 14<sup>th</sup> Streets.
  - g. Commencing Saturday, February 8, 2014 at 12:00 p.m. until Sunday February 9, 2014, at 6:00 a.m., the south curb lane of F Street NW between 12<sup>th</sup> and 13<sup>th</sup> Streets.
  - h. Commencing Saturday, February 8, 2014 at 12:00 p.m. until Sunday February 9, 2014, at 6:00 a.m., the westbound curb lane of Pennsylvania Ave NW between 12<sup>th</sup> and 13<sup>th</sup> Streets.
2. The designated areas shall be operated and overseen by BET Networks and the District of Columbia Office of Motion Picture and Television Development.
  3. This Order is authorization for the use of the designated streets and curb lanes only, and the named operator shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event. All building, health, life, safety, and use of public space requirements shall remain applicable to the Special Event Area designated by this Order.

**EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2014-027  
February 04, 2014

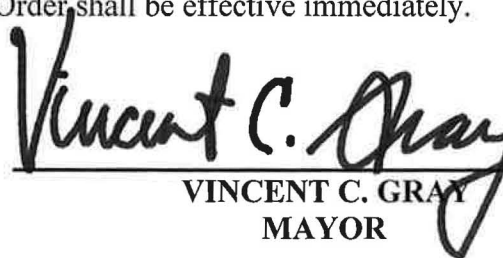
**SUBJECT:** Appointments – District of Columbia Occupational Safety and Health Board


**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 6 of the District of Columbia Occupational Safety and Health Act of 1988, effective March 16, 1989 (D.C. Law 7-186; D.C. Official Code § 32-1105) (2012 Repl.), it is hereby **ORDERED** that:

1. **KATHLEEN MCKIRCHY** was nominated by the Mayor on May 15, 2013 and, approved by the Council of the District of Columbia, pursuant to Resolution 20-0282, on January 7, 2014, and is appointed, as a private sector labor member to the District of Columbia Occupational Safety and Health Board (hereinafter referred to as the “**Board**”), for a term to end April 12, 2016.
2. **MICHAEL KILPATRICK** was nominated by the Mayor on May 15, 2013 and, approved by the Council of the District of Columbia, pursuant to Resolution 20-0284, on January 7, 2014, and is appointed, as a public sector labor member to the Board, for a term to end April 12, 2015.
3. **MS. ARYAN RODRIGUEZ BOCQUET** was nominated by the Mayor on May 15, 2013 and, approved by the Council of the District of Columbia, pursuant to Resolution 20-0285, on January 7, 2014, and is appointed, as a private sector management member to the Board, for a term to end April 12, 2016.
4. **EARL WOODLAND** was nominated by the Mayor on May 15, 2013 and, approved by the Council of the District of Columbia, pursuant to Resolution 20-0286, on January 7, 2014, and is appointed, as a private sector management member to the Board, for a term to end April 12, 2014.

5. EFFECTIVE DATE: This Order shall be effective immediately.

  
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VINCENT C. GRAY  
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

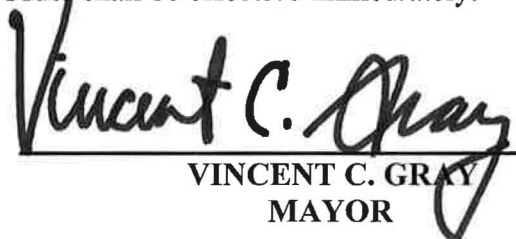
Mayor's Order 2014-028  
February 06, 2014


**SUBJECT:** Appointment – Rental Housing Commission

**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 201 of the Rental Housing Act of 1985, effective July 17, 1985, D.C. Law 6-10, D.C. Official Code § 42-3502.01, which established the Rental Housing Commission, it is hereby **ORDERED** that:

1. **CLAUDIA MCKOIN** was nominated by the Mayor on September 17, 2013 and, approved by the Council of the District of Columbia, pursuant to Resolution 20-0438, on January 7, 2014, and is appointed, as a member of the Rental Housing Commission, replacing Marta Berkley, for a term to end July 18, 2016.
2. **EFFECTIVE DATE:** This Order shall be effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

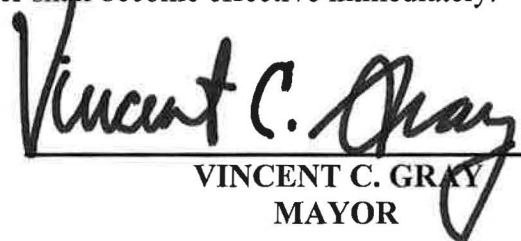
Mayor's Order 2014-029  
February 07, 2014


**SUBJECT:** Reappointment – Board of Funeral Directors

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 1002 of the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-261, D.C. Official Code § 47-2853.06(f) (2012 Repl. and 2013 Supp.), it is hereby **ORDERED** that:

1. **CHARLES F. BOWMAN, JR.**, who was nominated by the Mayor on October 18, 2013 and, following a forty-five day period of review by the Council of the District of Columbia, whose nomination was deemed approved on December 21, 2013 without Council action, is reappointed as a licensed funeral director member of the Board of Funeral Directors, for a term to end March 1, 2014.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

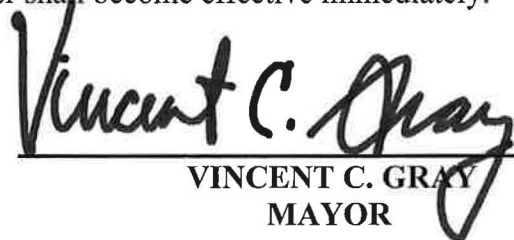
Mayor's Order 2014-030  
February 07, 2014


**SUBJECT:** Appointment – District of Columbia 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 3(b)(1) 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 § 3-652(b)(1) (2012 Repl.), it is hereby **ORDERED** that:

1. **MICHELLE WRIGHT** is designated as an *ex officio* member to the District of Columbia Commission on Fashion Arts and Events, replacing Latoyia Hampton, representing the Office of the Deputy Mayor for Planning and Economic Development, and shall serve in that capacity at the pleasure of the Mayor.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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



GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

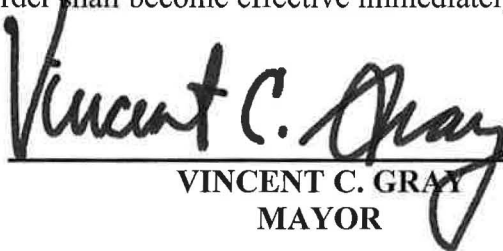
Mayor's Order 2014-031  
February 07, 2014


**SUBJECT:** Appointment – Interim Chief Administrative Law Judge for the Office of Administrative Hearings

**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, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), it is hereby **ORDERED** that:

- 1. **WANDA R. TUCKER** is appointed as Interim Chief Administrative Law Judge of the Office of Administrative Hearings and shall serve in that capacity at the pleasure of the Mayor.
- 2. This Order supersedes previous Mayor's Orders to the extent of any inconsistency.
- 3. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

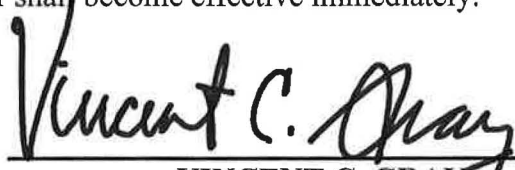
Mayor's Order 2014-032  
February 11, 2014


**SUBJECT:** Appointments – Commission on African Affairs

**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 pursuant to section 5 of the Office and Commission on African Affairs Act of 2006, effective June 8, 2006, D.C. Law 16-111, D.C. Official Code § 2-1394 (2012 Repl.), it is hereby **ORDERED** that:

1. **KEDIST GEREMAW**, who was nominated by the Mayor on November 20, 2013, and whose nomination was deemed approved without Council action, pursuant to 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f) (2012 Repl.)), on January 28, 2014, is appointed to the Commission on African Affairs as a public voting member, replacing Sharon Asongayi, for a term to end October 27, 2015.
2. **DR. AKUA ASARE**, who was nominated by the Mayor on November 20, 2013, and whose nomination was deemed approved without Council action, pursuant to 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f) (2012 Repl.)), on January 28, 2014, is appointed to the Commission on African Affairs as a public voting member, replacing Sefanit Befekadu, for a term to end October 27, 2015.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

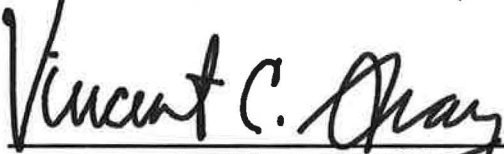
Mayor's Order 2014-033  
February 11, 2014


**SUBJECT:** Appointment – Office of Employee Appeals

**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 pursuant to section 601 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-606.01 (2012 Repl.), it is hereby **ORDERED** that:

1. **PATRICIA HOBSON WILSON**, who was nominated by the Mayor on December 16, 2013, and approved by the Council of the District of Columbia pursuant to Resolution 20-0409 on February 4, 2014, is appointed as a member of the Office of Employee Appeals, replacing Necola Yvonne Shaw, to complete the remainder of an unexpired term to end April 6, 2016.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

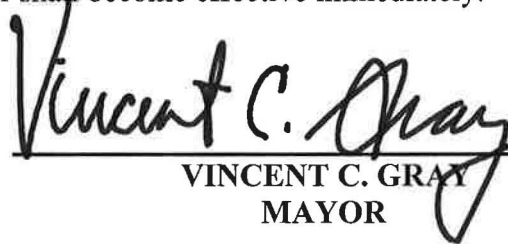
Mayor's Order 2014-034  
February 11, 2014


**SUBJECT:** Reappointment – Zoning Commission

**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 1 of An Act to regulate the height, area, and use of buildings in the District of Columbia and to create a Zoning Commission, and for other purposes, approved December 24, 1973, 87 Stat. 810, D.C. Official Code § 6-621.01 (2012 Repl.), which established the Zoning Commission (“**Commission**”) for the District of Columbia, it is hereby **ORDERED** that:

1. **ANTHONY J. HOOD**, who was nominated by the Mayor on December 17, 2013, and approved by the Council pursuant to Resolution 20-0407 on February 4, 2014, is reappointed to the Commission for a term to end February 3, 2018.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

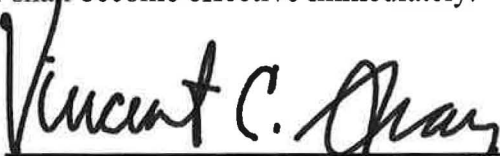
Mayor's Order 2014-035  
February 11, 2014

**SUBJECT:** Appointment -- Board of Barber and Cosmetology

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and pursuant to D. C. Official Code § 47-2853.06(c) (2012 Repl.), it is hereby **ORDERED** that:

1. **PAUL ROE**, who was nominated by the Mayor on October 23, 2013 and following a forty-five day period of review by the Council of the District of Columbia, whose nomination was deemed approved pursuant to Proposed Resolution 20-0524 on December 1, 2013, is appointed as a body artist member of the Board, for a term to end December 13, 2014.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.


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**VINCENT C. GRAY**  
**MAYOR**

**ATTEST:**   


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**CYNTHIA BROCK-SMITH**  
**SECRETARY OF THE DISTRICT OF COLUMBIA**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-036  
February 12, 2014

**SUBJECT:** Appointment – Apprenticeship 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 the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and pursuant to section 2 of An Act To provide for voluntary apprenticeship in the District of Columbia, approved May 21, 1946, 60 Stat. 204, D.C. Official Code § 32-1402 (2012 Repl.), it is hereby **ORDERED** that:

1. **F. THOMAS LUPARELLO**, Interim Director of the Department of Employment Services, is appointed to the Apprenticeship 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.


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**VINCENT C. GRAY**  
**MAYOR**

**ATTEST:**   


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**CYNTHIA BROCK-SMITH**  
**SECRETARY OF THE DISTRICT OF COLUMBIA**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

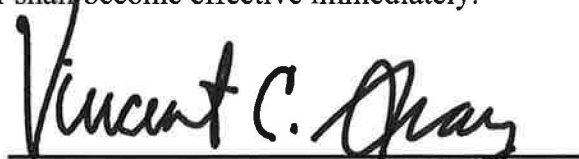
Mayor's Order 2014-037  
February 12, 2014


**SUBJECT:** Appointment – Board of Zoning Adjustment

**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 pursuant to section 8 of An Act Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes, approved June 20, 1938, 52 Stat. 799, D.C. Official Code § 6-641.07 (2012 Repl.), it is hereby **ORDERED** that:

1. **MARNIQUE HEATH**, having been nominated by the Mayor on November 5, 2013, and approved by the Council of the District of Columbia, pursuant to Resolution 20-0406, on February 4, 2014, is appointed as a member of the Board of Zoning Adjustment, for a term to end on September 30, 2016.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM


Mayor's Order 2014-038  
February 12, 2014

**SUBJECT:** Appointment – Acting Chief Medical Examiner,  
Office of the Chief Medical Examiner

**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) 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 by section 2903 of the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000, D.C. Law 13-172, D.C. Official Code § 5-1402 (2012 Repl.), it is hereby **ORDERED** that:

1. **ROGER A. MITCHELL, Jr., M.D., FASCP**, is appointed Acting Chief Medical Examiner, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2013-081, dated April 24, 2013.
3. **EFFECTIVE DATE:** This Order shall become effective February 14, 2014.

  
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 VINCENT C. GRAY  
 MAYOR

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



GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-039  
February 20, 2014


**SUBJECT:** Reappointments – Board of Library Trustees

**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 pursuant to section 4 of An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, 29 Stat. 244, D.C. Official Code § 39-104 (2012 Repl.), it is hereby **ORDERED** that:

1. **BRENDA L. RICHARDSON**, who was nominated by the Mayor on October 17, 2013, and approved by the Council of the District of Columbia pursuant to Resolution 20-0410 on February 4, 2014, is reappointed as a member of the Board of Library Trustees ("**Board**"), to complete the remainder of an unexpired term to end on January 5, 2016.
2. **DONALD F. RICHARDSON**, who was nominated by the Mayor on October 17, 2013, and approved by the Council of the District of Columbia pursuant to Resolution 20-0411 on February 4, 2014, is reappointed as a member of the Board, to complete the remainder of an unexpired term to end on January 5, 2015.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

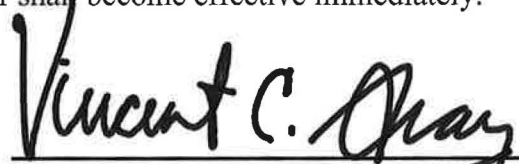
Mayor's Order 2014-040  
February 20, 2014


**SUBJECT:** Reappointment – Public Employee Relations Board

**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 pursuant to section 501(c) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 1-605.01(c) (2012 Repl.), it is hereby **ORDERED** that:

1. **CHARLES J. MURPHY**, who was nominated by the Mayor on November 13, 2013, and approved by the Council of the District of Columbia pursuant to Resolution 20-0408 on February 4, 2014, is reappointed as a neutral public member to the Public Employee Relations Board, for a term to end December 12, 2016.
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

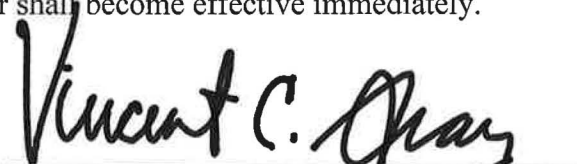
Mayor's Order 2014-041  
February 20, 2014


**SUBJECT:** Appointments – District of Columbia Water and Sewer Authority Board of Directors

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia 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 pursuant to section 204 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996, D.C. Law 11-111, D.C. Official Code § 34-2202.04 (2012 Repl.), it is hereby **ORDERED** that:

1. **AUBREY D. THAGARD** is appointed, as a principal Board member from Prince George's County, Maryland, to the District of Columbia Water and Sewer Authority Board of Directors ("**Board**"), replacing Carla A. Reid, pursuant to the recommendation of Rushern L. Baker, III, Prince George's County Executive, dated January 21, 2014, to complete the remainder of an unexpired term to end September 12, 2014 or until a successor is appointed.
2. **SHIRLEY ANTHONY BRANCH** is appointed, as the alternate Board member for principal Board member Aubrey D. Thagard, representing Prince George's County, Maryland, to the Board, replacing Dawn Hawkins-Nixon, pursuant to the recommendation of Rushern L. Baker, III, Prince George's County Executive, dated January 8, 2014, to complete the remainder of an unexpired term to end September 12, 2014 or until a successor is appointed.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
 \_\_\_\_\_  
 VINCENT C. GRAY  
 MAYOR

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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

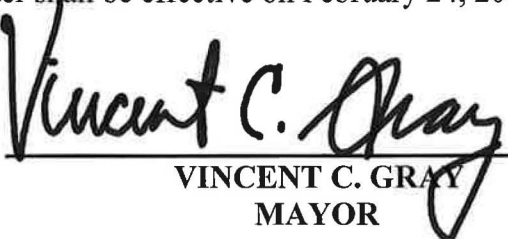
Mayor's Order 2014-042  
February 20, 2014


**SUBJECT:** Appointment – Interim Director District of Columbia Office of Planning

**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. **ROSALYNN HUGHEY** is appointed Interim Director of the District of Columbia Office of Planning and shall continue to serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2011-12, dated January 2, 2011.
3. **EFFECTIVE DATE:** This Order shall be effective on February 24, 2014.

  
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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 2014-043  
February 21, 2014

**SUBJECT:** Amendment - Mayor's Order 1997-177

**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) and (6) 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 (6) (2012 Repl.), it is hereby **ORDERED** that:

**I.** Section 3(x) of Mayor's Order 1997-177, dated October 9, 1977, is amended to read as follows:

“ x. In accordance with 36 CFR § 1206.41, establish, appoint members, and serve as Chairperson of the Historical Records Advisory Board. To carry out this function, the Secretary shall have the authority to solicit funds and donations in accordance with applicable District laws, rules, and Mayor's Orders.”

**II. EFFECTIVE DATE:** This Order shall become effective immediately.

  
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VINCENT C. GRAY  
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

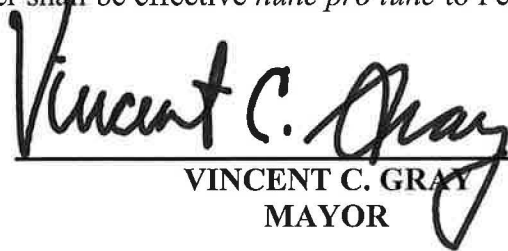
Mayor's Order 2014-044  
February 25, 2014


**SUBJECT:** Appointments – District of Columbia Commission on the Martin Luther King, Jr. Holiday

**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 2013-243, dated December 23, 2013, it is hereby **ORDERED** that:

1. **MARK LONG** is appointed as a private citizen member of the District of Columbia Commission on the Martin Luther King, Jr. Holiday (hereinafter referred to as "Commission"), for a term to end February 19, 2016.
2. **LEE BRIAN REBA** is appointed as a private citizen member of the Commission, for a term to end February 19, 2016.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to February 19, 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 2014-045  
February 25, 2014


**SUBJECT:** Reappointment – District of Columbia Judicial Nomination Commission

**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 pursuant to section 434 of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 796, Pub. L. 93-198, D.C. Official Code § 1-204.34 (2012 Repl.), it is hereby **ORDERED** that:

1. **WILLIAM LUCY**, whose term expires February 27, 2014, is reappointed as a non-lawyer member of the District of Columbia Judicial Nomination Commission for a term to end February 27, 2020.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 VINCENT C. GRAY  
 MAYOR

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

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

**NOTICE OF MEETING  
INVESTIGATIVE AGENDA**

**WEDNESDAY, MARCH 5, 2014  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**On March 5, 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#13-251-00160 Ibiza, 1222 1ST ST NE Retailer C Nightclub, License#: ABRA-074456

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2. Case#14-CMP-00057 El Tamarindo Adam Morgan, 1785 FLORIDA AVE NW Retailer C Restaurant, License#: ABRA-071179

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3. Case#14-CMP-00065 Vendetta, 1210 - 1212 H ST NE Retailer C Tavern, License#: ABRA-072734

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4. Case#14-CMP-00060 Bukom Cafe, 2442 18TH ST NW Retailer C Tavern, License#: ABRA-026466

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5. Case#14-CMP-00059 Little Fountain Cafe/Angles, 2339 18TH ST NW Retailer C Restaurant, License#: ABRA-020251

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6. Case#14-CC-00003 Fairmont Liquor & Grocery, 2633 SHERMAN AVE NW Retailer A Retail - Liquor Store, License#: ABRA-080900

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7. Case#14-CMP-00063 Bossa Brazilian Bistro, 2463 18TH ST NW Retailer C Restaurant, License#: ABRA-084505

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8. Case#14-CMP-00064 Smith Commons, 1245 H ST NE Retailer C Restaurant, License#: ABRA-084598

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9. Case#14-251-00043 Yetenbi Restaurant, 1915 9TH ST NW Retailer C Tavern, License#: ABRA-085258

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10. Case#14-CMP-00058 Mellow Mushroom, 2436 18TH ST NW Retailer C Tavern, License#: ABRA-086063

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11. Case#14-CMP-00067 RedRocks, 1348 H ST NE Retailer C Restaurant, License#: ABRA-090997

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LEGAL AGENDA

WEDNESDAY, MARCH 5, 2014 AT 1:00 PM  
2000 14<sup>th</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Motion to Consolidate Protests (13-PRO-00153 and 14-PRO-00005) dated February 19, 2014 from Makan Shirakan, Counsel for Park Place Inc. Protestants consent to Motion via email dated February 25, 2014. *Park at 14<sup>th</sup>*, 920 14<sup>th</sup> Street NW, Retailer CN, Lic#: 75548.

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2. Review of letter dated February 20, 2014 from Britt Swann of 3287 M LLC, In reference to CT Licenses in the Georgetown Moratorium Zone.

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3. Review of Request to Extend Petition Deadline dated February 19, 2014 from Chairperson Sheila Carson-Carr ANC 7F. Licensee objects to Request for extension via email dated February 25, 2014. *DC Eagle*, 3701 Benning Road NE, Retailer CT, Lic#: 93984.

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4. Review of Amendment to Settlement Agreement dated February 21, 2014. *Public*, 1214B 18<sup>th</sup> Street NW, Retailer CT, Lic#: 71638.

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5. Review of One (1) Request from E & J Gallo to provide retailers with products valued at more than \$50 and less than \$500.

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**\* 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, MARCH 5, 2014 AT 1:00 PM  
2000 14<sup>th</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review application for extension of license in Safekeeping since January 13, 2013. Requesting an additional six (6) months. No outstanding fines/citations. No pending enforcement matters. Settlement Agreement dated 2012. ANC 1C. SMD 1C01. *Duchess and The Queen*, 2102 18<sup>th</sup> Street NW, Retailer CR, License No. 089545.

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2. Review Request to add Cover Charge for Live Jazz, Bluegrass, Trivia and Stand-Up Comedy. *Hours of Entertainment*: Monday-Friday 6pm to 11:30pm. Saturday-Sunday 11am to 11:30pm. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 6E. SMD 6E02. *Shaw's Tavern*, 520 Florida Avenue NW, Retailer CT, License No. 088569.

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3. Review Requests from Manufacturer for Change of Hours and Tasting Permit. *Approved Hours of Operation*: Sunday-Saturday 6am to 1am. *Sales and Consumption* Thursday-Saturday 1pm to 9pm. *Proposed Hours of Operation*: Sunday-Saturday 6am to 1am. *Proposed Hours of Sales and Consumption*: Sunday-Saturday 7am to 12am. No outstanding fines/citations. No pending enforcement matters. No Settlement Agreement. ANC 5D. SMD 5D01. *Atlas Brew Works*, 2052 West Virginia Avenue NE, Manufacturer B, License No. 092182.

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4. Review Request for Summer Garden with thirty-four (34) seats. *Proposed Hours of Operation, Sales, and Consumption*: Sunday 10am to 2am. Monday-Thursday 11:30am to 2am. Friday 11:30am to 3am. Saturday 10am to 3am. No outstanding fines/citations. No pending enforcement matters. No Settlement Agreement. ANC 1A. SMD 1A06. *Maple*, 3418 11<sup>th</sup> Street NW, Retailer CT, License No. 082211.

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5. Review of Documents from Stephen J. O'Brien on behalf of Public Bar to Request Change of Hours for Summer Garden. *Approved Hours of Operation, Sales, and Consumption for Summer Garden*: Sunday-Thursday 5pm to 1:45am. Friday-Saturday 5pm to 2:45am. *Proposed Hours of Operation, Sales, and Consumption for Summer Garden*: Sunday-Thursday 11am to 1:45am. Friday-Saturday 11am to 2:45am. No outstanding fines/citations. No pending enforcement matters. No Conflict with Settlement Agreement. ANC 2B. SMD 2B06. *Public Bar*, 1214B 18<sup>th</sup> Street NW, Retailer CT, License No. 081238.

Board's Agenda –March 5, 2014 - Page 2

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6. Review of documents from Michael Fonseca on Behalf of Number Nine requesting approval to incorporate live performances, limited to piano with pianist, into the existing Entertainment Endorsement. No outstanding fines/citations. No pending enforcement matters. See provisions, item # 6 of the Settlement Agreement with letters dated February 11, 2014 and February 14, 2014 from ANC 2F. ANC 2F. SMD 2F02. **Number Nine**, 1435 P Street NW, Retailer CT, License No. 086354.
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7. Review Letter from a Retailer C Tavern licensee regarding appropriateness of limitations on Georgetown Moratorium Zone licensees. ANC 2E. SMD 2E05. **The Rhino-bar & Pumphouse**, 3295 M Street NW, Retailer CT, License No. 000523.
- 
8. Review letter requesting approval to allow Dispersing Agent, Stone Dozen, LLC, to disburse payments to distributors and wholesalers on behalf of licensee. ANC 2B. SMD 2B05. **Joe's Seafood, Prime Steak, and Stone Crab**, 740 15<sup>th</sup> Street NW, Retailer CR, License No. 093894.
- 
9. Review Request from Washington Wholesale Liquor Company to provide retailer with products more than \$50 and less than \$500.
- 
10. Review Manager's License Application for **Jared P. Richardson**, ABRA-094048.
- 
11. Review Manager's License Application for **Devon N. Sharp**, ABRA-094380.
- 

**\* 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.**

**CHILD AND FAMILY SERVICES AGENCY**  
**DISTRICT OF COLUMBIA CITIZENS REVIEW PANEL**

**NOTICE OF PUBLIC MEETING**

The District of Columbia Citizens Review Panel will be holding a meeting on Tuesday, March 4, 2014 at 6:30 p.m. The meeting will be held in the Mount Pleasant Library, MTP Large Meeting Room at 3160 16<sup>th</sup> St NW, Washington, DC 20010. Below is the agenda for this meeting.

For additional information, please contact Meron Meshesha at (202) 544-3144 or [cpfs@centerchildprotection.org](mailto:cpfs@centerchildprotection.org)

March 4, 2014 Meeting of the DC Citizen Review Panel

Time: 6:30-9:00 PM

Day: Tuesday

Place: Mt. Pleasant Library, 3160 16<sup>th</sup> Street, NW, Washington, DC

PROPOSED AGENDA

- 6:30 PM Welcome/Introductions: *Damon King, Chairperson*
- 6:40 PM Review and Approve: December 4, 2013 Minutes
- 6:45 PM Review and Approve Agenda
- 6:55 PM Treasurer's Report: *Rick Bardach*
- 7:00 PM Chairperson's Report: *Damon King*
- Welcome to a new year of activities of the CRP
  - Report on the status of appointment of CRP members by City Council
  - Follow-up on communications with Adrian Guzman re: recommendations to CFSA
  - Review of expectations and priorities for task force
  - Announcements, webinars and meeting attended on behalf of CRP
  - Feedback on webinar on Prevention Activities of CRP
  - Introduction of guest presenter from CFSA on medical services to children in foster care
  - Preparation for Testimony before City Council on CFSA Budget
- 7:15 PM Guest Presentation: Health Care Services to Child in Foster Care  
Cheryl Durden, RN, MS  
Child and Family Services Agency,  
Health Service Adm.
- 7:35 PM Q & A from the Panel Members

- 7:45 PM Update from CRP Task Force on Youth Aging Out of Foster Care: *Rick Bardach*
- 8:00 PM Establishment and Leadership of Task Force on Medical Needs
- 8:15 PM Establishment and Leadership of Task Force on Legislation
- 8:30 PM Facilitator Report: *Joyce N. Thomas*
- Status of Facilitator 2014 grant agreement with CFSA
  - New Project Officer: Trinette Hawkins, MSW
  - Review of 2014 work plan
  - Participation at National CRP Conference in Atlanta
  - Preparation and timelines for 2014 Annual Report
- 8:45 PM Open Discussion and Input from CRP members on new Business
- 9:00 PM Adjournment

**COMMUNITY ACADEMY PUBLIC CHARTER SCHOOLS (CAPCS)****REQUEST FOR PROPOSALS****Blended Learning Educational Consulting Services**

Community Academy Public Charter Schools (CAPCS) is seeking an educational consulting partner to develop a multistep blended learning model for grades 1<sup>st</sup> – 5<sup>th</sup> at one of its campuses. Model should be customized to CAPCS's curriculum and campus needs.

Proposal should include planning/design, implementation, timeline, professional development, and ongoing support by consultant. Description of relevant experience, references and cost structure required.

Final proposals submitted electronically to [kylewilliams@capcs.org](mailto:kylewilliams@capcs.org) are due by COB, **Friday, March 7, 2014.**

CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME.

**E.L. Haynes Public Charter School****REQUEST FOR PROPOSALS****Athletic Field Construction**

E.L. Haynes Public Charter School (“ELH”) is building an athletic field adjacent to its Kansas Avenue campus located at 4501 Kansas Avenue, NW. ELH is requesting proposals from qualified vendors for the supply and installation of a field surface (artificial turf, sod or seed) to support ELH’s physical education program, soccer teams, and other ancillary programs for a Pre-K through 12th grade student population.

Proposals are due via email to Richard Pohlman no later than 5:00 PM on Tuesday, March 18, 2014. The RFP with bidding requirements can be obtained by contacting:

Richard Pohlman  
E.L. Haynes Public Charter School  
Phone: 202.706.5838x1041  
Email: rpohlman@elhaynes.org



**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS****Certification of Filling a Vacancy  
In Advisory Neighborhood Commissions**

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Stacy Cloyd  
Single-Member District 6D02

## DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF FUNDS AVAILABILITY

**Office of Youth Programs**  
**2014 Summer Youth Employment Program**  
**“Work Readiness for ages 14-15 years”**

The District of Columbia Department of Employment Services (DOES) is seeking grant applications for high quality, structured, workforce development programs for youth participants between the ages of 14 and 15, as a part of Mayor Vincent C. Gray’s 2014 One City Summer Youth Employment Program (SYEP). All SYEP programs must be held in the District of Columbia. Applicants must deliver a variety of workforce exploration and work readiness experiences. All activities must provide purposeful and developmentally appropriate employment and career exploration opportunities. Applicants must employ a positive youth development philosophy in their approach and program design. Positive Youth Development (PYD) is a process in which young people seek ways to meet their basic physical and social needs and to build the competencies (knowledge and skills) necessary to succeed in adolescence and adulthood. Simply put, it is the process through which young people acquire the cognitive, social, and emotional skills and abilities required to successfully navigate life. DOES’ Office of Youth Programs (OYP) seeks qualified providers that will optimize positive youth development for 14-15 year old District residents during a six (6) weeks summer work readiness experience.

The SYEP for 14-15 year old participants strives to help youth:

- Earn money and gain meaningful work experiences;
- Learn and develop the skills, attitudes, and commitment necessary to succeed in today’s world of work;
- Gain exposure to various career industries, financial literacy, and entrepreneurship; and
- Interact with experienced working professionals in a positive work environment.

DOES is dedicated to educating youth participants about workforce readiness, financial literacy, and entrepreneurship through experiential, hands-on programs. As a result, youth participants should be able to utilize the lessons learned, put them into action, and contribute value to their communities.

The SYEP is a locally funded initiative sponsored by DOES that provides District youth (ages 14 to 21) with enriching and constructive summer work experiences through subsidized placements in the private and public sectors. Through the SYEP, DOES strives to provide young people with life changing opportunities that will lay a solid foundation for successful adulthood.

**Eligibility:** Applicant’s primary vision and program focus must be on serving youth ages 14-15 in programs located in the District of Columbia. Additionally, applicants must be in good financial standing with the DC Office of Tax and Revenue and the Internal Revenue Service, as well as follow all appropriate financial reporting standards. Applicants cannot be listed on the District’s or federal government’s Excluded Parties Lists.

**Length of Award:** Grant Awards will be made for a period of six (6) months. The actual duration of the 2014 SYEP is **June 30, 2014 through August 8, 2014.**

**Available Funding for Awards:** The total amount of funding that DOES anticipates to be available for this award is **\$480,000.00**, pending availability of funds. The funds for SYEP are made available through District of Columbia appropriations.

**Anticipated Number of Awards:** DOES intends to award at least one (1) grant award and may make multiple awards depending on funding availability.

**How to Obtain the RFA:** The Request for Application (RFA) will be released on **Friday, March 14, 2014**. The RFA will be available on the following websites:

- DOES website: [www.does.dc.gov](http://www.does.dc.gov) - OCP
- website: <http://ocp.dc.gov/service/ocp-solicitations>
- DC Grants Clearinghouse: <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse>

For more information regarding this grant opportunity, applicants may contact the DOES Grants Office at [doesgrants@dc.gov](mailto:doesgrants@dc.gov).

**The deadline for online application submission is:  
Friday, March 28, 2014, no later than 2:00pm EST.**

## DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF FUNDS AVAILABILITY

**Office of Youth Programs  
2014 Summer Youth Employment Program  
“Work Experience for ages 16-17 years”**

The District of Columbia Department of Employment Services (DOES) is seeking grant applications for high quality, structured, workforce development programs for youth participants between the ages of 16 and 17, as a part of Mayor Vincent C. Gray’s 2014 One City Summer Youth Employment Program (SYEP). All SYEP programs must be held in the District of Columbia. Applicants must deliver a variety of workforce exploration and work readiness experiences. All activities must provide purposeful and developmentally appropriate employment and career exploration opportunities. Applicants must employ a positive youth development philosophy in their approach and program design. Positive Youth Development (PYD) is a process in which young people seek ways to meet their basic physical and social needs and to build the competencies (knowledge and skills) necessary to succeed in adolescence and adulthood. Simply put, it is the process through which young people acquire the cognitive, social, and emotional skills and abilities required to successfully navigate life. DOES’ Office of Youth Programs (OYP) seeks qualified providers that will optimize positive youth development for 16-17 year old District residents during a six (6) week summer work experience.

The SYEP for 16-17 year old participants strives to help youth:

- Earn money and gain meaningful work experiences;
- Learn and develop the skills, attitudes, and commitment necessary to succeed in today’s world of work;
- Gain exposure to various career industries, financial literacy, and entrepreneurship; and
- Interact with experienced working professionals in a positive work environment.

DOES is dedicated to educating youth participants about workforce readiness, financial literacy, and entrepreneurship through experiential, hands-on programs. As a result, youth participants should be able to utilize the lessons learned, put them into action, and contribute value to their communities.

The SYEP is a locally funded initiative sponsored by DOES that provides District youth (ages 14 to 21) with enriching and constructive summer work experiences through subsidized placements in the private and public sectors. Through the SYEP, DOES strives to provide young people with life changing opportunities that will lay a solid foundation for successful adulthood.

**Eligibility:** Applicant’s primary vision and program focus must be on serving youth ages 16-17 in programs located in the District of Columbia. Additionally, applicants must be in good financial standing with the DC Office of Tax and Revenue and the Internal Revenue Service, as well as follow all appropriate financial reporting standards. Applicants cannot be listed on the District’s or federal government’s Excluded Parties Lists.

**Length of Award:** Grant Awards will be made for a period of six (6) months. The actual duration of the 2014 SYEP is **June 30, 2014 through August 8, 2014**.

**Available Funding for Awards:** The total amount of funding that DOES anticipates to be available for this award is **\$480,000.00**, pending availability of funds. The funds for SYEP are made available through District of Columbia appropriations.

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- DC Grants Clearinghouse: <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse>

For more information regarding this grant opportunity, applicants may contact the DOES Grants Office at [doesgrants@dc.gov](mailto:doesgrants@dc.gov).

**The deadline for online application submission is:  
Friday, March 28, 2014, no later than 2:00pm EST.**

**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, 5<sup>th</sup> Floor, Washington, DC, intends to issue Permits #6366-R1 and 6367-R1 to The George Washington University (GWU) to operate one Katolight emergency natural gas-fired generator and one Ford Power Products emergency natural gas-fired generator, located in Washington, DC. The contact person for the facility is James Schrote, Executive Director, Facilities Services, at (202) 994-0543.

**Emergency Generators to be Permitted**

<b>Equipment Location</b>	<b>Address</b>	<b>Equipment Size</b>	<b>Fuel</b>	<b>Serial Number</b>	<b>Permit Number</b>
Athletic Facility, Mount Vernon Campus	2100 Foxhall Road NW, Washington, DC 20007	25 kW (33 hp)	Natural gas	36590-83026-0702	6366-R1
Webb Building, Mount Vernon Campus	2100 Foxhall Road NW, Washington, DC 20007	20 kW (27 hp)	Natural gas	05RG47669	6367-R1

The application to construct and operate the emergency generators and the draft permit renewal 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:

Stephen S. Ours  
Chief, Permitting Branch  
Air Quality Division  
District Department of the Environment  
1200 First Street NE, 5<sup>th</sup> Floor  
Washington, DC 20002  
[Stephen.Ours@dc.gov](mailto:Stephen.Ours@dc.gov)

**No written comments or hearing requests postmarked after March 31, 2014 will be accepted.**

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

**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

FISCAL YEAR 2014

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Emergency Generator to be Permitted

<b>Equipment Location</b>	<b>Address</b>	<b>Equipment Size</b>	<b>Fuel</b>	<b>Serial Number</b>	<b>Permit Number</b>
Somers Hall, Mount Vernon Campus	2100 Foxhall Road NW, Washington, DC 20007	200 kW (268 hp)	Diesel	46090313	6368-R1

The application to operate the emergency generator and the draft permit renewal 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.

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FISCAL YEAR 2014

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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.

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**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

FISCAL YEAR 2014

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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.

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**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

FISCAL YEAR 2014

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**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

FISCAL YEAR 2014

**PUBLIC NOTICE**

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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.

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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:

	<b>Maximum Annual Emissions</b>
<b>Pollutant</b>	<b>(tons/yr)</b>
Particulate Matter (PM) (Total) <sup>1</sup>	0.25
Sulfur Dioxide (SO <sub>2</sub> )	0.24
Nitrogen Oxides (NO <sub>x</sub> )	3.59
Volatile Organic Compounds (VOC)	0.29
Carbon Monoxide (CO)	0.77

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)]:

<b>Pollutant Emission Limits (g/kW-hr)</b>		
NMHC+NO <sub>x</sub>	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 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:

Stephen S. Ours  
Chief, Permitting Branch  
Air Quality Division  
District Department of the Environment  
1200 First Street NE, 5<sup>th</sup> Floor  
Washington, DC 20002  
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**No written comments postmarked after March 31, 2014 will be accepted.**

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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:

<b>Pollutant</b>	<b>Maximum Annual Emissions (tons/yr)</b>
Particulate Matter (PM) (Total)	0.004
Sulfur Oxides (SOx)	0.00007
Nitrogen Oxides (NOx)	0.150
Volatile Organic Compounds (VOC)	0.005
Carbon Monoxide (CO)	0.020

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)]:

<b>Pollutant Emission Limits (g/kW-hr)</b>		
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 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:

Stephen S. Ours  
Chief, Permitting Branch  
Air Quality Division  
District Department of the Environment  
1200 First Street NE, 5<sup>th</sup> Floor  
Washington, DC 20002  
[Stephen.Ours@dc.gov](mailto:Stephen.Ours@dc.gov)

**No written comments postmarked after March 31, 2014 will be accepted.**

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

## DISTRICT DEPARTMENT OF THE ENVIRONMENT

## NOTICE TO COMMENT IN WRITING

## Community Involvement Plan for the Anacostia River Study Area

**Document Location:** <http://ddoe.dc.gov/riworkplan2014>

**Written Comments due by:** March 19, 2013

The District Department of the Environment (“DDOE”) invites the public to present its views and comments on the Community Involvement Plan (CIP) for the Anacostia River Study Area.

**Written comments may be sent to [DDOE.SedimentProject@dc.gov](mailto:DDOE.SedimentProject@dc.gov) using the comment form provided here: <http://ddoe.dc.gov/riworkplan2014>.** DDOE will accept written comments until Wednesday, March 19, 2014.

Hard copies of the CIP are also available at three locations which include two repository libraries and DDOE office. See below for the repository location details:

1. District Department of the Environment  
1200 First Street, NE, 5th Floor  
Washington DC 20002  
202:535.2600  
Contact: Sharon.cooke@dc.gov
2. Francis A. Gregory Neighborhood Library  
3660 Alabama Ave, SE  
Washington, DC 20020  
Main Library Phone: 202-698-6373  
Contact: Bettye Smith, Branch Manager, 202-698-3870  
[bettye.smith@dc.gov](mailto:bettye.smith@dc.gov)

Other information: 20 public computers with internet access are available to the public at this facility.

3. Rosedale Neighborhood Library  
1701 Gales St, NE  
Washington, DC 20002  
Main Library Phone: 202-727-5012  
Contact: Eboni Henry, Branch Manager, 202-727-5023  
[eboni.henry@dc.gov](mailto:eboni.henry@dc.gov)

Other information: 12 public computers with internet access are available to the public at this facility.

**Obtaining the CIP.** This document is available at DDOE's website.

A person may obtain a copy of the document by the following methods:

- Download, by visiting DDOE's website, <http://ddoe.dc.gov/riworkplan2014>. Look for the PDF document, titled "Community Involvement Plan (CIP) for the Anacostia River Study Area, near the bottom of the page;
- Email a request to [dev.murali@dc.gov](mailto:dev.murali@dc.gov) with "Request copy of CIP" in the subject line;
- In person by making an appointment to examine a copy in DDOE's offices at the 5<sup>th</sup> floor reception desk at the street address below (call DDOE reception at 202-535-2600 and mention the document by name). DDOE is located one block west of the NOMA Red Line Station, at the corner of M Street and First Street NE; or
- Write DDOE at 1200 First Street, N.E., 5th Floor, Washington, DC 20002, "Attn: Request copy of CIP for the Anacostia River Study Area" on the outside of the letter.

**Contact:** For additional information, email [dev.murali@dc.gov](mailto:dev.murali@dc.gov).

DDOE appreciates the time, insight, and expertise that go into submitting comments. DDOE will carefully consider all of the comments that it receives.

### **Instructions for Submitting Written Comments**

Written comments should: (1) identify the commenter, and commenter's organization, if any; (2) be clearly marked "CIP for the Anacostia River Study Area", and be delivered in one of the following ways: (a) mailed or hand-delivered to DDOE, 1200 First Street, NE, Washington DC 20002, marked "Attn: CIP for the Anacostia River Study Area"; (b) e-mailed to [DDOE.SedimentProject@dc.gov](mailto:DDOE.SedimentProject@dc.gov) with the subject indicated as "CIP for the Anacostia River Study Area"; or (c) delivered in person to the above address, with similar identification.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

**Office of Government Ethics**

**BEGA – Advisory Opinion – Unredacted - 1139-001**

**VIA EMAIL**

February 3, 2014

Emily Bloomfield

Dear Ms. Bloomfield:

This responds to your January 10, 2014 letter, by which you request advice concerning your role as a current member of the Public Charter School Board (“PCSB” or “Board”) and your work with Monument Academy, Inc. (“Monument”), an organization that intends to apply for a charter to open a new public charter school after your PCSB term expires. You also request advice concerning a continued role with the school, assuming the charter is granted.

Based upon the information you provided in your letter and in your follow-up conversation with a member of my staff, I conclude that you may permissibly continue to work with Monument during your PCSB tenure, as long as you meet the requirements discussed below, and that you may permissibly work with the school, including representing it before the PCSB, after your term expires.

You state in your letter that you founded Monument; that, without compensation, you chair its Board of Directors; that you have been working with a group of several people in writing a charter application for a new public charter school and otherwise planning for the potential school; that Monument intends to file the charter application with the PCSB on March 3, 2014; and that, if the charter is granted, you would continue in some substantial, yet still undetermined, leadership role with the school.

You also state in your letter that your current PCSB term will expire on February 24, 2014, and that you do not intend to seek re-nomination.

In a January 29, 2014 telephone conversation, you advised my Senior Attorney Advisor that your PCSB service entails fewer than sixty days in a calendar year; that your work with the Monument group involves consultative activities; and that the charter application and the consultative activities make use of publicly available information.

**Engaging in Outside Activities**

Inasmuch as PCSB members are not compensated,<sup>1</sup> you are not considered to be a District government employee for purposes of the District of Columbia Government Comprehensive Merit

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<sup>1</sup> See D.C. Official Code § 38-1802.14(c) (providing that “[m]embers of the [PCSB] shall serve without pay”).

Emily Bloomfield  
February 3, 2014  
Advisory Opinion

Personnel Act of 1978 (“CMPA”), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*),<sup>2</sup> and certain provisions of Chapter 18 of Title 6B of the District of Columbia Municipal Regulations (“DCMR”), which are based on the CMPA. Nevertheless, this Office considers those provisions to reflect best practices for members of the District’s boards and commissions, such as the PCSB, and they appear to have been followed in your outside work with the Monument group. I find nothing in your letter or my staff member’s report of your follow-up conversation to indicate that the charter application writing or school planning efforts have been incompatible with your duties as a PCSB member.<sup>3</sup> Furthermore, you may continue those activities during your PCSB tenure, as long as you continue to use publicly available information.<sup>4</sup>

### Post-Employment Restrictions

Former District government employees are subject to certain prohibitions on their post-employment activities. After your PCSB term expires, you would be subject to these restrictions, even though you served on the Board without compensation. This is because, for post-employment purposes, the DCMR defines the term “Government employee” to include “special Government employees.”<sup>5</sup> Special Government employees, in turn, are officers or employees “retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not to exceed one hundred and thirty (130) days during any period of three hundred and sixty five (365) consecutive days.”<sup>6</sup> However, the DCMR lifetime ban on appearing in a representational capacity before, or communicating with, a District government agency would not apply to you after your PCSB term ends, because the Monument charter application will not be filed with the Board until after you leave.<sup>7</sup>

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<sup>2</sup> See section 301(7) of the CMPA (D.C. Official Code § 1-603.01(7) (defining “employee” as meaning, generally, “an individual who performs a function of the District government and who receives compensation for the performance of such services”).

<sup>3</sup> See 6B DCMR § 1804.1 (“An employee may not engage in any outside employment or other activity which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee.”).

<sup>4</sup> See 6B DCMR § 1804.1(f) (prohibiting employee’s divulgence of “any official government information to any unauthorized person or in advance of the time prescribed for its authorized issuance, or otherwise making use of or permitting others to make use of information not available to the general public” in any outside activity); see also 6B DCMR § 1804.4 (prohibiting employee engaged in, among other things, outside consultative activities from “draw[ing] on official data or ideas which have not become part of the body of public information”).

<sup>5</sup> See 6B DCMR § 1814.1 (defining “Government employee” as “[a]ny officer or employee of the District government who performs a function and who receives compensation for the performance of such service, and special Government employees”).

<sup>6</sup> *Id.* Also note that, while certain substantively similar post-employment prohibitions of 18 U.S.C. § 207 apply to District government employees, “the receipt of compensation is not an element of any of [those] restrictions.” See federal Office of Government Ethics Informal Advisory Letter 97 x 9 (May 21, 1997).

<sup>7</sup> Respectively, see 6B DCMR § 1814.4 (prohibiting former employee “from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency as to a particular government matter involving a specific party *if the employee participated personally and substantially in that matter as a government employee*” (emphasis added)); 6B DCMR § 1814.5 (prohibiting former employee “from making any oral or written communication to an agency with the intent to influence that agency on behalf of another person as to a particular government matter

Emily Bloomfield  
February 3, 2014  
Advisory Opinion

In addition to the lifetime prohibitions, senior employees also are subject to a one-year ban prohibiting “any transactions with [their] former agency intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party.”<sup>8</sup> The one-year ban “is aimed at the possible use of personal influence based on past governmental affiliations to facilitate the transaction of business”<sup>9</sup> and, for that reason, applies “without regard to whether the former senior employee had participated in, or had responsibility for, the particular matter, and shall include matters which first arise after the senior employee leaves government service.”<sup>10</sup> However, even assuming that, as a PCSB member, you can be considered a senior employee,<sup>11</sup> the DCMR exempts from the one-year ban special Government employees, such as yourself, who serve for fewer than sixty days in a calendar year.<sup>12</sup>

All this said, you would be free after your PCSB term ends to do such things as join the group that submits the charter application, participate in informal Board staff interviews, testify in support of the application, and, assuming the application is granted, represent the school before the Board in the future.

Please be advised that this advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for violation of the District’s Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

You also are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. Please, then, let me know your wishes about disclosure.

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Footnote 7 (continued)

involving a specific party *if the employee participated personally and substantially in that matter as a government employee*” (emphasis added); *see also* 18 U.S.C. § 207(a)(1) (containing substantively similar restrictions).

<sup>8</sup> 6B DCMR § 1814.12.

<sup>9</sup> 6B DCMR § 1814.13.

<sup>10</sup> *Id.*

<sup>11</sup> *See* 6B DCMR § 1814.1 (defining “senior employee”).

<sup>12</sup> *See* 6B DCMR § 1814.12 (providing that “a special Government employee who serves for fewer than sixty (60) days in a calendar year” shall not be subject to one-year ban). Also note that you would not appear to be subject to the two-year post-employment “cooling off” period under federal law, given the fact that the Monument charter application would not have been “actually pending under [your] official responsibility as [a PCSB member] within a period of 1 year before the termination of” your term. *See* 18 U.S.C. § 201(a)(2)(B).

Emily Bloomfield  
February 3, 2014  
Advisory Opinion

If you have any questions or wish to discuss this matter further, I can be reached at 202-481-3411, or by email at [darrin.sobin@dc.gov](mailto:darrin.sobin@dc.gov).

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
DARRIN P. SOBIN  
Director of Government Ethics  
Board of Ethics and Government Accountability

DPS/jjg

#1139-001

**HEALTH BENEFIT EXCHANGE AUTHORITY**  
**NOTICE OF PUBLIC MEETING**

**Executive Board of the Health Benefit Exchange Authority**

The Executive Board of the Health Benefit Exchange Authority, pursuant to the requirements of Section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-0094), hereby announces a public meeting of the Executive Board. The meeting will be Friday, February 28, 2014 via teleconference. The call in number is 1-877-668-4493; access code: 737 885 981.

The Executive Board meeting is open to the public.

If you have any questions, please contact Debra Curtis at (202) 741-0899.



**HEALTH BENEFIT EXCHANGE AUTHORITY**  
**NOTICE OF PUBLIC MEETING**

**Executive Board of the Health Benefit Exchange Authority**

The Executive Board of the Health Benefit Exchange Authority, pursuant to the requirements of Section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-0094), hereby announces a public meeting of the Executive Board. The meeting will be at 1100 15<sup>th</sup> Street, NW, Suite 800 Washington, DC 20001 on **Wednesday, March 12, 2014 at 5:30 pm**. The call in number is 1-877-668-4493, Access code 734 244 084.

The Executive Board meeting is open to the public.

If you have any questions, please contact Debra Curtis at (202) 741-0899.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****NOTICE OF FUNDING AVAILABILITY**

Michael P. Kelly, Director, Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) for funding under the Community Development Block Grant (CDBG) program, the Home Investment Partnership (HOME) program, the Housing Production Trust Fund (HPTF) program, 9% Low Income Housing Tax Credits (LIHTC) program, the Department of Behavioral Health (DBH) and Department of Health (DOH) funds administered by DHCD, the District of Columbia Housing Authority's Local Rent Supplement Program (LRSP), Housing Choice Voucher Program (HCVP) and the Annual Contributions Contract Program (ACC), and the Department of Human Services (DHS) supportive services funds for permanent supportive housing. CDBG and HOME funds for this NOFA are being made available from anticipated FY 2015 budget funds. This NOFA is being conducted pursuant to the FY 2015 (October 1, 2014 to September 30, 2015) Consolidated Action Plan prepared for submission to the U.S. Department of Housing and Urban Development (HUD). **Housing Counseling, Facade Improvement, and Small Business Technical Assistance will also be funded under this NOFA.**

**- AFFORDABLE HOUSING (DFD)-**

The District is interested in financing projects that focus on the following categories:

1) elderly housing; 2) special needs housing; 3) housing for chronically homeless individuals and families in mixed-income buildings with supportive services; 4) preservation of housing affected by expiring federal subsidies; 5) new/substantial rehabilitation of housing (5 or more units); 6) homeownership; 7) new construction and preservation of affordable housing units and 8) permanent supportive housing units for the exclusive use of DBH and DHS consumers to serve low to moderate income persons.

**- HOUSING COUNSELING, FACADE IMPROVEMENTS & SMALL BUSINESS ASSISTANCE RFA (RCS)-**

The District will provide funding to community based non-profit organizations to provide counseling services and training for homeownership, home preservation, tenants, and tenant groups. These services will support several DHCD housing programs and initiatives, including, but not limited to Home Purchase Assistance Program (HPAP), Single Family Residential Rehabilitation, Lead Safe Washington, Affordable Dwelling Units, and Inclusionary Zoning. In addition, grantees provide credit counseling, foreclosure counseling, tenant education, eviction counseling, as well as other housing services. The District will also provide funding to community based non-profit organizations for DHCD's Facade Improvement Program and Small Business Assistance Program. In the Façade Improvement Program, non-profits will be selected to implement storefront improvement projects in targeted commercial areas. In the Small Business Assistance Program, non-profits will be selected to provide small business support services in targeted commercial areas which are intended to empower businesses and create jobs.

**- LOCAL RENT SUPPLEMENT PROGRAM (LRSP), the HOUSING CHOICE VOUCHER PROGRAM (HCVP) and the ANNUAL CONTRIBUTIONS CONTRACT (ACC) PROGRAM (DCHA)-**

The District of Columbia Housing Authority will provide project-based rental subsidies to qualified persons or households through this NOFA.

**- SUPPORTIVE SERVICES (DHS) –**

The Department of Human Services will provide funding to community based non-profit organizations to deliver intensive supportive services to single adult and family participants (who are chronically homeless, vulnerable and face significant barriers to achieving self-sufficiency) in permanent supportive housing programs/projects funded through this NOFA. All organizations awarded DHS funding must provide supportive services in compliance with all provisions related to case management services under Section 29-2538 of the D.C. Municipal Regulation Title 29 (Public Welfare), Chapter 25 (Shelter and Supportive Housing for Individuals and Families), Sectionb38 (PSH Program – Assessment and Case Management).

**All competitive Request for Proposals (RFPs) and Applications (RFAs) will be released on April 2, 2014. The RFP and RFA packages, including all application materials and the reference guidebook, will be available in CD format and can be obtained at DHCD, 1800 Martin Luther King Jr. Avenue, S.E., Washington, D.C. 20020, 1st floor reception desk daily from 8:15 a.m. until 4:45 p.m. This material will also be available from the DHCD website, [www.dhcd.dc.gov](http://www.dhcd.dc.gov), no later than April 4, 2014.**

**Completed applications for Housing Counseling, Façade Improvement, or Small Business Assistance (RCS) must be delivered on or before 4:00 p.m., Eastern Time, May 9, 2014, to DHCD, 1800 Martin Luther King Jr. Avenue, S.E., 1st floor reception desk, Washington, D.C., 20020. All other completed proposals and applications: Affordable Housing (DFD), Local Rent Supplement Program, Housing Choice Voucher Program and the Annual Contributions Contract (DCHA), and Supportive Services (DHS) must be delivered on or before 4:00 p.m., Eastern Time, June 2, 2014, to DHCD, 1800 Martin Luther King Jr. Avenue, SE., 1<sup>st</sup> floor reception desk, Washington, DC., 20020.**

**No applications will be accepted after the submission deadline**

Vincent C. Gray, Mayor  
Government of the District of Columbia

Victor L. Hoskins, Deputy Mayor for Planning and Economic Development

Michael P. Kelly, Director  
Department of Housing and Community Development

**DISTRICT OF COLUMBIA GOVERNMENT**  
**HOUSING PRODUCTION TRUST FUND ADVISORY BOARD**

**MEETING NOTICE**

The Housing Production Trust Fund (HPTF) Advisory Board announces its next Meeting on **Monday, March 3, 2014, from 10:00 A.M. to Noon**, at the Department of Housing and Community Development, Housing Resource Center, 1800 Martin Luther King Jr., Avenue, SE, Washington, DC 20020. See Draft Agenda below.

For additional information, please contact Oke Anyaegbunam via e-mail at [Oke.Anyaegbunam@dc.gov](mailto:Oke.Anyaegbunam@dc.gov) or by telephone at 202-442-7200.

**DRAFT AGENDA** (as of 2.20.14):

Call to Order & Establish Quorum, David Bowers, Chair

- 1) Approval of Prior Meeting Summary
- 2) Presentation/Discussion Item: Options for Leveraging HPTF Dollars for Affordable Housing
  - a. *Presenters:* Doug Auslander and Bryan Dickson, Citigroup
- 3) Updates on HPTF Activities
  - a. DHCD status update on the distribution of units per AMI for FY 2013 NOFA applications.
  - b. DHCD discussion of priority areas for the FY2014 NOFA.
- 4) Old Business
- 5) New Business
  - a. Discussion of Stakeholder Meeting, scheduled for Monday, April 7, 2014; 9:30 am to 1:00 pm
- 6) Announcements
- 7) Public Comments
- 8) Adjournment

**DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING****DISTRICT OF COLUMBIA FINANCIAL LITERACY COUNCIL****NOTICE OF PUBLIC MEETING**

The Members of the District of Columbia Financial Literacy Council (DCFLC) will hold a meeting on Tuesday, March 4, 2014 at 2:00 PM. The meeting will be held at the DC Department of Insurance, Securities and Banking, 810 First St, NE, 7<sup>th</sup> Floor Conference Room, Washington, DC 20002. Below is the draft agenda for the meetings. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at <http://disb.dc.gov>.

For additional information, please call (202) 442-7832 or e-mail: [idirys.abdullah@dc.gov](mailto:idirys.abdullah@dc.gov)

**DRAFT AGENDA**

- I. Call to Order**
- II. Welcoming Remarks**
- III. Minutes of the Previous Meeting**
- IV. Review of 2013 Draft Annual Report**
- V. Public Comments**
- VI. Executive Session-Edit of 2013 Draft Annual Report**
- VII. Adjournment**

**KIPP DC PUBLIC CHARTER SCHOOL  
NOTICE OF REQUEST FOR PROPOSALS**

**Internet, WAN, Landline Telephone Service and Basic Maintenance and Internal  
Connections, FY2014**

KIPP DC is seeking proposals for Internet, WAN, Landline Telephone Service and Basic Maintenance and Internal Connections. The Request for Proposal can be found at:  
<http://www.kippdc.org/about/procurement/>

The RFP is due no later than 5:00 P.M., EST, Monday, March 17, 2014. No proposals will be accepted after the deadline.

**LEE MONTESSORI PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****School Related Services**

Lee Montessori Public Charter School, an approved 501(c)3 organization, requests proposals for the following school related services:

- Aftercare Services
- Association Montessori International approved Montessori Primary Classroom Materials
- Association Montessori International approved Montessori Elementary Classroom Materials
- Business Liability Insurance
- Workers Compensation Insurance
- Classroom Furniture
- Computers/Tablets for staff
- Computers/Tablets for students
- Copier Services
- Employee Benefits Insurance
- Financial Management Services
- Data Consulting Services
- Food Services
- Information Technology Maintenance / Support Services
- Office Furniture
- Special Education Contracted Services

Lee Montessori Public Charter School is seeking qualified professionals for the above services. Applications must include references, resumes exhibiting experience in said field, and estimated fees. Please email proposals to [info@leemontessori.org](mailto:info@leemontessori.org) and include the service in the heading.

For questions please contact us at [info@leemontessori.org](mailto:info@leemontessori.org) or 202.779.9740, ext. 103.

**PROPOSALS MUST BE SUBMITTED BY MARCH 7, 2014 AT 12 NOON.**

**THE DISTRICT OF COLUMBIA COMMISSION ON THE  
MARTIN LUTHER KING, JR. HOLIDAY**

**NOTICE OF PUBLIC MEETING**

**Wednesday, March 5, 2014  
200 I Street SE Washington, DC 20001**

The District of Columbia Commission on the Martin Luther King, Jr. Holiday will hold its open public meeting on Wednesday, March 5, 2014 at 1:00 pm in the Offices of the DC Commission on the Arts and Humanities. The Commission will be in attendance to discuss program events, the donation agreement process, and committees.

The regular monthly meetings of the District of Columbia Commission on the Martin Luther King, Jr. Holiday are held in open session on the first Wednesday of the month, except for the month of August. If you have any questions or concerns, please feel free to contact Sharon Anderson at [sharond.anderson@dc.gov](mailto:sharond.anderson@dc.gov).



**D.C. SENTENCING AND CRIMINAL CODE REVISION COMMISSION****2014 MEETING SCHEDULE**

The Commission meetings of the District of Columbia Sentencing and Criminal Code Revision Commission are held in open session on the third Tuesday of every month. (unless otherwise noted)

All meetings are held at Suite 430 South at 441 Fourth St., N.W. Washington, D.C. A notice will be published in the *D.C. Register* for each meeting with a draft agenda.

The meeting schedules as follows are:

Tuesday, March 18, 2014	5:00 p.m. (cancelled)
Tuesday, April 15, 2014	5:00 p.m.
Tuesday, May 20, 2014	5:00 p.m.
Tuesday, June 17, 2014	5:00 p.m.

This schedule is subject to change. Inquiries concerning the meeting may be addressed to Mia Hebb, Staff Assistant, at (202) 727-8822 or [Mia.Hebb@dc.gov](mailto:Mia.Hebb@dc.gov).

**D.C. SENTENCING AND CRIMINAL CODE REVISION COMMISSION  
MEETING**

The D.C. Sentencing and Criminal Code Revision Commission hereby gives notice that the Commission meeting on March 18, 2014 is cancelled. Inquiries concerning the meeting may be addressed to Mia Hebb, Staff Assistant, at (202) 727-8822 or [Mia.Hebb@dc.gov](mailto:Mia.Hebb@dc.gov).

**TWO RIVERS PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Architectural and Engineering Services, and Builder Services**

Two Rivers Public Charter School invites all interested parties to submit proposals to provide architectural and engineering services or builder services for the renovation of the Young school facility. The required delivery date of the project is July 2015. The complete RFP can be obtained by contacting Ryan Gever at [rgever@programmanagers.com](mailto:rgever@programmanagers.com). Please indicate which service you would like to provide so that we may distribute the appropriate RFP. RFPs will be distributed starting Monday, March 3, 2014 and are due by noon on Friday, March 21, 2014.

**UNIVERSITY OF THE DISTRICT OF COLUMBIA**  
**BUDGET AND FINANCE COMMITTEE OF THE BOARD OF TRUSTEES**

**NOTICE OF PUBLIC MEETING**

The Budget and Finance Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Monday, March 3, 2014 at 6:00 p.m. The meeting will be held in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at [www.udc.edu](http://www.udc.edu).

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or [bfranklin@udc.edu](mailto:bfranklin@udc.edu).

**Planned Agenda**

- I. Call to Order and Roll Call**
- II. Approval of Minutes – January 15, 2014**
- III. Fund Balance**
- IV. FY14 Reprogramming**
- V. Closing Remarks**

**Adjournment**

**UNIVERSITY OF THE DISTRICT OF COLUMBIA**  
**FACILITIES COMMITTEE OF THE BOARD OF TRUSTEES**

**NOTICE OF PUBLIC MEETING**

The Facilities Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Tuesday, March 4, 2014 at 6:00 p.m. The meeting will be held in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at [www.udc.edu](http://www.udc.edu).

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or [bfranklin@udc.edu](mailto:bfranklin@udc.edu).

**Planned Agenda**

- I. Call to Order and Roll Call**
- II. Approval of Minutes – January 7, 2014**
- III. Law School - Lease**
- IV. Student Center Fees**
- V. Other Business**
- VI. Closing Remarks**

**Adjournment**

**UNIVERSITY OF THE DISTRICT OF COLUMBIA**  
**STUDENT AFFAIRS COMMITTEE OF THE BOARD OF TRUSTEES**

**NOTICE OF PUBLIC MEETING**

The Student Affairs Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Monday, March 3, 2014 at 4:30 p.m. The meeting will be held in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at [www.udc.edu](http://www.udc.edu).

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or [bfranklin@udc.edu](mailto:bfranklin@udc.edu).

**Planned Agenda**

- I. Call to Order and Roll Call
- II. Approval of Minutes – January 16, 2014
- III. Health Services
- IV. Enrollment Update
- V. Records Management
- VI. Student Life
- VII. Counseling Center
- VIII. Veterans Affairs
- IX. Financial Aid
- X. A-133 Update
- XI. Closing Remarks

**Adjournment**

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

## BOARD OF DIRECTORS

## NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, March 6, 2014 at 9:30 a.m. The meeting will be held in the Board Room (4<sup>th</sup> floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at [www.dewater.com](http://www.dewater.com).

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or [linda.manley@dewater.com](mailto:linda.manley@dewater.com).

## DRAFT AGENDA

- |    |   |                       |
|----|---|-----------------------|
| 1. | <b>Call to Order</b>                                | Board Chairman        |
| 2. | <b>Roll Call</b>                                    | Board Secretary       |
| 3. | <b>Approval of February 6, 2014 Meeting Minutes</b> | Board Chairman        |
| 4. | <b>Committee Reports</b>                            | Committee Chairperson |
| 5. | <b>General Manager's Report</b>                     | General Manager       |
| 6. | <b>Action Items</b><br>Joint-Use<br>Non Joint-Use   | Board Chairman        |
| 7. | <b>Other Business</b>                               | Board Chairman        |
| 8. | <b>Adjournment</b>                                  | Board Chairman        |

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

**Application No. 17696-C of Liberty Property Trust (formerly Hines VAFII 2100 M Street LP)**, pursuant to 11 DCMR § 3130, for a third time extension of one year of BZA Order No. 17696.

The original application was pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the roof structure setback requirements under subsection 400.7, and the parking space requirements under subsection 2108.2, and a variance from the loading platform height requirements under subsection 2201.7, a variance from the van parking requirements under subsection 2115.8, a variance from the compact parking space requirements under subsection 2115.4, a variance from the 45 degree height setback from neighboring property requirement under subsection 1709.20 and a variance from the loading space height requirements under subsection 2201.6, to allow the expansion of an existing office building with street level retail (through transferable development rights) by adding three new floors in the C-3-C District, at premises 2100 M Street, N.W. (Square 72, Lot 75).

<b>HEARING DATE (Orig. Application):</b>	December 18, 2007
<b>DECISION DATE (Orig. Application):</b>	December 18, 2007
<b>ORIGINAL ORDER ISSUANCE DATE (17696):</b>	December 20, 2007
<b>DECISION ON 1<sup>ST</sup> MOTION TO EXTEND:</b>	December 1, 2009 and December 8, 2009
<b>ISSUANCE DATE ON 1<sup>ST</sup> EXTENSION ORDER (17696-A)</b>	December 15, 2009
<b>DECISION ON 2<sup>ND</sup> MOTION TO EXTEND:</b>	December 6, 2011 and January 10, 2012
<b>ISSUANCE DATE ON 2<sup>ND</sup> EXTENSION ORDER (17696-B)</b>	January 20, 2012
<b>DECISION ON 3<sup>RD</sup> MOTION TO EXTEND:</b>	January 14, 2014 and February 4, 2014

**ORDER ON THIRD MOTION TO EXTEND  
THE VALIDITY OF BZA ORDER NO. 17696**

The Underlying BZA Order

On December 18, 2007, the Board of Zoning Adjustment (“Board” or “BZA”) approved the Applicant’s request for special exception relief from the requirements of roof structure setbacks and parking spaces as well as variance relief from the requirements of loading platform height, van parking, compact parking spaces, the 45 degree height setback from neighboring property, loading space heights, to allow the expansion of an existing office building with street level retail (through transferable development rights) by adding three new floors in the C-3-C District. Thus, pursuant to 11 DCMR §§ 3104.1 and 3103.2, the Board granted special exceptions from the roof structure setback



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requirements under § 400.7 and the parking space requirements under § 2108.2 as well as variances from the loading platform height requirements under § 2201.7, the van parking requirements under § 2115.8, the compact parking space requirements under § 2115.4, the 45 degree height setback from neighboring property requirement under § 1709.20 and the loading space height requirements under § 2201.6, to allow the expansion of an existing office building with street level retail (through transferable development rights) by adding three new floors in the C-3-C District, at premises 2100 M Street, N.W. (Square 72, Lot 75). The Order was issued December 20, 2007. (BZA Order 17696.)

Pursuant to § 3130.1 of the Zoning Regulations, Order 17696 was valid for two years from the time it was issued – that is, until December 20, 2009.

Section 3130.1<sup>1</sup> states:

No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(11 DCMR § 3130.1.)

#### 2009 Motion to Extend

On October 23, 2009, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR § 3130.6,<sup>2</sup> a two-year extension in the authority granted in the underlying BZA Order, which was due to expire December 20, 2009. (Exhibit 32.) The Board received supplemental material demonstrating good cause from the Applicant in support of that time extension request, pursuant to § 3130.6. (Exhibit 33.)

At decision meetings on December 1 and 8, 2009, the Board found that the requirements of 11 DCMR § 3130.6 were met and granted the Applicant a two-year extension of BZA Order No. 17696 until December 20, 2011. (Exhibit 35, BZA Order No. 17696-A.)

#### 2011 Motion to Extend

On November 4, 2011, the Board received a letter from the Applicant, which requested, upon a showing of good cause, a second two-year extension of the original Order as well as a waiver from the impact of 11 DCMR § 3130.6, pursuant to 11 DCMR § 3100.5, in order to allow a second extension to the Order. (Exhibit 37.)

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<sup>1</sup> Subsection 3130.1 was amended by the addition of the phrase “except as permitted in § 3130.6” by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

<sup>2</sup> Subsection 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

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At decision meetings held on December 6, 2011 and January 10, 2012, the Board waived the then-limitation to one extension and found that the requirements of 11 DCMR § 3130.6 were met and granted the Applicant a second two-year extension of BZA Order No. 17696 until December 20, 2013. (Exhibit 42, BZA Order No. 17696-B.)

### Third Motion to Extend

On December 18, 2013, the Board received a letter from the new owner of the Subject Property, who is now the Applicant, which requested, pursuant to 11 DCMR §§ 3130.6 and 3130.7, a third extension for one year in the authority granted in the underlying BZA Order, which was due to expire December 20, 2013. (Exhibit 44.)

The new owner and now Applicant is requesting a one-year extension in the authority granted in the underlying BZA Order because, having only acquired the Property recently, it was unable for reasons beyond its control to secure all required government agency approvals by the time the Order would expire. According to the Applicant, the reasons for the request to extend the Order are because of the change in property owner and the additional time required to reassess the viability of the office market and the project and to have sufficient time in which to obtain necessary government approvals. The timing of the new owner taking control of the Property prevented a timely ability to proceed with preparing and submitting a complete building permit application that would vest the Order before it was due to expire.

The new owner and Applicant pointed out that the recent economic downturn that affected development conditions in the District, particularly in the office market, had caused the prior delays based on which the Board had granted the prior two extensions of the Order. Although the economic conditions have since improved, the previous owner of the Property had not proceeded with developing the project because of the then state of the economy and depressed office market that, according to the new owner and Applicant, continued even after the Order was extended a second time. The prior owner had been unable to continue with preparing the necessary plans for vesting the Order. Approximately one year after the second extension was granted, the prior owner put the Property and building up for sale to sell the project to another owner who could have more success in developing it. Because the prior owner had stopped efforts to develop the project, it sold the Property to the new owner without having completed many of the steps needed for the project to be able to proceed under the Order.

According to the Applicant, while the previous owner did work on the construction drawings and plans for the project leading up to the second extension of the Order, it was unable to continue. The construction drawings and plans were not sufficiently complete so that a building permit application could be filed. Thus, the new owner which only acquired the Property in May 2013 faced an impossibly short time frame in which to effectuate the Order once it acquired the Property and the entitlements to the project. The new owner stated that it inherited the history of the project and an approved BZA Order that had not been vested due to adverse economic conditions. The previous owner's inability to proceed with the project was outside of the owner's control, and the now

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owner could only accept the limited progress made at the time it took ownership. The now owner acquired the project with the intention of constructing the project, but it indicated that it needed the time to study the project and determine whether it is viable for the present office market conditions or another use.

The now owner and Applicant attested to its good faith efforts to effectuate the underlying BZA Order by indicating that it assessed the viability of the project as quickly as possible. Less than two months after taking ownership of the Property, the Applicant engaged an engineer and an architect to evaluate the project in light of the office market conditions. To demonstrate that good faith effort, it provided the contract for engineering and architectural services for the study. The Applicant stated that it is still actively engaged in the study and is still collecting information that will allow it to make an informed decision about the viability of the project given the present office market. To further demonstrate its efforts, the Applicant provided an affidavit from its Senior Vice President, Regional Director and representative, John S. Gattuso. Mr. Gattuso indicated that because the new owner has not yet determined whether the project is appropriate for the office market, it has not yet proceeded with developing construction drawings for the project. Mr. Gattuso goes on to state that if the owner loses the entitlements granted by the BZA under the Orders, any future efforts to market the project to future tenants could be further hampered and would significantly diminish the expected value of the investment on which the owner relied. The requested one-year extension would allow the Applicant the additional needed time in which to make a fully informed determination as an owner who recently acquired the Property and to prepare all of the documents necessary for it to receive the appropriate government approvals that would vest the Order. (Exhibit 44.)

Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order for one additional year, thereby allowing the Applicant additional time to complete its study of the project, prepare documents, and apply for a building permit.

Request for Waiver of One-Extension-Only Requirement Pursuant to 11 DCMR § 3130.6

As part of the application for a third time extension, the Applicant requested that the Board waive the limitation to one extension in 11 DCMR § 3130.6 to allow the grant of a third extension of the Order. The Board in its deliberations noted that this request was no longer required as a result of the Zoning Commission's approval of Z.C. Case No. 12-11. On February 25, 2013 the Zoning Commission took final action to approve Z.C. Case No. 12-11, which included text amendments to BZA Rules and Procedures – Chapter 31, specifically to 11 DCMR §§ 3130.6 and 3130.9 in regard to time extensions of the validity of orders. The text amendment eliminated the limitation on granting more than one time extension (§ 3130.6) and also eliminated the 30-day rule for filing before the expiration date of an order so as to toll the expiration of the underlying order (§ 3130.9). The order and final rulemaking for Z.C. Case No. 12-11 was issued on June 14, 2013 in the *D.C. Register* and thereby finalized on that date.

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Criteria for Evaluating Motion to Extend

Subsection 3130.6 of the Zoning Regulations authorizes the Board to extend the time periods for good cause provided: (i) the extension request is served on all parties to the application by the applicant, and all parties are allowed 30 days in which to respond; (ii) there is no substantial change in any of the material facts upon which the Board based its original approval; and (iii) the applicant demonstrates there is good cause for such extension. (11 DCMR §3130.) Pursuant to 11 DCMR § 3130.6(c)(1), good cause is established through the showing of substantial evidence of one or more of the following criteria:

1. An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;
2. An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
3. The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

*The Merits of the Request to Extend the Validity of the Order Pursuant to 11 DCMR § 3130.6*

The Board finds that the motion has met the criteria of § 3130.6 to extend the validity of the underlying order with some caveats. To meet the burden of proof, the Applicant submitted an affidavit from its representative that described its recent acquisition of the Property and the project, its efforts to study the current office market conditions and project viability, and its reasons for delay in completing construction documents and obtaining government approvals. (Exhibit 44, Tab C.) The Applicant also submitted a contract for an engineering and architectural feasibility study of the project to demonstrate its good faith efforts. (Exhibit 44, Tabs B and J.)

As set forth in the affidavit, the new owner had recently acquired the Property and project. It has been diligent about its efforts to evaluate the project approved by Order 17696 by contracting for the services of an engineer and architect to study possible expansions of the building, including the approved project, as they relate to the office leasing market. The new owner acquired the Property in May 2013 and engaged the contract in July 2013. It states that it can take six months or more typically to complete such an assessment. It has not completed construction drawings for the project since it has not yet completed its evaluation of the viability of those plans for the market. The new owner points out that if it loses the entitlements granted by the BZA under the Orders, any future efforts to market the project to future tenants could be further hampered and this will significantly diminish the expected value of the investment on which the new owner relied. With some caveats, the Board finds that the Applicant has met the criteria set forth in this provision.

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The Office of Planning ("OP"), by memorandum dated January 7, 2014, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR § 3130.6 and recommended approval of the requested one-year extension. (Exhibit 45.) The Site is within the boundaries of Advisory Neighborhood Commission ("ANC") 2A. The ANC was the only other party to the case and was provided the required notice of the request for the extension and did not submit a report on the matter.

The motion for the time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). No party to the application objected to an extension of the Order. The Board concludes that extension of the relief is appropriate under the current circumstances.

The Board found that the Applicant has met the criteria set forth in 11 DCMR § 3130.6. The reasons given by the Applicant were beyond the Applicant's reasonable control within the meaning of § 3130.6(c)(3) and constitute "good cause" required under § 3130.6(c)(1). In addition, as required by § 3130.6(b), the Applicant demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 17696. There have also been no changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order.

The Board voiced some concerns during its deliberations about this third extension request and asked to have these concerns memorialized in this order. The Board noted that the Applicant was a new owner and was being approved for a third and final time extension of one year for the plans and project approved in Order No. 17696. The Board noted that it was granting this extension in deference to OP's recommendation to give the new owner time to look over the prior owner's plans and financials. Additionally, although the Zoning Commission had removed the one-extension-only limitation to § 3130.6 in Z.C. Case No. 12-11, the Board indicated that it would not be likely to entertain any further extensions in this case beyond this third one. The Board also warned the Applicant that should the new owner after completing its assessment of the approved project seek to modify those already approved plans and/or the project, it would need to come back and seek further approvals from this Board.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirements of 11 DCMR § 3125.3, which required that the order of the Board be accompanied by findings of fact and conclusions of law. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 17696-C for a third one-year time extension of Order No. 17696, which Order shall be valid until **December 20, 2014**, within which time the Applicant must file plans for the proposed development with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

**VOTE:** 4-0-1 (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE; the third mayoral appointee vacant).

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**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:** February 19, 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. 18688 of Lock 7 Development LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the height requirements under § 770, a variance from the floor area ratio requirements under § 771, and a variance from the off-street parking requirements under § 2101.1, to allow a mixed-use residential and ground floor retail development in the C-2-A District at premises 1348 – 1356 Florida Avenue, N.E. (Square 4068, Lots 116, 144, 145, 146, and 147).

**HEARING DATES:** January 14, 2014 and February 4, 2014

**DECISION DATE:** February 11, 2014

**SUMMARY ORDER**

**SELF CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

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") 5D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. ANC 5D submitted a written resolution, which indicated that at a properly noticed, regularly scheduled public meeting held on December 17, 2013, with a quorum of Commissioners present, the ANC voted unanimously (5:0:0) to conditionally support the application. (Exhibit 49.)

The Office of Planning ("OP") submitted a timely report on January 7, 2014, indicating that it did support the variance relief from the off-street parking requirements under § 2101.1, but could not support the Board granting the variance relief from the height requirements under § 770 or the floor area ratio ("FAR") requirements under § 771. (Exhibit 32.) By its letter, dated January 7, 2014, the District Department of Transportation ("DDOT") submitted a report of "no objection" to the application. (Exhibit 31.)

Letters of support for the application were submitted by neighbors Renee Garcia, Jamie Smith, Jose A. Garcia, Michael L. Crisci, Brian Camus, Sebastian Sergi, Jerome Bailey, Lori Steenhoek, Lee Wells, Lawrence Wooten, Bernadine Okoro (Exhibit 29), Robert Mann-Thompson (Exhibit 28), and Robert Traina. (Exhibit 25.) Also, the OP report indicated that the Trinidad Neighborhood Association had provided a letter dated December 8, 2013, indicating their support of the application. (See, Exhibit 32.)

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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 height requirements under § 770, the FAR requirements under § 771, and the off-street parking requirements under § 2101.1, to allow a mixed-use residential and ground floor retail development in the C-2-A 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 EXHIBITS 34 AND 37 WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall designate a member of the property management team as the Transportation Management Coordinator (TMC) to ensure that information identifying programs and incentives for using alternative modes of transportation is disseminated to tenants of the building.
2. The Applicant shall install an electronic information display providing real time information related to nearby trains, buses, carshare, and bikeshare.
3. The Applicant shall offer all new tenants, if renting the residential units, or the first subsequent owner, if selling the residential units as condominiums, a \$100 car sharing membership, a \$150 Capital Bikeshare membership, or a \$200 SmartTrip card.
4. The Applicant shall include links to [CommuterConnections.org](http://CommuterConnections.org) and [goDCgo.com](http://goDCgo.com) on the property management website.
5. The Applicant shall provide at least 30 secure bicycle parking spaces in a bicycle storage room.



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- 6. The Applicant shall restrict 17 units from obtaining a Residential Parking Permit (RPP) to offset the 17 spaces of parking relief sought, enforced through the following means:
  - a. Recordation of a covenant that runs with the land for the life of the project; and
  - b. Inclusion of the restriction in 17 of the residential leases if rented or in the recorded condominium declaration if sold as condominiums.

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

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

**VOTE:**           **4-0-1** (Lloyd L. Jordan, Jeffrey L. Hinkle, S. Kathryn Allen (by absentee vote), and Marcie I. Cohen (by absentee vote), to Approve; 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:** February 20, 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.

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

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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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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**

**Application No. 18709 of DAZ, LLC**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the nonconforming structure requirements of § 2001.3, a variance from the open court requirements of § 406, and a special exception from the lot occupancy requirements under § 403, to allow an addition to an existing child development center in the R-4 District at premises 125 New York Avenue, N.W. (Square 555, Lot 802).<sup>1</sup>

**HEARING DATE:** February 11, 2014  
**DECISION DATE:** February 11, 2014

**SUMMARY ORDER**

**SELF CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (the "Board") 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") 5E, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 5E, which is automatically a party to this application. ANC 5E neither testified nor submitted a written report on the application. The Office of Planning ("OP") submitted a timely report in support of the application, subject to a condition that the space allocated to the child development center use shall not be converted to additional residential units. (Exhibit 28.) The District Department of Transportation ("DDOT") submitted a report raising no objection to the approval of the application. (Exhibit 27.)

A letter of support for the application was submitted by the neighbor to the east, Melinee Rita Gethers. (Exhibit 26.)

**Variance Relief:**

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 for a variance under § 3103.2 from the strict application of the open court requirements of § 406 and the nonconforming structure requirements of § 2001.3. 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 OP report filed in this case, the Board concludes that in seeking the variance relief that the Applicant has

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<sup>1</sup> The Applicant amended the application and the caption has been revised accordingly. (Exhibit 26.)

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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.

Special Exception Relief:

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 § 3104.1 for a special exception from the lot occupancy requirements under § 403. 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 OP report filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements 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 the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 12.**

**VOTE:**           **3-0-2** (Lloyd J. Jordan, Michael G. Turnbull, and Jeffrey L. Hinkle to APPROVE; S. Kathryn Allen, not present or voting; 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:** February 21, 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.

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

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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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 12-20A**  
**Z.C. Case No. 12-20A**  
**13<sup>th</sup> & U Lessee, LLC**  
**(Minor Modification of an Approved Planned Unit Development@**  
**Square 237, Lots 198-202)**  
**January 13, 2014**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on January 31, 2014. At the meeting, the Commission approved an application of 13<sup>th</sup> & U Lessee, LLC (“Applicant”) for a minor modification to the approved plans of a planned unit development (“PUD”) for property consisting of Lots 198-202 in Square 237. Because the modification was deemed minor, a public hearing was not conducted. The Commission determined that this modification request was properly before it under § 3030 of the Zoning Regulations.

**FINDINGS OF FACT**

By Z.C. Order No. 12-20, dated May 13, 2013, the Commission approved a PUD and related amendment to the Zoning Map for a mixed-use project containing retail and residential uses in the ARTS Overlay (“Project”). In Z.C. Order No. 12-20, the Commission approved the use of four “art display windows” along U Street in lieu of the transparent windows required under the Overlay.

In this proceeding, the Applicant requested minor changes to the approved plans in order to accommodate the floor plan layout of the Project’s proposed pharmacy tenant. The tenant revised their floor plan to enable the Applicant to use transparent windows in place of some of the art display windows that were approved in Z.C. Order No. 12-20. In order to accommodate the revised store layout, however, two windows at the back of the store can no longer be transparent, and the Applicant requested the use of art display windows for those two windows. The proposed changes result in a net increase of two transparent windows. (Exhibit [“Ex.”] 1.)

The proposed changes do not impact the overall height, mass, bulk, or design that was originally approved by the Commission. Rather, it is a minor change driven by the needs of the retain tenant and requirements of the Overlay, and it is consistent with the purposes and intent of the original approval.

The Applicant served the minor modification request on Advisory Neighborhood Commission (“ANC”) 1B as well as the Office of Planning (“OP”). OP recommended approval of the modifications. (Ex. 4.)

On January 13, 2014, at its regular monthly meeting, the Commission reviewed the application as a Consent Calendar matter and granted approval of the application for a minor modification to the approved plans.

Z.C. ORDER NO. 12-20A  
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The Commission finds that the requested modification is of little consequence to the approved design as a whole, and further finds that approval of the modification is appropriate and not inconsistent with its original approval.

### **CONCLUSIONS OF LAW**

Upon consideration of the record in this application, the Commission concludes that the proposed modification is minor and consistent with the intent of the previously approved Z.C. Order No. 12-20. Furthermore, the Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations, and is not inconsistent with the Comprehensive Plan.

The Commission also concludes that the modification is of little or no consequence, and is therefore appropriate for consideration on the Consent Calendar, without a public hearing. (11 DCMR § 3030.2.)

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a minor modification of approved plans to allow the modifications as shown on Exhibit 1, Tab B of the record of Z.C. Case No. 12-20A. All other provisions and conditions of Z.C. Order No. 12-20 shall remain in effect.

The Applicant has not yet recorded the covenant required pursuant to condition C.1. of Z.C. Order No. 12-20. The Applicant shall include a true copy of this Z.C. Order No. 12-20A as well as Z.C. Order No. 12-20 to the covenant, and the recordation of the covenant shall bind the Applicant and any successors in title to construct on and use the site in accordance with this Order and any amendments thereof, as well as with Z.C. Order No. 12-20.

On January 13, 2014, upon motion of Commissioner Turnbull, 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, Michael G. Turnbull, and Peter G. May 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*, that is, on February 28, 2014.

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