VOL. 62 – NO. 20 FRIDAY, MARCH 20, 2015

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council passes Resolution 21-20, Prohibition on Pre-Employment Marijuana Testing Congressional Review Emergency Declaration Resolution of 2015
- D.C. Taxicab Commission establishes procedures for appealing a denial of a new or renewal license application
- Child and Family Services Agency proposes updates to the rights of foster children
- Board of Elections publishes Fictitious Ballots for the Ward Four and Ward Eight Council Member Special Election
- District Department of the Environment announces funding availability for construction of Municipal Wastewater Facilities
- Board of Ethics and Government Accountability publishes an Advisory Opinion on Post-Government Employment

Office of Documents and Administrative Issuances announces availability of the District of Columbia Construction Codes Supplement of 2013 for purchase

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 et *seq*. (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative· Issuances (1 DCMR 300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at dcregs.dc.gov. Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §2-50l et *seq.* (2102 Repl.).

All documents published in the *District of Columbia Register (Register)* must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *Register* include (1) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the D.C. government (6) Notices, Opinions, and Orders of D.C. Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

Deadlines for Submission of Documents for Publication

The Office of Documents and Administrative Issuances accepts electronic documents for publication using a Web-based portal. To submit documents for publication, agency heads, or their representatives, may obtain a username and password by email at dcdocuments@dc.gov. For guidelines on how to format and submit documents for publication, email dcdocuments@dc.gov.

The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THUSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

Viewing the DC Register

The Office of Documents and Administrative Issuances publishes the *D.C Register* ONLINE every Friday at www.dcregs.dc.gov. The Office of Documents does not offer paid subscriptions to the *D.C Register*. Copies of the *Register* from April 2003 through July 2010 are also available online in the *D.C Register* Archive on the website for the Office of the Secretary at www.os.dc.gov. Hardcopies of the Register from 1954 to September 2009 are available at the Martin Luther King, Jr. Memorial Library's Washingtonian Division, 901 G Street, NW, Washington, DC 20001. There are no restrictions on the republication of any portion of the *Register*. News services are encouraged to publish all or part of the *Register*.

Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

RM 520 – 441 4th ST, ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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ENROLLED ORIGINAL

A RESOLUTION

21-17

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2015

To declare the existence of an emergency, due to congressional review, with respect to the need to amend An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes to clarify that the posting requirement in section 5a is satisfied by posting the initial vacant or blight determination.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Nuisance Abatement Notice Congressional Review Emergency Declaration Resolution of 2015".

Sec. 2. (a) The Nuisance Properties Abatement Reform and Real Property Classification Amendment Act of 2008, effective August, 15, 2008 (D.C. Law 17-216; 55 DCR 7500), created a requirement that all notices specified by the nuisance act be provided by mail and by posting at the subject property. Previously, posting was required only when the registration status of the subject property changed or needed to change.

(b) On October 17, 2014, a judge in the Office of Administrative Hearings dismissed a notice of infraction issued by the Department of Consumer and Regulatory Affairs because, inter alia, the notice failed to satisfy the posting requirement.

(c) Prior to the decision of the Office of Administrative Hearings, the Department of Consumer and Regulatory Affairs had been posting notice at the subject property only when the subject property changed or needed to change.

(d) Without clarifying that the provision should apply only to registration-status changes, the Department of Consumer and Regulatory Affairs would be required to devote considerable resources to posting duplicative notices at a subject property rather than devoting those resources to registering and monitoring other vacant properties. All notices would still be required to be provided by United States mail.

(e) In January, the Council enacted the Nuisance Abatement Notice Emergency Amendment Act of 2014, effective January 13, 2015 (D.C. Act 20-569; 62 DCR 1056) ("emergency legislation"), and the Nuisance Abatement Notice Temporary Amendment Act of 2015, signed by the Mayor on February 5, 2015 (D.C. Act 20-622; 62 DCR 1953) ("temporary legislation"), to address the above-referenced issue.

(f) The emergency legislation expires on April 13, 2015. The temporary legislation must complete the 30-day review period required by section 602(c)(1) of the District of Columbia

ENROLLED ORIGINAL

Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and shall not become law until after the emergency legislation has expired.

(g) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Nuisance Abatement Notice Congressional Review Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-18

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2015

To declare the existence of an emergency, due to congressional review, with respect to the need to amend An Act To provide for voluntary apprenticeship in the District of Columbia and the Amendments to An Act to Provide for Voluntary Apprenticeship in the District of Columbia Act of 1978 to make technical and conforming amendments to allow the District of Columbia to continue to be recognized by the U.S. Department of Labor to operate as a State Apprenticeship Agency.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Apprenticeship Modernization Congressional Review Emergency Declaration Resolution of 2015".

Sec. 2. (a) The District of Columbia is currently recognized by the U.S. Department of Labor as able to operate as a State Apprenticeship Agency pursuant to Title 29 CFR, part 29.13, and has been since 1946.

(b) Beginning in 2008, the U.S. Department of Labor began the process of updating the Federal rules governing apprenticeship programs, labor standards for registration, and amending its regulations.

(c) To conform to the new regulations, for Federal purposes, each State Apprenticeship Agency must update its existing apprenticeship statutes and regulations for continued recognition as an apprenticeship registration agency.

(d) The District of Columbia, through its Office of Apprenticeship, Information and Training within the Department of Employment Services, has worked closely with the U.S. Department of Labor, Office of Apprenticeship, to draft mutually agreeable changes to the District's apprenticeship statutes and regulations.

(e) The U.S. Department of Labor indicated by letter that once the drafted changes are enacted, the District will retain its more than 60 years of recognition as a State Apprenticeship Agency.

(f) In January, the Council enacted the Apprenticeship Modernization Emergency Amendment Act of 2015, effective January 13, 2015 (D.C. Act 20-579; 62 DCR 1258) ("emergency legislation"), and the Apprenticeship Modernization Temporary Amendment Act of

ENROLLED ORIGINAL

2015, signed by the Mayor on February 5, 2015 (D.C. Act 20-626; 62 DCR 2259) ("temporary legislation").

(g) The emergency legislation expires on April 13, 2015. The temporary legislation must complete the 30-day review period required by 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 shall not become law until after the emergency legislation has expired.

(h) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Apprenticeship Modernization Congressional Review Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-19

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2015

To declare the existence of an emergency, due to congressional review, with respect to the need to amend Chapter 5 of Title 24 of the District of Columbia Municipal Regulations to regulate the sale of tickets from public space.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Ticket Sale Regulation Congressional Review Emergency Declaration Resolution of 2015".

Sec. 2. (a) The Vending Regulation Act of 2009, effective October 22, 2009 (D.C. Law 18-71; D.C. Official Code § 37-131.08), and subsequent amendments did not address the sale of tickets from public space, or ticket scalping.

(b) In January, the Council enacted the Ticket Sale Regulation Emergency Amendment Act of 2014, effective January 13, 2015 (D.C. Act 20-586; 62 DCR 1292) ("emergency legislation"), and the Ticket Sale Regulation Temporary Amendment Act of 2015, signed by the Mayor on February 5, 2015 (D.C. Act 20-630; 62 DCR 2274) ("temporary legislation"), to address the above-referenced issue.

(c) The emergency legislation expires on April 13, 2015. The temporary legislation must complete the 30-day review period required by 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 shall not become law until after the emergency legislation has expired.

(d) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Ticket Sale Regulation Congressional Review Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-20

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2015

To declare the existence of an emergency, due to congressional review, with respect to the need to prohibit employers from testing potential employees for marijuana use during the hiring process, unless otherwise required by law.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Prohibition on Pre-Employment Marijuana Testing Congressional Review Emergency Declaration Resolution of 2015".

Sec. 2. (a) On November 4, 2014, Initiative 71, the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Act of 2014, passed.

(b) In December 2014, the Council enacted the Prohibition of Pre-Employment Marijuana Testing Emergency Act of 2014, effective December 18, 2014 (D.C. Act 20-525; 61 DCR 13115) ("emergency legislation"), and the Prohibition of Pre-Employment Marijuana Testing Temporary Act of 2014, signed by the Mayor on January 25, 2015 (D.C. Act 20-610; 62 DCR 1874) ("temporary legislation"), to provide that testing procedures for marijuana mirror procedures for alcohol.

(c) The emergency legislation expires on March 18, 2015. The temporary legislation must complete the 30-day review period required by 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 shall not become law until after the emergency legislation has expired.

(d) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Prohibition on Pre-Employment Marijuana Testing Congressional Review Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILLS

B21-129 Nurse Safe Staffing Act of 2015

Intro. 3-3-15 by Councilmembers Cheh and Alexander and referred to the Committee on Health and Human Services

B21-130 Moratorium on Paint Spray Booth Permits in Ward 5 Temporary Act of 2015

Intro. 3-3-15 by Councilmembers McDuffie and Cheh and referred to the Committee on Transportation and the Environment with comments from the Committee on Business, Consumer, and Regulatory Affairs

B21-131 Senior Foster Care Establishment Act of 2015

Intro. 3-3-15 by Councilmembers Alexander, Bonds, and Grosso and referred to the Committee on Housing and Community Development

B21-132 Safe Working Conditions for Healthcare Workers Amendment Act of 2015

Intro. 3-3-15 by Chairman Mendelson and Councilmembers Orange, Allen, Silverman, and Bonds and referred sequentially to the Committee on Business, Consumer, and Regulatory Affairs and Committee on Health and Human Services

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B21-133 Solar Access Rights Establishment Act of 2015

Intro. 2-27-15 by Councilmember Grosso and referred to the Committee on Judiciary with comments from the Committee on Transportation and the Environment

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B21-134 Tip's Way Designation Act of 2015

Intro. 3-12-15 by Councilmember Allen and referred to the Committee of the Whole

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B21-137 Workforce Job Development Grant-Making Reauthorization Act of 2015

Intro. 3-13-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PROPOSED RESOLUTIONS

PR21-106 Secretary of the District of Columbia Lauren Vaughan Confirmation Resolution of 2015

Intro. 3-13-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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COUNCIL OF THE DISTRICT OF COLUMBIA

EXCEPTED SERVICE APPOINTMENTS AS OF FEBRUARY 28, 2015

NOTICE OF EXCEPTED SERVICE EMPLOYEES

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

COUNCIL OF THE DISTRICT OF COLUMBIA			
NAME	**POSITION TITLE**	**GRADE**	**TYPE OF APPOINTMENT**
Hilgendorf, Shawn	Legislative Counsel	5	Excepted Service - Reg Appt
Brown, Joshua	Constituent Services Director	6	Excepted Service - Reg Appt
Cameron, Malcolm	Legislative Aide	4	Excepted Service - Reg Appt
Dawson, Wesley	Constituent Services Coordinator	2	Excepted Service - Reg Appt
Smith, Monique	Administrative Assistant	4	Excepted Service - Reg Appt

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-072429 **License Class/Type: A Retail - Liquor Store**
Applicant: Khang's Liquor, Inc. **Trade Name: AB Liquors**
ANC: 1C04
Has applied for the renewal of an alcoholic beverage license at the premises:

1803 COLUMBIA RD NW

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 12 am	9 am -12 am
Monday:	9 am - 12 am	9 am - 12 am
Tuesday:	9 am - 12 am	9 am - 12 am
Wednesday:	9 am - 12 am	9 am - 12 am
Thursday:	9 am - 12 am	9 am - 12 am
Friday:	9 am - 12 am	9 am - 12 am
Saturday:	9 am - 12 am	9 am - 12 am

ENDORSEMENTS: Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-087970 **License Class/Type: A Retail - Liquor Store**
Applicant: Limited Release, LLC **Trade Name: Batch 13**
ANC: 2F01
Has applied for the renewal of an alcoholic beverage license at the premises:

1724 14TH ST NW

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	10 am – 12 am	10 am -12 am
Monday:	10 am - 12 am	10 am - 12 am
Tuesday:	10 am - 12 am	10 am - 12 am
Wednesday:	10 am - 12 am	10 am - 12 am
Thursday:	10 am - 12 am	10 am - 12 am
Friday:	10 am - 12 am	10 am - 12 am
Saturday:	10 am - 12 am	10 am - 12 am

ENDORSEMENTS: Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-024522 **License Class/Type: A Retail - Liquor Store**
Applicant: R S Liquors, Inc **Trade Name: Cap Liquors**
ANC: 6D06
Has applied for the renewal of an alcoholic beverage license at the premises:

1301 SOUTH CAPITOL ST SW

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 9 pm	9 am -9 pm
Monday:	9 am - 12 am	9 am - 12 am
Tuesday:	9 am - 12 am	9 am - 12 am
Wednesday:	9 am - 12 am	9 am - 12 am
Thursday:	9 am - 12 am	9 am - 12 am
Friday:	9 am - 12 am	9 am - 12 am
Saturday:	9 am - 12 am	9 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-090800 **License Class/Type: A Retail - Liquor Store**
Applicant: Cordial Union, LLC **Trade Name: Cordial Fine Wine and Beer**
ANC: 5D01
Has applied for the renewal of an alcoholic beverage license at the premises:

1309 5TH ST NE

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 10 pm	9 am -10 pm
Monday:	9 am - 10 pm	9 am - 10 pm
Tuesday:	9 am - 10 pm	9 am - 10 pm
Wednesday:	9 am - 10 pm	9 am - 10 pm
Thursday:	9 am - 10 pm	9 am - 10 pm
Friday:	9 am - 10 pm	9 am - 10 pm
Saturday:	9 am - 10 pm	9 am - 10 pm

ENDORSEMENTS: Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-090270 **License Class/Type: A Retail - Liquor Store**
Applicant: Lucky 7, LLC **Trade Name: LUCKY 7 LIQUOR**
ANC: 5C07
Has applied for the renewal of an alcoholic beverage license at the premises:

2314 RHODE ISLAND AVE NE

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 AM - 12 AM	7 AM -12 AM
Monday:	7 AM - 12 AM	7 AM - 12 AM
Tuesday:	7 AM - 12 AM	7 AM - 12 AM
Wednesday:	7 AM - 12 AM	7 AM - 12 AM
Thursday:	7 AM - 12 AM	7 AM - 12 AM
Friday:	7 AM - 12 AM	7 AM - 12AM
Saturday:	7 AM - 12 AM	7 AM - 12 AM

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-026226 **License Class/Type: A Retail - Liquor Store**
Applicant: ZSM, Inc **Trade Name: Papa's Liquors**
ANC: 3C07
Has applied for the renewal of an alcoholic beverage license at the premises:

3703 MACOMB ST NW

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	-	-
Monday:	9 am - 9 pm	9 am - 9 pm
Tuesday:	9 am - 9 pm	9 am - 9 pm
Wednesday:	9 am - 9 pm	9 am - 9 pm
Thursday:	9 am - 9 pm	9 am - 9 pm
Friday:	9 am - 10 pm	9 am - 10 pm
Saturday:	9 am - 10 pm	9 am - 10 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-072626 **License Class/Type: A Retail - Liquor Store**
Applicant: Hundal, Inc. **Trade Name: Petworth Liquors**
ANC: 1A09
Has applied for the renewal of an alcoholic beverage license at the premises:

3210 GEORGIA AVE NW

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	-	-
Monday:	9 am - 9 pm	9 am - 9 pm
Tuesday:	9 am - 9 pm	9 am - 9 pm
Wednesday:	9 am - 9 pm	9 am - 9 pm
Thursday:	9 am - 9 pm	9 am - 9 pm
Friday:	9 am - 10 pm	9 am - 10 pm
Saturday:	9 am - 10 pm	9 am - 10 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-000252 License Class/Type: A Retail - Liquor Store
Applicant: Schneider's Liquor Co., Inc. Trade Name: Schneider's of Capitol Hill
ANC: 6C02
Has applied for the renewal of an alcoholic beverage license at the premises:

300 MASSACHUSETTS AVE NE

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	10 am - 7 pm	10 am -7 pm
Monday:	9 am - 9 pm	9 am - 9 pm
Tuesday:	9 am - 9 pm	9 am - 9 pm
Wednesday:	9 am - 9 pm	9 am - 9 pm
Thursday:	9 am - 9 pm	9 am - 9 pm
Friday:	9 am - 9 pm	9 am - 9 pm
Saturday:	9 am - 9 pm	9 am - 9 pm

ENDORSEMENTS: Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-072301 License Class/Type: A Retail - Liquor Store
Applicant: Sylvia & David Industries, Inc Trade Name: Sosnick's Liquor
ANC: 5E10
Has applied for the renewal of an alcoholic beverage license at the premises:

2318 4TH ST NE

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 9 pm	9 am -9 pm
Monday:	9 am - 10 pm	9 am - 10 pm
Tuesday:	9 am - 10 pm	9 am - 10 pm
Wednesday:	9 am - 10 pm	9 am - 10 pm
Thursday:	9 am - 10 pm	9 am - 10 pm
Friday:	9 am - 12 am	9 am - 12 am
Saturday:	9 am - 12 am	9 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-083221 **License Class/Type: A Retail - Liquor Store**
Applicant: Suburban Liquors, Inc. **Trade Name: Suburban Liquors**
ANC: 7D06
Has applied for the renewal of an alcoholic beverage license at the premises:

4347 HUNT PL NE

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 10 pm	9 am -10 pm
Monday:	9 am - 10 pm	9 am - 10 pm
Tuesday:	9 am - 10 pm	9 am - 10 pm
Wednesday:	9 am - 10 pm	9 am - 10 pm
Thursday:	9 am - 10 pm	9 am - 10 pm
Friday:	9 am - 10 pm	9 am - 10 pm
Saturday:	9 am - 10 pm	9 am - 10 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

3/20/2015

Notice is hereby given that:

License Number: ABRA-019598 **License Class/Type: A Retail - Liquor Store**
Applicant: Manee Enterprises, Inc. **Trade Name: Takoma Park Liquors**
ANC: 4B08
Has applied for the renewal of an alcoholic beverage license at the premises:

6200 EASTERN AVE NE

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

5/4/2015

A HEARING WILL BE HELD ON:

5/18/2015

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7am - 12am	7am -12am
Monday:	7am - 12am	7am - 12am
Tuesday:	7am - 12am	7am - 12am
Wednesday:	7am - 12am	7am - 12am
Thursday:	7am - 12am	7am - 12am
Friday:	7am - 12am	7am - 12am
Saturday:	7am - 12am	7am - 12am

ENDORSEMENTS: Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	March 20, 2015
Petition Date:	May 4, 2015
Hearing Date:	May 18, 2015

License No.:	ABRA- 077576
Licensee:	Vigor Restaurant, LLC
Trade Name:	Epicurean and Company
License Class:	Retailer's Class "C" Restaurant
Address:	3800 Reservoir Road, N.W.
Contact:	Andrew Kline: 202-686-7600

WARD 2 ANC 2E SMD 2E01

Notice is hereby given that this applicant 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 Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Change of Hours of Operation and Live Entertainment.

APPROVED HOURS OF OPERATION
Sunday through Saturday 6:30am - 2am

APPROVED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION
Sunday through Saturday, 11am – 2am

APPROVED HOURS OF LIVE ENTERTAINMENT
Sunday through Saturday 11am - 2am

PROPOSED HOURS OF OPERATION AND LIVE ENTERTAINMENT
Sunday through Saturday 24 Hours

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	March 20, 2015
Petition Date:	May 4, 2015
Roll Call Hearing Date:	May 18, 2015
Protest Hearing Date:	July 29, 2015
License No.:	ABRA-098178
Licensee:	Good Food Market LLC
Trade Name:	Good Food Markets
License Class:	Retailer's Class "B" Grocery (25%)
Address:	2006 Rhode Island Avenue, N.E.
Contact:	Kris Garin: 202-488-8494/917-449-0077

WARD 5 ANC 5C SMD 5C07

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Roll Call Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled on July 29, 2015 at 1:30 pm.

NATURE OF OPERATION

Class "B" Grocery 25% Beer and Wine.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Saturday: 9am – 9pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	March 20, 2015
Petition Date:	May 4, 2015
Roll Call Hearing Date:	May 18, 2015
Protest Hearing Date:	July 29, 2015
License No.:	ABRA-098225
Licensee:	P & P Coffeehouse LLC
Trade Name:	P & P Coffeehouse
License Class:	Retailer's Class "D" Restaurant
Address:	5015 Connecticut Avenue, N.W.
Contact:	Bradley Graham: 202-362-2408

WARD 3 ANC 3F SMD 3F05

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for July 29, 2015 at 1:30pm.

NATURE OF OPERATION

New coffee shop providing cold and hot sandwiches, various pastries, breads, salads, coffee, tea, bottled drinks, beer and wine. Entertainment will consist of spoken word and music with the ability to use a small amplifier for a microphone or guitar. No dance floor. Seating capacity is 99. Total capacity is 115.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 8am - 8pm, Monday through Saturday 8am - 10pm

HOURS OF LIVE ENTERTAINMENT

Sunday 6pm - 8pm, Monday through Saturday 6pm - 10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	March 20, 2015
Petition Date:	May 4, 2015
Roll Call Hearing Date:	May 18, 2015
Protest Hearing Date:	July 29, 2015
License No.:	ABRA-097822
Licensee:	Slim's Diner, LLC
Trade Name:	Slim's Diner
License Class:	Retailer's Class "C" Restaurant
Address:	4201 Georgia Ave., N.W.
Contact:	Andrew Kline: 202-686-7600

WARD 4 ANC 4C SMD 4C07

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Roll Call Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The protest hearing date is scheduled on July 29, 2015 at 4:30 pm.

NATURE OF OPERATION

New restaurant open for breakfast, lunch and dinner seven days a week. Total occupancy load of 41.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

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

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF NEW SCHOOL LOCATION

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice dated March 5, 2015 of Washington Global Public Charter School's intent to locate its facility to 525 School Street SW, Washington, DC 20024. A hearing on the matter will take place during the board meeting on April 21, 2015 at 6:30pm. A vote on the matter will take place at the board meeting on May 18, 2015 at 6:30pm. For further information, please contact Ms. Avni Patel, Senior Special Education Specialist, at 202-328-2660.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, MAY 5, 2015
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD FOUR

18967 ANC-4C — **Application of Buddhist Congregational Church of America**, pursuant to 11 DCMR § 3104.1, for a special exception from the SSH-1 Overlay requirements under § 1553.2, to construct a second floor addition to an existing church in the SSH-1/R-1-B District at premises 5401 16th Street N.W. (Square 2718, Lot 44).

WARD FOUR

18991 ANC-4C — **Appeal of John A. Stokes**, pursuant to 11 DCMR §§ 3100 and 3101, from a December 31, 2014 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1503050, to convert a one-family dwelling into two multi-family dwellings comprising seven units in the R-4 District at premises 1521Varnum Street N.W. (Square 2698, Lot 817).

WARD SIX

18992 ANC-6B — **Application of Congressional 1015 E Street, LLC**, pursuant to 11 DCMR § 3103.2, for variances from the side yard requirements under § 775.5, and the nonconforming structure requirements under § 2001.3(b)(2), to allow the renovation and expansion of an existing building to create a five-unit apartment building in the CHC/C-2-A District at premises 105 E Street S.E. (Square 973, Lot 813).

WARD THREE

18993 ANC-3D — **Application of Colleen Reilly and Gary Addie**, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the rear yard requirements under § 404.1, to allow the construction of a one story rear addition in the R-1-B District at premises 2412 Chain Bridge Road N.W. (Square 1413, Lot 809).

WARD SIX

18994 ANC-6B **Application of Rahmin Mehdizadeh and Hun Ah Lee**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to allow the conversion of an existing one-family dwelling into a five-unit apartment building in the C-2-A District at premises 254 15th Street S.E. (Square 1073, Lot 22).

PLEASE NOTE:

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

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form**. This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

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

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 06-11N (The George Washington University – 2007 Foggy Bottom Campus Plan – Modification of Conditions C-4 and C-7 of Z.C. Order No. 06-11/06-12)

THIS CASE IS OF INTEREST TO ANC 2A

Application of The George Washington University, pursuant to 11 DCMR §§ 3035.5 and 3129, for approval of modifications to Conditions C-4 and C-7 of Z.C. Order No. 06-11/06-12 (the "Campus Plan Order") to specify how the Foggy Bottom Campus Plan will count students associated with the recently-acquired Corcoran College of Art and Design. No modification of the student caps is sought, nor does the University seek to change any other conditions of the Campus Plan or related first-stage PUD.

The property that is the subject of this application includes the properties owned by the University and located within the area of its Foggy Bottom Campus, as defined in Condition C-2 of the Campus Plan Order. This application involves the following properties: Square 39, Square 40, Square 41, Square 42 (Lots 54, 55)[1], Square 43 (Lot 26), Square 54, Square 55, Square 56, Square 57, Square 58 (Lots 1, 5, 6, 802, 803)[2], Square 75 (Lots 33, 34, 41, 46, 47, 861, 864, 865, 866, 867, 868, 869, 870, 2097)[3], Square 77[4], Square 79 (Lots 63, 64, 65, 808, 853, 854, 861, 862), Square 80 (Lots 2, 26, 27, 28, 29, 42, 43, 44, 45, 46, 47, 50, 51, 52, 54, 56, 800, 802, 811, 820, 822, 823, 824, 825, 828, 843)[5], Square 81 (Lot 846), Square 101 (Lots 58, 60, 62, 879), Square 102, Square 103 (1, 33, 34, 35, 40, 41, 42, 43, 44, 45)[6], Square 121 (Lot 819), and Square 122 (Lots 29, 824, 825), hereinafter referred to as the "Property." The Property is generally bounded by K Street NW, Washington Circle, and Pennsylvania Avenue NW to the north; 24th Street NW to the west; F Street to the south; and 19th and 20th Street NW to the east. The Property is located in the R-5-D, R-5-E, SP-2, C-3-C, and C-4 Zone Districts.

[1] An application is pending before the Commission in Z.C. Case No. 06-11L to amend the Campus Plan to include Lots 820 and 840 in Square 42.
[2] Reflects deletion of properties transferred out of University ownership and control.
[3] Reflects changes to lots resulting from development approved in Z.C. Order No. 06-11G/06-12G.
[4] Reflects changes to lots resulting from development approved in Z.C. Order No. 06-11J/06-12J.
[5] Reflects changes to lots resulting from development approved in Z.C. Order No. 06-17 and amendment approved in Z.C. Order No. 06-11D.
[6] Reflects changes to lots resulting from development approved in Z.C. Order No. 06-11A1/06-12A1, amendment approved in Z.C. Order No. 06-11D, and matter-of-right renovations.

PLEASE NOTE:

- Failure of the Applicant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Commission.

- Failure of the Applicant to be adequately prepared to present the application to the Commission, and address the required standards of proof for the application, may subject the application to postponement, dismissal, or denial.

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

How to participate as a witness.

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

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3106.2.

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

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

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

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

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

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

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. Written statements may be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, May 28, 2015, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 06-46B (Half Street Residential PJV, LLC - Capitol Gateway Overlay District Review @ Square 701, Lots 857, 858, & 859 – Half Street, S.W.)

THIS CASE IS OF INTEREST TO ANC 6D

On February 26, 2015, the Office of Zoning received an application from Half Street Residential PJV, LLC (the "Applicant"). The Applicant is requesting review and approval of modifications to previously approved plans for a proposed mixed-use (residential, retail, and hotel) development along Half Street, S.E., pursuant to the Capitol Gateway Overlay District provisions set forth in § 1604. In addition, the Applicant seeks special exception approval, pursuant to 11 DCMR §§ 1610.7, 411.11, and 3104, and from the roof structure enclosure requirements set forth in § 411.3.

The property which is the subject of this application consists of approximately 63,183 square feet of land area and is located at Half Street S.E. (Square 701, Lots 857, 858, and 859). The property is bounded to the east by a public alley referred to as Cushing Place, S.E., to the south by N Street, S.E., to the west by Half Street, S.E., and to the north by 55 M Street, S.E., an existing office building. The property is currently vacant with the exception of a portion of the underground parking garage constructed with the office building to the north extending onto the northern portion of the property. The property is currently zoned CR, a district in which multiple dwelling residential, retail and hotel uses are permitted as a matter-of-right.

The Applicant proposes to develop the property with a new 10-story mixed-use building with ground floor retail. Three levels of below-grade parking will be provided. The floor area ratio ("FAR") of the property will be approximately 7.31. The building height will measure approximately 110 feet. Vehicular access to required parking and loading will be provided from Cushing Place, S.E.

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

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most

important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

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

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

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

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

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

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

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

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. Written statements may be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, May 18, 2014, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 14-01A (Jemal's Hecht's, LLC – PUD Modification and Related Map Amendment @ Square 4037, Portions of Lots 7 and 804)

THIS CASE IS OF INTEREST TO ANC 5D

On December 22, 2014, the Office of Zoning received an application from Jemal's Hecht's, LLC (the "Applicant") requesting modifications to an approved planned unit development ("PUD") located on the western 345.93 feet of Square 4037, and a related zoning map amendment from the C-M-3 Zone District to the C-3-C Zone District for a small portion of Square 4037 adjacent to the approved PUD (together, the "PUD Site"). The original PUD was approved by the Zoning Commission pursuant to Z.C. Order No. 14-01, dated July 17, 2014, and effective on August 8, 2014. The PUD Site is located in Ward 5 and is within the boundaries of Advisory Neighborhood Commission ("ANC") 5D.

By report dated January 30, 2015, the Office of Planning recommended that the Zoning Commission schedule a public hearing on the application. At its public meeting on February 9, 2015, the Zoning Commission voted to set down the application for a public hearing. The Applicant provided its prehearing statement on February 27, 2015.

The PUD Site is located in Square 4037, which is bounded by New York Avenue, N.E. to the north, Fenwick Street, N.E. to the west, Okie Street, N.E. to the south, and 16th Street, N.E. to the east. The Applicant proposes to construct a second building on the southeast corner of the PUD Site, to be leased by a restaurant or other retail establishment as permitted in the C-3-C Zone District. The proposed building is located in an area of the PUD Site that was originally approved for use as a circular driveway with ingress and egress from Hecht Avenue. The Applicant proposes to modify the driveway configuration to provide space for the new building with a one-way drive aisle with ingress from Hecht Avenue and egress onto Okie Street. The building will have approximately 8,074 square feet of gross floor area and a maximum height of 32 feet, 11 inches. The modified application incorporates approximately 1,785.7 square feet of additional land area into the approved PUD Site, for a total of 120,823.6 square feet. The overall density of the project will remain at 4.7 floor area ratio ("FAR").

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

How to participate as a witness.

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

How to participate as a party.

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

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

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

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), or by calling (202) 727-0789.

Time limits.

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

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

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

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001.

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

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

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

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 14-13 (Office of Planning – Text Amendments to Chapters 1, 4, 5, 6, 7, 8, 9, 12, 15, 19, 26, 27, 29, and 33: Definitions, Use Permissions, and Size Restrictions for Rooftop Penthouses)

THIS CASE IS OF INTEREST TO ALL ANCS

On July 24, 2014, the Office of Zoning received a report that served as a petition from the District of Columbia Office of Planning (OP) proposing several text amendments to the Zoning Regulations (11 DCMR), related to use permissions and size restrictions for rooftop penthouses. The Act to Regulate the Height of Buildings in the District of Columbia of 1910 (the Height Act) was recently amended to permit the occupancy of rooftop penthouses of one story and 20 feet or less. Because the current Zoning Regulations pertaining to penthouses are in some instances more stringent than what the amendment would permit, the changes to the Height Act cannot be given effect until corresponding changes to the Zoning Regulations are also adopted.

The Office of Zoning received a supplemental report from OP on September 2, 2014. At a special public meeting on September 4, 2014, the Zoning Commission set down this case for a public hearing, including alternative concepts offered by the Zoning Commission. The public hearing was held November 6, 2014.

Subsequently, the Zoning Commission requested OP to prepare a report of additional alternatives for the regulation of penthouses, based on public and Commission comments, for consideration at a public meeting on February 23, 2015; this was provided in the OP report dated February 13, 2015. After consideration of the OP proposals, the Commission took action to setdown the following options and alternatives for public comment, as summarized in the following table, with illustrations provided for reference. The specific text of the proposed amendment appears after the summary chart below.

As specifically detailed in the chart, the alternatives to the Zoning Regulations identify, among other things, the uses that may be allowed in penthouses, the height and other area limitations

that apply to the structures, and the affordable housing requirements that are generated by either residential or non-residential uses.

Since the petition only sought changes to the text of the Zoning Regulations, and not the zoning map, the Commission's decision to hear the petition did not change the *status quo*. Any building permit application that has or will be filed during the pendency of this proceeding will be reviewed in accordance with the Zoning Regulations now in place unless or until amendments are adopted and become effective.

As is always the case, the Commission reserves the right not to adopt any or all of the text proposed and testimony arguing for the retention of the existing rules or alternative proposals will be received and considered.

SUMMARY OF PROPOSED AMENDMENTS AND ALTERNATIVES:

Section	Summary Amendment
Chapter 1 - DEFINITIONS	
199, Definitions	• Amend the definition for "Story" to remove the size limitation on a penthouse, beyond which it is considered a story. • Add a new definition for "Penthouse" • Add a new definition for "The Height Act"
Chapter 4 - RESIDENTIAL	
400.7 HEIGHT OF BUILDINGS OR STRUCTURES (R)	**Penthouse Setback:** • Provide clarification regarding when the 1:1 setback is required, including from a common lot line with a historic building or property, if the historic building is lower than the subject building. <u>The Zoning Commission also specifically invited comments regarding possible guidelines for special exception to grant relief from the penthouse setback requirements in these circumstances</u>. *Refer to illustrations of required setbacks below:*

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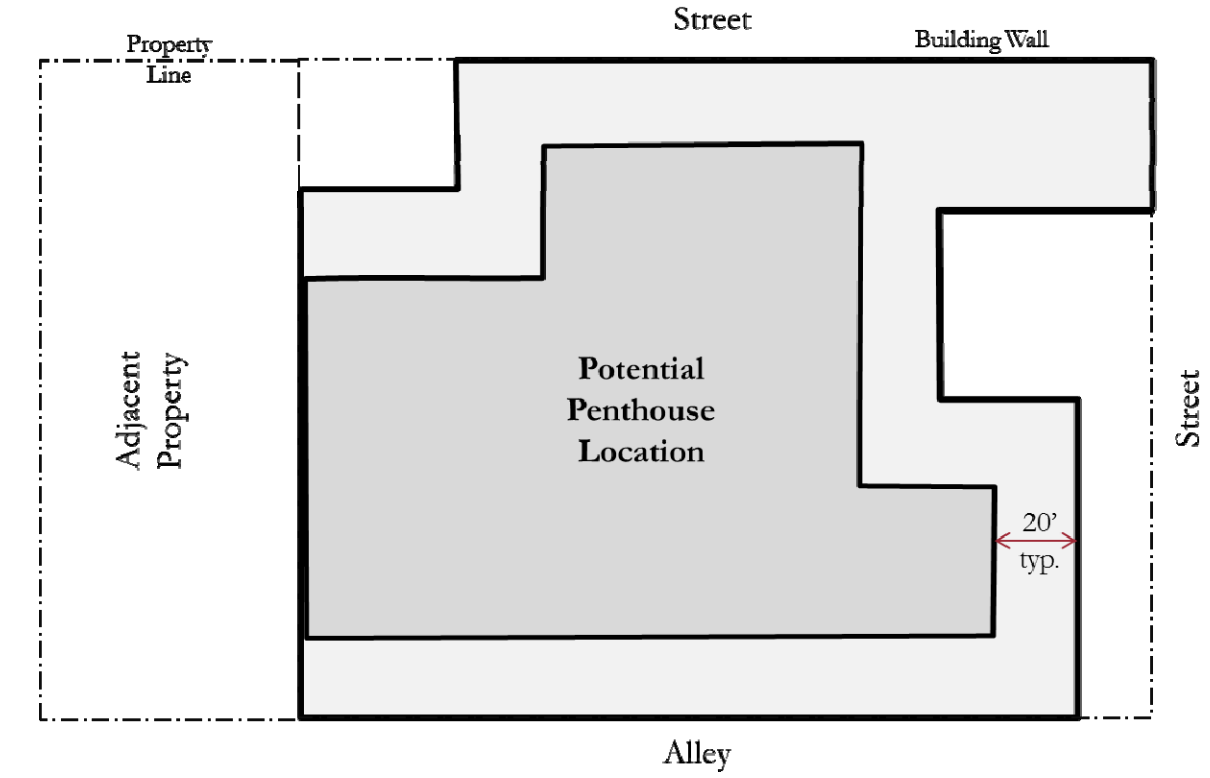
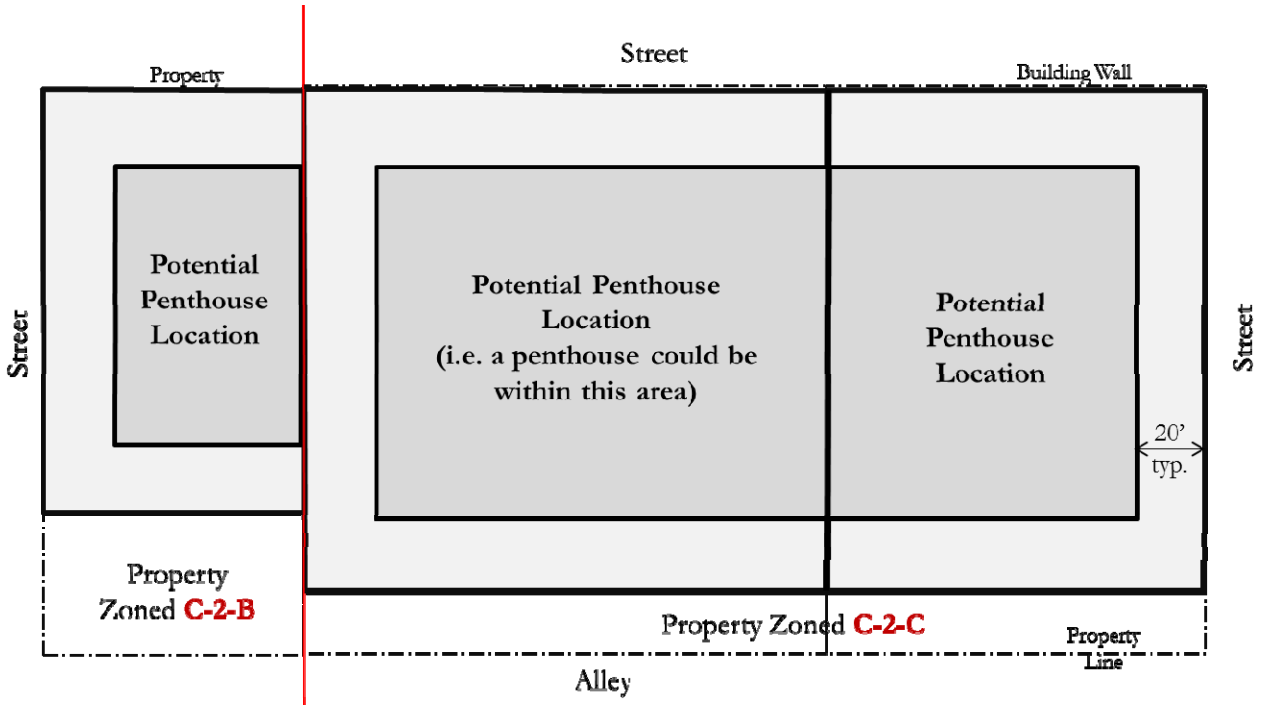
Section	Summary Amendment

Example Illustrations of Penthouse Setback Requirements





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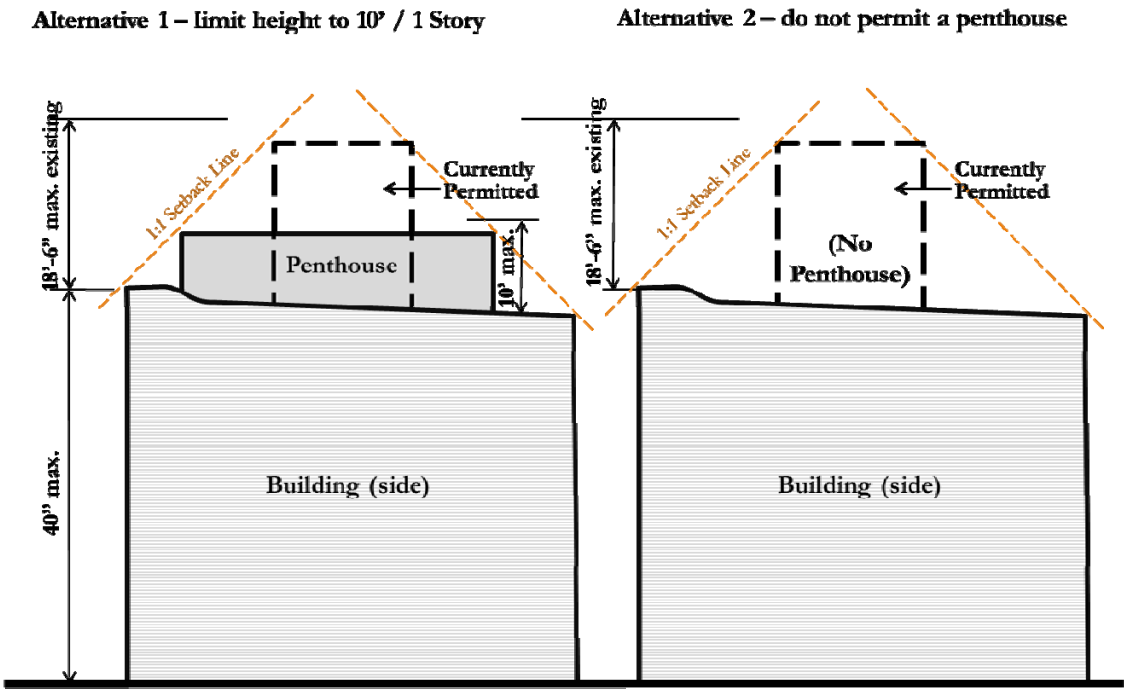
Section	Summary Amendment

400.7
HEIGHT OF BUILDINGS OR STRUCTURES (R)
	Penthouse Height:
	• Limit height of a penthouse:
	  • to 10 feet maximum on the roof of a one-family dwelling or flat in any zone;
	  • to 10 feet maximum within the R-1 through R-4, R-5-A, and R-5-B zones and any overlay zone for which the maximum permitted building height is 50 feet or less; and
	  • to 20 feet maximum for all other R zones and uses.
	Alternative: Do not permit, by right, a penthouse above a one-family dwelling or flat in any zone; allow a 10 foot maximum height penthouse by special exception.
	• *Refer to the illustrations of proposed alternatives for penthouse height and number of stories below:*

Penthouse Height – Single Family Dwellings and Flats:



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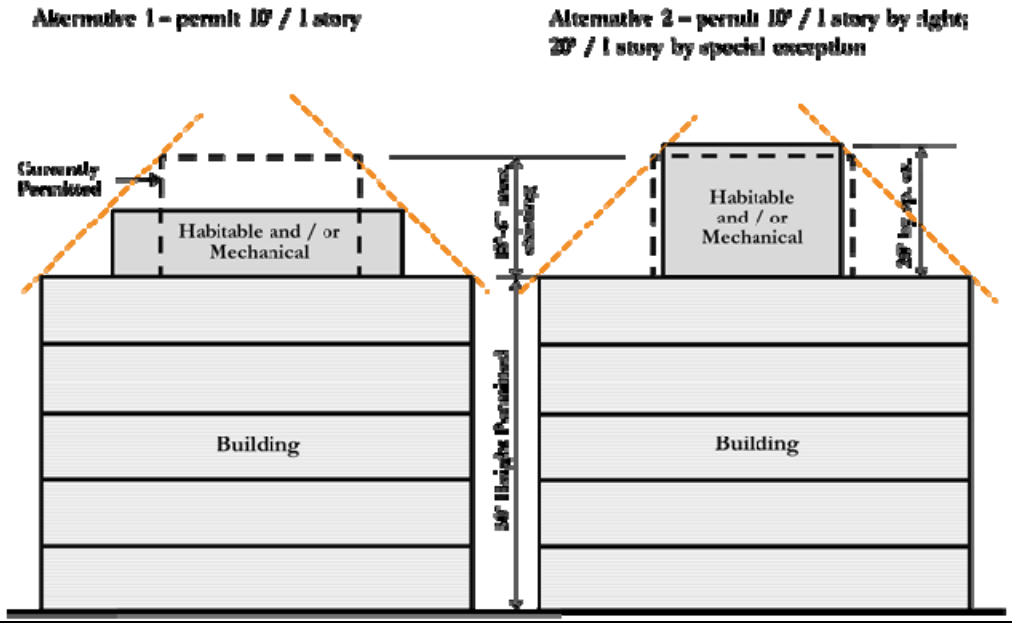
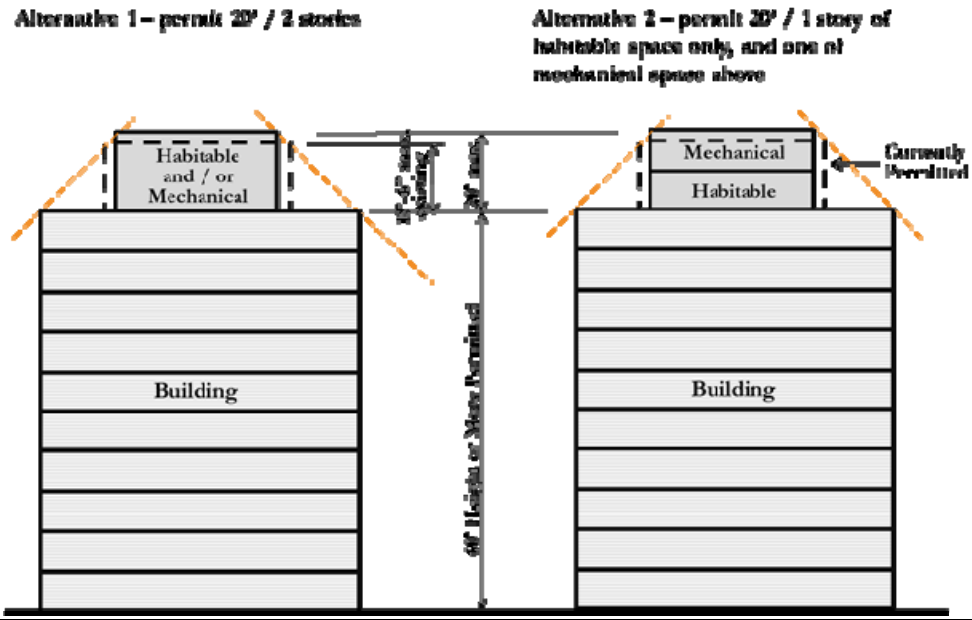
Section	Summary Amendment
	Penthouse Height – Zones Allowing Buildings of 50' or Less in Height:



	Penthouse Height – Zones Allowing Buildings of 60' or More in Height:



411 PENTHOUSES (R)	**Uses:** • Allow habitable space within a penthouse only in those zones allowing a building height of

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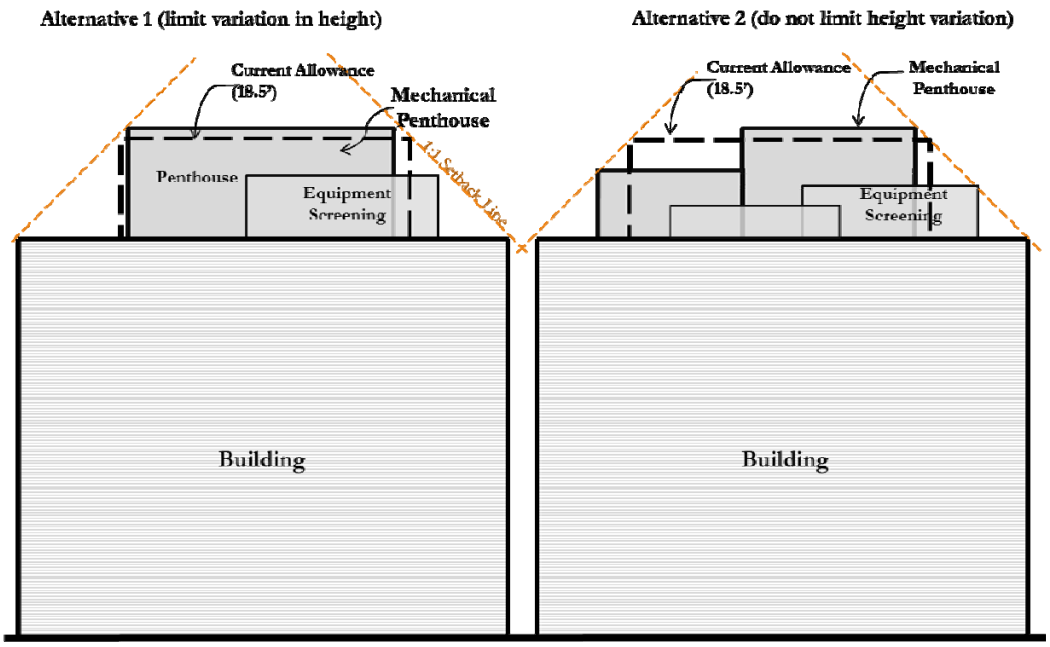
Section	Summary Amendment
Note: The provisions of § 411 carry forward to all R, SP, CR, C, CM, M, and W zones	more than 40 feet. For a building with a permitted height of 40 feet or less, if a penthouse is permitted, allow a penthouse for rooftop access only. Alternative: Allow habitable space within a penthouse only in those zones allowing a building height of more than 50 feet. For a building with a permitted height of 50 feet or less, if a penthouse is permitted, allow penthouse for rooftop access only. Alternative: Allow specified uses within a penthouse only with special exception approval by the Board of Zoning Adjustment – such as nightclub, bar, lounge, restaurant. **Enclosures:** • Retain the current requirement that all penthouses and mechanical equipment shall be placed in one enclosure. Alternative: Require that all penthouses and mechanical equipment must be placed in one enclosure, but permit emergency egress stairwells as required by the building code to be in a separate enclosure. • Retain requirement that the walls of an enclosed penthouse shall be of equal height above roof level, but permit screening walls for mechanical equipment not contained within a penthouse to be of a second, uniform height. Alternative: Delete requirement that penthouse walls be of equal height. *Refer to illustration of penthouse wall height alternatives below:*



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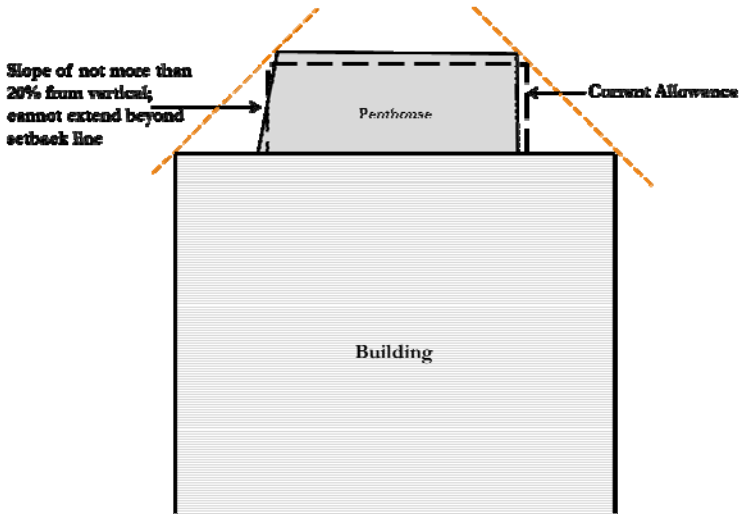
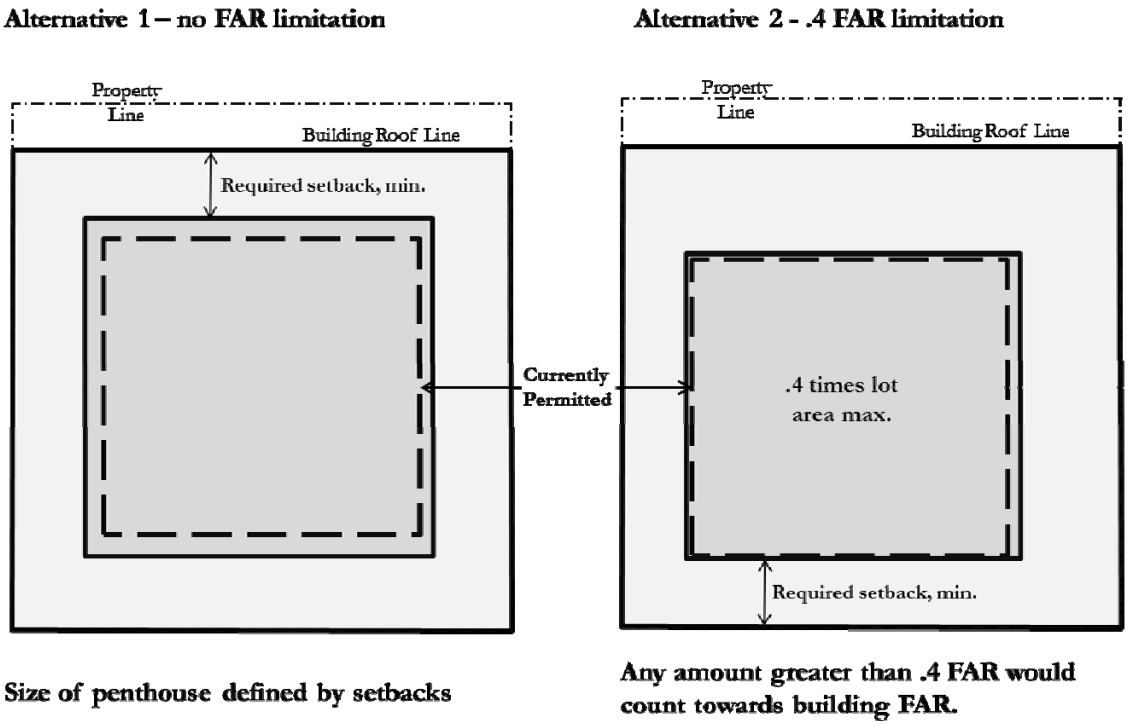
Section	Summary Amendment
411 PENTHOUSES (R)	• Retain requirement that the walls of an enclosed penthouse shall be vertical, but provide clarification language consistent with current interpretation of what is considered "vertical". OP has suggested a maximum of 20% from vertical, but alternative suggestions are solicited.  **Area:** • With regards to the provision that limits penthouse area to 1/3 the area of the roof below in zones, remove this limit for the R-5-A, C-1, and CM-1 zones, but retain it for the R-1 through R-4 zones and for the Capitol Interest Overlay zones. • Exempt all enclosed penthouse space, habitable and non-habitable, from building FAR. Alternative: Exempt enclosed mechanical space in a penthouse from building FAR, but provide a maximum exemption for habitable space - the 0.4 FAR exemption considered in ZRR. *Refer to illustrations below:*

Section	Summary Amendment
	FAR 

411
PENTHOUSES (R)
	Special Exception Review of Area Requirements:
	• Add clarification that the type of "operating difficulties" that warrant special exception relief involve difficulties in meeting building code requirements for roof access and stairwell separation or elevator stack location to maximize efficiencies in lower floors and similar issues.
	Exemptions:
	• Add clarification that guardrails as required by the construction code would not be considered a penthouse.
	Stories:
	• Permit two stories within a penthouse, provided it would be permitted by the Height Act, except limit a penthouse to one story:
	  • If located on the roof of a one-family dwelling or flat; or
	  • Within any zone where the building height is limited to 50 feet maximum.
	Alternative: Limit habitable penthouse space to one story in all zones, but allow a second story for non-habitable (mechanical) space in zones where a penthouse of 20 feet in height is permitted.

Section	Summary Amendment
	Refer to illustrations of alternatives for penthouse height and number of stories, above. **PUD Modifications:** • For a building subject to a Zoning Commission PUD or Design Review approved prior to the adoption of these penthouse text amendments, permit a penthouse addition request to be filed and considered as a minor modification pursuant to the Commission's consent calendar procedures (11 DCMR § 3030).
414 (new section) AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION OF PENTHOUSE NON-RESIDENTIAL GROSS FLOOR AREA	• Establish a requirement for the provision of on-site or off-site affordable housing for any habitable penthouse non-residential space greater than 1,000 sq. ft. in area, generally consistent with the existing Housing Linkage requirement for new office space gained through a planned unit development (§ 2404.6). Extent of housing to be produced would be dependent upon the adjacency of development. • Permit flexibility in the provision of the affordable housing off-site, or permit an in lieu contribution to a housing trust fund, consistent with the existing Housing Linkage requirement. • Apply this requirement to new non-residential habitable space in all parts of the city.
Chapter 5 – SPECIAL PURPOSE DISTRICTS	

530
HEIGHT (SP)
	• Provide clarification regarding when the 1:1 setback is required, including from a common lot line with a historic building or property, if the historic building is lower than the subject building.
	• Limit height of a penthouse:
	  • to 10 feet maximum on the roof of a one-family dwelling or flat; and
	  • to 20 feet maximum for all other uses.
	Alternative: Do not permit, by right, a penthouse of any height above a one-family dwelling or flat; allow a 10 foot penthouse only by special exception.

537 ROOF STRUCTURES (SP)	• Retain current provision that penthouse space, including any permitted habitable space, not count towards parking requirements for the building. Alternative: Continue to exempt mechanical space and communal recreation space within a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 6 – COMMERCIAL RESIDENTIAL DISTRICT	
630 HEIGHT OF BUILDINGS OR	• Provide clarification regarding when the 1:1 setback is required, including from a common lot line with a historic building or property, if the historic building is lower than the subject building.

Section	Summary Amendment

STRUCTURES (CR)	• Limit height of a penthouse:
	  • to 10 feet maximum on the roof of a one-family dwelling or flat; and
	  • to 20 feet maximum for all other uses.
	Alternative: Do not permit, by right, a penthouse of any height above a one-family dwelling or flat; allow a 10 foot penthouse only by special exception.

639 ROOF STRUCTURES (CR)	• Retain current provision that penthouse space, including any permitted habitable space, not count towards parking requirements for the building. Alternative: Continue to exempt mechanical space and communal recreation space within a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 7 – COMMERCIAL DISTRICTS	

770
HEIGHT OF BUILDINGS OR STRUCTURES (C)
	• Provide clarification regarding when the 1:1 setback is required, including from a common lot line with a historic building or property, if the historic building is lower than the subject building.
	• Limit height of a penthouse:
	  • to 10 feet maximum on the roof of a one-family dwelling or flat;
	  • to 10 feet maximum within the C-1, C-2-A, and overlay zones for which the maximum permitted building height is 50 feet or less; and
	  • to 20 feet maximum for all other zones and uses.
	Alternative: Do not permit, by right, a penthouse of any height above a single family dwelling or flat; allow a 10 foot penthouse only by special exception.

777 ROOF STRUCTURES (C)	• Retain current provision that penthouse space, including any permitted habitable space, not count towards parking requirements for the building. Alternative: Continue to exempt mechanical space and communal recreation space within a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 8 – INDUSTRIAL DISTRICTS	
840 HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M)	• Provide clarification regarding when the 1:1 setback is required, including from a common lot line with a historic building or property, if the historic building is lower than the subject building. • Limit height of a penthouse:

Section	Summary Amendment
	• to 10 feet maximum within the CM-1 zone where the maximum permitted building height is 40 feet; and • to 20 feet maximum for all other CM and M zones.
845 ROOF STRUCTURES (C-M, M)	• Retain current provision that penthouse space, including any permitted habitable space, not count towards parking requirements for the building. Alternative: Continue to exempt mechanical space and communal recreation space within a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 9 – WATERFRONT DISTRICTS	
930 HEIGHT OF BUILDINGS OR STRUCTURES (W)	• Provide clarification regarding when the 1:1 setback is required, including from a common lot line with a historic building or property, if the historic building is lower than the subject building. • Limit height of a penthouse: • to 10 feet maximum on the roof of a one-family dwelling or flat; • to 10 feet maximum within the W-0, W-1 and overlay zones for which the maximum permitted building height is 50 feet or less; and • to 20 feet maximum for all other W zones and uses. Alternative: Do not permit, by right, a penthouse of any height above a one-family dwelling or flat; allow a 10 foot penthouse only by special exception.
936 ROOF STRUCTURES (W)	• Retain current provision that penthouse space, including any permitted habitable space, not count towards parking requirements for the building. Alternative: Continue to exempt mechanical space and communal recreation space within a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 12 – CAPITOL INTEREST OVERLAY DISTRICT	
1203 HEIGHT, AREA, AND BULK REGULATIONS (CAP)	• Retain the existing 1:1 setback and the 10 foot maximum height limit for a penthouse. • Limit penthouses to one story. • Retain current provision that penthouse space, including any permitted habitable space, not count towards parking requirements for the building. Alternative: Continue to exempt mechanical space and communal recreation space within

Section	Summary Amendment
	a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 15 – MISCELLANEOUS OVERLAY DISTRICTS	
1563 HEIGHT, BULK, AND USE PROVISIONS (FT)	• Retain the existing 80 foot height limit for buildings, including the penthouse. • Limit penthouses to one story. Alternative: Limit the number of stories for habitable space to one; allow a second story for mechanical equipment only, in zones that permit a 20 foot tall penthouse.
Chapter 16 – CAPITOL GATEWAY OVERLAY DISTRICT	
1613 PENTHOUSES (CG)	• Clarify the applicability of §§ 400.7 and 411. • Exempt penthouse gross floor area from parking requirement calculations. Alternative: Exempt mechanical space and communal recreation space within a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 18 – SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT	
1811 PENTHOUSES (SEFC)	• Clarify the applicability of §§ 400.7 and 411. • Exempt penthouse gross floor area from parking requirement calculations. Alternative: Exempt mechanical space and communal recreation space within a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 19 – UPTOWN ARTS-MIXED USE OVERLAY DISTRICT	
1902 HEIGHT AND BULK (ARTS)	• Retain the existing height limits for penthouses. • Limit penthouses to one story. Alternative: Limit the number of stories for habitable space to one; allow a second story for mechanical equipment only, in zones that permit a 20 foot tall penthouse.
Chapter 26 – INCLUSIONARY ZONING	
Chapter 26 INCLUSIONARY ZONING	• Establish a requirement that area devoted partially or entirely to one or more dwelling units within a penthouse shall count towards the existing Inclusionary Zoning (IZ) set-aside requirement. • Apply this requirement to new habitable penthouse space in all parts of the city, including zones and areas of the city where IZ currently does not apply. Alternative: Increase the IZ requirement for habitable penthouse space by requiring that all of the affordable housing be provided at 50% AMI.

Section	Summary Amendment
Chapter 28 – HILL EAST	
2809 ROOFTOP PENTHOUSES (HE)	• Exempt penthouse gross floor area from parking requirement calculations. Alternative: Exempt mechanical space and communal recreation space within a penthouse from parking requirements, but apply parking requirements of the zone and use to other enclosed penthouse area, such as additional residential units, office, or retail space.
Chapter 29 – UNION STATION NORTH	
2906 ROOFTOP PENTHOUSES (USN)	• Clarify the applicability of §§ 400.7 and 411.
Chapter 33 – ST. ELIZABETHS	
3312 ROOF STRUCTURES (StE)	• Amend terms, and clarify the applicability of § 400.7.

The following amendments to the Zoning Regulations are proposed. New text is shown in **bold underlined** type and text to be deleted is shown in ~~**bold strikethrough**~~ type. Where no alternative text was requested by the Zoning Commission, the Alternative Text column is left blank.

Title 11 DCMR (Zoning) is proposed to be amended as follows:

1. *WITHIN THE ENTIRETY OF TITLE 11:*

   (a) Replace the term "roof structure" wherever it appears with "penthouse", whether in singular or plural; and

   (b) Replace all references to the full or partial title of the Height Act of 1910, such as "the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code §§ 6-601.01 to 6-601.09", "the Building Height Act of 1910, D.C. Official Code § 6-601.05(b) (formerly codified at D.C. Code § 5-405(b) (1994 Repl.))", and "the act of June 1, 1910 (36 Stat. 452)" with the phrase "The Height Act".

2. AMEND § 199, DEFINITIONS, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
199.1	**NEW DEFINITION:** **Height Act - Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09).**	
	NEW DEFINITION: **Penthouse – A structure on or above the roof of any part of a building. The term includes all structures previously regulated as "roof structures" by § 411 prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] including roof decks and mechanical equipment.**	
	Story - the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured. For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars**, or** ~~**stairway or elevator**~~ penthouses.~~**, or other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area.**~~	
	Story, top - the uppermost portion of any building or structure that is used for purposes other than ~~**housing for mechanical equipment or stairway or elevator**~~ penthouses. The term "top story" shall exclude architectural embellishment.	

3. AMEND CHAPTER 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, § 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	CHAPTER 4 - RESIDENTIAL	**CHAPTER 4 - RESIDENTIAL**
400.7	If ~~**housing for mechanical equipment or a stairway or elevator a**~~ penthouse is provided ~~**on the roof of a building or structure**~~, it shall be erected or enlarged as follows:	**A penthouse shall not be permitted on a one-family dwelling or flat. As to all other uses and structures,** if ~~**housing for mechanical equipment or a stairway or elevator a**~~ penthouse is provided ~~**on the roof of a building or structure**~~, it shall be erected or enlarged as follows:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
(a)	It shall meet the requirements of § 411;	
(b)	It shall **~~be set back from all exterior walls a distance at least equal to~~ provide a setback greater than or equal to** its height above the roof upon which it is located **from:** **(1) Any wall facing a public street;** **(2) Any wall facing a public alley;** **(3) Any wall facing a court open to a public street;** **(4) Any wall that provides a setback from a lot line that it faces;** **(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height; or** **(6) Any wall on a lot line shared with a property containing a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located; except this setback is not required if the adjacent historic building is of equal or higher height;**	
(c)	It shall not exceed **~~eighteen foot, six inch (18 ft., 6 in.),~~ twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) in height above the roof upon which it is located:** **(1) On a one-family dwelling or flat; or** **(2) On a building in any zone in which the building height is limited to fifty feet (50') or less by right; and**	It shall not exceed **~~eighteen foot, six inch (18 ft., 6 in.),~~ twenty feet (20')** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10') maximum on a building in any zone in which the building height is limited to fifty feet (50') or less by right;**
(d)	**For all buildings and structures,** mechanical equipment shall not extend above the **~~permitted eighteen foot, six inch (18 ft., 6 in.),~~ maximum permitted** height of the **penthouse ~~housing~~, as specified in paragraph (c) above.**	
~~400.8~~	**~~Housing for mechanical equipment, a stairway, or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.~~**	

4. AMEND CHAPTER 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, § 411, ROOF STRUCTURES, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
411	~~**ROOF STRUCTURES (R)**~~ **PENTHOUSES (R)**	
411.1	**A penthouse permitted in this title shall comply with the conditions specified in this section.** ~~**To exercise a reasonable degree of architectural control upon roof structures in all districts, housing for mechanical equipment, stairway and elevator penthouses, and, when not in conflict with An Act To Regulate the Height of Buildings in the District of Columbia, approved June 10, 1920 (36 Stat. 452; D.C. Official Code, §§ 6-601.01 to 6-601.09, on apartment building roofs, penthouses for (a) storage, showers, and lavatories incidental and accessory to roof swimming pools or communal recreation space located on that roof; and (b) other enclosed areas, within the area permitted as a roof structure, used for recreational uses accessory to communal rooftop recreation space, shall be subject to conditions and variable floor area ratio credit specified in this section.**~~	
411.2	New provision: **A penthouse may house mechanical equipment, stairway, and elevator overrides, or any use permitted within the zone in which the penthouse is located; except that it may house only mechanical equipment or stairway and elevator overrides:** **(a) If the penthouse is located on a one-family dwelling or flat; or** **(b) In any zone in which the building height is limited to forty feet (40 ft.) or less by right.**	New provision: **A penthouse may be used to house mechanical equipment, stairway, and elevator overrides, or any use permitted within the zone in which the penthouse is located, except as limited in § 411.2(c); except that it may house only mechanical equipment or stairway and elevator overrides:** **(a) If the penthouse is located on a one-family dwelling or flat; or [1]** **(b) In any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**
		(c) Notwithstanding whether the following uses are permitted in the zone in which they are located, if partially or fully located within a penthouse, they shall be permitted only as a special exception if approved by the Board of Zoning Adjustment under § 3104: **(1) Nightclub;** **(2) Bar;**

[1] § 411.2(a) would be deleted if the Commission elects to not permit a penthouse on a single family dwelling or flat, as noted in the Alternative Text #2 for § 400.7(c).

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
		(3) Lounge; or **(4) Restaurant.**[2]
411.3	When located below, at the same roof level with, or above the top story of any building or structure, penthouses **~~(as outlined in § 411.1)~~** shall be subject to the provisions of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3 when applicable, and to the conditions **~~and variable floor area ratio~~** specified in this section.	When located below, at the same roof level with, or above the top story of any building or structure, penthouses **~~(as outlined in § 411.1)~~** shall be subject to the provisions of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3 when applicable, and to the conditions and variable floor area ratio specified in this section.
411.4	All **enclosed** penthouse**~~s~~ ~~and mechanical equipment~~ space** shall be placed in one (1) **~~enclosure~~ structure**, and shall harmonize with the main structure in architectural character, material, and color.	All **enclosed** penthouse**~~s~~ ~~and mechanical equipment~~ space** shall be placed in one (1) **~~enclosure~~ structure**, and shall harmonize with the main structure in architectural character, material, and color**; except that egress stairs required to meet building code requirements to a rooftop may be located in a separate structure or structures**.
411.5	When roof levels vary by one (1) floor or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level.	
411.6	**Except as provided in § 411.7,** enclosing walls **~~from roof level~~** shall:**~~ and shall rise vertically to a roof, except as provided in § 411.6.~~** **(a)** Be of equal height **above roof level, except that screening walls for mechanical equipment that is not contained within a penthouse shall be of a uniform height not greater than the maximum permitted height for a penthouse, but need not be the same height as any enclosed penthouse on the same roof;** and **~~shall~~** **(b)** Rise vertically**, with a slope of not greater than twenty percent (20%) from vertical,** to a roof**~~, except as provided in § 411.6~~.**	**Except as provided in § 411.7,** enclosing walls from roof level **~~shall be of equal height, and~~** shall rise vertically**, with a slope of not greater than twenty percent (20%) from vertical,** to a roof**~~, except as provided in § 411.6~~**.
411.7	**~~When~~ A penthouse** consisting solely of mechanical equipment, **~~the equipment~~** shall be enclosed fully as prescribed in § 411.**4 ~~3 and 411.5,~~** except that louvers may be provided. A roof over a cooling tower need not be provided when the tower is located at or totally below the top of enclosing walls.	
411.8	**~~Solely for the uses designated in this section, an increase of allowable floor area ratio of not more than thirty-seven hundredths (0.37) shall be permitted~~** **Gross floor area within a penthouse shall not be included in the calculation of a building's permitted FAR.**	**~~Solely for the uses designated in this section,~~** An increase of allowable floor area ratio of not more than **~~thirty-seven hundredths (0.37)~~ 0.40 shall be permitted for habitable gross floor area located within a penthouse. Gross floor area within a penthouse devoted to mechanical uses, stair or**

[2] Under the Zoning Regulations Review (ZC Case 08-06A) Use Category provisions, this would read "Eating or Drinking Establishment."

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
		elevator overrides, or communal recreation or support space shall not be included in the calculation of a building's permitted FAR.
411.9	~~**Roof structures shall not exceed one-third (1/3) of the total roof area for those districts where there is a limitation on the number of stories.**~~ **A penthouse shall not exceed one-third (1/3) of the total roof area if located:** **(a) On a building within the R-1 through R-4 zones; or** **(b) On a building within the Capitol Interest Overlay District.**	
411.10	In addition to the floor area ratio allowed by § **411.8**, mechanical equipment owned and operated as a roof structure by a fixed right-of-way public mass transit system shall be permitted in addition to roof structures permitted in this section.	
~~411.10~~	~~Repealed~~	
411.11	~~**Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable,**~~ **Except for the use restriction of § 411.2, the Board of Zoning Adjustment may grant special exceptions under § 3104 from ~~the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5~~ any of the requirements or limits of this section,** even if such structures do not meet the normal setback requirements of §§ 400.7, 530.5, 630.4, 770.6, 840.3, or 930.3, **upon a showing that:** **(a)** Operating difficulties **such as meeting building code requirements for roof access and stairwell separation or elevator stack location to maximize efficiencies in lower floors;** size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable**;** **(b)** The intent and purpose of this chapter and this title will not be materially impaired by the structure**; and** **(c)** The light and air of adjacent buildings will not be affected adversely.	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
411.12	**Deleted** ~~**For purposes of this section, the rules of interpretation provided in §§ 411.13 through 411.17 shall be applicable.**~~	For purposes of this section, the rules of interpretation provided in §§ 411.13 through 411.17 shall be applicable.
411.13	**Deleted** ~~**In computing the floor area ratio of a roof structure, the aggregate square footage of all levels or floors contained within a roof structure measuring six and one-half feet (6 1/2 ft.) or more in height shall be included in the total floor area ratio permitted.**~~	In computing the floor area ratio of a roof structure, the aggregate square footage of all levels or floors contained within a roof structure measuring six and one-half feet (6 1/2 ft.) or more in height shall be included in the total floor area ratio permitted.
411.14	**Deleted** ~~**Areas within curtain walls without a roof used where needed to give the appearance of one (1) structure shall not be counted in floor area ratio, but shall be computed as a roof structure to determine if they comply with § 411.8.**~~	Areas within curtain walls without a roof used where needed to give the appearance of one (1) structure shall not be counted in floor area ratio, but shall be computed as a roof structure to determine if they comply with **§ 411.9**.
411.15	~~**For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, or electronic equipment of a type not necessary to the operation of the building or structure.**~~ Antenna equipment cabinets and antenna equipment shelters shall be regulated by Chapter 27 of this title.	For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, or electronic equipment of a type not necessary to the operation of the building or structure. Antenna equipment cabinets and antenna equipment shelters shall be regulated by Chapter 27 of this title.
411.16	For purposes of this section, skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, **safety railings or guard rails required by the construction code,** and plumbing vent stacks shall not be considered as ~~**roof structure**~~ **penthouses**.	
411.17	~~**Roof structures**~~ **Penthouses** less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section.	
411.18	**A penthouse shall be limited to one (1) story maximum, except that, where not in conflict with the Height Act, two (2) stories shall be permitted where a penthouse of twenty feet (20 ft.) in height is permitted.**	**A penthouse shall be limited to one (1) story maximum, except that, where permitted by the Height Act, an additional story, for a total of two (2) stories maximum, shall be permitted solely for mechanical equipment in any zone or use where a penthouse of twenty feet (20 ft.) in height is permitted.**
411.19	**There shall be no limitation on the amount of gross floor area that may be occupied by a penthouse, although penthouse residential GFA is subject to the Inclusionary Zoning set-aside provisions of Chapter 26; and the construction of penthouse non-residential GFA in excess of one thousand square feet (1,000 sq. ft.) triggers the affordable housing production requirement as set forth in § 414.**	**Penthouse residential GFA is subject to the Inclusionary Zoning set-aside provisions of Chapter 26; and the construction of penthouse non-residential GFA in excess of one thousand square feet (1,000 sq. ft.) triggers the affordable housing production requirement as set forth in § 414.**

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
411.20	**A request to add penthouse space to a building approved by the Zoning Commission as a planned unit development or through the design review requirements of Chapters 16, 18, 28, or 29 prior to (EFFECTIVE DATE OF THIS AMENDMENT) may be filed as a minor modification for placement on the Zoning Commission consent calendar, pursuant to § 3030 and the following provisions:** **(a) The application shall include:** **(1) A fully dimensioned copy of the PUD approved and the proposed roof-plan; and elevations as necessary to show the changes;** **(2) A written comparison of the proposal to the zoning regulations; and** **(3) Verification that the affected ANC has been notified of the request;** **(b) The item not be placed on a consent calendar for a period of thirty (30) days minimum following the filing of the application; and** **(c) The Office of Planning shall submit a report with recommendation a minimum of seven (7) days in advance of the meeting.**	

5. *AMEND CHAPTER 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, BY ADDING A NEW § 414, AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION OF PENTHOUSE NON-RESIDENTIAL GROSS FLOOR AREA, AS FOLLOWS:*

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
414	**AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION OF PENTHOUSE NON-RESIDENTIAL GROSS FLOOR AREA**	
414.1	**The owner of a building proposing to construct more than one thousand square feet (1,000 sq. ft.) of penthouse gross floor area not associated with a residential use (penthouse non-residential GFA) shall produce or financially assist in the production of dwellings or multiple dwellings that are affordable to low-income households, as those households are defined by § 2601.1, in accordance with this section.**	
414.2	**For the purposes of this section, the term "penthouse non-residential GFA" shall mean all of the gross floor area of a penthouse not occupied by dwelling units,**	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	mechanical equipment, stairway, or elevator overrides.	
414.3	**The requirements of this section shall not apply to properties owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.**	
414.4	**Qualifying residential uses include one-family dwellings, flats, multiple-family dwellings, including apartment houses, rooming houses, and boarding houses, but shall not include transient accommodations, all as defined in § 199.1.**	
414.5	**If the owner constructs or rehabilitates the required housing, the provisions of §§ 414.6 through 414.10 shall apply,**	
414.6	**The gross square footage of new or rehabilitated housing shall equal:** **(a) Not less than one-fourth (1/4) of the proposed penthouse non-residential gross square area if the required housing is situated on an adjacent property;** **(b) Not less than one-third (1/3) of the proposed penthouse non-residential gross square area if the location of the required housing does not comply with paragraph (a) of this subsection, but is nonetheless within the same Advisory Neighborhood Commission area as the property, or if it is located within a Housing Opportunity Area as designated in the Comprehensive Plan; and** **(c) Not less than one-half (1/2) of the proposed penthouse non-residential gross square area if the location of the required housing is other than as approved in paragraphs (a) and (b) above.**	
414.7	**If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than eight hundred and fifty square feet (850 sq. ft.); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing.**	
414.8	**For purposes of this section, the word "rehabilitation" means the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing**	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	Regulations of the District of Columbia (14 DCMR).	
414.9	**In the case of rental housing, the required housing shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one-family dwelling the effective date of the first lease agreement.**	
414.10	**If the required housing is provided for home ownership shall be the housing shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one-family dwelling the effective date of the first sales agreement.**	
414.11	**No certificate of occupancy shall be issued for the owner's building to permit the occupancy of penthouse non-residential gross floor area until a certificate of occupancy has been issued for the housing required pursuant to this section.**	
414.12	**If the owner instead chooses to contribute funds to a housing trust fund, as defined in § 2499.1, the provisions of §§ 414.13 through §414.16 shall apply.**	
414.13	**The contribution shall be equal to one-half (1/2) of the assessed value of the proposed penthouse non-residential gross floor area for office use.**	
414.14	**The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Office of Tax and Revenue no earlier than thirty (30) days prior to the date of the building permit application to construct the penthouse non-residential gross floor area**	
414.15	**The contribution shall be determined by dividing the assessed value per square foot of land that comprises the lot upon which the building is or will be located by the maximum permitted non-residential FAR and multiplying that amount times the penthouse non-residential gross square feet to be constructed.**	
414.16	**Not less than one-half (1/2) of the required total financial contribution shall be made prior to the issuance of a building permit for construction of the penthouse non-residential gross floor area, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any or all of the building's penthouse non-residential gross floor area.**	

6. AMEND CHAPTER 5, SPECIAL PURPOSE DISTRICTS, § 530, HEIGHT, AS FOLLOWS:

	ALTERNATIVE TEXT #1	**ALTERNATIVE TEXT #2**
530.4	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses ~~**over elevator shafts**~~, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	
530.5	If ~~**housing for mechanical equipment or a stairway or elevator**~~ **a** penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	**A penthouse shall not be permitted on a one-family dwelling or flat. As to all other uses and structures,** if ~~**housing for mechanical equipment or a stairway or elevator**~~ **a** penthouse is provided ~~**on the roof of a building or structure**~~, it shall be erected or enlarged as follows:
(a)	It shall meet the requirements of § 411;	
(b)	It shall ~~**be set back from all exterior walls a distance at least equal to**~~ **provide a setback greater than or equal to** its height above the roof upon which it is located **from:** **(1) Any wall facing a public street;** **(2) Any wall facing a public alley;** **(3) Any wall facing a court open to a public street;** **(4) Any wall that provides a setback from a lot line that it faces;** **(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height; or** **(6) Any wall on a lot line shared with a property containing a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located; except this setback is not required if the adjacent historic building is of equal or higher height;**	
(c)	It shall not exceed ~~**eighteen foot, six inch (18 ft., 6 in.),**~~ **twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) in height above the roof upon**	It shall not exceed ~~**eighteen foot, six inch (18 ft., 6 in.),**~~ **twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.)**

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	which it is located: **(1) On a one-family dwelling or flat; or** **(2) On a building in any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**	**maximum on a building in any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**
(d)	**For all buildings and structures,** mechanical equipment shall not extend above the **~~permitted eighteen foot, six inch (18 ft., 6 in.),~~ maximum permitted** height of the **penthouse ~~housing~~, as specified in paragraph (c) above.**	
~~530.6~~	**Deleted** **~~Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.~~**	
530.7	**~~Where required by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))),~~ Pursuant to the Height Act, a penthouse may be erected to a** height in excess of that permitted **~~shall be~~** if authorized by the Mayor **or his or her designee and subject to the setback back and other restrictions stated in the Act.**	

7. AMEND CHAPTER 5, SPECIAL PURPOSE DISTRICTS, § 537, ROOF STRUCTURES, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
537	**~~ROOF STRUCTURES~~ PENTHOUSES (SP)**	
537.1	The provisions of § 411 shall also regulate **~~roof structures~~ penthouses** in CR Districts.	
537.2	The gross floor area of **~~roof structures~~ penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	The gross floor area of **~~roof structures~~ mechanical space, stair or elevator overruns, or communal recreation space within a penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.

8. AMEND CHAPTER 6 MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS, SECTION 630 HEIGHT OF BUILDINGS OR STRUCTURES (CR) AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
630.3	Spires, towers, domes, pinnacles, or minarets serving as architectural embellishments, penthouses ~~**over elevator shafts**~~, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	
630.4	If ~~**housing for mechanical equipment or a stairway or elevator**~~ **a** penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	**A penthouse shall not be permitted on a one-family dwelling or flat. As to all other uses and structures,** if ~~**housing for mechanical equipment or a stairway or elevator**~~ **a** penthouse is provided ~~**on the roof of a building or structure**~~, it shall be erected or enlarged as follows:
(a)	It shall meet the requirements of § 411;	
(b)	It shall ~~**be set back from all exterior walls a distance at least equal to**~~ **provide a setback greater than or equal to** its height above the roof upon which it is located **from:** **(1) Any wall facing a public street;** **(2) Any wall facing a public alley;** **(3) Any wall facing a court open to a public street;** **(4) Any wall that provides a setback from a lot line that it faces;** **(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height; or** **(6) Any wall on a lot line shared with a property containing a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located; except this setback is not required if the adjacent historic building is of equal or higher height;**	
(c)	It shall not exceed ~~**eighteen foot, six inch (18 ft., 6 in.),**~~ **twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) in height above the roof upon which it is located:**	It shall not exceed ~~**eighteen foot, six inch (18 ft., 6 in.),**~~ **twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) maximum on a building in any zone in**

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	(1) On a one- family dwelling or flat; or **(2) On a building in any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**	**which the building height is limited to fifty feet (50 ft.) or less by right; and**
(d)	**For all buildings and structures,** mechanical equipment shall not extend above the **~~permitted eighteen foot, six inch (18 ft., 6 in.),~~ maximum permitted** height of the **penthouse ~~housing~~, as specified in paragraph (c) above.**	
~~630.5~~	**~~Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located.~~**	

9. AMEND CHAPTER 6, MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS, § 639, ROOF STRUCTURES (CR), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
639	**~~ROOF STRUCTURES~~ PENTHOUSES (SP)**	
639.1	The provisions of § 411 shall also regulate **~~roof structures~~ penthouses** in SP Districts.	
639.2	The gross floor area of **~~roof structures~~ penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	The gross floor area of **~~roof structures~~ mechanical space, stair or elevator overruns, or communal recreation space within a penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.

10. AMEND CHAPTER 7, COMMERCIAL DISTRICTS, § 770, HEIGHT OF BUILDINGS OR STRUCTURES (C), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
770	**HEIGHT OF BUILDINGS OR STRUCTURES (C)**	
770.3	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses **~~over elevator shafts~~**, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	
770.6	If **~~housing for mechanical equipment or a stairway or elevator~~ a** penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	**A penthouse shall not be permitted on a one-family dwelling or flat. As to all other uses and structures,** if **~~housing for mechanical~~**

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
		~~**equipment or a stairway or elevator a**~~ penthouse is provided ~~**on the roof of a building or structure**~~, it shall be erected or enlarged as follows:
(a)	It shall meet the requirements of § 411;	
(b)	It shall ~~**be set back from all exterior walls a distance at least equal to**~~ **provide a setback greater than or equal to** its height above the roof upon which it is located **from:** **(1) Any wall facing a public street;** **(2) Any wall facing a public alley;** **(3) Any wall facing a court open to a public street;** **(4) Any wall that provides a setback from a lot line that it faces;** **(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height; or** **(6) Any wall on a lot line shared with a property containing a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located; except this setback is not required if the adjacent historic building is of equal or higher height;**	
(c)	In the C-5 (PAD) District, it shall be set back from that portion of the perimeter of the roof fronting on a street a minimum distance equal to twice the height of the ~~**roof structure**~~ **penthouse** above the roof upon which it is located; and	
(d)	It shall not exceed ~~**eighteen foot, six inch (18 ft., 6 in.),**~~ **twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) in height above the roof upon which it is located:** **(1) On a one- family dwelling or flat; or** **(2) On a building in any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**	It shall not exceed ~~**eighteen foot, six inch (18 ft., 6 in.),**~~ **twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) maximum on a building in any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**
(e)	**For all buildings and structures,** mechanical equipment shall not extend above the ~~**permitted eighteen foot, six inch (18 ft., 6 in.),**~~ **maximum permitted** height of the **penthouse** ~~**housing,**~~ **as**	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	specified in paragraph (d) above.	
770.7	**Deleted** ~~**Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.**~~	
770.8	Where required by ~~**the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.)))**~~ **The Height Act**, a height in excess of that permitted shall be authorized by the Mayor.	
770.9	The height permitted for a building eligible for the additional density permitted pursuant to § 771.4 shall be that permitted by ~~**the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09)**~~ **The Height Act.**	

11. AMEND CHAPTER 7, COMMERCIAL DISTRICTS, § 777, ROOF STRUCTURES (C), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
777	~~**ROOF STRUCTURES**~~ **PENTHOUSES (C)**	
777.1	The provisions of § 411 shall also regulate ~~**roof structures**~~ **penthouses** in the Commercial Districts.	
777.2	The gross floor area of ~~**roof structures**~~ **penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	The gross floor area of ~~**roof structures**~~ **mechanical space, stair or elevator overruns, or communal recreation space within a penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.

12. AMEND CHAPTER 8, INDUSTRIAL DISTRICTS, § 840, HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
840	**HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M)**	
840.2	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.	
840.3	If ~~**housing for mechanical equipment or a stairway or elevator**~~ **a** penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	
(a)	It shall meet the requirements of § 411;	
(b)	It shall ~~**be set back from all exterior walls a distance at least equal to**~~ **provide a setback greater than or equal to** its height above the roof upon which it is located **from:** **(1) Any wall facing a public street;** **(2) Any wall facing a public alley;** **(3) Any wall facing a court open to a public street;** **(4) Any wall that provides a setback from a lot line that it faces;** **(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height; or** **(6) Any wall on a lot line shared with a property containing a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located; except this setback is not required if the adjacent historic building is of equal or higher height;**	
(c)	It shall not exceed ~~**eighteen foot, six inch (18 ft., 6 in.),**~~ **twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) in height above the roof upon which it is located on a building in any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**	
(d)	**For all buildings and structures,** mechanical equipment shall not extend above the ~~**permitted eighteen foot, six inch (18 ft., 6 in.),**~~ **maximum permitted** height of the **penthouse** ~~**housing,**~~ **as specified in paragraph (c) above.**	
~~**840.4**~~	**Deleted** ~~**Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the District in which it is located.**~~	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
840.5	~~**Where required by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))),~~**Pursuant to The Height Act, a penthouse may be erected to a** height in excess of that permitted ~~**shall be**~~ if authorized by the Mayor **or his or her designee and subject to the setback back and other restrictions stated in the Act.**	

13. AMEND CHAPTER 8, INDUSTRIAL DISTRICTS, § 845 ROOF STRUCTURES (C-M, M), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
845	~~**ROOF STRUCTURES**~~ **PENTHOUSES** (C-M, M)	
845.1	Section 411 shall be applicable to ~~**roof structures**~~ **penthouses** in the Industrial Districts.	
845.2	The gross floor area of ~~**roof structures**~~ **penthouses** permitted under § 411 shall not be counted in determining the amount of off-street parking required elsewhere in this title.	The gross floor area of ~~**roof structures**~~ **mechanical space, stair or elevator overruns, or communal recreation space within a penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.

14. AMEND CHAPTER 9, WATERFRONT DISTRICTS, § 930, HEIGHT OF BUILDINGS OR STRUCTURES (W), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
930.2	Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses ~~**over elevator shafts**~~, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews or mayoral approvals.	
930.3	If ~~**housing for mechanical equipment or a stairway or elevator**~~ **a** penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:	**A penthouse shall not be permitted on a one-family dwelling or flat. As to all other uses and structures,** if ~~**housing for mechanical equipment or a stairway or elevator**~~ a penthouse is provided ~~**on the roof of a building or structure**~~, it shall be erected or enlarged as follows:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
(a)	It shall meet the requirements of § 411;	
(b)	It shall **~~be set back from all exterior walls a distance at least equal to~~ provide a setback greater than or equal to** its height above the roof upon which it is located **from:** **(1) Any wall facing a public street;** **(2) Any wall facing a public alley;** **(3) Any wall facing a court open to a public street;** **(4) Any wall that provides a setback from a lot line that it faces;** **(5) Any wall that abuts a lot line, and is taller than the greater of the adjacent property's existing or matter-of-right height; or** **(6) Any wall on a lot line shared with a property containing a building or structure listed in the District of Columbia Inventory of Historic Sites or a building or structure certified in writing by the State Historic Preservation Officer as contributing to the character of the historic district in which it is located; except this setback is not required if the adjacent historic building is of equal or higher height;**	
(c)	It shall not exceed **~~eighteen foot, six inch (18 ft., 6 in.),~~ twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) in height above the roof upon which it is located:** **(1) On a one- family dwelling or flat; or** **(2) On a building in any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**	It shall not exceed **~~eighteen foot, six inch (18 ft., 6 in.),~~ twenty feet (20 ft.)** in height above the roof upon which it is located**, except it shall not exceed a height of ten feet (10 ft.) maximum on a building in any zone in which the building height is limited to fifty feet (50 ft.) or less by right; and**
(d)	**For all buildings and structures,** mechanical equipment shall not extend above the **~~permitted eighteen foot, six inch (18 ft., 6 in.),~~ maximum permitted** height of the **penthouse ~~housing~~, as specified in paragraph (d) above.**	
~~930.4~~	**Deleted** **~~Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which it is located.~~**	
930.5	**~~Roof structures~~ Penthouses** less than ten feet (10 ft.) in height above a roof or parapet wall of a structure in the W-0 District on Kingman Island shall not be subject to the requirements of this section when the top of the **~~roof~~**	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	~~**structure**~~ **penthouse** is below maximum building height prescribed for the W-0 District.	

15. AMEND CHAPTER 9, WATERFRONT DISTRICTS, § 936, ROOF STRUCTURES (W), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
936	~~**ROOF STRUCTURES**~~ **PENTHOUSES** (W)	
936.1	The provisions of § 411 shall apply to ~~**roof structure**~~ **penthouses** in the Waterfront Districts.	
936.2	The gross floor area of ~~**roof structure**~~ **penthouses** permitted under this section shall not be counted in determining the required number of off-street parking spaces or loading berths as specified elsewhere in this title.	The gross floor area of ~~**roof structures**~~ **mechanical space, stair or elevator overruns, or communal recreation space within a penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.

16. AMEND CHAPTER 12, CAPITOL INTEREST OVERLAY DISTRICT, § 1203, HEIGHT, AREA, AND BULK REGULATIONS, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
1203.1	Except as specified in § 1203.2 and in Chapters 20 through 25 of this title, the height of buildings or structures in the CAP Overlay District shall not exceed forty feet (40 ft.) or three (3) stories in height.	
1203.2	The height of buildings or structures as specified in § 1203.1 may be exceeded in the following instances:	
(a)	A spire, tower, dome, minaret, pinnacle, or penthouse ~~**over elevator shaft**~~ may be erected to a height in excess of that authorized in § 1203.1; and	
(b)	If erected or enlarged as provided in § 411, ~~**housing for mechanical equipment or a stairway or elevator**~~ penthouse may be erected to a height in excess of that authorized in the zone district in which located; provided that: **(1)** ~~**the housing**~~ **It meets the setback requirements of § 400.7;** ~~**is set back from all lot lines of the lot upon which the structure is located a distance equal to its height above the roof of the top story;**~~ **and** (2) ~~**In any case, a roof structure**~~ **It** shall not exceed ten feet (10 ft.) **and one story** in height above the roof upon which it is located.	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
1203.4	~~**All provisions of § 411 shall also apply to roof structures in the CAP Overlay District.**~~ The gross floor area of ~~**roof structure**~~ **penthouses** permitted under this subsection shall not be counted in determining the amount of off-street parking as required elsewhere in this title.	The gross floor area of ~~**roof structures**~~ **mechanical space, stair or elevator overruns, or communal recreation space within a penthouses** permitted under this section shall not be counted in determining the amount of off-street parking as required elsewhere in this title.
1203.5	**A penthouse shall not exceed one-third (1/3) of the total roof area.**	

17. AMEND CHAPTER 15, MISCELLANEOUS OVERLAY DISTRICTS, FT TOTTEN OVERLAY, § 1562, HEIGHT, BULK, AND USE PROVISIONS (FT), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
1563.4	The maximum height and bulk of a new building for a newly established use in the underlying CR District shall be 5.0 floor area ratio and eighty-feet (80 ft.) in height, inclusive of **a penthouse which shall be limited to one (1) story** ~~**roof structure**~~.	The maximum height and bulk of a new building for a newly established use in the underlying CR District shall be 5.0 floor area ratio and eighty-feet (80 ft.) in height, inclusive of **a penthouse which shall be limited to one (1) story;** ~~**roof structure**~~**. except that an additional story, for a total of two (2) stories maximum, shall be permitted within the penthouse solely for mechanical equipment.**
1563.5	Buildings proposed to have a height in excess of sixty-five feet (65 ft.) shall provide special architectural features, roof parapet detailing, and design consideration of ~~**roof top and**~~ penthouses ~~**structures**~~ to ensure that the views and vistas from the historic fortification of Fort Totten are not degraded or obstructed. The D.C. Office of Planning shall review and provide a report with recommendation.	**A penthouse, where permitted, shall be limited to one (1) story maximum,**

18. AMEND CHAPTER 16, CAPITOL GATEWAY OVERLAY DISTRICT, TO ADD A NEW § 1613, ROOF STRUCTURES (CG), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
1613.1	**The provisions of §§ 411 and 400.7 shall apply to penthouses in the CG District.**	
1613.2	**The gross floor area of penthouses permitted under this section shall not be counted in determining the amount of off-street parking that is required by Chapter 21.**	**The gross floor area of penthouse mechanical space, stair or elevator overruns, or communal recreation space permitted under this section shall not be counted in determining the amount of off-street parking that is required by Chapter 21.**

19. AMEND CHAPTER 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, TO ADD A NEW § 1811, ROOF STRUCTURES (SEFC), AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
1811.1	**The provisions of §§ 411 and 400.7 shall apply to penthouses in the SEFC District.**	
1811.2	**The gross floor area of penthouses permitted under this section shall not be counted in determining the amount of off-street parking that is required by Chapter 21.**	**The gross floor area of penthouse mechanical space, stair or elevator overruns, or communal recreation space permitted under this section shall not be counted in determining the amount of off-street parking that is required by Chapter 21.**

20. AMEND CHAPTER 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, § 1902, HEIGHT AND BULK, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
1902.1	In the underlying C-3-A District, a building may be constructed in excess of the height limit of sixty-five feet (65 ft.), up to a maximum height of seventy-five feet (75 ft.); provided:	
(a)	No ~~**roof structure**~~ **penthouse** permitted by this title shall exceed a height of eighty-three and one-half feet (83.5 ft.) above the measuring point used for the building, **or exceed one (1) story**; and	No ~~**roof structure**~~ **penthouse** permitted by this title shall exceed a height of eighty-three and one-half feet (83.5 ft.) above the measuring point used for the building, **or exceed one (1) story; except that an additional story, for a total of two (2) stories maximum, shall be permitted within the penthouse solely for mechanical equipment**; and

21. AMEND CHAPTER 26, INCLUSIONARY ZONING, § 2602, APPLICABILITY AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
2602.1	Except as provided in § 2602.3, the requirements and incentives of this chapter shall apply to developments that:	
(a)	Are mapped within the R-2 through R-5-D, C-1 through C-3-C, USN, CR, SP, StE, and W-1 through W-3 Zone Districts, unless exempted pursuant to § 2602.3;	
(b)	Have ten (10) or more dwelling units (including off-site inclusionary units; and	

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	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
(c)	Are either:	
(1)	New multiple-dwellings;	
(2)	New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction; or	
(3)	An existing development described in subparagraph (a) or (b) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more; or	
(d)	**Provide new residential habitable space within a penthouse, except that this requirement shall not apply to:** **(1) penthouse space accessory to residential rooftop recreation purposes; and** **(2) penthouse space for a single family dwelling or flat, in any zone.**	
2602.3	This chapter shall not apply to:	
(a)	Hotels, motels, inns, or dormitories;	
(b)	Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff;	
(c)	Housing that is owned or leased by foreign missions exclusively for diplomatic staff;	
(d)	Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments; or	
(e)	Any development financed, subsidized, or funded in whole or in part by the federal or District government and administered by the Department of Housing and Community Development (DHCD), the District of Columbia Housing Finance Agency, or the District of Columbia Housing Authority and that meets the requirements set forth in § 2602.7	
2602.4	**Except for projects described in § 2602.1(d),** this chapter shall **also** not apply to properties located in any of the following areas:	
(a)	The Downtown Development or Southeast Federal Center Overlay Districts;	
(b)	The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
(c)	The W-2 zoned portions of the Georgetown Historic District;	
(d)	The R-3 zoned portions of the Anacostia Historic District;	
(e)	The C-2-A zoned portion of the Naval Observatory Precinct District; and	
(f)	The Eighth Street Overlay.	

22. AMEND CHAPTER 26, INCLUSIONARY ZONING, § 2603, SET-ASIDE REQUIREMENTS, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
2603.1	An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of 10% of the gross floor area being devoted to residential use **including floor area devoted to new residential habitable space within a penthouse included in a project described in § 2602.1(d),** or seventy-five percent (75%) of the bonus density being utilized for inclusionary units.	
2603.2	An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2 or W-3 District shall devote the greater of 8% of the gross floor area being devoted to residential use **including floor area devoted partially or entirely to new residential habitable space within a penthouse consistent with § 2602.1(d),** or fifty percent (50%) of the bonus density being utilized for inclusionary units.	
2603.3	Inclusionary developments located in R-3 through R-5-E, C-1, C-2-A, StE, W-0, and W-1 Districts shall set aside 50% of inclusionary units for eligible low-income households and 50% of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.	
2603.4	Developments located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP Districts shall set aside 100% of inclusionary units for eligible moderate-income households.	
2603.5	**n/a**	**Notwithstanding §§ 2603.3 and 2603.4, new residential habitable space within a penthouse**

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
		consistent with § 2602.1(d), shall set aside one hundred percent (100%) of inclusionary units for eligible low income households.
2603.6	The Mayor or the District of Columbia Housing Authority shall have the right to purchase up to twenty-five percent (25%) of inclusionary units **required by this chapter** in a for-sale inclusionary development in accordance with such procedures as are set forth in the Act.	
2603.7	Notwithstanding § 2603.5, nothing shall prohibit the Mayor or the District of Columbia Housing Authority to acquire title to inclusionary units **required by this chapter** in a for-sale inclusionary development if any of the following circumstances exist:	
(a)	There is a risk that title to the units will be transferred by foreclosure or deed-in-lieu of foreclosure, or that the units' mortgages will be assigned to the Secretary of the U.S. Department of Housing and Urban Development; or	
(b)	Title to the units has been transferred by foreclosure or deed-in-lieu of foreclosure, or the units' mortgages have been assigned to the Secretary of the U.S. Department of Housing and Urban Development.	
2603.8	An inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in a StE District shall devote no less than ten percent (10%) of the gross floor area being devoted to residential use for inclusionary units.	
2603.9	An inclusionary development of steel and concrete frame construction located in a StE District shall devote no less than eight percent (8%) of the gross floor area being devoted to residential use in a StE District.	

23. AMEND CHAPTER 26, INCLUSIONARY ZONING, § 2604, BONUS DENSITY, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
2604.1	Inclusionary developments subject to the provisions of this Chapter, except those located in the StE District, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by **The Height Act.** ~~**the Act to Regulate the Height of Buildings in the District of Columbia, approved June**~~	Inclusionary developments subject to ~~**the provisions of this Chapter**~~ **§ 2603.1 or § 2603.2**, except those located in the StE District, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by **The Height**

	~~**1, 1910 (36 Stat. 452; D.C. Official Code § 6-601.01, et seq. (2001 Ed.).**~~	**Act.** ~~**the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Official Code § 6-601.01, et seq. (2001 Ed.).**~~
2604.2	Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the bonus density: *(table unchanged)*	

24. AMEND CHAPTER 26, INCLUSIONARY ZONING, § 2608, APPLICABILITY DATE ,AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
2608.2	The provisions of this chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.	**With the exception of new habitable residential space within a penthouse approved by the Zoning Commission pursuant to §411.20**, the provisions of this chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.

25. AMEND CHAPTER 27, REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES, § 2707, EXEMPTED ANTENNAS, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
2707.1	The requirements of §§ 2703 through 2706 shall not apply to any antenna that is:	
(b)	Entirely enclosed on all sides by a ~~**roof structure,**~~ penthouse, or an extension of penthouse walls; this subsection shall not be interpreted to permit penthouses ~~**or roof structures**~~ in excess of the **permitted** height **above a roof;** ~~**limitations for roof structures;**~~	

26. AMEND CHAPTER 27, REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES, § 2715, EQUIPMENT CABINET OR SHELTER, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
2715.2	If an antenna equipment cabinet or shelter is provided on the roof of a building or structure, it shall be erected or enlarged subject to the following:	
(d)	It shall be placed only on a roof of a principal structure and may not be permitted on a roof of ~~**any other roof**~~	

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
	~~**structure or**~~ **a** penthouse.	

27. AMEND CHAPTER 28, HILL EAST (HE) DISTRICT, § 2809, ROOF STRUCTURES, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
2809.1	The provisions of §§ 411 and 400.7 shall apply to ~~**roof structures**~~ **penthouses** in the HE District.	
2809.2	The gross floor area of ~~**roof structures**~~ **penthouses** permitted under this section shall not be counted in determining the amount of off-street parking that is required by Chapter 21.	The gross floor area of ~~**roof structure**~~ **penthouse mechanical space, stair or elevator overruns, or communal recreation space** permitted under this section shall not be counted in determining the amount of off-street parking that is required by Chapter 21.

28. AMEND CHAPTER 29, UNION STATION NORTH (USN) DISTRICT, § 2906, ROOFTOP PENTHOUSES, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
2906	~~**ROOFTOP**~~ **PENTHOUSES**	
2906.1	Rooftop penthouses ~~**not intended for human occupation, such as penthouses over mechanical equipment, a stairway, or an elevator shaft**~~ shall be erected or enlarged pursuant to ~~**§ 770.6 through 770.8**~~ **§§ 400.7 and 411.**	
~~**2906.2**~~	~~**Such a penthouse shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.**~~	
~~**2906.3**~~	~~**A penthouse not intended for human occupancy may be erected to a height in excess of that authorized in the USN District subject to the provisions of the Height Act.**~~	
~~**2906.4**~~	~~**Spires, towers, domes, pinnacles, or minarets serving as architectural embellishments, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes.**~~	

29. AMEND CHAPTER 33, SAINT ELIZABETHS EAST CAMPUS (StE) DISTRICT, § 3312, ROOF STRUCTURE, AS FOLLOWS:

	ALTERNATIVE TEXT #1	ALTERNATIVE TEXT #2
3312	~~**ROOF STRUCTURE**~~ **PENTHOUSES**	
3312.1	~~**Rooftop**~~ **A** penthouse ~~**not intended for human occupation, such as penthouses over mechanical equipment, a stairway or an elevator shaft**~~ shall be erected or enlarged pursuant to **§§ 400.7 and** 411 of this title.	

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

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 210, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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 SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, May 14, 2015, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 14-14 (Jemal's CDC, LLC – Consolidated PUD and Related Map Amendment @ Square 833, Lot 47)

THIS CASE IS OF INTEREST TO ANC 6C

On August 6, 2014, the Office of Zoning received an application from Jemal's CDC, LLC (the "Applicant") requesting approval of a consolidated planned unit development ("PUD") and related zoning map amendment from the HS-H/C-2-A District to the HS-H/C-2-B Zone District for property located at 501 H Street, N.E. (Square 833, Lot 47) (the "Property"). The Office of Planning submitted a report to the Zoning Commission, dated September 19, 2014. At its September 29, 2014, public meeting, the Zoning Commission voted to set down the application for a public hearing. The Applicant provided its prehearing statement on February 27, 2015.

The Property that is the subject of this application is located on the southeast corner of the intersection of 5th and H Streets, N.E., and is bounded by H Street to the north, 5th Street to the west, a public alley to the south, and private property to the east. The Property has a land area of approximately 9,813 square feet. The Property is located in Ward 6 and is within the boundaries of Advisory Neighborhood Commission ("ANC") 6C.

The proposed project is a mixed-use residential development with retail uses on the cellar, first, and second levels. Approximately 17,562 square feet of gross floor area and approximately 7,856 square feet of cellar floor area will be devoted to retail uses. Approximately 30,475 square feet of gross floor area will be devoted to residential uses, comprised of 28 units (plus or minus three units). No less than eight percent of the residential gross floor area will be devoted to affordable housing, with 50% of the affordable units devoted to low-income households and 50% of the affordable units devoted to moderate-income households. The project will have an overall density of 4.90 floor area ratio ("FAR") and a maximum height of 77 feet, 5 inches, as permitted in the HS-H/C-2-B Zone District. Six compact parking spaces will be provided at the rear of the Property.

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

How to participate as a witness.

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

How to participate as a party.

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

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

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

If an affected Advisory Neighborhood Commission (ANC) 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), or by calling (202) 727-0789.

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

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

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

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

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

District of Columbia Pesticide Operation Regulations

The Director of the District Department of the Environment (DDOE or Department)**,** pursuant to the authority set forth in Section 12(a) of the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-411(a) (2013 Repl.)); Section 11(a) of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191; D.C. Official Code § 8-440(a) (2013 Repl.)); Section 103(b)(1)(B)(ii)(II) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03(b)(1)(B)(ii)(II) (2013 Repl.)); the Brownfields Revitalization Amendment Act of 2010 (Brownfields Act), effective April 8, 2011 (D.C. Law 18-369; D.C. Official Code §§ 8-631.01 *et seq*. (2013 Repl.)); and Mayor's Order 98-47, dated April 15, 1998, as amended by Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to repeal Chapters 22 through 25 of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), the Pesticide Operation Regulations, in their entirety, and to adopt the following new provisions in Chapters 22 through 25 of Title 20 (Environment).

This rulemaking implements the provisions of the Pesticide Education and Control Amendment Act of 2012, and amends and reorganizes the District's existing pesticide regulations.

The Department published a Notice of Proposed Rulemaking in the *D.C. Register* on May 30, 2014 at 61 DCR 5432, which includes a summary of the rulemaking. Comments were received during the comment period, which ended on June 30, 2014, and were carefully considered, but the Department determined that no substantive changes were necessary. Minor changes have been made to correct grammar and typographical errors, and to provide clarity; no substantive change is intended.

These rules were adopted as final on February 12, 2015, and shall take effect upon publication in the *D.C. Register*.

Chapters 22 through 25 of Title 20 DCMR, ENVIRONMENT, are repealed in their entirety and hereby replaced with new Chapters 22 through 25, to read as follows:

CHAPTER 22 CONTROL OF PESTICIDES

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2200 GENERAL PROVISIONS

2200.1 The purpose of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, is to conform the laws of the District of Columbia with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), effective April 26, 2010, as amended (7 U.S.C. §§ 136 *et seq.*), and the implementing regulations, and to establish a regulatory process in the District of Columbia as provided for in the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*).

2200.2 The Pesticide Operation Regulations, Chapters 22 through 25 of this title, apply to all pesticide operations in the District, including federal pesticide operations, to the full extent permitted by FIFRA.

2201 GENERAL REQUIREMENTS FOR PESTICIDES

2201.1 Pesticides shall be used in strict accordance with the manufacturer's labeling directions, and in compliance with District and federal laws and regulations.

2201.2 A pesticide operator shall maintain pesticide equipment or application apparatus in sound mechanical condition and a condition capable of satisfactory operation.

2201.3 A pesticide distributed in the District shall be distributed in the registrant's or the manufacturer's unbroken immediate container.

2201.4 Pesticide containers shall have a label containing the information required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) securely affixed to the outside.

2201.5 Unless the pesticide label indicates otherwise, no person shall use pesticide containers for any purposes other than containing the original labeled pesticide product.

2201.6 Each pesticide operator shall make available, and each pesticide applicator shall use, effective anti-siphon devices or back-flow preventers on all water-supply hoses to protect the water supply from pesticide contamination when drawing water from a water source during pesticide application or mixing.

2201.7 No person shall use pesticides in a manner that is harmful to human health, non-target organisms, or the environment.

2201.8 No person shall apply pesticides by air or ground equipment when the wind velocity is reasonably likely to cause the pesticide to drift beyond the target area.

2201.9 No person shall display or offer for sale pesticides in leaking, broken, corroded, or otherwise damaged containers, or with damaged or obscure labels.

2201.10 No person shall detach, alter, deface, or destroy, wholly or in part, any label or labeling prescribed by FIFRA.

2201.11 No person shall apply pesticides without a copy of the label available for inspection at the time and place of application.

2201.12 The inspection of premises for the purpose of determining the presence of pests shall only be performed by licensed pesticide applicators certified in the category of "Industrial, Institutional, Structural, and Health Related Pest Control," as described in § 2301.5.

2201.13 The inspection of premises for the purpose of issuing wood infestation certificates shall only be performed by licensed pesticide applicators certified in the subcategory of "Wood Destroying Organisms," as described in § 2301.5(b).

2201.14 Nothing in these regulations shall be construed to relieve any person from liability for any damages to the person or property of another, caused by the use of

pesticides even though the use conforms to regulations prescribed by the District Department of the Environment.

2202 PESTICIDE REGISTRATION

2202.1 Except as provided in § 2202.2, any pesticide used, manufactured, distributed, sold, shipped, or applied in the District, shall be registered with the District Department of the Environment (Department), including, but not limited to, the following:

(a) Pesticides that are registered with the United States Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

(b) Pesticides that are exempt from registration with the EPA under FIFRA; and

(c) Any pesticide that the Department determines should be registered to protect public health, safety, or welfare, or the environment.

2202.2 Registration of a pesticide under § 2202.1 shall not be required if:

(a) A pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part to make a pesticide that is registered under the provisions of this chapter; or

(b) A pesticide is distributed, used, or applied under the provisions of an experimental use permit issued by the EPA, provided that written notification and a copy of the experimental use permit is provided to the Department.

2202.3 If an emergency condition so dictates, the Director of the District Department of the Environment may petition the EPA Administrator for an exemption from any provisions of FIFRA.

2203 PROCEDURES FOR PESTICIDE REGISTRATION

2203.1 An applicant for registration of a pesticide in the District shall file with the District Department of the Environment (Department), on a form prescribed by the Department, a statement that includes the following information:

(a) The name and address of the applicant and any other person whose name will appear on the label;

(b) The name of the pesticide;

(c) A complete copy of the labeling accompanying the pesticide, a statement of all claims to be made for it, and any directions for use;

(d) The use classification of the pesticide, as established under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

(e) If an agent is acting on behalf of the company registering a pesticide for distribution, sale, or use in the District, a letter of authorization designating the authorized agent;

(f) A copy of the Notice of Supplemental Distribution of a Registered Pesticide Product (Environmental Protection Agency (EPA) Form 8750-5), along with the distributor's label of the EPA-registered product that is being distributed in the District; and

(g) Any other necessary information required for completion of the application form for registration, as specified by the Department.

2203.2 If requested by the Department, the applicant shall submit a full description of every test conducted with respect to the pesticide, and the results of the tests upon which any claim is based.

2203.3 If the Department determines it necessary for approval of a pesticide registration, the Department may require the submission of the complete formula for any pesticide, including the active and inert ingredients.

2203.4 No person shall use or reveal for that person's own advantage any information relating to the formula of pesticides acquired by the authority of this section, except that this provision shall not be deemed to prohibit the disclosure of information to the Department, to the proper officials or employees of the District, to courts of competent jurisdiction in response to a subpoena, to physicians or pharmacists or other qualified persons for use in the preparation of antidotes, or to any other person when the Department determines that disclosure is necessary to protect the public health, safety, or welfare, or the environment.

2203.5 An applicant shall pay an annual registration fee for each pesticide registered by the applicant, as specified in § 2518.

2203.6 Each registration approved by the Department and in effect on December 31st, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until the Department notifies the applicant that the registration has been renewed or denied.

2203.7 In renewing a registration, the Department shall only require each applicant to provide information that is different from the information furnished when the pesticide was originally registered or last reregistered in the District.

2204 DENIAL, SUSPENSION, AND REVOCATION OF PESTICIDE REGISTRATION

2204.1 If the District Department of the Environment (Department) determines that a pesticide registered under the Department's authority does not warrant the proposed claims for it, or if the pesticide and its labeling and other supporting material do not comply with the pesticide provisions of this title, the Department shall notify the applicant of the manner in which the pesticide, labeling, or other supporting material fail to comply with the provisions of this title so as to afford the applicant an opportunity to make the necessary corrections.

2204.2 If, upon receipt of the notice required by § 2204.1, the applicant does not make the required changes within thirty (30) days, the Department may deny the application for registration of the pesticide.

2204.3 The Department may deny, suspend, or revoke the registration of any pesticide if the Department determines any of the following conditions exist:

(a) The pesticide, its labeling, or other material required to be submitted do not comply with the Pesticide Operation Regulations, Chapters 22 through 25 of this title; or

(b) The denial, suspension, or revocation is necessary to prevent unreasonable adverse effects on public health, safety, or welfare, or the environment.

2204.4 If the Department determines that there is an imminent hazard, the Department may immediately suspend a pesticide registration in the District without prior compliance with §§ 2204.5 or 2204.6.

2204.5 The Department shall notify the registrant in writing with the reasons for any proposed denial, suspension, or revocation of a pesticide registration in the District.

2204.6 Pursuant to § 2504, the registrant shall have fifteen (15) calendar days from the date of service of the notice to deny, suspend, or revoke registration to request a hearing with the Office of Administrative Hearings (OAH) to show cause why registration should not be denied, suspended, or revoked.

2204.7 An appeal to OAH pursuant to this section shall be subject to the requirements of § 2504.

2205 CLASSIFICATION OF PESTICIDES

2205.1 For the purposes of classifying pesticides as District restricted-use or non-essential in this section, the term "pesticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, and any

substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, but does not including the following:

(a) Fertilizers and other plant supplements whose primary purpose is to provide nutrition to plant-life and not to repel, treat, or control pests;

(b) Pesticides exempt under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its implementing regulations, specifically those pesticides exempted under Section 25(b) of FIFRA and 40 C.F.R. § 152.25(f), subject to reclassification as set forth in Section 3 of FIFRA;

(c) Individual repellents, personalized devices, and other agents not necessarily classified under FIFRA but employed by individuals for protection from pests;

(d) Sanitizers, disinfectants, and antimicrobial agents; and

(e) Other chemicals, devices, or substances excluded by the District Department of the Environment (Department) in regulations.

2205.2 For the purposes of classifying pesticides as District restricted-use or non-essential in this section, the term "pest management" means the control of plants, insects, herbs, or rodents with chemical agents deployed as pesticides.

2205.3 The Department shall create and maintain lists of pesticides classified as District restricted-use or non-essential.

2205.4 The Department shall publish on the Department's website the lists of pesticides classified as District restricted-use or non-essential.

2205.5 The Department shall designate as District restricted-use any pesticide that:

(a) When used as directed or in accordance with commonly recognized practice requires additional restrictions for that use to prevent a hazard to human health, the environment, or property; or

(b) The Department determines presents a significant, scientifically sound basis justifying that reclassification; and

(c) For purposes of this subsection, "scientifically sound basis" shall include conclusions of published, peer-reviewed studies conducted by experts in their respective fields, EPA guidance documents, and other similar materials.

2205.6 The Department shall designate as non-essential any pesticide that is not used as part of critical pest management in the District, as follows:

(a) Critical pest management shall include controlling:

(1) Plants that are poisonous to touch or are likely to cause damage to a structure or infrastructure; or

(2) Insects that bite or sting, are venomous or disease-carrying, or are likely to cause damage to a structure or infrastructure.

(b) The Department shall presume that a pesticide should be classified as essential if it is intended primarily for use on or for:

(1) Agriculture;

(2) Forests;

(3) Promotion of public health or safety;

(4) Protection of structures or infrastructure;

(5) Protection of endangered, threatened or other similarly situated plant and animal species;

(6) Management of invasive plant species; or

(7) Management of invasive insect species.

2205.7 The Department shall offer an opportunity for public comment before classifying as District restricted-use any pesticide that is not designated as restricted-use under 40 C.F.R. § 152.175 or adding restrictions to a restricted-use pesticide designated under 40 C.F.R. § 152.175.

2205.8 The Department shall publish notice in the *D.C. Register* regarding the proposed reclassification of a particular pesticide and provide a comment period of at least thirty (30) days.

2205.9 The Department shall hold a public hearing if significant public interest is expressed during the comment period specified in § 2205.8.

2206 DISTRICT RESTRICTED-USE PESTICIDES

2206.1 The following pesticides are classified by the District Department of the Environment as District restricted-use:

(a) Products classified by the United States Environmental Protection Agency (EPA) as restricted-use pesticides under Section 3(d) of the Federal

Insecticide, Fungicide and Rodenticide Act (FIFRA), effective April 26, 1910, as amended (7 U.S.C. § 136a(d)), as enumerated in 40 C.F.R. § l52.175; and

(b) [RESERVED].

2207 NON-ESSENTIAL PESTICIDES

2207.1 The following pesticides are classified by the District Department of the Environment as non-essential:

(a) [RESERVED].

2208 PROHIBITED AND RESTRICTED USES

2208.1 No person shall apply District restricted-use pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in § 2209.

2208.2 No person shall apply non-essential pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in § 2209.

2209 PROHIBITED AND RESTRICTED USES: EXEMPTIONS

2209.1 The provisions of § 2208 shall not apply to the use of a pesticide for the purpose of improving or maintaining water quality at:

(a) Drinking water treatment plants;

(b) Wastewater treatment plants;

(c) Reservoirs and swimming pools; and

(d) Related collection, distribution, and treatment facilities.

2209.2 A person may apply to the District Department of the Environment (Department) for an exemption from § 2208.1 for a District restricted-use pesticide. The Department may grant an exemption to apply a District restricted-use pesticide on property prohibited under § 2208.1 if the applicant demonstrates:

(a) That integrated pest management practices have been utilized prior to application for an exemption;

(b) That the applicant has made a good-faith effort to seek effective and economical alternatives to the District restricted-use pesticides, and they are unavailable;

(c) That providing a waiver will not violate District or federal law; and

(d) That use of the District restricted-use pesticide on the property prohibited under § 2208.1 is linked to a need to protect health, the environment, or property.

2209.3 An application for exemption under § 2209.2 shall be made in writing to the Department and signed by the person requesting the exemption under penalty of perjury.

2209.4 A person may apply to the Department for an exemption from § 2208.2 for a non-essential pesticide. The Department may grant an exemption to apply a non-essential pesticide on property prohibited under § 2208.2, if the applicant demonstrates:

(a) That integrated pest management practices have been utilized prior to application for an exemption;

(b) That effective alternatives are unavailable;

(c) That providing a waiver will not violate District or federal law; and

(d) That use of the non-essential pesticide is critical and necessary to protect human health or prevent imminent and significant economic damage.

2209.5 An application for exemption under § 2209.4 shall be made in writing to the Department and signed by the person requesting the exemption under penalty of perjury.

2209.6 A person may apply to the Department for an emergency exemption in the event that an emergency pest outbreak poses an immediate threat to public health or would result in significant economic damage because of failure to use a pesticide prohibited or restricted by § 2208. The Department may grant an emergency exemption to apply pesticides prohibited under § 2208, after the application, if the applicant demonstrates:

(a) An urgent, non-routine situation that requires the use of pesticides where:

(1) No effective pesticides are available that are registered for use to control the pest under the conditions of the emergency;

(2) No economically or environmentally feasible practices which provide adequate control are available; and

(3) The situation:

(i) Involves the introduction or dissemination of a new pest;

(ii) Will cause significant economic loss due to an outbreak or an expected outbreak of a pest; or

(iii) Presents significant risks to human health, endangered or threatened species, beneficial organisms, or the environment.

2209.7 If a person makes an emergency application of pesticides under this section under a condition not qualifying as an emergency under § 2209.6(a), as determined by the Department, then the Department may initiate an action to suspend, modify, or revoke the certification of the person in accordance with § 2507.

2209.8 The Department may require a person who applies for an exemption under this section for the same property on more than one (1) occasion to attend a District-approved integrated pest management course.

2209.9 Upon receiving notice from the Department that a person is required to take a District-approved integrated pest management course as provided in § 2209.8, the person shall complete the required course and submit proof of completion to the Department within one (1) year.

2210 REDUCED-RISK PESTICIDES AND METHODS OF PEST CONTROL

2210.1 For the purposes of customer notification required by § 2211, the following pesticides are identified by the District Department of the Environment (Department) as reduced-risk:

(a) Products classified by the United States Environmental Protection Agency (EPA) as exempt from regulation under Section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), effective April 26, 1910 (7 U.S.C. § 136w(b)), when used according to District-approved label instructions, because the products meet all of the criteria set forth in 40 C.F.R. § 152.25, contain only the active ingredients listed in 40 C.F.R. § l52.25(f)(l), as amended, and include only the inert ingredients described in 40 C.F.R. § 152.25(f)(2) and listed in the most current List 4A (4A Inerts List).

(b) Biopesticide active ingredients in products registered by EPA under FIFRA and components of plant-incorporated protectants (PIPs) registered by EPA under FIFRA, when used according to EPA-approved label directions;

(c) The following compounds, when used according to EPA label directions: boric acid, disodium octaborate tetrahydrate, silica gels, and diatomaceous earth; and

(d) Non-volatile pesticides in tamper resistant containers.

2210.2 For the purposes of customer notification required by § 2211, the following methods for applying pesticides, when the pesticides are used according to EPA-approved label directions, are identified by the Department as reduced-risk:

(a) Pesticides used for the purpose of rodent control that are placed directly into rodent burrows or placed in areas inaccessible to children or pets; and

(b) Pesticides in the form of a non-liquid gel used for the purpose of insect control that are placed in areas inaccessible to children or pets.

2211 NOTIFICATION

2211.1 When a customer enters into a contract for pesticide application services with a pesticide operator, the pesticide operator shall provide the customer with the following written information prior to applying treatment:

(a) The name of the pesticide operator;

(b) The name of the pesticide applicator if different from that of the operator;

(c) The District of Columbia pesticide operator license number;

(d) The telephone number of the pesticide operator;

(e) The National Capital Poison Control Center hotline number;

(f) The re-entry period specified on the pesticide label, if applicable;

(g) The common name of the pest to be controlled;

(h) The common name of pesticide or active ingredient to be applied;

(i) At the request of the customer, both or either:

(1) An original or legible copy of the current pesticide product label; or

(2) A Safety Data Sheet; and

(j) The following statement: "District of Columbia law requires that you be given the following information:

Notice of Pesticide Application:

CAUTION -- PESTICIDES MAY CONTAIN TOXIC CHEMICALS. Companies that apply pesticides are licensed and regulated by the District Department of the Environment (DDOE). The United States Environmental Protection Agency and DDOE approve pesticides for use. At your request, the company conducting your pest control will provide you with either or both of the Safety Data Sheet(s) or the pesticide label(s), both of which provide further information about the approved uses of and recommended precautions for the pesticide being applied on your property. Neither of these documents is guaranteed to list every danger associated with a pesticide. DDOE maintains a list of pesticides that present a reduced risk to humans and the environment, and encourages the use of such pesticides whenever possible. The pesticide company:

[ ] HAS
[ ] HAS NOT

chosen to apply reduced-risk pesticide(s). The District of Columbia government encourages the use of non-chemical and reduced-risk methods of pest control by residents and commercial pest control companies. Even when using reduced-risk pesticides, residents should familiarize themselves with safety information for pesticide products, and should avoid exposure to pesticides."

2211.2 In addition to the information required in § 2211.1, the pesticide operator may provide the customer with additional product information, such as a United States Environmental Protection Agency fact sheet on the product, or additional labeling information provided by the product manufacturer or registrant.

2211.3 Upon a customer's request at least forty-eight (48) hours prior to an application, the pesticide operator shall provide the customer with advance notice of a pesticide application, including the information required under § 2211.1, no less than twenty-four (24) hours prior to the application.

2211.4 When pesticide is to be applied on a multi-unit property, the pesticide operator shall provide the information listed in § 2211.1 to the customer at least forty-eight (48) hours before the pesticide is to be applied.

2211.5 At least twenty-four (24) hours, and not more than seven (7) days, before the application of pesticides on a multi-unit property, the owner of the property shall

provide each resident and tenant of the property that will be treated with the information listed in § 2211.1 by:

(a) Delivering the information to each resident's door or mailbox, or to each resident through electronic mail or facsimile; and

(b) Posting the information conspicuously in common spaces on the property, in reasonably close proximity to the locations where pesticide will be applied.

2211.6 In the event that there is no clearly defined customer or business entity as identified in § 2211.1, the applicator shall post the documentation required in § 2211.1 in an accessible location at the site of the application for public inspection.

2211.7 When applying a restricted-use pesticide outside the confines of an enclosed structure, the person applying the pesticide shall provide notice of the date and approximate time of any such pesticide application to any property that abuts the property to be treated.

2212 POSTING

2212.1 Any person applying pesticides to a lawn or to exterior landscape plants shall post a sign which meets the following requirements:

(a) The information on the front of the sign shall include the same words and symbols in the sizes specified in Figure A shown in § 2299.1 at the end of this chapter;

(b) The sign shall only include the words and symbols specified in Figure A shown in § 2299.1 at the end of this chapter;

(c) The information on the back of the sign shall be at least eighteen (18) point type (5/32 inch) in size and indicate the following:

(1) Date pesticide was applied;

(2) Name of applicator; and

(3) Telephone number of applicator;

(d) The sign shall be:

(1) Four (4) inches in height and five (5) inches in width or larger;

(2) Constructed of a sturdy, weather-resistant material;

(3) Constructed of a rigid material, as opposed to a flag;

(4) Printed on a yellow background with black, bold-faced lettering; and

(5) Posted so that the bottom of the sign shall be at least twelve (12) inches but not more than sixteen (16) inches above the surface of the soil; and

(e) The sign shall be clearly visible:

(1) From the principal places of access to the property; and

(2) On the portion of the property where the pesticide is applied.

2212.2 The sign shall remain in place for forty-eight (48) hours following the pesticide application, after which time the property owner is responsible for removal of the sign.

2212.3 Subject to the penalties provided in the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), no person, acting alone or in concert with others, may alter or deface the sign, or remove the sign within forty-eight (48) hours of its posting.

2213 STORAGE, DISPOSAL, AND TRANSPORTATION OF PESTICIDES

2213.1 Any person required to obtain a license or certification under the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), shall ensure that the pesticides under storage and the pesticide storage areas shall meet the following requirements, unless otherwise directed by the pesticide label:

(a) The storage area shall be secured or locked to prevent unauthorized access;

(b) Pesticides shall be stored in a separate building or under cover on a paved surface, separated by a physical barrier from living and working areas and from food, feed, fertilizer, seed, and safety equipment;

(c) Pesticides shall be stored in a dry, clean, and well-ventilated area;

(d) A supply of absorbent material, sufficient to absorb a spill equivalent to the capacity of the largest container in storage, shall be kept in the storage area;

(e) All pesticide containers in the storage area shall be properly labeled, free of leaks, and in sound condition;

(f) The storage area shall have a fire extinguisher available of a type and capacity sufficient to extinguish fires originating in the storage area;

(g) Pesticides shall be stored in an area located at least fifty (50) feet from any waterbody, storm sewer, or well, or stored in secondary containment approved by the District Department of the Environment; and

(h) Personal protective equipment shall be stored in an area separated by a physical barrier from the storage area or in a chemical-resistant container.

2213.2 In addition to the requirements in § 2213.1, any person storing restricted-use pesticides shall post on the exterior of the storage area and at each entrance or exit to the storage area, a sign which meets the following requirements:

(a) The sign shall be twelve (12) inches by twelve (12) inches or larger; and

(b) The information on the sign shall include the same words specified in Figure B shown in § 2299.1 at the end of this chapter.

2213.3 Disposal of any pesticides shall be in accordance with Subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), and in accordance with label directions on each pesticide product.

2213.4 Unless otherwise provided for in United States Department of Transportation regulations, pesticide operators shall ensure that:

(a) During transport, pesticide containers and application equipment shall be secured to prevent shifting or release of pesticides; and

(b) Pesticides shall not be placed or carried in the same compartment as the driver, food, or feed, unless placed or carried in a manner that provides adequate protection for the health of the driver and passengers, and the safety of the food or feed from the pesticide.

2213.5 The pesticide business name and certification number shall appear on each motor vehicle transporting in the District pesticides or devices used in pest control. The pesticide operator certification number shall be preceded by "DC Cert. No." and the business name shall be:

(a) In bold print not less than 2 inches high; and

(b) Displayed on both sides of the vehicle.

2214 MISBRANDED PESTICIDES AND DEVICES

2214.1 It shall be unlawful for any person to distribute any pesticide or device that is misbranded.

2214.2 A pesticide is misbranded if its labeling and packaging fail to comply with the provisions of this section.

2214.3 No pesticide label shall have any statement, design, or graphic representation relative to the pesticide or its ingredients that is false or misleading.

2214.4 No pesticide shall be contained in a package or other container or wrapping that does not conform to the standards established by the Environmental Protection Agency (EPA) Administrator pursuant to § 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136w(c)(3)).

2214.5 No pesticide shall be an imitation of, or offered for sale under the name of, another pesticide.

2214.6 The label of a pesticide shall bear the registration number assigned under § 7 of FIFRA (7 U.S.C. § 136e) to each establishment in which it is produced.

2214.7 Any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling shall be prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and stated in terms that will render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

2214.8 The labeling accompanying a pesticide shall contain directions for use that are necessary for effecting the purpose for which the product is intended that, if complied with, together with any requirements imposed under § 3(d) of FIFRA (7 U.S.C. § 136a(d)), are adequate to protect health and the environment.

2214.9 The label shall bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except as provided in § 2214.10.

2214.10 The label need not bear an ingredient statement as required by § 2214.9 if the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase. In this case, the ingredient statement shall appear prominently on another part of the immediate container, or on the outside container or wrapper, as permitted by the EPA Administrator.

2214.11 Each label shall contain a statement of the use classification established by the EPA Administrator under which the pesticide is registered.

2214.12 Each label shall contain a warning or cautionary statement that may be necessary and, if complied with, together with any requirements imposed under § 3(d) of FIFRA (7 U.S.C. § 136a(d)), is adequate to protect health and the environment.

2214.13 Each pesticide shall have affixed to its container, and to the outside container or wrapper of its retail package, if there is one, through which the required information on the immediate container can be clearly read, a label bearing the following information:

(a) The name and address of the producer, registrant, or person for whom the pesticide was produced;

(b) The name, brand, or trademark under which the pesticide is sold;

(c) The net weight or measure of the content, provided that the EPA Administrator may permit reasonable variations; and

(d) When required by regulation of the EPA Administrator to effectuate the purposes of FIFRA, the registration number assigned to the pesticide under FIFRA, and the use classification established by the EPA Administrator.

2214.14 No pesticide shall contain any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by FIFRA, the following information:

(a) The skull and crossbones symbol;

(b) The word "poison" prominently displayed in red on a background of distinctly contrasting color; and

(c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

2215 INTEGRATED PEST MANAGEMENT

2215.1 A District agency shall utilize an IPM program to reduce application of pesticides applied by District employees or contractors to public rights-of-way, parks, District-occupied buildings, and other District property to ensure that:

(a) Pesticides are used only if monitoring indicates they are needed according to established IPM guidelines;

(b) Pesticides are used only as a last resort after all alternative pest management strategies have been exhausted; and

(c) Pesticide application is made with the purpose of removing only the target organism.

2215.2 A child-occupied facility shall utilize an IPM program to reduce application of pesticides.

2215.3 A District agency and a child-occupied facility shall have an IPM program approved by the District Department of the Environment (Department) that meets the following requirements:

(a) Has a written IPM policy;

(b) Has a written policy on pest management roles and responsibilities of decision makers, including the name, address, and telephone number of the contact person;

(c) Has procedures for conducting the pest control program, including pest management objectives;

(d) Has procedures for regular inspection and monitoring activities to determine the presence and distribution of pests;

(e) Has standards to determine the:

(1) Severity of pest infestation;

(2) Need for alternative pest management strategies; and

(3) Need for pesticide application only as a last resort after all alternative pest management strategies have been exhausted;

(f) Has recordkeeping procedures for documenting:

(1) Pest sightings;

(2) Pest control procedures; and

(3) Any communications to potentially affected individuals regarding IPM or pesticide use; and

(g) Has a range of alternative pest management strategies, including sanitation, structural repair, physical, cultural, and biological control, and other non-chemical methods.

2215.4 If a District agency employs a contractor to perform pesticide management or application, the District agency's IPM policy shall be incorporated into the specifications or statement of work for the pest management or application contract.

2215.5 No person required to obtain a license or certification under the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*) shall apply any pesticide to public rights-of-way, parks, District-occupied buildings, other District property, or child-occupied facilities if the location does not have an IPM program approved by the Department.

2216 PEST CONTROL BY FUMIGATION

2216.1 The following regulations shall apply to fumigation operations performed by any person required to obtain an applicator certification and license or to be registered as a registered technician as required by the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), as amended.

2216.2 Notwithstanding any other provisions of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, each fumigation operation shall be performed or supervised only by a licensed applicator certified to perform fumigation.

2216.3 Each member of the fumigation crew shall be trained in those aspects of the fumigation process in which the member participates, have adequate knowledge of the fumigant, and be provided with all the safety equipment necessary for the member's protection.

2216.4 Before performing fumigation, the licensed applicator shall notify the fire station nearest the site of the fumigation.

2216.5 The notice to the nearest fire station required by § 2216.4 shall be in writing and shall include the following information:

(a) The name and address of the pesticide operator;

(b) The name of the fumigant;

(c) The name of the licensed certified applicator and the applicator's day and night telephone numbers;

(d) The location and type of structure; and

(e) The date and approximate time of fumigation, and the estimated length of the fumigation period.

2216.6 The structure, vault, vehicle, commodity, or area to be treated shall be conspicuously posted with warning signs on all sides.

2216.7 Warning signs required by § 2216.6 shall carry the following information:

(a) The skull and crossbones symbol;

(b) The name of the fumigant;

(c) A warning statement that reads: "DANGER POISON KEEP OUT";

(d) The name of the company performing fumigation; and

(e) The name and telephone number of the licensed certified applicator in charge.

2216.8 A guard shall be on the site during the entire fumigation period.

2216.9 A guard shall be capable, awake, alert, and remain on duty at the site at all times to prevent unauthorized persons from gaining entrance into the structure.

2216.10 The licensed certified applicator shall:

(a) Ensure that all persons and pets are out of the structure before fumigation;

(b) Ensure that the structure is secure; and

(c) Ensure that the structure is safe for re-occupancy.

2216.11 Only a licensed applicator certified to perform fumigation shall perform the introduction of the fumigant.

2217 PEST CONTROL BY HEAT TREATMENT

2217.1 No person shall perform pest control by heat treatment unless the person is a licensed and certified pesticide operator, in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2217.2 A person performing pest control by heat treatment shall maintain records containing the following information:

(a) Name or identification of the person performing heat treatment;

(b) Address of treated property;

(c) Date of heat treatment, including the month, day, and year;

(d) Duration of heat treatment and temperature during treatment period;

(e) Procedure for performing heat treatment; and

(f) Brand and model of the heat treatment equipment used.

2218 CANINE PEST DETECTION

2218.1 No person shall use a canine scent pest detection team to detect any pest for compensation, unless:

(a) The person is a licensed and certified pesticide operator, in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title; and

(b) The team, consisting of a handler and dog, is certified according to the requirements of this section.

2218.2 Each team shall be certified as satisfactorily trained for pest detection for each target pest by two (2) persons meeting the requirements of § 2218.14.

2218.3 Each team shall be certified as satisfactorily trained for pest detection for each target pest for which the team intends to offer pest detection services.

2218.4 Only a team may be certified as trained for pest detection and not individual dogs or handlers who are not part of a team.

2218.5 A team shall renew its certification each year for pest detection for each target pest for which the team offers pest detection services.

2218.6 A person that trains or certifies a team for pest detection may use pseudo-scents and extracts for training purposes but shall not use them for a canine scent detection test.

2218.7 A pesticide operator that uses a team to detect any pest shall maintain accurate records of the training of each team and its certification, which shall include the following:

(a) The name of the handler and the dog;

(b) The name, address, and telephone number of the individual or organization that provided initial training, maintenance training, or certification of the team;

(c) The date when initial training, maintenance training, or certification was completed; and

(d) Proof that the team has been certified as required by this section.

2218.8 A pesticide operator shall maintain the records specified in § 2218.7 for three (3) years and shall make the records immediately available, on request, to the District Department of the Environment (Department).

2218.9 A canine scent detection test shall be designed by a person to accurately evaluate the ability of a team to satisfactorily perform pest detection for each target pest and shall meet the following requirements:

(a) A canine scent detection test shall take place under conditions that are similar to conditions where target pests may be found;

(b) A canine scent detection test shall consist at a minimum of four (4) areas or spaces designed to restrict odors from moving between areas or spaces;

(c) A canine scent detection test shall contain at least two (2) distractors and three (3) hides as follows:

(1) The persons performing a canine scent detection test shall place hides in the testing room or space at least thirty (30) minutes before testing begins;

(2) A distractor shall represent the type encountered under field conditions by a team in the region the team operates; and

(3) If a dead target pest is used as a distractor, the target pest shall have been dead for at least forty-eight (48) hours; and

(d) The time limit for completing the search of all rooms, spaces or areas for a pest by a team shall be twenty (20) minutes, excluding the time spent by the team travelling between rooms or spaces. The qualified persons conducting the canine scent detection test may adjust the time limit of the test to account for varying size rooms and spaces.

2218.10 The persons conducting a canine scent detection test shall pass or fail the team.

2218.11 The team may make one false alert during a canine scent detection test, but it cannot be on a placed distractor.

2218.12 If the team passes a canine scent detection test, the persons conducting the test shall certify the team as satisfactorily trained for pest detection for the target pest.

2218.13 If the dog is treated cruelly during the canine scent detection test, the persons conducting the canine scent detection test shall fail the team.

2218.14 A person conducting a canine scent detection test shall have a minimum of five (5) years of documented experience, recognized by the Department, in dog scent handling, training, and evaluation in at least one of the following areas:

(a) Law enforcement;

(b) Other government agency;

(c) Military; or

(d) Other comparable experience verifiable by the Department in dog scent detection training or evaluation.

2218.15 At least two (2) persons meeting the requirements of § 2218.14 shall conduct each canine scent detection test.

2218.16 The persons conducting a canine scent detection test may not be the dog's current or former trainer and may not have any business or financial interest in the team's business.

2218.17 The persons conducting a canine scent detection test may have standards that are stricter than the standards provided in this section.

2219 UNLAWFUL ACTS

2219.1 Pursuant to the provisions in § 2500, the District Department of the Environment (Department) may pursue an enforcement action against any person who violates the Pesticide Operation Regulations, Chapters 22 through 25 of this title, including, but not limited to any person who:

(a) Fails to register a pesticide in accordance with the pesticide registration provisions of this title;

(b) Uses a pesticide in a manner that is inconsistent with the labeling of the pesticide or that is in violation of the restrictions imposed on the use of the pesticide by the Environmental Protection Act (EPA) Administrator or the Department;

(c) Makes a pesticide recommendation that is inconsistent with the labeling of the pesticide, or that is in violation of the restrictions imposed on the use of the pesticide by EPA Administrator or the Department;

(d) Falsifies, refuses, or neglects to maintain or make available records required to be kept under the provisions of this title;

(e) Uses fraud or misrepresentation in applying for certification, registration, or a license;

(f) Refuses or neglects to comply with any limitations or restrictions on his or her certification, registration, or license;

(g) Makes false or fraudulent claims through any media that misrepresent the effect of a pesticide or the method to be utilized in the application of a pesticide;

(h) Applies any known ineffective or improper pesticide, or operates faulty or unsafe equipment;

(i) Uses or supervises the use of a pesticide in a faulty, careless, or negligent manner;

(j) Makes false or fraudulent records, invoices, or reports;

(k) Acts in the capacity of, advertises as, or assumes to act as a pesticide dealer in the District at any time unless he or she is licensed by the District in accordance with the provisions of this title;

(l) Aids, abets, or conspires with any other person to evade the provisions of this title;

(m) Makes fraudulent or misleading statements during or after an inspection of a pest infestation, or during or after an inspection pursuant to the provisions in Chapter 25 (Pesticide Use Enforcement and Administration) of this title;

(n) Impersonates any federal, state, or District inspector or official;

(o) Fails to immediately notify the Department by telephone, or in writing, of any pesticide accident, incident, fire, flood, or spill, or to report to the Department the full details of the event, including any remediation taken;

(p) Distributes any pesticide that is adulterated;

(q) Fails to maintain a record required pursuant to § 2517.1 for a transaction involving a restricted-use pesticide; or

(r) Violates any other requirement or provision of the Pesticide Operations Act of 1977, as amended, or the rules promulgated to carry out the provisions of the Act, set forth in Chapters 22 through 25 of this title.

2219.2 Each unlawful act shall constitute a separate violation of the Pesticide Operation Regulations, Chapters 22 through 25 of this title. In the event of any violation of or failure to comply with the Pesticide Operation Regulations, each and every day of the violation or failure shall constitute a separate offense.

2299 DEFINITIONS

2299.1 When used in this chapter, the following terms shall have the meanings ascribed (definitions that are codified in the relevant Acts are indicated as [Statutory], and are reprinted below for regulatory efficiency):

Accident - an unexpected, undesirable event, caused by the use or presence of a pesticide that adversely affects humans or the environment.

Active ingredient - shall be as follows:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, or mitigate any pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, will accelerate or retard the rate of growth or maturation, or otherwise alter the behavior of ornamental or crop plants or the product of the plants;

(c) In the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant; and

(d) In the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue. [Statutory]

Adulteration - a pesticide the strength or purity of which falls below the professed standard or quality as expressed in its labeling or under which it is sold, or the total or partial substitution of any substance for the pesticide, or the total or partial abstraction of any valuable constituent of the pesticide. [Statutory]

Agriculture - land whose primary purpose and use is to raise crops. [Statutory]

Agricultural commodity - any plant or part of a plant, or an animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by humans or animals.

Alert - a characteristic change in a dog's behavior in response to the odor of a pest as interpreted by the dog's handler.

Animal - all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish, and shellfish. [Statutory]

Biopesticide - a chemical derived from plants, fungi, bacteria, or other non-man-made synthesis that is effective in controlling target pests; or certain microorganisms, including bacteria, fungi, viruses, and protozoa that are effective in controlling target pests. These agents usually do not have toxic effects on animals and people and do not leave toxic or persistent chemical residues in the environment.

Canine scent pest detection team - a unit consisting of a human and a dog that train and work together to detect a target pest.

Certification - the recognition by a certifying agency that a person is competent and is authorized to use or supervise the use of restricted-use pesticides or authorized to perform pest detection for a target pest.

Certified applicator - any individual who is certified by the Department as being competent to use or supervise the use of any restricted-use pesticide or class of restricted-use pesticides covered by his or her certification. [Statutory]

Child-occupied facility - a building or portion of a building which, as part of its function, receives children under the age of 6 years on a regular basis and is required to obtain a certificate of occupancy as a precondition to performing that function, including day care centers, nurseries, pre-school centers, kindergarten classrooms, child development centers, child development homes, child development facilities, child-placing agencies, infant care centers, and similar entities. [Statutory]

Commercial applicator - an individual, whether or not he or she is a private applicator with respect to some uses, who uses or supervises the use of any pesticide that is classified for restricted use for any purpose or on any property other than as provided by the definition of "private applicator." [Statutory]

Competent - properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

DCRA - the District of Columbia Department of Consumer and Regulatory Affairs.

Defoliant - any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission. [Statutory]

Department - the District Department of the Environment.

Desiccant - any substance or mixture of substances intended for artificially accelerating the drying of plant tissue. [Statutory]

Device - any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than human and other than bacteria, virus, or other microorganism on or in living humans or other living animals); but not including equipment used for the application of pesticides when sold separately from the pesticides. [Statutory]

Director - the Director of the District Department of the Environment or the Director's designated agent.

Distractor - a non-target odor source placed within a pest scent-detecting dog's search area.

Distribute - to offer for sale, hold for sale, sell, barter, or trade a commodity. [Statutory]

District - the District of Columbia. [Statutory]

District agency - any District office, department, or agency, including independent agencies, the District of Columbia Water and Sewer Authority, and the Washington Metropolitan Area Transit Authority.

District property - buildings or land owned, leased, or otherwise occupied by the District government. [Statutory]

District restricted-use - a pesticide identified by the Department as requiring additional restrictions for use to prevent a hazard to human health, the environment, or property as set forth in § 2205 of Chapter 22 of this title. [Statutory]

Environment - includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these. [Statutory]

EPA - the United States Environmental Protection Agency.

EPA Administrator - the Administrator of the United States Environmental Protection Agency. [Statutory]

Equipment - any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power, and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land. This term shall not include any pressurized hand-sized household apparatus used to apply a pesticide. [Statutory]

Extract - an odor extracted from a target pest for a pest scent-detecting dog to detect.

FIFRA - the Federal Insecticide, Fungicide, and Rodenticide Act, effective April 26, 1910, as amended (7 U.S.C. § 136 *et seq*.).

Forestry - trees on land that is at least one acre in size and at least 10% occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use. [Statutory]

Fumigation - the act of releasing or dispensing a toxic chemical agent in such a way that it reaches the organism wholly or primarily in the gaseous state.

Fungus - any non-chlorophyll-bearing thallophyte (any non-chlorophyll-bearing plant of a lower order than mosses and liverworts); for example: rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other animals and those on or in processed food, beverages, or pharmaceuticals. [Statutory]

Hazard - a probability that a given pesticide will have an adverse effect on humans or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

Hide - a container that allows free movement of air containing between five (5) and twenty (20) live target pests or viable eggs.

Inert ingredient - an ingredient that is not active.

Ingredient statement - a statement that contains:

(a) The name and percentage of each active ingredient, and the total percentage of all inert ingredients in the pesticide; and

(b) If the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

Insect - any of the numerous small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class insecta, comprising six- (6) legged, usually winged forms (for example, beetles, bugs, bees, and flies). For purposes of Chapters 22 through 25 of this title, the term "insect" also applies to allied classes of arthropods whose members are wingless and usually have more than six (6) legs (for example, spiders, mites, ticks, centipedes, and wood lice). [Statutory]

Integrated pest management or **IPM** - an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage economically, and with a strong preference for examining a range of cultural, mechanical, biological, and chemical practices and selecting a method presenting the least possible hazard to people, property, and the environment. [Statutory]

Label - the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its container or wrappers. [Statutory]

Labeling - all labels and all other written, printed, or graphic matter:

(a) Accompanying the pesticide or device at any time, or

(b) Accompanying or referring to the pesticide or device except when accurate non-misleading references are made to current official publications of Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides. [Statutory]

Land - all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation. [Statutory]

Licensed certified applicator - a pesticide applicator who has completed the requirements for certification and holds a valid District license.

Mayor - the Mayor of the District of Columbia or the Mayor's designee.

Minimum-risk pesticide - a pesticide registered with the Department, but exempt from federal registration under Section 25(b) of FIFRA. [Statutory]

Misbranded - a pesticide is misbranded if its labeling and packaging fail to comply with the provisions of § 2214 of Title 20 of the District of Columbia Municipal Regulations.

Nematode - invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms. [Statutory]

Non-essential - a pesticide that is not critical to managing pests that threaten health, property, or the environment in the District as set forth in § 3 of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191; 59 DCR 10166 (August 24, 2012)). [Statutory]

Ornamental - trees, shrubs, and other plantings in and around habitations, generally, but not necessarily, located in urban and suburban areas, including residences, parks, streets, retail outlets, and industrial and institutional buildings.

Person - any individual, partnership, association, corporation, company, joint stock association, or any organized group of people whether incorporated or not, and includes any trustee, receiver, or assignee. [Statutory]

Pest - any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living humans or other living animals) which commonly is considered to be detrimental to humans or their interests or which the Department may declare to be detrimental. [Statutory]

Pesticide - any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. [Statutory]

Pesticide applicator or **applicator** - an individual who is a commercial applicator, private applicator, public applicator, or registered technician. [Statutory]

Pesticide dealer - any person who distributes to the ultimate user restricted-use pesticides or any pesticide whose use or distribution is further restricted by the Department. [Statutory]

Pesticide operator - shall be:

(a) Any person who owns or manages a pesticide application business in which pesticides are applied upon the lands of another for hire or compensation; or

(b) Except as otherwise provided under the definition of "private applicator," the owner or manager of any commercial firm, business, corporation, or private institution, who directly or through employees uses restricted-use pesticides on property owned, managed, or leased by the commercial firm, business, corporation, or private institution; or

(c) Any District or other governmental agency whose officials or employees apply pesticides as part of their normal duties. [Statutory]

Pesticide registration fee - the fee set for product registration by § 2518 of Title 20 of the District of Columbia Municipal Regulations. [Statutory]

Plant incorporated protectant - pesticidal substances that are intended to be produced and used in a living plant or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. Plant incorporated protectant also includes any inert ingredient contained in the plant, or produce thereof.

Plant regulator - any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, it shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration. [Statutory]

Private applicator - any individual who uses any restricted-use pesticide for purposes of producing any agricultural commodity on property owned or rented by the individual or his or her employer, or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. [Statutory]

Protective equipment - clothing or any other materials or devices that shield against unintended exposure to pesticides.

Pseudo-scent - a human-made compound that mimics a target pest odor.

Public applicator - a commercial applicator who is authorized to use or supervise the use of pesticides and who is an employee of the District or of a governmental agency. [Statutory]

RCRA - the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq*.), as amended.

Reduced-risk pesticides - any pesticide identified in § 2210 of Title 20 of the District of Columbia Municipal Regulations. [Statutory]

Registered technician - an individual who is registered with the Department, under § 2311 of Title 20, and who works under the direct supervision of a licensed commercial or public applicator, as set forth in § 12(c) of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191; 59 DCR 10166 (August 24, 2012)).

Registrant - any person who registers any pesticide pursuant to the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*).

Restricted-use pesticides - any pesticides or pesticide use classified by the EPA Administrator for restricted use; or any pesticide, which when used as directed or in accordance with a commonly recognized practice, the Department determines, subsequent to a hearing, that additional restrictions for that use are necessary in order to prevent a hazard to the applicator or other persons, or to prevent unreasonable adverse effects upon the environment. [Statutory]

School - a public or private facility whose primary purpose is to provide K-12 educational services and includes adjacent or contiguous recreation centers or athletic fields owned or maintained by the educational facility. [Statutory]

Space treatment - the dispersal of insecticides into the air by foggers, misters, aerosol devices, ultra-low volume equipment, or vapor dispensers for the control of flying insects and exposed crawling insects.

Storm sewer - a system of pipes or other conduits which carries or stores intercepted surface runoff, street water, and other wash waters, or drainage, but excludes domestic sewage and industrial wastes.

Under the direct supervision of - unless otherwise prescribed by its labeling or other restrictions imposed by the Department, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent registered technician acting under the instruction and control of a certified applicator who is available if and

when needed, even though the certified applicator may not be physically present at the time and place the pesticide is applied. [Statutory]

University - the University of the District of Columbia.

Waterbody - those portions, sections, or segments of waters located within the District that are:

(a) Subject to the ebb and flow of the tide; or

(b) Free flowing, unconfined, and aboveground rivers, streams, or creeks. [Statutory]

Waterbody-contingent property - property within 25 feet of a waterbody. [Statutory]

Weed - any plant that grows where it is not wanted. [Statutory]

Figure A

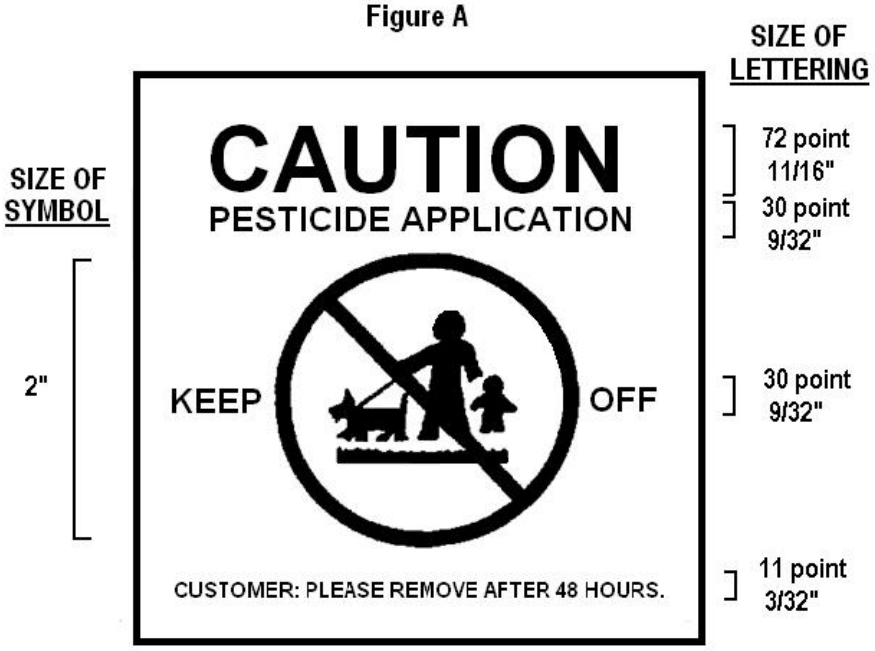
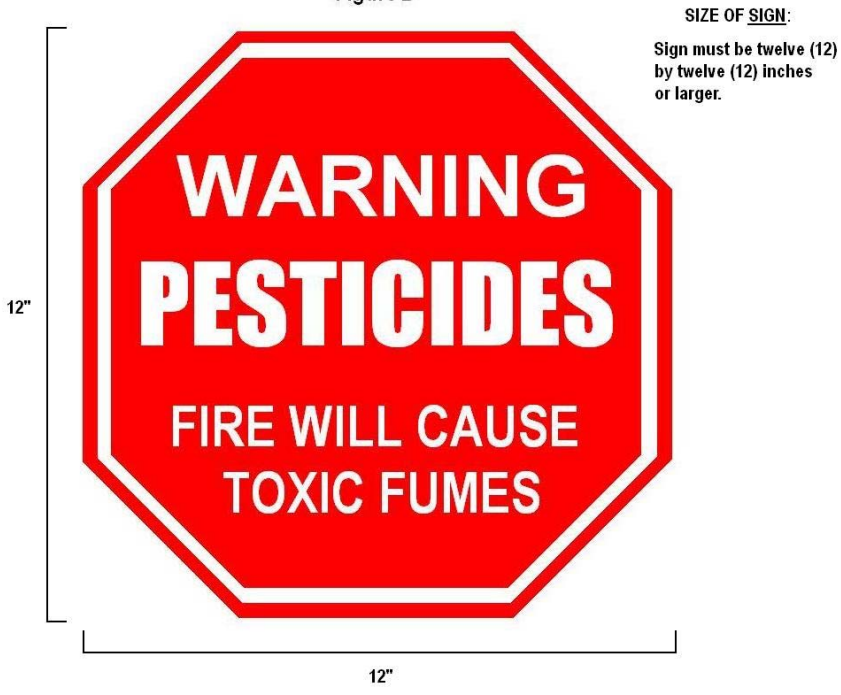


Figure B



CHAPTER 23 PESTICIDE APPLICATORS

2300 GENERAL PROVISIONS

2300.1 The following regulations shall apply to all persons required to obtain an applicator certification and license or to be registered as a registered technician as required by the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), as amended.

2300.2 No person shall apply any pesticide in the District for a fee unless he or she is certified and licensed or registered in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title, except as provided in § 2300.8.

2300.3 No person shall purchase, use, or supervise the use of any restricted-use pesticide unless he or she is certified and licensed in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title, except as provided in § 2300.8.

2300.4 No person shall apply for a pesticide applicator license unless the applicant is certified as a pesticide applicator.

2300.5 Application for a pesticide applicator's license shall be made in writing on a form prescribed by the District Department of the Environment (Department).

2300.6 If the Department does not certify or license an applicant as provided in this chapter, the Department shall inform the applicant in writing of the reasons for the denial of the license or certification.

2300.7 A registered technician shall purchase and use pesticides under the direct supervision of a licensed commercial or public applicator in accordance with §§ 2311 and 2312.

2300.8 The certification and licensing requirements of this chapter shall not apply to the following individuals:

(a) A person conducting laboratory-type research involving restricted-use pesticides;

(b) A doctor of medicine or doctor of veterinary medicine applying pesticides as drugs or medication during the course of normal practice;

(c) A registered technician while working under the direct supervision of a licensed certified applicator; or

(d) A person applying any pesticide that is not a restricted-use pesticide on his or her own premises, or an employee of that person who applies any pesticide that is not a restricted-use pesticide on the person's premises.

2300.9 All certifications and licenses granted pursuant to this chapter shall be posted conspicuously on the premises of the licensee.

2301 CATEGORIES OF PESTICIDE APPLICATORS

2301.1 Individuals shall apply for certification on a form prescribed by the District Department of the Environment in one (1) of the categories or subcategories of pest control outlined in this section (subject categories are classified in accordance with 40 C.F.R. § 171.3).

2301.2 Ornamental and Turf Pest Control - this category includes applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf. This category contains the following subcategories:

(a) Exterior Ornamental Plants;

(b) Lawns and Turf; and

(c) Interior Ornamental Plants.

2301.3 Aquatic Pest Control - this category includes applicators using or supervising the use of pesticides purposefully applied to standing or running water, wetland areas, or within tidal basins, excluding applicators engaged in public health-related activities included in § 2301.6.

2301.4 Right of Way Pest Control - this category includes applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway right-of-way, or other similar areas.

2301.5 Industrial, Institutional, Structural, and Health Related Pest Control - this category includes applicators using or supervising the use of pesticides in, on, or around food handling establishments; human dwellings; industrial establishments, including warehouses and grain elevators; institutions, such as schools and hospitals; and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. This category contains the following subcategories:

(a) General Pest Control - preventing, repelling, or controlling insects, fungi, or other pests within or adjacent to structures of any kind, or the adjacent grounds, or where people may assemble or congregate. This subcategory does not include work otherwise defined in §§ 2301.5(b) through (f);

(b) Wood Destroying Organism - preventing, repelling, or controlling termites, powder post beetles, fungi, or wood destroying organisms in or on

structures of any kind of pre-treating areas or the surrounding grounds where the structures are to be constructed;

(c) Wildlife Control - preventing, repelling, or controlling nuisance birds, mammals, reptiles, and other wildlife not covered by the Rodent Control category;

(d) Fumigation - the use of a fumigant within an enclosed space for the destruction of a pest, not including space treatment;

(e) Rodent Control - preventing, repelling, or controlling rodents; and

(f) Industrial Weed Control - preventing, repelling, or controlling weeds on industrial or commercial sites.

2301.6 Public Health Pest Control - this category includes District and other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.

2301.7 Regulatory Pest Control - this category includes District and other governmental employees who use or supervise the use of pesticides in the control of regulated pests.

2301.8 Demonstration and Research Pest Control - this category includes the following:

(a) Individuals who demonstrate to the public the proper use and techniques of application of restricted-use pesticides, or who supervise the public demonstration. Included in this group is any person who is an extension specialist, or a commercial representative demonstrating restricted-use pesticide products, and anyone demonstrating methods used in public programs; or

(b) Persons conducting field research with restricted-use pesticides and, in doing so, use or supervise the use of restricted-use pesticides.

2301.9 Miscellaneous Pest Control - this category includes commercial applicators using or supervising the use of a pesticide(s) for the management and control of pests that are not related to or described in §§ 2301.2 through 2301.8.

2302 COMMERCIAL APPLICATORS: ELIGIBILITY FOR CERTIFICATION

2302.1 Each applicant for certification as a commercial applicator shall demonstrate to the District Department of the Environment (Department) that he or she has at least one (1) of the following:

(a) One (1) year of experience acceptable to the Department as a full-time registered technician engaged in those categories in which the applicant seeks to be certified. Proof of this experience may include affidavits from former employers, certification or licensing from other states or the federal government, or other measures acceptable to the Department;

(b) A degree or certification from an accredited college or university with specialized training acceptable to the Department in the categories in which the applicant seeks to be certified. One (1) year of this specialized training may be considered equivalent to one (1) year of practical experience; or

(c) A combination of training and experience acceptable to the Department. This combination shall total not less than one (1) year.

2303 COMMERCIAL APPLICATORS: DETERMINATION OF COMPETENCY

2303.1 To be certified as competent in the use and handling of pesticides, each applicant shall meet the requirements of this section.

2303.2 An applicant for certification shall pass a written examination (and, where appropriate, a practical examination) administered by the District Department of the Environment (Department) in each category or subcategory for which the applicant seeks to be certified.

2303.3 The required examinations and testing shall be based upon the standards set forth in § 2304.

2303.4 The required examinations and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory, if any, in which an applicator is to be certified.

2303.5 Examinations shall be administered at least six (6) times a year at locations and times designated and announced by the Department.

2303.6 To become certified in any category or subcategory, each applicant shall be required to pass the following separate written examinations:

(a) A general, core examination; and

(b) A category examination which shall be specific to the category(ies) or subcategory(ies) described in § 2301 of this chapter, and which, when applicable, may include a practical examination.

2303.7 A passing score for any examination shall consist of a total correct score equal to or exceeding seventy percent (70%) of the total points on the examination as graded by the Department.

2303.8 The Department shall notify in writing each applicant who takes an examination of the results of the examination on a pass-fail basis.

2303.9 An applicant who fails the general core or category examination, or, when applicable, the practical examination, may not reapply to take that examination until thirty (30) days after the date of the last failed examination.

2303.10 An applicant who fails the general core or category examination, or, when applicable, the practical examination, three (3) consecutive times, shall wait one hundred and eighty (180) days after the date of the last failed examination before re-applying to take the examination.

2303.11 The Department shall notify in writing each applicant who has successfully completed the requirements for certification, stating the category(ies) or subcategory(ies) in which competency has been demonstrated.

2303.12 A certified applicator who elects to add one (1) or more category(ies) or subcategory(ies) to an existing certification shall be required to take only the examination for the new category(ies) or subcategory(ies) for which certification is desired.

2303.13 An applicator who has any part of his or her certification revoked shall retake the examination in the category(ies) or subcategory(ies) for which the applicator seeks to be recertified.

2304 COMMERCIAL APPLICATORS: STANDARDS FOR DETERMINATION OF COMPETENCY

2304.1 The standards prescribed in this section shall be used to determine the competency of each commercial applicator prior to his or her certification.

2304.2 A commercial applicator shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides.

2304.3 A commercial applicator shall demonstrate mastery of the principles of integrated pest management.

2304.4 Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification, as well as the following areas of competency:

(a) Label and labeling comprehension, including the following factors:

(1) The general format and terminology of pesticide labels and labeling;

(2) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

(3) Classification of the product; and

(4) Necessity for use consistent with the label;

(b) Pests, including factors such as the following:

(1) Common features of pest organisms and characteristics of damage needed for pest recognition;

(2) Recognition of relevant pests; and

(3) Pest development and biology as it may be relevant to problem identification and control;

(c) Safety, including the following factors:

(1) Pesticide toxicity, common exposure routes, and hazard to humans;

(2) Common types and causes of pesticide accidents;

(3) Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;

(4) Need for and use of protective clothing and equipment;

(5) Symptoms of pesticide poisoning;

(6) First aid and other procedures to be followed in case of a pesticide accident; and

(7) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers;

(d) Environment, including the potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as the following:

(1) Weather and other climatic conditions;

(2) Types of terrain, soil, or other substrate;

(3) Presence of fish, wildlife, and other non-target organisms; and

(4) Drainage patterns;

(e) Pesticides, including factors such as the following:

(1) Types of pesticides;

(2) Types of formulations;

(3) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations;

(4) Hazards and residues associated with use;

(5) Factors that influence effectiveness or that lead to problems such as a resistance to pesticides; and

(6) Dilution procedures;

(f) Equipment, including the following factors:

(1) Types of equipment and advantages and limitations of each type; and

(2) Uses, maintenance, and calibration;

(g) Application techniques, including the following factors:

(1) Methods and procedures used to apply various formulations of pesticides, solutions and gases, together with a knowledge of which technique of application to use in a given situation;

(2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(3) Prevention of drift and pesticide loss into the environment; and

(h) All applicable District and federal laws and regulations.

2304.5 In order to be certified in a particular category(ies) or subcategory(ies), commercial applicators shall demonstrate qualification in their respective category(ies) or subcategory(ies) according to the practical knowledge standards specified in §§ 2304.6 through 2304.13.

2304.6 Ornamental and Turf Pest Control - applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, plantings, shrubs, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators shall be knowledgeable about the various application methods that will minimize or prevent hazards to humans, pets, and other domestic animals.

2304.7 Aquatic Pest Control - applicators shall demonstrate practical knowledge of the secondary effects that can be caused by improper application rates, incorrect formulations, and faulty application of restricted-use pesticides used in this category. Applicators shall demonstrate practical knowledge of various water use situations and the potential of down-stream effects. Further, applicators shall have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

2304.8 Right-of-Way Pest Control - applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-ways can traverse many different terrains, including waterways. These applicators shall demonstrate practical knowledge of problems of runoff, drift, and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the rights-of-way area, and the impact of their application activities in the adjacent areas and communities.

2304.9 Industrial, Institutional, Structural, and Health Related Pest Control - applicators shall demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination of habitat, and exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators shall demonstrate a practical knowledge of the specific factors that may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applications, applicators shall also demonstrate practical knowledge of environmental conditions that are particularly related to this activity.

2304.10 Public Health Pest Control - applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that these be known and recognized, and that appropriate life cycles and habitats be understood as a basis for a control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in

buildings. They also should have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal, and drainage.

2304.11 Regulatory Pest Control - applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted-use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

2304.12 Demonstration and Research Pest Control - persons demonstrating the safe and effective use of pesticides to other applicators and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration; and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, applicators shall demonstrate an understanding of pesticide-organism interactions, and the importance of integrating pesticide use with other control methods. In general, it shall be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in § 2304.4 of this section. In addition, applicators shall meet the specific standards required for the categories listed as §§ 2304.6 through 2304.9 as may be applicable to their particular activity.

2304.13 Miscellaneous Pest Control - applicators shall demonstrate a practical knowledge of the type of pest(s) and pesticide(s) problems as it relates to a particular type of pest control activity. If appropriate, the applicator may be required to demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control, and methods of application, potential effects on the environment, and principles of limited area application. The District Department of the Environment shall specify a specific subcategory pertaining to the applicant's request for certification.

2305 COMMERCIAL APPLICATORS: CERTIFICATION AND LICENSING

2305.1 The District Department of the Environment (Department) shall issue an applicant a certification and the appropriate credentials, after an applicant performs the following actions:

(a) Submits proof of competency; and

(b) Submits a completed application for an applicator's license.

2305.2 A license shall be valid only when accompanied by a current pesticide applicator's certification issued by the Department.

2305.3 Each certification and license shall contain the names of both the applicant and the employing pesticide operator and shall specify the category(ies) or subcategory(ies) of pest control activity in which the applicant has demonstrated and maintained competency.

2305.4 No applicator shall be employed by more than one (1) pesticide operator unless the applicator has a separate certification for each employer.

2305.5 A licensed certified applicator terminating employment within a licensing period shall submit his or her certification and credentials to the employing pesticide operator.

2305.6 Within ten (10) working days after a licensed certified applicator terminating employment within a licensing period submits his or her certification and credentials to the employing pesticide operator, the pesticide operator shall:

(a) Notify the Department in writing of the termination of the licensed certified applicator's employment; and

(b) Return the certification and credentials of the employee to the Department for cancellation.

2305.7 A licensed certified applicator whose employment has terminated within a licensing period may, after becoming employed by another pesticide operator and after new application and payment of the appropriate certification fees, be issued a new certification and appropriate credentials.

2305.8 Any applicant who has successfully completed the requirements for certification, but who does not complete the licensing requirement within one (1) year from the date of certification, shall lose certification and may re-qualify for certification only by passing the relevant qualifying examinations for the category(ies) or subcategory(ies) in which the applicant seeks certification.

2305.9 Any licensed certified applicator who has not renewed his or her certification within one (1) year from the date certification expires shall be considered as a new applicant.

2305.10 Any applicator whose license has been revoked, or whose license has lapsed, shall re-qualify for certification and licensing only by passing the relevant qualifying examinations for the category(ies) or subcategory(ies) in which they seek certification.

2305.11 An applicator may maintain his or her certification by putting it on inactive status. To maintain a certification in inactive status, the applicator shall notify the Department of the change in status and maintain recertification credits in accordance with the provisions of this chapter.

2306 COMMERCIAL APPLICATORS: CERTIFICATION AND LICENSING RENEWAL

2306.1 Beginning January 1, 2016, a licensed certified applicator shall renew his or her certification and license every year.

2306.2 Beginning January 1, 2016, an applicant for certification renewal shall be required to present documentation indicating satisfactory completion within the year of a minimum of one (1) refresher training course approved by the District Department of the Environment (Department) and pertinent to the applicator's competency, including training on integrated pest management principles or other least-toxic pest management practices.

2306.3 Refresher courses meeting the requirements of § 2306.2 may be in the form of educational courses, programs, seminars, or workshops.

2306.4 To renew certification, the refresher course shall be combined with a history of satisfactory performance as a certified applicator.

2306.5 If the Department determines after consultation with the EPA or other qualified professionals in the field of pest control that a significant change in technology has occurred and that additional training is vital for the protection of the environment, the Department may require that an applicator take an examination prior to the issuance of the renewed certification.

2307 PRIVATE APPLICATORS: CERTIFICATION AND LICENSING

2307.1 Each applicant shall notify the District Department of the Environment (Department), in writing, of reasons for requesting private applicator certification.

2307.2 An applicant's written notification shall include the following information:

(a) The name of the restricted-use pesticide;

(b) The intended use of the pesticide; and

(c) The address of the site where the pesticide will be applied.

2307.3 If the notification is accepted by the Department, the applicant may then apply for certification pursuant to § 2308 of this chapter.

2307.4 The Department shall issue an applicant a certification and the appropriate credentials, after the applicant performs the following actions:

(a) Submits proof of competency; and

(b) Submits a completed application for an applicator's license.

2307.5 Beginning January 1, 2016, a private applicator shall renew his or her certification every two (2) years by presenting documentation indicating satisfactory completion of a minimum of one (1) refresher training course meeting the requirements of §§ 2306.2 or 2306.3, combined with a history of satisfactory performance.

2307.6 A license shall be valid only when accompanied by a current pesticide applicator's certification issued by the Department.

2308 PRIVATE APPLICATORS: DETERMINATION OF COMPETENCY

2308.1 Each applicant shall demonstrate proof of practical and scientific knowledge of pest control by:

(a) Passing an examination that meets the requirements outlined in § 2309; and

(b) Performing a labeling exercise pertinent to the restricted-use product or products for which certification is requested.

2308.2 A passing score for any examination shall consist of a total correct score equal to or exceeding seventy percent (70%) of the total points on the examination as graded by the District Department of the Environment (Department).

2308.3 The Department shall notify in writing each applicant who takes an examination of the results of the examination on a pass-fail basis.

2308.4 The Department shall notify in writing each applicant who successfully completes the requirements for certification for the product or products for which competency has been demonstrated.

2308.5 Certification of private applicators shall be limited to specified uses of a single product or related products having the same active ingredient formulation and uses.

2308.6 Each applicator shall be authorized to use only the pesticide or pesticides for which competency has been demonstrated.

2308.7 The Department may amend a certification to include additional products if the private applicator fulfills the testing requirement of § 2309 for the additional products.

2308.8 Any applicator who has any part of his or her certification revoked shall re-qualify for certification only by fulfilling the testing requirement of § 2309.

2309 PRIVATE APPLICATORS: STANDARDS FOR DETERMINATION OF COMPETENCY

2309.1 The District Department of the Environment (Department) shall determine competency in the use and handling of pesticides by a private applicator by procedures set forth in this section.

2309.2 As a minimum requirement for certification, a private applicator shall show that he or she possesses a practical knowledge of the following:

(a) The pest problems and pest control practices associated with the agricultural operations, proper storage, use, handling, and disposal of the pesticides and containers with which the applicator will be involved;

(b) The principles of integrated pest management; and

(c) The legal responsibilities related to the applicator's job.

2309.3 An applicator's practical knowledge shall be evaluated according to his or her ability to:

(a) Recognize common pests to be controlled and the damage caused by these pests;

(b) Read and understand the label and labeling information, including the common name of pesticides the applicator applies, the pest or pests to be controlled, the timing and methods of applications, the safety precautions, the pre-harvest or reentry restrictions, and any specific disposal procedures;

(c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as the area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) Recognize local environmental situations that must be considered during an application in order to avoid contamination; and

(e) Recognize poisoning symptoms and know procedures to follow in case of a pesticide accident.

2309.4 The Department may verify the competence of each private applicator through the administration of a private applicator certification system that ensures that the

private applicator is competent, based upon the standards set forth in this section, to use the restricted-use pesticides under limitations of applicable District and federal laws and regulations.

2309.5 The certification system specified in § 2309.4 shall employ a written demonstration of competence or any other equivalent system as may be adopted by the Department subject to the approval of the Environmental Protection Agency.

2310 GOVERNMENT AGENCIES AND PUBLIC APPLICATORS

2310.1 Except as otherwise provided, all District and other governmental agencies shall be subject to the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2310.2 The District Department of the Environment shall issue a certification to each qualified public applicator pursuant to the standards for certification of commercial applicators set forth in this chapter.

2310.3 No fee shall be charged for the issuance of a public applicator certification or license to an employee of the District or any federal governmental agency.

2310.4 A public applicator license shall be valid only when the licensee is engaged by his or her employing agency as an applicator to use or supervise the use of pesticides on land or other property owned or rented by the agency, or is acting within the scope of his or her employment.

2310.5 A District and federal governmental agency employing pesticide applicators shall not be subject to the requirements of § 2402.

2311 REGISTRATION OF TECHNICIANS

2311.1 Except for persons who are exempt from certification and license requirements under § 2300.8, only those persons certified and licensed under the Pesticide Operation Regulations, Chapters 22 through 25 of this title, shall apply pesticides in the District of Columbia for a fee unless they are registered as a technician with the District Department of the Environment (Department) pursuant to this section and acting under the direct supervision of a licensed certified applicator.

2311.2 No pesticide operator required to be licensed in the District of Columbia pursuant to the Pesticide Operation Regulations, Chapters 22 through 25 of this title, shall permit the use of any pesticide by any technician unless that technician is registered with the Department pursuant to this section and under the direct supervision of a licensed certified commercial or public applicator pursuant to the requirements in § 2312.

2311.3 Application for registration of each technician shall be submitted to the Department within thirty (30) days after the first date of employment.

2311.4 Application for registration shall be made in writing on a form prescribed by the Department.

2311.5 Prior to approval by the Department as a registered technician, an individual shall receive a passing score on the general core examination as provided for in §§ 2303.6(a) and 2303.7.

(a) An individual shall have one hundred and eighty (180) days from the date the Department receives a completed application for registration to receive a passing score the general core examination as provided for in §§ 2303.6(a) and 2303.7.

(b) An individual that fails to receive a passing score on the general core examination as provided for in §§ 2303.6(a) and 2303.7 within one hundred and eighty (180) days from the date the Department receives a completed application for registration shall wait an additional one hundred and eighty (180) days before retaking the examination.

2311.6 Any person that registered with the Department as a registered technician prior to October 1, 2014, shall not be required to retake the general core examination as provided in § 2311.5.

2311.7 Upon approval, the Department shall issue an identification card to each registered technician.

2311.8 A registered technician shall carry, or have reasonably available nearby, his or her identification card during all working hours and shall display it upon request.

2311.9 Registration under this section shall be valid for three (3) years from the date of issuance of the identification card.

2311.10 In order to renew his or her registration, a registered technician shall be required to:

(a) Present documentation indicating satisfactory completion within the year of a minimum of one (1) refresher training course approved by the Department and pertinent to the employee's competency;

(b) Demonstrate a history of satisfactory performance; and

(c) If the Department determines after consultation with the EPA and other qualified professionals in the field of pest control that a significant change in technology has occurred and that additional training is vital for the protection of the environment, the Department may require that the

registered technician take an examination prior to the issuance of the renewed registration.

2311.11 Upon completion of any three (3) year term as a registered technician, the individual shall apply for certification in a category pursuant to § 2303 of this chapter. The individual shall sit for a category examination. If a passing score is achieved, the individual shall be certified as an applicator in that category. If a passing score is not achieved, the individual may remain a registered technician for an additional three (3) year term.

2311.12 A registered technician can only renew his or her registration for one additional three (3) year term. If at the end of this additional term the registered technician does not apply for and achieve certification in a category pursuant to § 2303 of these regulations, the technician may no longer remain a registered technician.

2311.13 The pesticide operator shall pay an annual fee for each registered technician in the amount specified in § 2520.

2311.14 The pesticide operator shall give the Department written notice of the termination of the employment of a registered technician within thirty (30) days of the termination and shall return the registered technician's identification card to the Department with the written notice of termination.

2312 SUPERVISION OF REGISTERED TECHNICIANS

2312.1 A registered technician shall apply pesticides under the direct supervision of a licensed certified applicator whose certification permits the application.

2312.2 A registered technician working under direct supervision shall meet the following requirements:

(a) Be able to read and comprehend written instructions, including the text of pesticide labeling;

(b) Be capable of properly handling and applying a given pesticide to the satisfaction of the supervising licensed certified applicator; and

(c) Be able to carry out assignments and instructions in a responsible manner.

2312.3 Direct supervision shall include, but is not necessarily limited to, the requirements set forth in §§ 2312.4 and 2312.5.

2312.4 If the label of the pesticide being applied so stipulates, direct supervision shall be defined as the physical presence of a supervising licensed certified applicator.

2312.5 Unless the pesticide label indicates otherwise, in the absence of the supervising

licensed certified applicator, direct supervision may be provided by clearly legible written or electronic verifiable instructions or directions at a location at which pesticides are handled, mixed, stored, disposed, applied, or used. The instructions shall specify the following information:

(a) How to handle and apply the pesticide;

(b) The precautions to be taken to prevent injury to the applicator, other persons, and the environment; and

(c) How to contact the supervising licensed certified applicator under whose supervision the registered technician is working. The technician shall have direct voice contact with the supervising licensed certified applicator if needed.

2312.6 The pesticide label shall be a part of the instructions required by § 2312.5, and may suffice in those matters that it addresses.

2312.7 Ultimate responsibility for the application of pesticides by registered technicians shall remain with the supervising licensed certified applicator.

2312.8 The supervising licensed certified applicator shall instruct the registered technician in all directions for use and of cautions necessary for the safe use and application of any pesticide the technician may be directed to use.

2312.9 The supervising licensed certified applicator is responsible for understanding and complying with the provisions of this section.

2312.10 The availability of the supervising licensed certified applicator shall be directly related to the hazard of the situation, and as provided in §§ 2312.4 and 2312.5.

2313 PROTECTION OF PESTICIDE HANDLERS AND APPLICATORS

2313.1 Each applicator required to be licensed under this chapter shall acquaint those working under his or her direct supervision with the hazards involved in the use of pesticides generally and specific hazards set forth on the labeling of the pesticides to be used, and instruct the employees on the proper steps to avoid these hazards.

2313.2 Each applicator required to be licensed under this chapter shall provide the necessary safety equipment and protective clothing for the protection of all employees under his or her supervision as set forth on the pesticide labeling.

2313.3 Each applicator required to be licensed under this chapter shall inform those working under his or her direct supervision of any appropriate reentry requirements, and to provide the necessary protective clothing or apparatus if premature reentry is necessary.

2313.4 If the applicator is not the owner or manager, the pesticide operator shall have ultimate responsibility for providing safety equipment and protective clothing.

2314 RECIPROCITY OF CERTIFICATION

2314.1 The District Department of the Environment (Department) may certify a nonresident of the District of Columbia who is certified by a state under a certification plan that has been approved by the Environmental Protection Agency Administrator and that is substantially in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title, provided that the state has a reciprocity provision granting similar accommodation to applicators certified by the District.

2314.2 The Department may waive all or part of any applicator certification examination required by the Pesticide Operation Regulations, Chapters 22 through 25 of this title. Grounds for waiver include when a commercial applicator or registered technician is certified under the state plan of another state granting similar accommodations to applicators licensed and certified by the District of Columbia, and the certifying state's plan has been approved by the Environmental Protection Agency Administrator and is substantially in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2314.3 The Department shall suspend or revoke certifications issued pursuant to this section in the same manner and on the same grounds as other certifications issued pursuant to the provisions of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, or upon suspension or revocation of the applicator's or registered technician's certification by the state issuing the applicator's original certification.

2314.4 An applicant for a waiver of all or part of any certification shall furnish to the Department a copy of the applicant's credentials at the time of application. The applicant shall comply with all other requirements of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2399 DEFINITIONS

2399.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

CHAPTER 24 PESTICIDE OPERATORS AND DEALERS

2400 GENERAL PROVISIONS

2400.1 No person shall act in the capacity of a pesticide operator, or advertise as, or assume to act as a pesticide operator, at any time unless the person is certified and licensed by the District Department of the Environment (Department) in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2400.2 No person shall apply for a pesticide operator license unless the applicant is certified as a pesticide operator.

2400.3 Application for a pesticide operator's license shall be made in writing on a form prescribed by the Department.

2400.4 No licensed certified pesticide operator shall permit the use of any pesticide, including any restricted-use pesticide, by any person who is not:

(a) A licensed certified applicator in the category in which the application is made; or

(b) A registered technician of the pesticide operator acting under the direct supervision of a pesticide applicator certified and licensed in that category.

2400.5 A pesticide operator shall apply to the Department for a separate certification and license for each place of business providing services involving the use of pesticides or devices or performing other pest control activities in the District for the control, eradication, mitigation, or prevention of pests either entirely or as part of the business, in accordance with the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2400.6 The certification and license issued to a pesticide operator is not transferable and shall remain with the person to whom it is issued.

2400.7 Within ten (10) days of termination of business, the operator shall submit the operator's certification and license to the Department for cancellation.

2400.8 A pesticide operator shall notify the Department in writing of any change of address within thirty (30) days of the change.

2400.9 The following types of persons shall not be required to obtain a pesticide operator's certification or license:

(a) A person conducting laboratory-type research involving restricted-use pesticides;

(b) A doctor of medicine or doctor of veterinary medicine applying pesticides as drugs during the course of normal practice;

(c) A registered technician while working under the direct supervision of a licensed certified applicator; or

(d) A person applying any pesticide that is not a restricted-use pesticide on his or her own premises, or an employee of that person who applies any pesticide that is not a restricted-use pesticide on the person's premises.

2400.10 All certifications and licenses granted pursuant to this chapter shall be posted conspicuously on the premises of the pesticide operator.

2401 PESTICIDE OPERATORS: CERTIFICATION AND LICENSING

2401.1 Application for a pesticide operator's certification shall be made in writing on a form prescribed by the District Department of the Environment (Department).

2401.2 Each application for a pesticide operator's certification shall contain the following information:

(a) Data about the applicant's proposed operations;

(b) The certification category or categories applied for;

(c) The full name of the person applying for the certification;

(d) The full name of each principle member of the entity, if the applicant is a person other than an individual;

(e) The address of the person applying for a pesticide operator certification;

(f) A certificate of liability insurance as required by § 2402 of this chapter;

(g) Designation of those individuals who are certified in each category in which the operator will engage; and

(h) Any other information as the Department may prescribe.

2401.3 Each pesticide operator's certification shall specify the category(ies) or subcategory(ies) of pest control activity in which the business may lawfully engage.

2401.4 The Department shall issue an applicant a pesticide operator certification and the appropriate credentials, after the applicant performs the following actions:

(a) Submits proof of certification; and

(b) Submits a completed application for a pesticide operator's license.

2401.5 The pesticide operator's license shall be valid only when accompanied by a current pesticide operator's certification issued by the Department.

2401.6 A licensed certified operator that elects to add or delete one (1) or more categories or subcategories from an existing certification shall notify the Department in writing of the proposed changes to the current certification.

2401.7 A pesticide operator shall immediately notify the Department when the operator no longer employs a licensed certified applicator in any of the categories for which the operator is certified.

(a) The certification shall not be affected for ten (10) days after such notification, during which time the operator shall designate another licensed certified applicator;

(b) In response to a written request from the operator, the Department may extend the ten (10) day grace period to up to thirty (30) days; and

(c) During the grace period, restricted-use pesticides may not be used without an applicator certified and licensed in the appropriate category.

2402 PESTICIDE OPERATORS: LIABILITY INSURANCE

2402.1 The District Department of the Environment (Department) shall only issue a pesticide operator's license when the applicant has provided proof of liability insurance for the protection of persons who may suffer damages as a result of the operations of the applicant. Proof of liability insurance shall be provided on a form prescribed by the Department.

2402.2 The insurer of a pesticide operator shall notify the Department in writing at least ten (10) days before the effective date of cancellation, if a certified operator's policy is to be canceled.

2402.3 Each pesticide operator shall inform its insurer of the requirement to notify the Department of policy cancellation as provided by § 2402.2.

2402.4 Each pesticide operator shall keep its liability insurance in full force and effect as long as pesticide operations continue.

2402.5 Pesticide operators shall maintain liability insurance against bodily injury and property damage in amounts not less than the following:

(a) For bodily injury: $100,000 each person, $300,000 each occurrence; and

(b) For property damage: $15,000 each occurrence, $30,000 annual aggregate provision.

2403 PESTICIDE DEALERS: LICENSING

2403.1 Except as provided in § 2403.8, any person who distributes restricted-use pesticides to the ultimate user in the District of Columbia shall obtain a pesticide dealer's license from the District Department of the Environment (Department).

2403.2 Each manufacturer, registrant, or distributor whose restricted-use pesticide products are distributed or who distributes restricted-use pesticide products in the District and who has no pesticide dealer outlet licensed within the District, shall obtain a pesticide dealer's license from the Department for the manufacturer, registrant, or distributor's principal out-of-state location or outlet.

2403.3 Each applicant for a pesticide dealer's license shall apply in writing on a form prescribed by the Department.

2403.4 The Department shall not issue a pesticide dealer's license unless an applicant has submitted a completed application as specified in § 2403.3 and paid the fee set forth in § 2520.

2403.5 Each applicant for a pesticide dealer's license shall pay an annual fee to the Department in the amount specified in § 2520.

2403.6 A pesticide dealer shall be liable for the acts of each of the dealer's employees in the marketing and sale of restricted-use pesticides and for all claims and recommendations for the use of restricted-use pesticides.

2403.7 A pesticide dealer shall not sell or transfer any restricted-use pesticide to any person other than a certified and licensed applicator or the certified and licensed applicator's authorized representative presenting the applicator's proof of certification.

2403.8 The provisions of this section shall not apply to a certified and licensed pesticide operator who sells restricted-use pesticides only as an integral part of the pesticide operator's pesticide application service or to any District or other governmental agency that provides pesticides only for its own programs.

2499 DEFINITIONS

2499.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

CHAPTER 25 PESTICIDE USE ENFORCEMENT AND ADMINISTRATION

2500 GENERAL ADMINISTRATIVE AND ENFORCEMENT AUTHORITY

2500.1 This chapter applies to the administration and enforcement of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), and of the rules promulgated to carry out the provisions of the Act, set forth in Title 20, Chapters 22 through 25 of the District of Columbia Municipal Regulations.

2500.2 The District Department of the Environment may cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government or the District, or with any agency of a state, to obtain assistance in the implementation of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.); the Pesticide Operation Regulations, Chapters 22 through 25 of this title; or in the enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2501 RIGHT OF ENTRY, INSPECTION, SAMPLING, AND OBSERVATION

2501.1 For the purposes of carrying out and enforcing the law and rules described in § 2500.1, the District Department of the Environment (Department) shall have the right, upon presentation of appropriate credentials, to enter, inspect, sample, and observe, without delay, subject to § 2501.3, any place or vehicle where:

(a) There is present any pesticide, or any pesticide device, container, product, apparatus, or equipment that is stored, disposed of, used or intended for use in pest control activity, pesticide manufacture, or pesticide storage;

(b) The Department has reason to believe that pest control activity is being conducted, has been conducted, or will be conducted; or

(c) In the case of a vehicle, if:

(1) If it is marked as a pesticide application vehicle; or

(2) The Department has other reason to believe that the vehicle is involved in pest control activity.

2501.2 Appropriate credentials for making an inspection shall include:

(a) A duly issued photo identification card or badge showing the name of the inspector and proof of employment with the Department; or

(b) A notice of inspection issued by the Department.

2501.3 Entry by the Department may be made, with or without prior notice, as follows:

(a) At any time, in emergency situations, or where there is a potential immediate threat to public health, safety, or welfare, or the environment; and

(b) At any reasonable time in non-emergency situations. The following times shall be deemed reasonable for purposes of entry:

(1) Between the hours of 7:30 a.m. and 6:00 p.m. on weekdays;

(2) Any hours during which the place is open for business or operation; or

(3) In the case of a vehicle, any time the vehicle is being used in the course of business or operations, or any time the Department has reason to believe the vehicle is, has been, or will be involved in pest control activity.

2501.4 If a person denies access to any place or vehicle to the Department acting pursuant to the authority in the law and rules described in § 2500.1, the Department may apply for a search warrant in a court of competent jurisdiction, in addition to other actions authorized by law and regulations.

2502 ENTRY FOR INSPECTION, SAMPLING, AND OBSERVATION

2502.1 Upon entry, the District Department of the Environment (Department) may do any of the following:

(a) Inspect the place or vehicle where the pesticide, pesticide equipment, or device is located, or will be located; any areas involved in pesticide control activity; and any surrounding areas that may be impacted;

(b) Inspect and obtain samples of any pesticide or pesticide equipment or device used in handling, transporting, applying, storing, or disposing of the pesticide, pesticide equipment or device;

(c) Inspect and copy or print out any record, including electronic records, reports, tapes, test results, or other documents or information relating to the purpose of the laws and rules described in § 2500.1; or

(d) Conduct interviews and obtain photographs, recordings, videos, or electronic documentation relating to the purpose of the law and regulations described in § 2500.1.

2502.2 If the Department obtains any samples from the premises or the vehicle, the Department shall give the owner, applicator, dealer, operator, supervisor, or agent in charge a receipt that describes the samples obtained, and if requested, a portion of each sample equal in volume or weight to the portion obtained.

2502.3 In addition to the information required to be produced during an inspection pursuant to § 2502.1, the Department may require in writing that an owner, applicator, dealer, operator, supervisor, technician, employee, or any other person involved in the activity being investigated, respond to specific questions or provide other information with respect to any of the pesticides, pesticide equipment or devices, or pesticide control activity as may be necessary to determine compliance with the law and rules described in § 2500.1.

2502.4 When the Department makes a written request for any document, response to specific questions, or other information pursuant to § 2502.3, the documents, responses, or other information shall be submitted to the Department within ten (10) days of receipt of the request, unless the Department specifies a different time period.

2502.5 The Department may require an owner, applicator, dealer, supervisor, operator, technician, employee, or any other person involved in an activity being investigated pursuant to § 2502.1 to take any necessary action to determine or facilitate compliance with the law and rules described in § 2500.1 or to protect public health, safety, or welfare, or the environment.

2502.6 When requiring action under § 2502.5, the Department may issue a field notice or directive letter that shall advise the recipient of the action the person is required to take and state the time period within which the action must be performed.

2502.7 Notwithstanding § 2502.6, the Department may give an oral directive to take immediate action to mitigate any hazard from any application, spill, release, or other pesticide control activity where there is potential serious danger to public health, safety, or welfare, or the environment; provided, that the Department shall, as soon thereafter as practicable, issue a written directive incorporating the contents of the oral directive.

2502.8 When a pesticide, pesticide device, equipment, or pesticide control activity poses an imminent threat to public health, safety, welfare, or the environment, the Department may post notice of the threat on the property and restrict access. The posting shall provide the public with notice that a dangerous condition exists and restrict entry, and the Department may prohibit the owner, applicator, dealer, operator, supervisor, technician, or employee from removing or handling the

pesticide, pesticide device, or equipment, or from continuing the pesticide control activity until the Department has determined that the threat no longer exists.

2503 ENTRY FOR RESPONSIVE OR CORRECTIVE ACTION

2503.1 Pursuant to the Brownfields Revitalization Amendment Act of 2000, effective April 8, 2011 (D.C. Law 18-369; D.C. Official Code §§ 8-631 *et seq.*), in the event of an application, spill, or release of a pesticide, or an alleged or threatened violation of the law and rules described in § 2500.1, the District Department of the Environment (Department) may, under the following circumstances, enter any place or vehicle to perform, or cause to be performed, any responsive or corrective action necessary to protect public health, safety, or welfare, or the environment:

(a) In a situation that requires immediate action by the Department to protect public health, safety, welfare, or the environment; or

(b) Where the person responsible for the application, spill, release or alleged violation has failed or refused to comply with an administrative or court order requiring responsive or corrective action.

2503.2 Except as provided in § 2503.3, the Department shall provide notice in writing of the Department's intent to enter the premises or vehicle to take responsive or corrective action to the owner, applicator, dealer, operator, supervisor, employee, or agent in charge at least seven (7) days before commencing work, and shall serve the notice personally or by first class mail, or where such service cannot be accomplished, by publication or posting.

2503.3 When an application, spill, or release of a pesticide, or an alleged or threatened violation of the law and rules described in § 2500.1, creates an imminent threat to public health, safety, or welfare, or the environment necessitating response or corrective action, and the emergency nature of the situation makes it impractical to give prior notice as described in § 2503.2, the Department may provide notice by conspicuously posting the notice on the property at the earliest time feasible, before commencing work.

2504 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

2504.1 With respect to a matter governed by the Pesticide Operation Regulations, Chapters 22 through 25 of this title, a person adversely affected or aggrieved by an enforcement action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.*), or OAH's successor.

2504.2 The Department may pursue administrative enforcement actions through:

(a) Warning notices;

(b) Field notices or directive letters;

(c) Stop sale, use, or removal orders;

(d) Notices of violation;

(e) Compliance orders;

(f) Notices of violation combined with an immediate compliance order or stop sale, use, or removal order;

(g) Denial, suspension, or revocation of pesticide registration;

(h) Denial, modification, suspension, or revocation of a license;

(i) Notices of infraction;

(j) DDOE internal notices of violation or notices of infraction; or

(k) Any other order necessary to protect public health, safety, or welfare, or the environment.

2504.3 For the purposes of this chapter, a DDOE internal notice of violation or notice of infraction:

(a) Shall not be an action of the Department that a person may appeal to OAH, except as stated in § 2504.4(b);

(b) Shall be responded to within fifteen (15) calendar days of service of the notice, including a written statement containing the grounds, if any, for opposition; and

(c) Shall not waive compliance or toll any period of fine or penalty.

2504.4 If a person fails to agree to or settle an internal notice of infraction or otherwise denies a claim stated in an internal notice of infraction, the Department may cancel the internal notice of infraction and file a notice of infraction for adjudication with OAH.

2504.5 A person aggrieved by an action of the Department shall file a written appeal with OAH within the following time period:

(a) Within fifteen (15) calendar days of service of the notice of the action; or

(b) Another period of time stated specifically in the section for an identified Department action.

2504.6 Notwithstanding another provision of this section, the Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.

2504.7 OAH shall:

(a) Resolve an appeal or a notice of infraction by:

(1) Affirming, modifying, or setting aside the Department's action complained of, in whole or in part;

(2) Remanding for Department action or further proceedings, consistent with OAH's order; or

(3) Providing such other relief as the governing statutes, regulations and rules support;

(b) Act with the same jurisdiction, power, and authority as the Department may have for the matter currently before OAH; and

(c) By its final decision render a final agency action which will be subject to judicial review.

2504.8 The filing of an administrative appeal shall not in itself stay enforcement of an action; except that a person may request a stay according to the rules of OAH.

2504.9 The burden of proof in an appeal of an action of the Department shall be allocated to the person who appeals the action, except the Department shall bear the ultimate burden of proof for any action it takes that denies a personal, property, or other right.

2504.10 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

(a) To the Department when a party challenges the Department's denial, suspension, modification, or revocation of a:

(1) Pesticide registration;

(2) Certification or license; or

(3) Other right;

(b) To the party who asserts an affirmative defense; and

(c) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.

2504.11 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

2504.12 Judicial review of a final OAH decision shall not be *de novo*, but shall be a review of the administrative record alone and shall not duplicate agency proceedings or consider additional evidence.

2504.13 Nothing in this chapter shall be interpreted to:

(a) Provide that a filing of a petition for judicial review stays enforcement of an action; or

(b) Prohibit a person from requesting a stay according to the rules of the court.

2505 WARNING NOTICES; FIELD NOTICES OR DIRECTIVE LETTERS; STOP SALE, USE, OR REMOVAL ORDERS; NOTICES OF VIOLATION

2505.1 A warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation shall identify the alleged violation or threatened violation and may require the respondent to conduct monitoring or testing, or to take any responsive or corrective measures the District Department of the Environment (Department) determines reasonable and necessary.

2505.2 A warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation shall make clear the basis for the notice and that the respondent's failure to take the measures directed will constitute an additional violation of the pertinent statute or regulation.

2505.3 The Department shall serve a warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation on the respondent or the respondent's authorized representative in person or in a manner likely to insure receipt, including first class mail, fax with return receipt, email with return read receipt, or hand-delivery with certification of service.

(a) The Department shall send the notice to the last known address listed on the person's application for certification or other official correspondence submitted to the Department; and

(b) The Department shall verify the accuracy of the address.

2505.4 After receipt of a stop sale, use, or removal order issued by the Department, no person shall sell, use, or remove the pesticide or device described in the order, except in accordance with the provisions of the order.

2505.5 When any pesticide, pesticide application, or pest control activity poses a threat to public health, safety, welfare, or the environment, and the responsible person, or the address of the responsible person, is unknown or cannot be located, the Department may serve written notice by conspicuously posting the notice on the property where the threat exists and sending a copy to the owner of the property at the owner's last known address.

2506 COMPLIANCE ORDER

2506.1 The District Department of the Environment may issue a compliance order if the respondent upon whom a warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation has been served fails to comply with any actions required in the notice, pursuant to the Brownfields Revitalization Amendment Act of 2000, effective April 8, 2011, as amended (D.C. Law 18-369; D.C. Official Code §§ 8-631 *et seq*.)).

2506.2 A compliance order shall:

(a) Include a statement of the facts and nature of the alleged violation;

(b) Allow a reasonable time for compliance with the order, consistent with the likelihood of any harm and the need to protect public health, safety, or welfare, or the environment;

(c) Advise the respondent that the respondent has the right to request an administrative hearing and, at the respondent's expense, the right to legal representation at the hearing;

(d) Inform the respondent of any scheduled hearing date, or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the compliance order or failure to request a hearing;

(e) State the action that the respondent is required to take, or the activity or activities that the respondent is require to cease to comply with the order; and

(f) State that civil infraction fines, penalties, or costs may be assessed for failure to comply with the order.

2506.3 A compliance order shall state that the respondent is required to file a written answer to the compliance order, the time within which to respond, and the form of responses required.

2507 DENIAL, SUSPENSION, MODIFICATION, AND REVOCATION OF CERTIFICATION AND LICENSE

2507.1 The District Department of the Environment (Department) shall initiate an action denying, suspending, modifying, or revoking a certification or license by issuing a notice of denial, suspension, modification, or revocation.

2507.2 Except as provided in § 2507.5, the notice of proposed denial, suspension, modification, or revocation shall be in writing, and shall include the following:

(a) The name and address of the holder of the license;

(b) A statement of the action or proposed action and the effective or proposed effective date and duration of the denial, suspension, modification, or revocation;

(c) The grounds upon which the Department is proposing to deny, suspend, modify, or revoke the certification or license;

(d) Notice that the respondent has a right to request an administrative hearing before the District of Columbia Office of Administrative Hearings (OAH), in accordance with Rules of Practice and Procedure of OAH set forth in Chapter 28 of Title 1 of the District of Columbia Municipal Regulations;

(e) A statement that the respondent has the right, at the respondent's expense, to legal representation at the hearing; and

(f) Information notifying the respondent of any scheduled hearing date or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the suspension or immediate revocation, if applicable.

2507.3 The Department may issue a notice of denial, suspension, modification, or revocation:

(a) To protect the public health, safety, welfare, or the environment;

(b) If the applicant or license holder is in violation or threatened violation of the law and rules described in § 2500.1;

(c) If the applicant or license holder violates the provisions of § 2208 more than once in a calendar year in a manner that endangers human health or the environment, pursuant to D.C. Official Code § 8-418(b);

(d) If the applicant or license holder has been convicted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or is subject to a final order imposing a civil penalty under FIFRA; or

(e) To correct an error in the terms and conditions of the certification or license.

2507.4 Pursuant to § 2504, the applicant or license holder shall have fifteen (15) calendar days from the date of service of the notice of denial, suspension, modification, or revocation to request a hearing with OAH to show cause why the certification or license should not be denied, revoked, modified, or suspended.

2507.5 The Department may immediately suspend a certification or license to protect the public health, safety, or welfare, or the environment. The suspension shall be immediately effective pending further investigation.

2507.6 The Department may serve a notice of modification, suspension, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

2507.7 The Department shall not reissue a certification or license to any person whose certification and license has been revoked until after at least one hundred eighty (180) days following the revocation.

2507.8 The Department shall not reissue a certification or license to any person whose license has been revoked until the applicant has been recertified in accordance with the recertification provisions contained in Chapter 23 (Pesticide Applicators).

2507.9 An appeal to OAH pursuant to this section shall be subject to the requirements of § 2504.

2508 CONDEMNATION PROCEEDINGS

2508.1 In addition to the enforcement actions set forth in this chapter, the District Department of the Environment may seize for confiscation by a process *in rem* for condemnation, any pesticide, pesticide device or equipment that is being transported or, having been transported, remains unsold or in original unbroken packages, is being sold or offered for sale in the District of Columbia, or that is imported from a foreign country.

2508.2 Any pesticide device or equipment may be proceeded against as provided in this section if it is misbranded.

2508.3 A pesticide may be proceeded against as provided in this section under the following circumstances:

(a) If it is adulterated or misbranded;

(b) If it is not registered pursuant to the provisions of the law and rules described in § 2500.1;

(c) If its labeling fails to bear the information required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

(d) If it is not colored or discolored, and the coloring or discoloring is required under FIFRA; or

(e) If any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration.

2508.4 Any pesticide, pesticide device or equipment may be proceeded against as provided in this section even when used in accordance with the requirements imposed under the law and rules described in § 2500.1 and as directed by the labeling, if the pesticide, pesticide device or equipment causes unreasonable adverse effects on the environment.

2508.5 In the case of a plant regulator, defoliant, or desiccant that is used in accordance with the label claim and recommendations, physical or physiological effects on plants or parts of the plants shall not be deemed to be unreasonable adverse effects on the environment when the effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

2508.6 If the pesticide, pesticide device or equipment is condemned pursuant to this section, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct; and the proceeds, if sold, less the court costs, shall be paid into the District Treasury and credited to the general fund. A pesticide, pesticide device or equipment sold pursuant to this subsection shall not be sold in violation of the provisions of the law and rules described in § 2500.1, FIFRA, or the laws of the jurisdiction in which it is sold.

2508.7 Upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned upon assurances that the pesticide shall not be sold or otherwise disposed of contrary to the provisions of the law and rules described in § 2500.1, FIFRA, or the laws of any jurisdiction in which it is sold, the court may direct the pesticide, pesticide device or equipment to be delivered to the owner.

2508.8 The proceedings of condemnation cases shall conform, as nearly as possible, to the proceedings used for the condemnation of insanitary buildings under An Act to create a board for the condemnation of insanitary buildings in the District, and for other purposes, approved May 1, 1906, as amended, D.C. Official Code Title 6, Chapter 9.

2508.9 When a decree of condemnation is entered against the pesticide, pesticide device or equipment, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide, pesticide device or equipment.

2509 PENALTIES AND INJUNCTIVE RELIEF FOR FAILURE TO COMPLY WITH FINAL ADMINISTRATIVE ORDER

2509.1 The District Department of the Environment may seek a temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief in any court of competent jurisdiction, or any administrative, civil, or criminal penalty, or other remedy authorized by the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*) or other legal authority, including for failure to comply with a final compliance order; stop sale, use, or removal order; or final modification, suspension, or revocation issued pursuant to this chapter.

2510 CIVIL INFRACTION FINES, PENALTIES, AND FEES PURSUANT TO THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS CIVIL INFRACTIONS ACT

2510.1 A person violating a provision of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), as amended, or the Pesticide Operation Regulations, Chapters 22 through 25 of this title, shall be fined according to the schedule set forth in Title 16 of the District of Columbia Municipal Regulations, or be imprisoned for not more than ninety (90) days, or both.

2510.2 Where civil infraction fines are the only penalties pursued in a particular case, the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*), and the regulations adopted thereunder govern the proceedings in lieu of this chapter, and where there is a violation, a notice of infraction may be issued without first issuing a notice of violation or threatened violation.

2511 JUDICIAL ACTION IN LIEU OF ADMINISTRATIVE ENFORCEMENT

2511.1 The District Department of the Environment may bring an action in Superior Court of the District of Columbia to enjoin the violation or threatened violation of any provision of the law or rules described in § 2500.1.

2512 SETTLEMENT AGREEMENTS AND CONSENT COMPLIANCE ORDERS

2512.1 At any time after the issuance of a notice or order listed in § 2504.2, the parties to the proceeding may enter into a settlement agreement or consent compliance order.

2512.2 A settlement agreement or consent compliance order, including a consent compliance decree, shall set forth each of the agreements made, actions to be taken by the parties to the agreement, the dates by which any required actions must be undertaken or completed, and any agreed-upon fines, penalties, cost recovery, damages, attorney's fees, costs and expenses, interest, supplemental environmental project, or any other sanction or remedy authorized by law.

2512.3 A settlement agreement shall be effective when signed by the parties and shall not require the signature of an administrative law judge of the District of Columbia Office of Administrative Hearings or a judge of a court of competent jurisdiction to become effective or to be filed in the case.

2512.4 A settlement agreement may be submitted to a court of competent jurisdiction for approval.

2512.5 The parties may enter into a consent compliance order with the approval of a court of competent jurisdiction.

2512.6 A consent compliance order shall be signed by the parties to the case and by the judge and shall have the force and effect of any judicial order.

2512.7 Unless the consent compliance order states otherwise, there shall be no right of appeal from a consent compliance order.

2513 COMPUTATION OF TIME

2513.1 Except as provided in § 2219.2, this section applies to all periods of time prescribed or allowed by the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2513.2 In computing any period of time measured in days or calendar days, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

2513.3 For any period of time that is measured in days or calendar days, the last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation, unless the period of time is measured in calendar days.

2513.4 Whenever a person has the right or the obligation to do some act within a prescribed period after the service of an order or other paper upon the person, and the order or other paper is served by United States mail or third party commercial carrier, five (5) days shall be added to the prescribed period, unless a statue provides otherwise.

2514 LICENSE RENEWAL

2514.1 The District Department of the Environment will mail each license holder an application for renewal of a license not less than thirty (30) days before the expiration of the current license period.

2514.2 Failure to receive an application to renew a license shall not relieve the license holder of his or her responsibility to renew any license and pay the appropriate fee.

2514.3 A person who fails to file a renewal application on or before the first day of any licensure period shall be subject to the late fee specified in § 2520.

2515 PESTICIDE EDUCATION REPORTING

2515.1 The University of the District of Columbia (University) shall prepare and submit a report to the Council on or before January, 1, 2015, assessing the effectiveness of the District's pesticide programs. The University shall prepare and submit a new report by January 1 of each subsequent calendar year assessing the effectiveness of the District's pesticide programs. The report shall include:

(a) An assessment of attitudinal changes of District residents toward pesticide use;

(b) An assessment of changes in the cost of pest management in the District; and

(c) An assessment of changes in the number of pesticides registered and used in the District.

2516 RECORDKEEPING AND REPORTING REQUIREMENTS

2516.1 Any person applying pesticides, other than those excluded in § 2300.8(a), (b), or (d), shall maintain records containing the following information:

(a) Name or identification of applicator;

(b) Name of supervising certified applicator;

(c) Address of treated property;

(d) Date of application, including the month, day, and year;

(e) Time of application;

(f) Type of plant, animal, or structure treated and target pest;

(g) Acreage, or number of plants or animals, or a description of or square or cubic footage of the structure treated;

(h) Wind direction, estimated velocity, and weather conditions;

(i) Pesticide applied (the name brand) and the type of formulation;

(j) Classification of pesticide used, whether restricted-use, District restricted-use, or non-essential;

(j) Dilution rate of the product as applied (the percent of active ingredient);

(k) The amount of diluted material applied;

(l) The type of equipment used; and

(m) Environmental Protection Agency registration number of product used.

2516.2 Except as provided in § 2516.4, any person applying pesticides, other than those excluded in § 2300.8(a), (b), or (d) shall submit to the District Department of the Environment (Department) the records of pesticide applications to property in the District specified in § 2516.1.

2516.3 Each year, on or before February 1, an applicator or operator shall submit for each application performed during the previous year the records required to be maintained under § 2516.1 to the Department in a form prescribed by the Department.

2516.4 Applications of minimum-risk and reduced-risk pesticides are exempt from the reporting requirements of § 2516.2.

2516.5 Each person shall, upon written request from the Department, furnish the Department with copies of any requested records within 24 hours of the request.

2516.6 The records required in this chapter shall be subject to inspection by the Department in accordance with § 2501.3.

2516.7 Each licensee, permit holder, or certified applicator, shall immediately notify the Department in writing if there is any change in business ownership, name, address, or phone number.

2516.8 If an applicator or operator goes out of business, he or she shall immediately transfer all the pesticide application records in his or her possession to the Department.

2516.9 The pesticide operator shall file and maintain sales invoices provided to customers separately from the records required in § 2516.1, for a minimum of three (3) years.

2516.10 The applicator or operator shall provide the Department with written notification of any significant pesticide accidents or incidents within 24 hours of occurrence.

2516.11 The Department shall preserve the required records for not less than ten (10) years.

2517 RECORDS OF RESTRICTED-USE PESTICIDES

2517.1 Dealers of restricted-use pesticides shall keep and maintain for a period of three (3) years records of each transaction involving restricted-use pesticides and shall then transfer the records to the District Department of the Environment.

2517.2 For each restricted-use pesticide transaction, the dealer is required to record the following information:

(a) Name and address of purchaser or receiver, including name and license number of the licensed certified applicator;

(b) Pesticide product sold (the brand name), the Environmental Protection Agency registration number, and the type of formulation;

(c) Quantity; and

(d) The date of sale.

2518 PESTICIDE REGISTRATION FEES AND TERMS

2518.1 The registration for each pesticide registered pursuant to §§ 2202 and 2203 shall be issued for a period of one (1) year, beginning on January 1 and expiring on December 31.

2518.2 The annual registration fee for each pesticide shall be two hundred and fifty dollars ($250), payable to the District Department of the Environment.

2518.3 If the renewal of a pesticide registration is not filed before January 31 of any year, an additional fee equal in amount to the registration fee shall be assessed and added to the original fee, and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

2519 CERTIFICATION EXAMINATION FEES

2519.1 A thirty-dollar ($30) fee shall be charged for the core certification and each category examination for registered technicians and pesticide applicators.

2519.2 A ten-dollar ($10) fee shall be charged for each re-examination session.

2520 PESTICIDE CERTIFICATION AND LICENSING FEES AND TERMS

2520.1 Except as provided in § 2520.2, pesticide certifications are valid for a period of one (1) year.

2520.2 Pesticide certifications issued pursuant to § 2307 are valid for a period of two (2) years.

2520.3 Beginning January 1, 2016, the following pesticide licenses shall be valid for a period of one (1) year and shall be subject to the following fee schedule:

(a) Pesticide Operator:

(1) Commercial: $215

(2) Public: No Charge

(b) Pesticide Applicator:

(1) Commercial: $135

(2) Public: No Charge

(c) Pesticide Dealer: $215

2520.4 Beginning January 1, 2016, the following pesticide license shall be valid for a period of two (2) years from the effective date of the license, and shall be subject to the following fee schedule:

(a) Private Applicator: $135

2520.5 The following registration shall be valid for a period of three (3) years from the effective date, and shall be subject to the following annual fee:

(a) Registered technician: $33

2520.6 The late fee for failing to file a renewal application on or before the first day of any licensure period is twenty dollars ($20) per application.

2599 DEFINITIONS

2599.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Section 8(c) (2), (3), (7), (19), 14, 20, and 20f of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c) (2), (3), (7), (19), 50-313, 50-319, and 50-325 (2014 Repl.)), hereby gives notice of its intent to adopt amendments to Chapter 5 (Taxicab Companies, Associations and Fleets), and Chapter 12 (Luxury Services – Owners, Operators, and Vehicles), of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations ("DCMR").

These rules clarify the Commission's implementation of the minimum percentages of wheelchair accessible vehicles in the taxicab fleets of companies and in the black car fleets of luxury class service (LCS) organizations required by the Establishment Act. The rules also allow the Office of Taxicabs to issue a temporary certificate of operating authority to a company or organization (applicant) whose fleet is not in compliance with accessibility requirements at the time it seeks to renew its certificate of operating authority, provided the applicant meets the conditions set forth in the rules. If issued, the temporary certificate would provide an additional one hundred eighty (180) days for the applicant to comply with the applicable statutory minimum.

The proposed rulemaking was adopted by the Commission on November 12, 2014 and published in the *D.C. Register* on December 12, 2014 at 61 DCR 12620. The Commission did not receive any comments on the proposed rulemaking during the comment period, which ended on January 11, 2015. No substantive changes have been made. Minor changes have been made to correct grammar and typographical errors, to provide clarity, or to lessen the burdens established by the proposed rules.

This final rulemaking was adopted by the Commission on February 11, 2015, and will become effective upon publication in the *D.C. Register*.

Chapter 5, TAXICAB COMPANIES, ASSOCIATIONS AND FLEETS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 501, RENEWAL CERTIFICATES AND LICENSES; FILING REQUIREMENTS, is amended as follows:

Subsections 501.10 through 501.15 are added as follows:

501.10 Each taxicab company shall dedicate a portion of each taxi fleet with which it is associated or affiliated as follows:

(a) At least six percent (6%) of each taxicab fleet shall be wheelchair-accessible by December 31, 2014.

(b) At least twelve percent (12%) of each taxicab fleet shall be wheelchair-accessible by December 31, 2016.

(c) At least twenty percent (20%) of each taxicab fleet shall be wheelchair-accessible by December 31, 2018.

501.11 Beginning in 2015, a vehicle shall not be counted for purposes of compliance with § 501.10 where for fifty percent (50%) or more of the vehicle's aggregated operating time in any three (3) months during the calendar year it is:

(a) Under contract(s) to provide transportation for a service that is not a public vehicle-for-hire service; or

(b) Used to provide transportation for a service that is not a public vehicle-for-hire service.

501.12 The Office shall deny an initial or renewal certificate of operating authority to a taxicab company which is not in compliance with § 501.10.

501.13 If the Office denies a renewal certificate of operating authority pursuant to § 501.12, it shall at such time grant a temporary certificate of operating authority to the taxicab company, which shall expire not later than one hundred eighty (180) days from the date of issuance, provided that:

(a) The taxicab company files by the renewal date a compliance plan with the Office; and

(b) The compliance plan demonstrates that the taxicab company shall achieve full compliance with the requirements of § 501.10 not later than one hundred eighty (180) days of the renewal date, and is supported by such information and documentation as the Office may require.

501.14 A taxicab company granted a temporary certificate of operating authority pursuant to § 501.13 shall submit evidence that it has complied with the compliance plan, filed with the Office pursuant to § 501.13, prior to the expiration date of the temporary certificate of operating authority. The Office shall review the taxicab company's evidence of compliance, during which time the temporary certificate of operating authority shall continue in force and effect.

501.15 If the evidence of compliance with the compliance plan submitted pursuant to § 501.13 is satisfactory to the Office, the Office shall renew the company's certificate of operating authority. If the evidence of compliance is not satisfactory to the Office, the Office shall provide notice of its decision to the company, and the company's operating authority shall not be renewed, provided however, that the temporary operating authority shall continue in force and effect during the period of any appeal.

Section 510, COMPLIANCE WITH LICENSING REQUIREMENTS; SUSPENSIONS AND REVOCATIONS, is repealed and reserved.

CHAPTER 12, LUXURY SERVICES - OWNERS, OPERATORS, AND VEHICLES, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 1214, RENEWAL OF OPERATOR LICENSE, is amended as follows:

New Subsections 1214.4 through 1214.8 are added to read as follows:

1214.4 Beginning in 2015, a black car shall not be counted for purposes of compliance with § 1213.2 where for fifty (50%) percent or more of the vehicle's aggregated operating time in any three (3) months during the calendar year it is:

(a) Under contract(s) to provide transportation for a service that is not a public vehicle-for-hire service; or

(b) Used to provide transportation for a service that is not a public vehicle-for-hire service.

1214.5 The Office shall deny an initial or renewal certificate of operating authority to an LCS organization which is not in compliance with § 1213.2.

1214.6 If the Office denies a renewal certificate of operating authority to an LCS organization pursuant to § 1213.2, it shall at such time grant a temporary certificate of operating authority to the LCS organization, which shall expire not later than one hundred eighty (180) days from the date of issuance provided that:

(a) The LCS organization files by the renewal date a compliance plan with the Office; and

(b) The compliance plan demonstrates that the LCS organization shall achieve full compliance with the requirements of § 1213.2 not later than one hundred eighty (180) days of the renewal date, and is supported by such information and documentation as the Office may require.

1214.7 An LCS organization granted a temporary certificate of operating authority pursuant to § 1214.6 shall submit evidence that it has complied with the compliance plan, filed with the Office pursuant to § 1214.6, prior to the expiration date of the temporary certificate of operating authority. The Office shall review the LCS organization's evidence of compliance, during which time the temporary certificate of operating authority shall continue in force and effect.

1214.8 If the evidence of compliance with the compliance plan submitted pursuant to § 1212.6 is satisfactory to the Office, the Office shall renew the organization's certificate of operating authority. If the evidence of compliance is not satisfactory to the Office, the Office shall provide notice of its decision to the organization, and the organization's operating authority shall not be renewed, provided however, that the temporary operating authority shall continue in force and effect during the period of any appeal.

CHILD AND FAMILY SERVICES AGENCY

NOTICE OF PROPOSED RULEMAKING

The Interim Director of the Child and Family Services Agency (CFSA), pursuant to Section 372 of the Prevention of Child Abuse and Neglect Act of 1977 (Act), as amended, effective April 23, 2013 (D.C. Law 19-276; 60 DCR 2060 (February 22, 2013)) and Mayor's Order 2013-145, dated August 8, 2013, hereby gives notice of his intent to adopt the following amendments to Chapters 60 (Foster Homes) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of notice in the *D.C. Register*, and following approval of the rules by the D.C. Council.

The proposed amendments supplement the rights of foster children placed in foster homes that were finalized in the Notice of Final Rulemaking published in the *D.C. Register* on September 19, 2014 at 61 DCR 9579. However, these amendments do not establish any additional private right of action beyond that which already exists under federal or District law. The implementation of specific rights and responsibilities shall be consistent with each foster child's health, welfare, age, and level of development.

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

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

Section 6004, RIGHTS AND RESPONSIBILITIES OF FOSTER CHILDREN LIVING IN FOSTER HOMES, is amended as follows:

Section 6004.1 is amended by adding the following paragraphs:

(qq) To be integrated into household and family activities, consistent with his or her age and level of development.

(rr) To have privileges and responsibilities that correspond with those provided to other children living in the foster home, consistent with his or her age and level of development.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Lionel Sims, General Counsel, Child and Family Services Agency, 200 I Street, SE Washington, D.C. 20003, at Lionel.Sims@dc.gov or online at dcregs.dc.gov. Copies of these proposed rules may be obtained without charge at the address above or online at dcregs.dc.gov.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Acting 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 15, 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 her intent to take final rulemaking action to adopt the following amendment to Chapter 66 (Professional Counseling) of Title 17 (Business, Occupations, and Professionals) 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.*

This rulemaking notifies licensees, students, and graduates that practice professional counseling that they are required to abide by the most recent edition of the Code of Ethics as published by the American Counseling Association.

Chapter 66, PROFESSIONAL COUNSELING, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 6609, STANDARDS OF CONDUCT, is amended as follows:

Add a new Subsection 6609.51 to read as follows:

6609.51 A licensee, student or graduate practicing professional counseling pursuant to this chapter shall adhere to the standards set forth in the most recent edition of the Code of Ethics as published by the American Counseling Association.

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., 5th Floor, Washington, D.C., 20002. In addition comments may be sent to 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.

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06) (2012 Repl.)) (the "Act"), hereby gives notice of the adoption of the following emergency rules and of the intent to adopt final rulemaking to amend Sections 1647 and 1648, of Chapter 16 (Procurement by Competitive Proposals), of Title 27 (Contracts and Procurement), of the District of Columbia Municipal Regulations (DCMR).

This rulemaking updates the regulations and outlines the procedures applicable to procurement by competitive proposals. This rulemaking authorizes preaward debriefings for unsuccessful offerors, and outlines the applicable process. This rulemaking also clarifies the procedures for postaward debriefings to unsuccessful offerors. These changes are necessary to fully implement the Act and to ensure transparent and fair procurement. Adoption of these emergency rules is therefore necessary for the immediate preservation and promotion of the public safety and welfare.

The emergency rules will remain in effect for up to one hundred twenty (120) days from February 25, 2015, the date of their adoption; thus, expiring on June 25, 2015, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Chapter 16, PROCUREMENT BY COMPETITIVE SEALED PROPOSALS, of Title 27 DCMR, CONTRACTS AND PROCUREMENTS, is amended as follows:

Section 1647 is amended to read as follows:

1647 PREAWARD DEBRIEFINGS

1647.1 Offerors excluded from the competitive range or otherwise excluded from the competition before award may submit a written request for a preaward debriefing to the contracting officer.

1647.2 The contracting officer shall make reasonable efforts to debrief the unsuccessful offeror as soon as practicable, unless the Director determines that to do so is not in the best interest of the District.

1647.3 A preaward debriefing shall include, at a minimum:

(a) The District's evaluation of significant elements in the offeror's proposal;

(b) A summary of the rationale for eliminating the offeror from the competition; and

(c) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

1647.4 A preaward debriefing shall not disclose:

(a) The number of offerors;

(b) The identity of another offeror;

(c) The content of another offeror's proposal;

(d) The ranking of other offerors;

(e) The evaluation of other offerors; or

(f) Any information prohibited by § 1648.3(b) of this chapter.

Section 1648 is amended to read as follows:

1648 POSTAWARD DEBRIEFINGS

1648.1 If a contract is awarded on a basis other than price alone, the contracting officer shall provide a postaward debriefing for any unsuccessful offeror that submits a written request for a debriefing, unless the Director determines that to do so is not in the best interest of the District.

1648.2 If a postaward debriefing is held, the information provided shall include, at a minimum:

(a) The District's evaluation of the significant weak or deficient factors in the unsuccessful offeror's proposal;

(b) The overall evaluated cost or price (including unit prices), the numeric technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

(c) The overall numeric ranking of all offerors, if any ranking was developed by the procuring agency during the evaluation;

(d) A summary of the rationale for award; and

(e) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations and other applicable authorities were followed.

1648.3 The postaward debriefing shall not:

(a) Include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors; or

(b) Reveal any information prohibited from disclosure by Subsection 417 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-354.17 (2012 Repl.)) or exempt from release under the District of Columbia Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531 *et seq*. (2012 Repl.)), including:

(1) Information which has been designated as confidential and proprietary by an offeror;

(2) Trade secrets and commercial or financial information where disclosure would impair the competitive position of an offeror, including cost breakdowns, profit, indirect cost rates, and similar information;

(3) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency, including the names and written comments of the members of the evaluation panel;

(4) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy, including offerors' employees' names, résumés, contact information, the names of offerors' partners and the names of individuals providing reference information about an offeror's past performance; and

(5) Federal tax identification numbers or other information specifically exempted from disclosure by statute.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4th Street, 700 South, Washington, D.C. 20001. Comments may be sent by email to OCPRulemaking@dc.gov or may be submitted by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia (CPO), pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06) (2012 Repl.)) (the "Act"), hereby gives notice of the adoption of the following emergency rules and of the intent to adopt a final rulemaking to amend Chapter 21 (Required Sources of Goods and Services), of Title 27 (Contracts and Procurement), of the District of Columbia Municipal Regulations (DCMR).

The rulemaking updates Chapter 21 and implements the provisions in the Act that apply to required sources of goods and services. It also incorporates the source requirements of the Small and Certified Business Enterprise Development and Assistance Act of 2014, effective June 10, 2014 (D.C. Law 20-108; D.C. Official Code §§ 2-218.01 *et seq*., as amended) (the "CBE Act"). The current Chapter 21 contains regulations that are outdated and inconsistent with the Act and the CBE Act. These inconsistencies create legal uncertainty regarding the priorities for use of required sources of goods and services. Adoption of these emergency rules is therefore necessary for the immediate preservation and promotion of the public safety and welfare.

The emergency rules will remain in effect for up to one hundred twenty (120) days from February 25, 2015, the date of their adoption, and will expire on June 25, 2015, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Chapter 21, REQUIRED SOURCES OF GOODS AND SERVICES, of Title 27 DCMR, CONTRACTS AND PROCUREMENTS, is amended as follows:

Section 2100, PRIORITIES FOR USE OF GOVERNMENT SUPPLY SOURCES, is repealed and replaced with:

2100 PRIORITIES FOR USE OF REQUIRED SOURCES

2100.1 Except as otherwise authorized by this title or law, each agency shall satisfy requirements for goods and services from or through the sources listed below in descending order of priority:

(a) Existing agency inventories;

(b) Excess personal property from the Surplus Property Division of the Office of Contracting and Procurement (OCP);

(c) Existing requirements contracts;

(d) Existing indefinite quantity contracts, to the extent of the minimums stated in those contracts;

(e) For contracts of $250,000 or less, qualified small business enterprises (SBE) on the District of Columbia Supply Schedules (DCSS) in accordance with § 2104;

(f) For contracts of $250,000 or less, qualified certified business enterprises (CBE) on the DCSS in accordance with § 2104;

(g) For contracts of $250,000 or less, qualified small business enterprises (SBE) in accordance with § 2105;

(h) For contracts of $250,000 or less, qualified CBEs, in accordance with § 2105; and

(i) Other sources, including federal schedules and cooperative purchasing agreements.

Section 2101, EXCESS PERSONAL PROPERTY, is amended to read as follows:

2101 EXCESS PERSONAL PROPERTY

2101.1 When requirements cannot be met from existing agency inventories, each agency shall use excess personal property as its first source of supply in fulfilling its requirements.

2101.2 Each agency shall ensure that all personnel make positive efforts to satisfy agency requirements by obtaining and using excess personal property before initiating contract action, including obtaining current information regarding the availability of excess personal property from the Surplus Property Division of the OCP.

Section 2102, PROCUREMENT OF UTILITY SERVICES, is repealed and replaced with:

2102 EXISTING REQUIREMENTS CONTRACTS

2102.1 The use of District requirements contracts shall be mandatory for all District agencies listed under the contract as using agencies.

2102.2 When goods or services are available under a District requirements contract, a contracting officer shall not:

(a) Solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to the requirements contract; or

(b) Request formal or informal quotations from other contractors for the purpose of making price comparisons.

Section 2103, DISTRICT TERM CONTRACTS AND FEDERAL SUPPLY SCHEDULES, is repealed and replaced with:

2103 EXISTING INDEFINITE QUANTITY CONTRACTS

2103.1 The use of District indefinite quantity contracts shall be mandatory to the extent of the minimums stated in those contracts.

Section 2104, ORDERING FROM THE SUPPLY SCHEDULES, is repealed and replaced with:

2104 DISTRICT OF COLUMBIA SUPPLY SCHEDULES

2104.1 Except as provided by §§ 2101, 2102, 2103, 2104.2 and 2104.3, the contracting officer shall award contracts of $250,000 or less to a qualified SBE on the DCSS.

2104.2 If the contracting officer determines in writing that there are not at least two (2) qualified SBEs on the DCSS that can provide the goods or services, the contracting officer may use a qualified CBE on the DCSS that can provide the goods or services.

2104.3 If the contracting officer determines in writing that the price offered by the SBE or CBE is believed to be 12% or more above the likely price in the open market, the contracting officer may decline to award a contract under this section, and may issue the solicitation in the set-aside market under § 2105.

2104.4 A copy of each determination made under this section shall be submitted promptly to the Director of the Department of Small and Local Business Development (DSLBD).

Section 2105, TERMINATION OF ORDERS, is repealed and replaced with:

2105 MANDATORY SET-ASIDES

2105.1 Except as provided by §§ 2101, 2102, 2103, 2104 and 2105.2 and 2105.3, the contracting officer shall award contracts of $250,000 or less to a qualified SBE.

2105.2 If the contracting officer determines in writing that there are not at least two (2) qualified SBEs that can provide the goods or services, the contracting officer may use a qualified CBE that can provide the goods or services.

2105.3 If the contracting officer determines in writing that the price offered by the SBE or CBE is believed to be 12% or more above the likely price in the open market, the contracting officer may decline to award a contract under this section, and issue the solicitation in the open market.

2105.4 A copy of each determination made under this section shall be submitted promptly to the Director of the DSLBD.

Section 2106, SALES DISCOUNT UNDER MULTIPLE AWARD SCHEDULE PROCUREMENT PROGRAM, is repealed and replaced with:

2106 FEDERAL SCHEDULES

2106.1 Except as provided by §§ 2101, 2102, 2103, 2104 and 2105, the contracting officer may utilize federal schedules that offer programs to the District following the applicable schedule procedures.

2106.2 Except as otherwise provided in a federal schedule, all schedule contract terms and conditions apply to contracts between the schedule contractor and the District.

Section 2107, RESERVED, is amended to read as follows:

2107 SALES DISCOUNT UNDER DISTRICT OF COLUMBIA SUPPLY SCHEDULE PROGRAM

2107.1 The Director may charge and collect, on a quarterly basis, a sales discount in the amount of one percent (1%), on all sales, purchase orders, delivery orders, task orders, and purchase card transactions invoiced under contracts awarded under the DCSS.

Section 2108, RESERVED is repealed.

Section 2109, RESERVED, is repealed.

Section 2110, PROCUREMENT FROM THE BLIND AND SEVERELY HANDICAPPED, is repealed.

Section 2111, PROCUREMENT FROM FEDERAL PRISON INDUSTRIES, INC., is repealed.

Section 2112, EXCEPTIONS FROM HANDICAPPED AND FEDERAL PRISON INDUSTRIES, INC. SOURCE REQUIREMENTS, is repealed.

Section 2113, RESERVED, is repealed.

Section 2114, RESERVED, is repealed

Section 2115, PROCUREMENT OF PRINTING AND RELATED GOODS, is repealed.

Section 2116, LEASING OF MOTOR VEHICLES, is repealed.

Section 2199, DEFINITIONS, is amended to read as follows:

2199 DEFINITIONS

2199.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Director - the Director of the Office of Contracting and Procurement (OCP) or the District of Columbia Chief Procurement Officer (CPO).

Excess personal property - any personal property under the control of a District agency that the agency head or a designee determines is not required for its needs and for the discharge of its responsibilities.

District of Columbia Supply Schedule - indefinite quantity contracts made with more than one (1) CBE supplier for comparable goods and services at varying prices.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments to the Chief Procurement Officer, 441 4th Street, 700 South, Washington, D.C. 20001. Comments may be sent by email to OCPRulemaking@dc.gov, by postal mail or hand delivery to the address above, or by calling (202) 727-0252. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be requested at the same address, e-mail, or telephone number as above.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)), 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 903 (Outpatient Hospital Services Reimbursement Methodology) under Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This emergency and proposed rule amends the payment system by the District of Columbia Medicaid program for reimbursement of outpatient hospital services.

Effective Fiscal Year (FY) 2015, beginning October 1, 2014, all hospitals that deliver outpatient services and are enrolled as providers under the District Medicaid program will be reimbursed for outpatient services by a prospective payment system (PPS) under the Enhanced Ambulatory Patient Grouping (EAPG) classification system. The EAPG based reimbursement methodology will reimburse providers of outpatient hospital services based on the patient's severity of illness and risk of mortality as well as the hospital's resource needs. The emergency and proposed rulemaking will also identify which providers are subject to the revised reimbursement system; delineate coverage and payment for specific services; and establish exceptions to service reimbursement under the payment system.

This emergency rulemaking is necessitated by the immediate need to ensure that District residents have continued access to quality outpatient hospital care services. Emergency action is necessary for the immediate preservation of the health, safety and welfare of persons receiving these services.

The corresponding amendment to the District of Columbia State Plan for Medical Assistance (State Plan) was approved by the Council of the District of Columbia (Council) through the Medicaid Assistance Program Emergency Amendment Act of 2014, enacted July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (August 1, 2014)). The amendment must also be approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

A Notice of Emergency and Proposed Rulemaking was published in *D.C. Register* on December 26, 2014 (61 DCR 013196). Since the first notice of emergency and proposed rules expired before the end of the comment period, DHCF is publishing this Notice of Second Emergency and Proposed Rulemaking to allow the general public to submit comments. This second emergency rulemaking was adopted on January 16, 2015 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until May 15, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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

Section 903, OUTPATIENT AND EMERGENCY ROOM SERVICES, of Chapter 9, MEDICAID PROGRAM, Title 29 DCMR, PUBLIC WELFARE, is amended to read as follows:

903 GENERAL PROVISIONS

903.1 The purpose of this section is to set forth the requirements governing Medicaid reimbursement of outpatient hospital services.

903.2 All hospitals that deliver outpatient hospital services to Medicaid-eligible individuals and are enrolled as providers under the Department of Health Care Finance's (DHCF) Medicaid program shall be reimbursed under a prospective payment system (PPS) under the Enhanced Ambulatory Patient Grouping (EAPG) classification system.

903.3 The EAPG payment system shall be applicable to the following hospitals enrolled as Medicaid providers:

(a) In-District General Hospitals;

(b) Specialty Hospitals; and

(c) Out-of-District Hospitals with the exception of Maryland hospitals.

903.4 The EAPG is a visit-based classification system that uses a grouping algorithm for outpatient services to characterize the amount and type of resources used during a hospital outpatient visit for patients with similar clinical characteristics.

903.5 Except as provided in Subsection 903.7, DHCF shall update the EAPG grouper/pricer software version every two (2) years, or more often when necessary. These updates shall be effective on October 1st of the applicable year. The first update shall be implemented in FY 2017, beginning on October 1, 2016.

903.6 DHCF shall use the national relative weights of the EAPG grouper/pricer software and update the EAPG relative weights at a minimum of every two (2) years to coincide with the grouper version upgrades, or more frequently as needed.

903.7 DHCF shall update the EAPG grouper/pricer software on a quarterly basis to accommodate changes in the national Current Procedural Terminology (CPT)/HealthCare Common Procedure Coding System (HCPCS) code sets.

903.8 The EAPG payment system shall apply to all hospital claims for dates of service on or after October 1, 2014.

903.9 Payment for an outpatient hospital claim under the EAPG payment system shall be based on the following formula:

Adjusted EAPG relative weight x policy adjustor (if applicable)
x
Conversion factor

903.10 Each EAPG shall be assigned a national relative weight, which shall be adjusted by the applicable payment mechanisms including discounting, packaging, and/or consolidation.

903.11 DHCF may also use policy adjustors, as appropriate, to ensure that Medicaid beneficiaries maintain access to certain services and adequate provider networks based on review and analysis.

903.12 Effective October 1, 2014, a pediatric policy adjustor in the amount of 1.25 shall be applied to the national weight for all outpatient visits for children under the age of twenty-one (21). Thereafter, the policy adjustor rate shall be evaluated during the annual rate review.

903.13 The EAPG payment system shall utilize one of the following conversion factors:

(a) An In-District rehabilitation hospital factor;

(b) A District-wide conversion factor for other in-District and out-of-District hospitals (except Maryland hospitals); or

(c) A District-wide conversion factor increased by two percent (2%) for outpatient services provided by hospitals located in an Economic Development Zone (EDZ).

903.14 A factor that is two percent (2%) higher than the District-wide conversion factor shall be applicable to hospitals whose primary location is in an area identified as an Economic Development Zone and certified by the District Department of Small and Local Business Development as a Developmental Zone Enterprise (DZE) pursuant to D.C. Official Code § 2-218.37.

903.15 The conversion factors shall be dependent upon DHCF's budget target, and shall be calculated using outpatient hospital paid claims data from DHCF's most recent and available fiscal year.

903.16 The base year data for the conversion factors effective Fiscal Year 2015, beginning on October 1, 2014, shall be historical claims data for outpatient hospital services from the DHCF Fiscal Year 2013, for dates of service beginning on October 1, 2012 through September 30, 2013.

903.17 The base year shall change when the EAPG payment system is rebased and recalibrated with a grouper version and EAPG relative weights update every other year.

903.18 DHCF shall utilize a budget target for Fiscal Year 2015 which will be based on seventy-seven percent (77%) of Fiscal Year 2013 costs that will be inflated to Fiscal Year 2015 using the CMS Inpatient Prospective Payment System (IPPS) Hospital Market Basket Rate.

903.19 DHCF shall reduce the budget target for Fiscal Year 2015 by five percent (5%) in anticipation of more complete and accurate coding by hospitals upon implementation of the EAPG payment system.

903.20 The budget target shall be subject to change each year. Initially, DHCF shall monitor claim payments at least biannually during DHCF Fiscal Years 2015 and 2016 to ensure that expenditures do not significantly exceed or fall below the budget target and shall make adjustments to the conversion factors as necessary. DHCF shall provide written notification to the hospitals of the initial conversion factors and any future adjustments to the conversion factors.

903.21 DHCF shall analyze claims data annually to determine the need for an update of the conversion factors. The conversion factors in subsequent years shall be based on budget implications or other factors deemed necessary by DHCF.

903.22 New hospitals shall receive the District-wide conversion factor on an interim basis until the conversion factor annual review during which conversion factors for all hospitals shall be analyzed and subject to adjustment. Any changes in rates shall be effective on October 1 of each year.

903.23 Each CPT/HCPCS procedure code on a claim line shall be assigned to the appropriate EAPG at the claim line level. The total reimbursement amount shall be the sum of all claim lines.

903.24 Prospective payments using the EAPG classification system shall be considered final and there shall be no retrospective cost settlements.

903.25 Coverage and payment for specific services shall be made as follows:

(a) Payment of laboratory and radiology shall be processed and paid by EAPG, subject to consolidation, packaging, or discounting;

(b) Physical therapy, occupational therapy, speech therapy, and hospital dental services shall be processed and paid by EAPGs, subject to consolidation, discounting, and packaging; and

(c) Observation services shall be processed and paid by EAPG. In order to receive reimbursement for services with an observation status, claims shall include at least eight (8) consecutive hours (billed as units of service). Any hours in excess of forty-eight (48) shall not be covered.

903.26 All DHCF policies for outpatient hospital services requiring prior authorization shall be applicable under the EAPG payment system.

903.27 Exceptions to reimbursement under the EAPG payment system shall include the following:

(a) Vaccines for children that are currently paid under the federal government's Vaccine for Children (VFC) program;

(b) Professional services provided by physicians; and

(c) Claims originating from Maryland hospitals, St. Elizabeths Hospital, and managed care organizations.

903.28 With the exception of Specialty hospitals and Maryland hospitals, outpatient diagnostic services provided by a hospital one (1) to three (3) days prior to an inpatient admission at the same hospital shall not be covered under the EAPG payment system and shall be considered as part of the inpatient stay.

903.29 With the exception of Specialty hospitals and Maryland hospitals, outpatient diagnostic services that occur on the same day as an inpatient admission at the same hospital shall be considered part of the inpatient stay.

903.30 The EAPG payment system shall be utilized for any Medicaid payment adjustments for Provider Preventable Conditions as set forth in Chapter 92 of Title 29 of the District of Columbia Municipal Regulations.

9299 DEFINITIONS

9299.1 For purposes of this section, the following terms shall have the meanings ascribed:

Base year – The standardized year on which rates for all hospitals for outpatient hospital services are calculated to derive a prospective payment system.

Budget target - The total amount that DHCF anticipates spending on all hospital outpatient claims during a fiscal year.

Conversion Factor – The dollar value based on DHCF's budget target, multiplied by the final EAPG weight for each EAPG on a claim to determine the total allowable payment for a visit.

Consolidation – Collapsing multiple significant procedures into one EAPG during the same visit which used to determine payment under the EAPG classification system reimbursement methodology.

Discounting - The reduction in payment for an EAPG when significant procedures or ancillary services are repeated during the same visit or in the presence of certain CPT/HCPCS modifiers.

Department of Health Care Finance – The single state agency responsible for the administration of the District of Columbia's Medicaid program.

DHCF Fiscal year – The period between October 1st and September 30th; used to calculate the District's annual budget.

Enhanced Ambulatory Patient Grouping (EAPG) – A group of outpatient procedures, encounters, or ancillary services reflecting similar patient characteristics and resource use; incorporates the use of diagnosis codes Current Procedural Terminology (CPT)/Healthcare Common Procedure Coding System (HCPCS) procedure codes, and other outpatient data submitted on the claim.

EAPG Grouper/Pricer Software – A system designed by 3M Health Information Systems to process HCPCS/CPT and diagnosis code information in order to assign patient visits at the procedure code level to the appropriate EAPG and apply appropriate bundling, packaging, and discounting logic to calculate payments for outpatient visits.

EAPG Relative Weight - The national relative weights calculated by 3M Health Information Systems.

EAPG Adjusted Relative Weight – The weight assigned to the patient grouping after discounting, packaging, or consolidation.

General Hospital - A hospital that has the facilities and provides the services that are necessary for the general medical and surgical care of patients, including the provision of emergency care by an emergency department in accordance with 22-B DCMR§ 2099 .

Grouper Version - Numeric identifier used by 3M Health Information Systems to distinguish any updates made to the software.

In-District Hospital - Any hospital defined in accordance with 22-B DCMR § 2099 that is located within the District of Columbia.

New Hospital - A hospital without an existing Medicaid provider agreement that is enrolled to provide Medicaid services after September 30, 2014.

Observation Status – Services rendered after a physician writes an order to evaluate the patient for services and before an order for inpatient admission is prescribed.

Outpatient Hospital Services – Preventative, diagnostic, therapeutic, rehabilitative, or palliative services rendered in accordance with 42 C.F.R. § 440.20(a).

Out-of-District Hospital - Any hospital that is not located within the District of Columbia. The term does not include hospitals located in the State of Maryland and specialty hospitals identified under 22-B DCMR § 2099.

Packaging – Including payment for certain services in the EAPG payment, along with services that are ancillary to a significant procedure or medical visit.

Specialty Hospital - A hospital that meets the definition of "special hospital" as set forth in 22-B DCMR § 2099 as follows: (a) defines a program of specialized services, such as obstetrics, mental health, orthopedics, long term acute care, rehabilitative services or pediatric services; (b) admits only patients with medical or surgical needs within the defined program; and (c) has the facilities for and provides those specialized services.

Visit – A basic unit of payment for an outpatient prospective payment system.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D, Senior Director/Interim Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2014 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 1916, entitled "In-Home Supports", of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of in-home supports 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 (5) year period beginning November 20th, 2012. In-home supports services are essential to ensuring that persons enrolled in the Waiver continue to receive services and supports in the comfort of their own homes or family homes.

A Notice of Emergency and Proposed rulemaking was published in the *D.C. Register* on October 3, 2014 at 61 DCR 010388, amending the previously published final rules by increasing the rates, using the approved rate methodology, to reflect the increase in the D.C. Living Wage to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)). Comments were received and considered. These rules will amend the previously published emergency and proposed rules by: (1) increasing the rates, using the approved rate methodology, to reflect the anticipated increase in the D.C. Living Wage for 2015 to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)); (2) changing language in Subsection 1916.8(a)(1) to clarify that providers of in-home supports services shall "provide evidence" of the community activities a person attends; (3) clarifying in Subsection 1916.8(a)(3) that daily progress notes should provide information to incoming staff about any follow-up needed at end of a shift, (4) clarifying language in Subsection 1916.12 regarding the maximum daily hours and calendar year timeframe for In-Home supports; and (5) adding a new Subsection 1916.21 to provide clarity on rates for in-home supports services if they are extended in the event of a temporary emergency.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of in-home support services. The ID/DD Waiver serves some of the District's most vulnerable residents. The rate increase is necessary to ensure

a stable workforce and provider base. In order to ensure that the residents' health, safety, and welfare are not threatened, it is necessary that that these rules be published on an emergency basis.

The emergency rulemaking was adopted on January 7, 2015 and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days until May 7, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 1916, IN-HOME SUPPORTS, of Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety and amended to read as follows:

1916 IN-HOME SUPPORTS SERVICES

1916.1 The purpose of this section is to establish standards governing Medicaid eligibility for in-home supports services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of these services.

1916.2 In-home supports are services provided to a person to allow him or her to reside successfully at home. In-home supports include activities in which the person is assisted by a Direct Support Professional (DSP) to achieve the goals set forth in the Individual Support Plan (ISP). Services may be provided in the home or community, with the place of residence as the primary setting.

1916.3 To be eligible for reimbursement, in-home supports services shall be:

(a) Included in a person's Individual Support Plan (ISP) and Plan of Care;

(b) Habilitative in nature; and

(c) Provided to a person living in one of the following types of residences:

(1) The person's own home;

(2) The person's family home; or,

(3) The home of an unpaid caregiver.

1916.4 In-home supports services include a combination of hands-on care, habilitative supports, and assistance with activities of daily living. In-home supports services eligible for reimbursement shall include the following:

(a) Training and support in activities of daily living and independent living skills;

(b) Training and support to enhance community integration by utilizing community resources, including management of financial and personal affairs and awareness of health and safety precaution;

(c) Training on, and assistance in the monitoring of health, nutrition, and physical condition;

(d) Training and support to coordinate or manage tasks outlined in the Health Management Care Plan;

(e) Assistance in performing personal care, household, and homemaking tasks that are specific to the needs of the person;

(f) Assistance with developing the skills necessary to reduce or eliminate behavioral episodes by implementing a Behavioral Support Plan (BSP) or positive strategies;

(g) Assistance with the acquisition of new skills or maintenance of existing skills based on individualized preferences and goals identified in the In-home Supports Plan, ISP, and Plan of Care; and

(h) Coordinating transportation to participate in community events consistent with this service.

1916.5 Each provider rendering in-home supports services shall:

(a) Be a Waiver provider agency; and

(b) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

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

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

(a) The Department on Disability Services (DDS) shall provide a written service authorization before the commencement of services;

(b) The service name and provider delivering services shall be identified in the ISP and Plan of Care;

(c) The ISP and Plan of Care shall document the amount and frequency of services to be received;

(d) The In-home Supports Plan, ISP, and Plan of Care shall be submitted to and authorized by DDS annually; and

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

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

(a) The daily progress notes described in Section 1909 of Chapter 19 of Title 29 DCMR, which shall include the following:

(1) Notes or other documentation of all community activities in which the person participated, including a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?" DDS encourages the use of the Learning Log, a Person-Centered Thinking tool, which may be used to record detailed information about a person's activities and what was learned about the person through his/her experience.;

(2) Notes or other documentation of all habilitative supports provided in the home and a response to the following questions: "What supports worked well for the person?" and "What supports did not work well for the person?";

(3) Notes or other documentation of any special events attended, and any situation or event in the home that requires follow-up by incoming staff or shift during the delivery of the in-home supports services; and

(4) Notes that record the dates and times services are delivered.

(b) The documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.

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

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

1916.11 Each DSP providing in-home supports services shall:

(a) Be a member of the person's Support Team;

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

(c) Record daily progress notes; and

(d) Review the person's In-home Supports Plan, ISP, and Plan of Care initially and at least quarterly, and more often as needed once the DSP initiates services.

1916.12 In-home supports services shall only be provided for up to eight (8) hours per day unless there is a temporary emergency. In the event of a temporary emergency, DDS may authorize up to sixteen (16) hours per day for up to one hundred and eighty (180) days, during the person's ISP year.

1916.13 In the event of a temporary emergency, a written justification for an increase in hours shall be submitted with the In-home Supports Plan, ISP, and Plan of Care by the provider to DDS. The written justification must include:

(a) An explanation of why no other resource is available;

(b) A description of the temporary emergency;

(c) An explanation of how the additional hours of in-home supports services will support the person's habilitative needs;

(d) A revised copy of the in-home Supports Plan, ISP, and Plan of Care reflecting the increase in habilitative supports to be provided; and

(e) The service authorization from the Medicaid Waiver Supervisor or other Department on Disability Services Administration designated staff.

1916.14 Payment for in-home supports services shall not be made for routine care and supervision that is normally provided by the family, legal guardian, or spouse.

1916.15 Family members who provide in-home supports services shall comply with Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.

1916.16 Family members who provide in-home supports services and reside in the same home as the person receiving services may only be paid for in home support services that are in accordance with the person's ISPs goals.

1916.17 In-home supports services shall not be provided to persons receiving the following residential services:

(a) Host Home;

(b) Shared Living;

(c) Residential Habilitation; and

(d) Supported Living.

1916.18 In-home supports services may be used in combination with Medicaid State Plan Personal Care Aide (PCA) services or ID/DD PCA services, provided the services are not rendered at the same time.

1916.19 In-home supports services shall not be used to provide supports that are normally provided by medical professionals.

1916.20 In-home supports services, including those provided in the event of a temporary emergency shall be billed at the unit rate. The reimbursement rate shall be twenty-three dollars and twenty-eight cents ($23.28) per hour, billable in units of fifteen (15) minutes at a rate of five dollars and eight-two cents ($5.82), and shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

1916.21 Reimbursement for in-home supports services shall not include:

(a) Room and board costs;

(b) Routine care and general supervision normally provided by the family or unpaid individuals who provide supports;

(c) Services or costs for which payment is made by a source other than Medicaid;

(d) Travel or travel training to Supportive Employment, Day Habilitation, Individualized Day Supports, or Employment Readiness; and

(e) Costs associated with the DSP engaging in community activities with the individuals.

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

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

Temporary Emergency – A sudden change in the medical condition or behavioral status of a person receiving in-home supports services or their caregiver that warrants additional hours of in-home supports services.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, Acting Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, 9th Floor, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND SECOND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) 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 (2014 Repl.)), 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 intent to adopt, on an emergency basis, a new Chapter 95, entitled "Medicaid Eligibility" of Title 29 of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules will reorganize the District's eligibility policies and procedures in accordance with the Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat 119), as amended, and supplemented by the Health Care and Education Reconciliation Act of 2010, approved January 5, 2010 (Pub. L. No. 111-152, 124 Stat. 1029) (codified as amended in scattered sections of 42 U.S.C.) (collectively referred to as the Affordable Care Act) (ACA), and related regulations.

DHCF is the single state agency for the administration of the State Medicaid program under Title XIX of the Social Security Act and CHIP under Title XXI of the Social Security Act in the District. As the single state agency, DHCF is also responsible for supervising and administering the District of Columbia State Plan (State Plan) for Medical Assistance pursuant to 42 U.S.C. §§ 1396 *et seq.*, and amendments thereto. DHCF shall ensure that the State Plan establishes standards that govern DHCF, or its designee, in the administration of the District's Medicaid program.

These emergency and proposed rules correspond to amendments to the District of Columbia State Plan for Medical Assistance (State Plan), which require approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS). The corresponding State Plan amendments (SPA) have been approved by the Council through the Fiscal Year 2013 Budget Support Act of 2013, effective date December 24, 2013 (D.C. Law 20-61; 60 DCR 12472 (September 6, 2013)) and by CMS. A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 31, 2014 at 61 DCR 011440. Comments were received and substantive changes were made to Section 9505 governing non-financial eligibility verification factors for this second proposed rulemaking.

This emergency rulemaking is necessitated by the immediate need to ensure that Medicaid-eligible District residents receive Medicaid coverage as quickly as possible. An outdated paper application process and outdated eligibility categories within existing policies and procedures create unnecessary barriers to Medicaid coverage. Conversely, under these emergency and proposed rules, District residents will be able to apply for health care coverage using a single, streamlined application which may be submitted online, by telephone, through the mail, or in-

person. Eligibility will be verified primarily through self-attestation and electronic data accessed through state, federal and private data sources. The implementation of streamlined eligibility and enrollment processes under these emergency and proposed rules will encourage real-time eligibility and enrollment in Medicaid; enable the application of eligibility verification policies more consistently and accurately; improve application processing times; and reduce administrative costs. Accordingly, emergency action is necessary for the immediate preservation of the health, safety and welfare of Medicaid-eligible District residents.

These emergency and proposed rules were adopted on February 10, 2015 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until June 10, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt these emergency and proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 29, PUBLIC WELFARE, of the DCMR is amended as follows:

CHAPTER 95 MEDICAID ELIGIBILITY

9500 GENERAL PROVISIONS

9500.1 This chapter shall govern eligibility determinations for the District of Columbia (District) Medicaid programs authorized under Title XIX and XXI of the Social Security Act (the Act).

9500.2 Pursuant to 42 U.S.C. Section 1396 *et seq*., and amendments thereto, the Department of Health Care Finance (Department) shall be responsible for supervising and administering the District of Columbia State Plan (the State Plan) for Medical Assistance.

9500.3 The Department may delegate its authority to determine eligibility for non-pregnant individuals, ages twenty-one (21) through sixty-four (64), without dependent children; individuals, ages zero (0) through twenty (20); pregnant women; parents and other caretaker relatives; individuals formerly in foster care, and individuals who are aged, blind, or disabled pursuant to 42 C.F.R. Subsection 431.10.

9500.4 The Department may delegate its authority to conduct administrative reviews and fair hearings with respect to denials of eligibility pursuant to 42 C.F.R. Subsection 431.10.

9500.5 The Department shall exercise appropriate oversight over the eligibility determinations and appeal decisions of its designees and incorporate such written delegations in the State Plan.

9500.6 The Department shall apply the following general standards in the administration of its Medicaid programs:

(a) Information explaining the policies governing eligibility determinations and appeals shall be provided in plain language and in a manner that is accessible and timely to all applicants and beneficiaries, including those with limited or no-English proficiency and those living with disabilities;

(b) District Medicaid program information shall be provided to applicants and beneficiaries who have limited or no-English proficiency through the provision of language services at no cost to them pursuant to Title VI of the Civil Rights Act of 1964, effective July 2, 1964 (42 U.S.C. §§ 2000d, *et seq*.), the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq*.) (Language Access Act), and Mayor's Order 2007-127, dated May 31, 2007;

(c) District Medicaid program information shall be provided to applicants and beneficiaries who are living with disabilities through the provision of auxiliary aids and services at no cost to the individual in accordance with Title II of the Americans with Disabilities Act of 1990, effective July 26, 1990 (42 U.S.C. §§ 12101 *et seq*.), § 504 of the Rehabilitation Act of 1973, effective September 26, 1973 (29 U.S.C. § 794), and the District of Columbia Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq*.);

(d) Applicants and beneficiaries shall be informed at the time of application, renewal, or redetermination that the Department, shall obtain and use available information to verify income, eligibility, and the correct amount of Medicaid payments, except for aged, blind, or disabled individuals whose eligibility is determined by the U.S. Social Security Administration (SSA) under an agreement between the District and SSA pursuant to Section 1634 of the Act;

(e) Information obtained by the Department under this section may be exchanged with the District Health Benefit Exchange Authority (DC HBX) and with other District or federal agencies for the purpose of:

(1) Verifying eligibility for Medicaid, the DC HBX, or other Insurance Affordability Programs (IAP), defined as one of the following:

(i) A State Medicaid program under Title XIX of the Social Security Act;

(ii) A State children’s health insurance program (CHIP) under Title XXI of the Social Security Act;

(iii) A State basic health program established under the Affordable Care Act; or

(iv) A program that makes coverage available through an Exchange with advance payments of premium tax credits or cost-sharing reductions;

(2) Establishing the amount of tax credit or cost-sharing reduction due;

(3) Improving the provision of services; and

(4) Administering IAPs; and

(f) Income and eligibility information shall be furnished to the appropriate District agencies responsible for the child support enforcement program under part D of Title IV of the Act; and the provision of old age, survivors, and disability benefits under Title II and for Supplemental Security Income (SSI) benefits under Title XVI of the Act.

9500.7 The Department shall establish and maintain policies that govern the types of information about applicants and beneficiaries that are protected against unauthorized disclosure for purposes unrelated to the determination of Medicaid eligibility. Protected information may include, but is not limited to, the following:

(a) Name and address;

(b) Phone number;

(c) Social security number;

(d) Medical services provided;

(e) Social and economic conditions or circumstances;

(f) Department evaluation of personal information;

(g) Medical data, including diagnosis and past history of disease or disability;

(h) Any information received for verifying income eligibility and the amount of Medicaid payments; and

(i) Any information received in connection with the identification of legally liable third party resources pursuant to applicable federal regulations.

9500.8 Protected information, in accordance with Subsection 9500.7, shall not include Medicaid beneficiary identification numbers.

9500.9 The Department shall provide notice or other communications concerning an applicant's or beneficiary's eligibility for Medicaid electronically only if the individual has affirmatively elected to receive electronic communications. If the individual elects to receive communications from the agency electronically, the Department shall:

(a) Confirm by regular mail the individual's election to receive notices electronically;

(b) Inform the individual of the right to change such election, at any time, to receive notices through regular mail;

(c) Post notices to the individual's electronic account within one (1) business day of notice generation; and

(d) Send an email or other electronic communication alerting the individual that a notice has been posted to the individual's account.

9500.10 If an electronic communication is undeliverable, a notice shall be sent by regular mail within three (3) business days of the date of the failed electronic communication.

9500.11 At the individual's request, the Department shall provide a paper copy of any notice posted to the individual's electronic account.

9500.12 The Department shall provide the following information by telephone, mail, in person, or through other commonly available electronic means, as appropriate, to all applicants and other individuals upon request:

(a) Eligibility requirements;

(b) Covered Medicaid services;

(c) The rights and responsibilities of applicants and beneficiaries; and

(d) Appeals.

9500.13 The Department shall consider the following factors in determining eligibility for Medicaid:

(a) Income at or below the applicable Medicaid program standard;

(b) District of Columbia residency;

(c) Age;

(d) Social security number;

(e) U.S. Citizenship or satisfactory immigration status;

(f) Household composition;

(g) Pregnancy, where applicable; and

(h) Any other applicable non-financial eligibility factors under federal or District law, such as disability, blindness, or need for long-term services or supports.

9500.14 The Department shall use MAGI-based methodologies and non-MAGI-based methodologies in eligibility determinations for enrollment in and receipt of benefits from the District Medicaid program, in accordance with the requirements of this chapter, and any subsequent amendments thereto.

9500.15 MAGI-based income methodologies, under the provisions of this chapter, shall apply to the following groups:

(a) Non-pregnant individuals, ages twenty-one (21) through sixty-four (64), without dependent children;

(b) Individuals, ages zero (0) through twenty (20);

(c) Pregnant women; and

(d) Parents and other caretaker relatives. For purposes of this section a caretaker relative is a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care (as may, but is not required to, be indicated by claiming the child as a tax dependent for Federal income tax purposes), and who is one of the following:

(1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(2) The spouse of such parent or relative, even after the marriage is terminated by death or divorce; or

(3) Another relative of the child based on blood (including those of half-blood), adoption, or marriage.

9500.16 No resource (assets) test shall apply to eligibility groups identified in Subsections 9500.15(a) through 9500.15(d).

9500.17 MAGI-based income methodologies, under the provisions of this chapter and 42 C.F.R. Section 435.603, shall not apply to the following groups:

(a) Individuals who are under the age of eighteen (18) for whom an adoption assistance agreement under Title IV-E of the Act is in effect and individuals who receive Title IV-E foster care maintenance payments;

(b) Individuals who are under the age of twenty-one (21) in foster care under the responsibility of the District and individuals receiving adoption subsidy payments;

(c) Individuals who are under the age of twenty-six (26) and were on District Medicaid and in foster care under the responsibility of the District at the time they reached the age of eighteen (18) or have aged out of foster care;

(d) Individuals who are age sixty-five (65) or older when age is a condition of eligibility;

(e) Individuals whose eligibility is being determined on the basis of being blind or disabled or on the basis of being treated as being blind or disabled, including but not limited to, individuals eligible under 42 C.F.R. Section 435.121, Section 435.232, Section 435.234, or under Section 1902(e)(3) of the Act;

(f) Individuals who request coverage for long-term services and supports for the purpose of being evaluated for an eligibility group under which long-term services and supports are covered;

(g) Individuals who are being evaluated for eligibility for Medicare cost sharing assistance under Section 1902(a)(10)(e) of the Act and 42 C.F.R. Section 435.603;

(h) Individuals who are being evaluated for coverage as medically needy; and

(j) Other individuals whose eligibility for Medicaid does not require a determination of income by the Department.

9500.18 For an applicant or beneficiary found not eligible based on MAGI methodology and who has been identified on the application or renewal form as potentially eligible on a non-MAGI basis, an eligibility determination shall be made on such basis.

9500.19 The meaning of foster care under this chapter shall be consistent with the definition of foster family home under 45 C.F.R Section 1355.20.

9500.20 The Department shall issue and maintain all policies relevant to Medicaid eligibility determinations. The Department shall make its policies available at www.dhcf.dc.gov and shall provide updates as necessary.

9501 APPLICATION, REDETERMINATION, AND RENEWAL

9501.1 An individual may apply for Medicaid or other Insurance Affordability Programs (IAPs) using a single, streamlined application described at 42 C.F.R. Sections 435.907(b) and (c). The application and any required verification may be submitted:

(a) Over the Internet;

(b) By telephone;

(c) By mail;

(d) In person; and

(e) Through other commonly available electronic means.

9501.2 The application and any required verification may be submitted by:

(a) The applicant;

(b) An adult who is in the applicant's household or family;

(c) An authorized representative of the applicant, pursuant to Subsection 9501.33; or

(d) An individual acting responsibly on behalf of the applicant, if the applicant is a minor or incapacitated.

9501.3 Where the Department requires additional information to determine eligibility, the Department shall provide written notice that includes a statement of the specific information needed to determine eligibility; and the date by which an applicant or beneficiary shall provide the required information.

9501.4 The Department shall determine whether an applicant meets the eligibility factors for Medicaid based upon receipt of:

(a) A complete, signed, and dated application for Medicaid and other IAPs; and

(b) Required verifications as described in the District Verification Plan pursuant to 42 C.F.R. Sections 435.940 through 435.965 and Section 457.380.

9501.5 An application shall be considered complete and submitted if all of the following requirements are met:

(a) All information, including but not limited to demographic information, citizenship/nationality or satisfactory immigration status, household composition, residency, and income, to determine eligibility is provided within the time frame established at Subsection 9501.9;

(b) The application is signed and dated, under penalty of perjury; and

(c) The application is received by the Department.

9501.6 The Department shall accept handwritten, telephonically recorded, and electronic signatures that conform to the requirements of federal and District law.

9501.7 The Department may not require an in-person interview as part of the application process for Medicaid eligibility determinations.

9501.8 The Department shall use the application filing date to determine the earliest date for which Medicaid can be effective. The filing date shall be the date that a complete application is received by the Department.

9501.9 Application timeliness standards shall be as follows:

(a) For an initial eligibility determination based on a disability, the Department shall inform the applicant of timeliness standards and determine eligibility within sixty (60) calendar days of the date that a complete application is submitted.

(b) For an initial eligibility determination for all other applicants, the Department shall inform the applicant of timeliness standards and determine eligibility within forty-five (45) calendar days of the date that a complete application is submitted.

(c) The Department may extend the sixty (60) day and forty-five (45) day periods pursuant to DC Official Code Section 4-205.26 and described in Subsections 9501.9(a) through (b) when a delay is caused by unusual circumstances such as:

(1) Circumstances wholly within the applicant's control;

(2) Circumstances beyond the applicant's control such as hospitalization or imprisonment; or

(3) An administrative or other emergency that could not be reasonably controlled by the Department.

9501.10 Eligibility for Medicaid shall begin three (3) months before the month of application if the individual was eligible and received covered services during that period.

9501.11 The earliest possible date for retroactive eligibility shall be the first day of the third month preceding the month of application.

9501.12 Retroactive eligibility, pursuant to Subsections 9501.10 and 9501.11, shall not apply to:

(a) Qualified Medicare Beneficiaries (QMB);

(b) Individuals without dependent children eligible for Medicaid under Section 1115 of the Social Security Act on or before December 31, 2014;

(c) Individuals determined presumptively eligible by qualified hospitals; and

(d) Individuals determined presumptively eligible based on pregnancy.

9501.13 An applicant or an individual acting on an applicant's behalf may withdraw an application upon request and prior to an eligibility determination through any means identified at Subsection 9501.1.

9501.14 The Department shall renew eligibility every twelve (12) months for all beneficiaries, except for beneficiaries deemed eligible for less than one (1) year.

9501.15 A beneficiary shall immediately notify the Department of any change in circumstances that directly affects the beneficiary's eligibility to receive Medicaid, or affects the type of Medicaid for which the beneficiary is eligible.

9501.16 The Department shall redetermine eligibility for beneficiaries identified at Subsection 9501.15 at the time the change is reported.

9501.17 When renewing or redetermining eligibility, the Department shall, where possible, determine eligibility using available electronic information.

9501.18 Where the Department can renew eligibility based on available electronic information, the Department shall issue written notice of the determination to renew eligibility and its basis to the beneficiary no later than sixty (60) days

before the end of the certification period. The Department shall then renew eligibility for twelve (12) months.

9501.19 A beneficiary shall not be required to sign and return the written notice identified at Subsection 9501.18 if the information provided in the notice is accurate.

9501.20 Where the information in the written notice identified at Subsection 9501.18 is inaccurate, the beneficiary shall provide the Department with correct information, along with any necessary supplemental information through any means allowed under Subsection 9501.1.

9501.21 A beneficiary may provide correct information and any necessary supplemental information pursuant Subsection 9501.20 without signature.

9501.22 Where the Department cannot determine eligibility using available information, the Department shall provide a pre-populated renewal form with information available to the Department; a statement of the additional information needed to renew eligibility; and the date by which the beneficiary shall provide the requested information.

9501.23 Where the Department provides a beneficiary with a pre-populated renewal form, to complete the renewal process, the beneficiary shall:

(a) Complete and sign the form in accordance with Subsection 9501.6;

(b) Submit the form via the Internet, telephone, mail, in person, or through other commonly available electronic means; and

(c) Provide required information to the Department before the end of the beneficiary's certification period.

9501.24 The pre-populated renewal form shall be complete if it meets the requirements identified in Subsection 9501.5.

9501.25 Where a beneficiary fails to return the pre-populated renewal form and the information necessary to renew eligibility, the Department shall issue a written notice of termination thirty (30) days preceding the end of a beneficiary's certification period.

9501.26 The Department shall terminate Medicaid eligibility when:

(a) A beneficiary fails to submit the pre-populated renewal form and the necessary information by the end of certification period; or

(b) The beneficiary no longer meets all eligibility factors.

9501.27 For an individual who is terminated for failure to submit the pre-populated renewal form and necessary information, the Department shall determine eligibility without requiring a new application if the individual subsequently submits the pre-populated renewal form and necessary information within ninety (90) days after the date of termination.

9501.28 The Department shall terminate eligibility upon a beneficiary's request.

9501.29 Upon receipt of a written request for termination of Medicaid eligibility by the beneficiary, the Department shall terminate the beneficiary's eligibility on:

(a) The last day of the month in which the Department receives the request where there are fifteen (15) or more days remaining in the month;

(b) The last day of the following month in which the Department receives the request where there are fewer than fifteen (15) days remaining in the month; or

(c) A date earlier than those referenced in Subsections 9501.29(a) through (b), upon request by the beneficiary.

9501.30 A request to terminate Medicaid eligibility shall be complete if all of the following requirements are met:

(a) The request is submitted by Internet, telephone, mail, in-person, or through other commonly available electronic means;

(b) The request is signed and dated, under penalty of perjury, in accordance with Subsection 9501.6; and

(c) The request includes all information necessary to determine the identity of the individual seeking termination.

9501.31 The Department shall provide written notice of termination no later than fifteen (15) calendar days prior to termination, except as stated under Subsection 9508.5 through Subsection 9508.7.

9501.32 An applicant or beneficiary determined to be ineligible for Medicaid shall receive an eligibility determination for other IAPs.

9501.33 An individual may designate another individual or organization to be an authorized representative to act on their behalf to assist with an application, a redetermination of eligibility, and other on-going communications with the Department. The Department shall require the following:

(a) The designation of an authorized representative shall be in writing and signed, pursuant to Subsection 9501.6, by the individual seeking representation. In the alternative, legal documentation of authority to act on behalf of an individual under District law, including a court order establishing legal guardianship or power of attorney, may serve in the place of a written authorization;

(b) The authority of an authorized representative shall be valid until the represented individual or authorized representative notifies the Department that the representative is no longer authorized to act on the individual's behalf; or there is a change in the legal document of authority to act on the individual's behalf;

(c) An authorized representative may be authorized to:

(1) Sign an application on behalf of an applicant;

(2) Receive copies of notices and other communications from the Department;

(3) Act on behalf of an individual in all other matters with the Department; and

(4) Complete and submit redetermination forms; and

(d) An authorized representative shall agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the represented individual provided by the Department.

9502 RESIDENCY

9502.1 An individual shall be a resident of the District as a condition of Medicaid eligibility.

9502.2 An individual shall be considered incapable of stating intent to reside in the District if one of the following applies to the individual:

(a) Individual has an I.Q. of forty-nine (49) or less or a mental age of seven (7) or less, based on tests acceptable to the District Department on Disability Services;

(b) Individual is judged legally incompetent; or

(c) Individual is found incapable of indicating intent by a physician, psychologist, or other similarly individual licensed in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective

March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2012 Repl.)).

9502.3 A resident of the District shall be any individual who:

(a) Meets the conditions of Subsections 9502.4 through 9502.19; or

(b) Meets the criteria specified in an interstate agreement under Subsection 9502.23.

9502.4 Subject to the exceptions identified in Subsections 9502.6, 9502.11, 9502.12, 9502.14, and 9502.15 below, an individual under age nineteen (19) who lives in the District shall be considered a resident of the District.

9502.5 Subject to the exceptions identified in Subsections 9502.6, 9502.11, 9502.12, 9502.14, and 9502.15 below, the state of residence of an individual who is age nineteen (19) through twenty (20) shall be where the individual resides or the state of residency of the parent or caretaker relative with whom the individual resides.

9502.6 An individual who is under the age of twenty-one (21), who is capable of stating intent to reside; who is married or emancipated, and who does not reside in an institution, shall follow the residency rules applicable to individuals who are the age of twenty-one (21) and older.

9502.7 An individual, who is the age of twenty-one (21) or older and who does not live in an institution, shall be considered a resident of the District if the individual is living in the District voluntarily and not for a temporary purpose; that is, an individual with no intention of presently leaving including individuals without a fixed address or who have entered the District with a job commitment or seeking employment, whether or not currently employed.

9502.8 Temporary absence from the District, with subsequent returns to the District, or intent to return when the purposes of the absence have been accomplished, shall not interrupt continuity of residence.

9502.9 Residence as defined for eligibility purposes shall not depend upon the reason for which the individual entered the District, except insofar as it may bear on whether the individual is there for a temporary purpose.

9502.10 Unless an exception applies, the State of residence for an individual who is age twenty-one (21) and over, and who is not living in an institution, but who is incapable of stating intent to reside, shall be the State where the individual lives.

9502.11 Where a District agency or designee arranges or makes an out-of-state placement for any individual aged eighteen (18) and older receiving diagnostic, treatment, or

rehabilitative services related to intellectual or developmental disabilities, the District shall be the State of residence.

9502.12 The State of residence for an individual placed by the District in an out-of-District institution shall be determined as follows:

(a) An individual who is placed in an institution in another State by a District agency or designee is a District resident;

(b) If a District agency or designee arranges or makes the placement, the District is considered as the individual's State of residence, regardless of the individual's intent or ability to indicate intent;

(c) Where a placement is initiated by a District agency or designee because the District lacks a sufficient number of appropriate facilities to provide services to its residents, the District, as the State making the placement is the individual's State of residence.

9502.13 Any action by a District agency or designee beyond providing information to the individual and the individual's family constitutes arranging, or making, an out-of-District placement in an institution.

9502.14 The State of residence for an individual of any age who receives a State supplementary payment (SSP) shall be the State paying the SSP.

9502.15 The State of residence for individuals who is under the age of twenty-one (21) receiving adoption assistance, foster care, or guardianship care under title IV-E of the Social Security Act (the Act) shall be the State where such individuals actually live even if adoption assistance, foster care, or guardianship payments originate from the District.

9502.16 The State of residence for an institutionalized individual under the age of twenty-one (21), who is neither married nor emancipated, shall be the following:

(a) The parent's or legal guardian's State of residence at the time of placement;

(b) The current State of residence of the parent or legal guardian who files the application if the individual is institutionalized in that same State; or

(c) If the individual has been abandoned by his or her parents and has no legal guardian, the State of residence of the individual who files an application.

9502.17 For any institutionalized individual who became incapable of indicating intent before age twenty-one (21), the State of residence shall be:

(a) That of the parent applying for Medicaid on the individual's behalf, if the parents reside in separate States (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's);

(b) The parent's or legal guardian's State of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's);

(c) The current State of residence of the parent or legal guardian who files the application if the individual is institutionalized in that State (if a legal guardian has been appointed and parental rights are terminated, the State of residence of the guardian is used instead of the parent's); or

(d) The State of residence of the individual or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that State.

9502.18 For any institutionalized individual (regardless of any type of guardianship) who became incapable of indicating intent at or after age twenty-one (21), the State of residence is the State in which the individual is physically present, except where another State makes a placement.

9502.19 For any other institutionalized individual, the State of residence shall be the State where the individual is living and intends to reside.

9502.20 The Department shall not deny eligibility for Medicaid because an individual has not resided in the District for a specified period.

9502.21 The Department shall not deny eligibility for Medicaid to an individual in an institution, who satisfies the residency rules set forth in this section on the grounds that the individual did not establish residence in the District before entering the institution.

9502.22 The Department shall not deny or terminate an individual’s eligibility for Medicaid because of the individual's temporary absence from the District if the individual intends to return when the purpose of the absence has been accomplished, unless another State has determined that the individual is a resident there for purposes of Medicaid.

9502.23 The District may extend eligibility for Medicaid to individuals who would traditionally be considered residents of a State other than the District under an interstate agreement.

9502.24 Where two or more States cannot resolve which State is the State of residence, and in the absence of an interstate agreement between the District and another

State governing disputed residency, the State where the individual is physically located shall be the State of residence.

9503 CITIZENSHIP OR SATISFACTORY IMMIGRATION STATUS

9503.1 An individual shall meet applicable citizenship or satisfactory immigration status requirements as a condition of Medicaid eligibility.

9503.2 The following groups of individuals satisfy citizenship or satisfactory immigration status requirements:

(a) A U.S. citizen or national as described in Subsection 9503.8, including children born to a non-citizen in the U.S;

(b) Lawful Permanent Residents (LPRs) pursuant to the Immigration and Nationality Act (INA);

(c) Refugees admitted under Section 207 of INA including Afghan and Iraqi Special Immigrants (SIV's) as permitted under Pub. L. 111-118;

(d) Aliens granted Asylum under Section 208 of INA;

(e) Cuban or Haitian entrants as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(f) Aliens granted conditional entry prior to April 1, 1980;

(g) Aliens who have been paroled into the U.S. in accordance with 8 U.S.C. § 1182(d)(5) for less than one (1) year;

(h) Certain battered spouses, battered children or parents, or children of a battered individual with a petition approved or pending under Section 204(a)(1)(A) or (B) or Section 244(a)(3) of the INA;

(i) An individual who has been granted withholding of Deportation;

(j) American entrants pursuant to Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988 (as contained in Section 101(e) of Pub. L. 100-202 and amended by the 9th provision under Migration and Refugee Assistance in Title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988, Pub. L. 100-461 as amended);

(k) American Indians born outside the U.S. who were born in Canada and are at least fifty percent (50%) American Indian blood and to whom the provisions of Section 289 of the INA apply; and are members of a

federally recognized tribe as defined in Section 4(e) of the Indian Self-Determination and Education Act; and

(l) Lawfully residing aliens who are under the age of twenty-one (21) and pregnant women pursuant to Section 1903(v)(4) of the Social Security Act, including the following individuals who are:

(1) Defined as qualified aliens in 8 U.S.C. Section 1641(b) and (c);

(2) In a valid nonimmigrant status, as defined in 8 U.S.C. Section 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. Section 1101(a)(17))(includes worker visas, student visas, and citizens of Micronesia, the Marshall Islands, and Palau);

(3) Paroled into the U.S. in accordance with 8 U.S.C. Section 1182(d)(5) for less than one (1) year, except for individuals paroled for prosecution, for deferred inspection or pending removal proceedings;

(4) Granted temporary resident status in accordance with 8 U.S.C. Section 1160 or Section 1255a, respectively;

(5) Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. §1254a, and individuals with pending applications for TPS who have been granted employment authorization;

(6) Granted employment authorization under 8 C.F.R Section 274a.12(c);

(7) Family Unity beneficiaries in accordance with Section 301 of Pub. L. 101-649, as amended;

(8) Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;

(9) Granted Deferred Action status;

(10) Granted an administrative stay of removal under 8 C.F.R Section 241 (issued by the Department of Homeland Security);

(11) The recipient of an approved visa petition or who has a pending application for adjustment to lawful permanent resident status;

(12) The recipient of a pending application for asylum under 8 U.S.C. Section 1158, or for withholding of removal under 8 U.S.C. Section 1231, or under the Convention Against Torture who have

been granted employment authorization; or are under the age of fourteen (14) and have had an application pending for at least one-hundred eighty (180) days;

(13) Granted withholding of Deportation;

(14) Children who have a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. Section 1101(a)(27)(J);

(15) Lawfully present in American Samoa under the immigration laws of American Samoa; or

(16) Victims of severe trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, as amended (22 U.S.C. Section 7105(b).

9503.3 Individuals with deferred action under the U.S. Department of Homeland Security's Deferred Action for Childhood Arrivals (DACA) process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, shall not meet citizenship or satisfactory immigration status requirements under Subsections 9503.2(c) through (l).

9503.4 Unless exempt under 8 U.S.C. Section 1613(b), qualified aliens who are age nineteen (19) or older and entered the U.S. on or after August 22, 1996 shall be subject to a five (5) year period during which they are ineligible for full Medicaid.

9503.5 The five (5) year period, described in 8 U.S.C. Section 1613, shall begin on the date the qualified alien entered the U.S., or the date a previously unqualified alien attained qualified alien status.

9503.6 An alien who does not meet the citizenship or satisfactory immigration status requirements identified at Subsections 9503.1 through 9503.5 may be eligible to receive emergency services that are not related to an organ transplant procedure if:

(a) The alien has a medical condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(1) Placing health in serious jeopardy;

(2) Serious impairment to bodily functions; or

(3) Serious dysfunction of a bodily organ or part.

(b) The alien meets all other eligibility requirements for Medicaid except the requirements concerning furnishing social security numbers and verification of alien status; and

(c) The alien's need for the emergency service continues.

9503.7 The Department shall discontinue Emergency Medicaid for aliens described at Subsection 9503.6 once the alien's medical condition has been stabilized.

9503.8 An individual shall qualify as a U.S. citizen if the individual was born in the fifty (50) states or the District of Columbia, Puerto Rico, Gram, U.S. Virgin Islands or Northern Mariana Islands. Nationals from American Samoa or Swain's Island are regarded as U.S. citizens for purposes of Medicaid eligibility. A child of a U.S. citizen born outside the U.S. may automatically be eligible for a Certificate of Citizenship.

9504 SOCIAL SECURITY NUMBER

9504.1 An individual, except as otherwise provided in this section, shall provide his or her SSN as a condition of Medicaid eligibility pursuant to 42 C.F.R. Section 435.910.

9504.2 An individual who cannot provide his or her SSN shall provide proof of an application for an SSN with the U.S. Social Security Administration (SSA).

9504.3 The Department shall take the following actions when an individual cannot recall his or her SSN or has not been issued an SSN:

(a) Assist with the completion of an application for an SSN;

(b) Obtain evidence required under SSA regulations to establish the age, the citizenship or alien status, and the true identity of the individual; and

(c) Send the application to SSA, or request SSA to furnish the number, if there is evidence that the individual has previously been issued a SSN.

9504.4 The Department shall not deny or delay services to an otherwise eligible individual pending issuance or verification of the individual's SSN by the SSA.

9504.5 Individuals identified in Subsection 9504.3 shall be eligible for Medicaid on a temporary basis for ninety (90) days.

9504.6 The Department shall verify each SSN of each individual with SSA, as prescribed by the U.S. Commissioner of Social Security, to ensure that each SSN furnished was issued to that individual, and to determine whether any others were issued.

9504.7 The requirement to furnish an SSN shall not apply to the following individuals:

(a) An individual who is applying for Medicaid due to the presence of an emergency medical condition defined at 42 C.F.R Section 440.255;

(b) An individual who does not have an SSN and may only be issued an SSN for a valid non-work reason;

(c) An individual who refuses to obtain an SSN because of well-established religious objections;

(d) An individual who is an infant under the age of one (1);

(e) An authorized representative;

(f) Adult who is applying for Medicaid on a minor's behalf; or

(g) Any other individual member of an applicant or beneficiary's household who is not applying for Medicaid.

9504.8 The Department may give a Medicaid identification number to an individual who, because of well-established religious objections, refuses to obtain an SSN. The identification number may be either an SSN obtained by the District on an individual's behalf or another unique identifier.

9504.9 The Department shall advise an individual of the uses the Department will make of each SSN, including its use for verifying income, eligibility, and amount of Medicaid payments.

9505 VERIFICATION OF NON-FINANCIAL ELIGIBLITY FACTORS

9505.1 The Department shall verify the non-financial eligibility factors necessary for a MAGI-based Medicaid eligibility determination at the time of application, at each renewal of eligibility, and at each redetermination of eligibility in accordance with the District Verification Plan pursuant to 42 C.F.R. Sections 435.940 through 435.965 and Section 457.380.

9505.2 An applicant, adult who is in a minor applicant's household, or an authorized representative, as identified in Subsection 9501.33, of an applicant shall attest to the following non-financial eligibility factors:

(a) Household composition;

(b) Residency;

(c) Age;

(d) SSN;

(e) U.S. citizenship, nationality or satisfactory immigration status;

(f) Pregnancy status;

(g) Relationship of a caretaker relative to an applicant or eligible child; and

(h) Eligibility for Medicare.

9505.3 The Department shall accept attestation without verification, unless the attestation is not reasonably compatible with information available to the Department, for the following eligibility factors:

(a) Household composition;

(b) Residency for individuals age eighteen (18) and under;

(c) Age;

(d) Pregnancy (includes attestation of multiple gestation pregnancies, *i.e.*, a woman pregnant with twins would be counted as three people);

(e) Relationship of a caretaker relative to an applicant, beneficiary, or eligible child;

(f) Homelessness; and

(g) Eligibility for Medicare.

9505.4 The Department shall require verification through one (1) or more federal and State electronic data sources for the following eligibility factors:

(a) Residency for individuals age nineteen (19) and older;

(b) SSN; and

(c) U.S. citizenship/nationality or satisfactory immigration status.

9505.5 The Department shall not require verification of U.S. citizenship or nationality and satisfactory immigration status pursuant to Subsection 9505.4(d) for the following:

(a) Individuals receiving SSI;

(b) Individuals receiving Social Security Disability (SSDI) based on their own disability;

(c) Individuals who are entitled to or enrolled in Medicare;

(d) Individuals who are eligible for Medicaid as a deemed newborn; and

(e) Children in foster care or receiving adoption assistance payments.

9505.6 The Department shall use a reasonable compatibility standard to match information obtained from federal and State electronic or other data sources with attested application information as further described in Subsection 9505.7 below.

9505.7 Attestation and information from electronic or other data sources shall be considered reasonably compatible by the Department where the data sources match or do not significantly differ from attestation. Only discrepancies that affect eligibility shall be considered significant.

9505.8 The Department may require individuals to provide supplemental information where electronic data is unavailable or application information is not reasonably compatible with information obtained from an electronic or other data source.

9505.9 The Department may accept supplemental information in the following forms:

(a) Paper, electronic, or telephonic documentation; or

(b) If other documentation is not available, a statement which explains the discrepancy.

9505.10 The Department shall provide a ninety (90) day period to provide supplementary information to verify SSN, U.S. citizenship or nationality, and satisfactory immigration status once per lifetime. Medicaid coverage may be provided during this period.

9505.11 An applicant who makes a good faith effort to obtain the requested documentation may receive an additional ninety (90) day period to produce the documentation necessary to verify citizenship or immigration status once per lifetime.

9505.12 Excepting citizenship, nationality, and satisfactory immigration status, the Department may waive its verification requirements for exceptional circumstances.

9505.13 In accordance with the District Verification Plan, exceptional circumstances shall include:

(a) Homelessness;

(b) Domestic violence;

(c) Instances where a noncustodial parent refuses to release documentation germane to verification of one (1) or more eligibility factors; and

(d) Other circumstances as identified on a case-by-case basis and approved by the Department.

9506 MODIFIED ADJUSTED GROSS INCOME (MAGI) ELIGIBILITY

9506.1 This section shall establish the factors of District Medicaid eligibility for modified adjusted gross income (MAGI) eligibility groups, as identified in Section 9500.

9506.2 To be determined eligible for Medicaid as a parent or other caretaker relative, an individual shall:

(a) Be a parent or other caretaker relative of a dependent child;

(b) Have a household income that does not exceed two hundred sixteen percent (216%) of the Federal Poverty Level (FPL) as determined in accordance with this section; and

(c) Meet all other applicable non-financial eligibility factors identified at Subsection 9506.9.

9506.3 To be determined eligible for Medicaid as a pregnant woman, an individual shall:

(a) Be pregnant or in the post-partum period;

(b) Have household income that does not exceed three hundred nineteen percent (319%) of the FPL as determined in accordance with this Section;

(c) Not otherwise eligible or enrolled under the following mandatory groups:

(1) Supplemental Security Income (SSI) and related groups,

(2) Parent or Other Caretaker Relatives,

(3) Infants and Children, or

(4) Title IV-E Foster Children;

(d) Not entitled to or enrolled in Medicare; and

(e) Meet all other applicable non-financial eligibility factors identified at Subsection 9506.9.

9506.4 The Department shall not require a pregnant woman to cooperate in establishing paternity in order to receive Medicaid.

9506.5 A pregnant woman who is determined eligible for Medicaid shall retain eligibility throughout the pregnancy and the post-partum period regardless of changes in household income.

9506.6 To be determined eligible for Medicaid as an infant and child under age nineteen (19), an individual shall:

(a) Be age zero (0) through eighteen (18);

(b) Have a household income that does not exceed three hundred nineteen percent (319%) of the FPL as determined in accordance with this Section; and

(c) Meet all other applicable non-financial eligibility factors identified at Subsection 9506.9.

9506.7 To be determined eligible for Medicaid as a child age nineteen (19) or twenty (20), an individual shall:

(a) Be age nineteen (19) or twenty (20);

(b) Have household income that does not exceed two hundred sixteen percent (216%) of the FPL as determined in accordance with this section; and

(c) Meet all other applicable non-financial eligibility factors identified at Subsection 9506.9.

9506.8 To be eligible as an individual without a dependent child (childless adult), an individual shall:

(a) Be age twenty-one (21) through sixty-four (64);

(b) Have a household income that does not exceed hundred thirty-three percent (133%) of the FPL as determined in accordance with this section;

(c) Without dependent children;

(d) Not otherwise eligible or enrolled under the following mandatory groups:

(1) SSI and related groups,

(2) Parent or Caretaker Relative,

(3) Pregnant Woman,

(4) Former Foster Child, or

(e) Not entitled to or enrolled in Medicare Part A or Part B; and

(f) Meets all other applicable non-financial eligibility requirements identified at Subsection 9506.9.

9506.9 All individuals applying for Medicaid, regardless of eligibility group, shall meet the following non-financial eligibility factors:

(a) Be a District resident pursuant to 42 C.F.R. Section 435.403;

(b) Provide an SSN or be exempt pursuant to 42 C.F.R. Section 435.910 and Subsection 9504.7; and

(c) Be a U.S. citizen or national, or be in a satisfactory immigration status.

9506.10 The Department shall employ MAGI methodologies (based on federal income tax rules) to determine household composition, family size, and how income is counted during eligibility determinations for MAGI eligibility groups.

9506.11 For individuals who expect to file a federal income tax return or who expect to be claimed as a tax dependent by another tax filer for the taxable year in which an eligibility determination is made, household composition shall be determined as follows:

(a) The household of an individual who expects to be a tax filer consists of the tax filer and all of the tax dependents the tax filer expects to claim;

(b) The household of a tax dependent, except individuals identified at Subsection 9506.14, consists of the tax filer claiming the tax dependent and all other tax dependents expected to be claimed by that tax filer;

(c) The household of a married individual who lives with their spouse consists of both spouses regardless of whether they expect to file a joint federal tax return or whether one (1) or both spouses expect to be claimed as a tax dependent by another tax filer; and

(d) The household of a pregnant woman which consists of the pregnant woman plus the number of children she is expected to deliver. In the case of determining the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted herself plus the number of children she is expected to deliver.

9506.12 The Department shall consider an individual who expects to be both a tax filer and a tax dependent to be a tax dependent.

9506.13 For individuals who do not expect to file a federal income tax return or be claimed as a tax dependent for the taxable year in which an eligibility determination is made, household composition shall be determined as follows:

(a) The household of an individual who expects to be a non-filer consists of the non-filer and, if living with the non-filer:

(1) The non-filer's spouse;

(2) The non-filer's children under age nineteen (19); and

(3) If the non-filer is under age nineteen (19), the non-filer's parents and any siblings who are also under age nineteen (19).

9506.14 Household composition shall be determined under Subsection 9506.13 for the following:

(a) Individuals who expect to be claimed as a tax dependent by a tax filer who is not their spouse or biological, adoptive, or step parent, regardless of the individual's age;

(b) Individuals who are under age nineteen (19) living with both parents who do not expect to file a joint federal tax return, and who expect to be claimed as a tax dependent by one of their parents; or

(c) Individuals who are under age nineteen (19) and expect to be claimed by a non-custodial parent.

9506.15 MAGI-based income shall be determined using federal income tax rules for determining adjusted gross income except as otherwise provided in this Section. Countable income shall include the following:

(a) Wages, salaries, tips, and other forms of earned income;

(b) Taxable and tax-exempt interest;

(c) Ordinary dividends;

(d) Qualified dividends;

(e) Taxable refunds, credits, or offsets of state and local income taxes;

(f) Alimony received;

(g) Business income or losses;

(h) Capital gains or losses;

(i) Other taxable gains or losses;

(j) Taxable Individual Retirement Account (IRA) distributions;

(k) Taxable pensions and annuities – taxable amount;

(l) Rental real estate, royalties, income from partnerships, S corporations, trusts, etc.;

(m) Farm income or losses;

(n) Unemployment compensation;

(o) Taxable and tax-exempt Social Security benefits except as provided in Subsection 9506.16(q) below;

(p) Lump sum payments (in the month received), including back pay, a retroactive benefit payment, State tax refund, or an insurance settlement; and

(q) Any other income reported on the Internal Revenue Service (IRS) Form 1040.

9506.16 Countable income shall exclude the following:

(a) Income scholarships, awards, or fellowship grants used for education purposes and not for living expenses;

(b) American Indian/Alaska Native income as defined in 42 C.F.R Section 435.603(e);

(c) Educator expenses;

(d) Certain business expenses of reservists, performing artists, and fee-based government officials;

(e) Health savings account deduction;

(f) Moving expenses;

(g) Deductible part of self-employment tax;

(h) Self-employed Simplified Employee Pension (SEP), Savings Incentive Match Plan for Employees (SIMPLE), and qualified plans;

(i) Self-employed health insurance deduction;

(j) Penalty on early withdrawal of savings;

(k) Alimony paid;

(l) Individual Retirement Account (IRA) deduction;

(m) Student loan interest deduction;

(n) Tuition and fees;

(o) Public assistance benefits;

(p) Domestic production activities deduction; and

(q) SSI benefits under Title XVI of the Act.

9506.17 Household income shall include the MAGI-based income of all individuals in a household except that:

(a) The MAGI-based income of an individual who is included in the household of his or her natural, adopted, or step parent and is not expected to be required to file a federal tax return for the taxable year of an eligibility determination, shall not be included in household income, whether or not the individual files a federal tax return; and

(b) The MAGI-based income of a tax dependent, other than a spouse or child under age nineteen (19), who is not expected to be required to file a separate federal tax return for the taxable year of an eligibility determination, is not included in the household income of the tax filer who expects to claim the tax dependent, whether or not such tax dependent files a federal tax return.

9506.18 An amount equivalent to five percent (5%) of the Federal Poverty Level (FPL) for the applicable family size shall be deducted from household income only when determining the financial eligibility of an individual under the highest income standard available for an individual.

9506.19 The Department shall base current financial eligibility for Medicaid on current monthly income.

9506.20 Current monthly income shall be calculated as follows:

(a) Income received on a yearly basis or less often than monthly, that is predictable in both amount and frequency, shall be converted to a monthly amount or prorated;

(b) If the amount or frequency of regularly received income is known, the Department shall average the income over the period between payments; or

(c) If neither the amount nor the frequency is predictable, the Department shall not average the income but count income only for the month in which it is received.

9506.21 The Department shall verify financial eligibility for Medicaid at the time of application, at each renewal of eligibility, and at each redetermination of eligibility in accordance with the District Verification Plan, submitted to CMS pursuant to 42 C.F.R. Sections 435.940-435.965 and Section 457.380.

9506.22 An applicant adult who is in a minor applicant's household or family, or an authorized representative of an applicant, as identified in 42 C.F.R. Section 435.923, shall attest to household income.

9506.23 The Department shall verify financial eligibility through one (1) or more federal and State electronic data sources.

9506.24 The Department shall use a reasonable compatibility standard to match financial information obtained from federal and State electronic data sources with attested application information.

9506.25 The reasonable compatibility standard for financial information shall be met when:

(a) The attestation and data sources are both above the District Medicaid program's applicable income standard;

(b) The attestation and data sources are both below the District Medicaid program's applicable income standard;

(c) The attestation is below the District Medicaid program's applicable income standard and the data sources are above the applicable income standard, when the difference between them is less than ten percent (10%) of the amount given by data sources; and

(d) The attestation is zero (0) income and no income data is available from electronic data sources.

9506.26 The Department may require supplemental information where electronic data is unavailable or application information is not reasonably compatible with information obtained from an electronic data source.

9506.27 The Department may accept supplemental information reflecting current monthly income in the following forms:

(a) Paystubs;

(b) Completed employer verification form;

(c) Statement showing retirement income, disability income, Workers Compensation income, or a pension statement;

(d) Bank and checking account statement;

(e) Paper, electronic, or telephonic documentation; or

(f) If other documentation is not available, a statement which explains the discrepancy.

9506.28 The Department shall provide a forty-five (45) day period to provide supplementary information to verify financial eligibility.

9506.29 The Department may waive the verification required under this section for exceptional circumstances.

9506.30 In accordance with the District Verification Plan, exceptional circumstances shall include:

(a) Homelessness;

(b) Domestic violence;

(c) Employer moved to another state or country;

(d) Business closed;

(e) Employer will not release information;

(f) Self-employed individuals who cannot produce documentation of income; or

(g) Other circumstances as identified on a case-by-case basis and approved by the Department.

9507 NON-MAGI ELIGIBILTY GROUP: DEEMED NEWBORNS

9507.1 To be determined eligible for Medicaid as a deemed newborn, an individual shall be born to a woman eligible for and receiving Medicaid from the District at the time of birth.

9507.2 The Department shall not require an application or income test for deemed newborns.

9507.3 The Department shall not require deemed newborns to provide or apply for a SSN until age one (1).

9507.4 The Department shall not require verification of U.S. citizenship/nationality or satisfactory immigration status for deemed newborns.

9507.5 A deemed newborn who is determined eligible for Medicaid shall retain eligibility from date of birth until the end of the month in which the newborn turns age one (1) regardless of changes in household income or the mother's eligibility for Medicaid; and provided the newborn remains a resident of the District.

9508 NOTICE AND FAIR HEARING RIGHTS

9508.1 The Department shall provide timely and adequate notice of eligibility and enrollment determinations and the right to appeal to Medicaid applicants and beneficiaries consistent with the requirements set forth in Federal and District law and rules.

9508.2 The Department shall provide timely and adequate notice to Medicaid applicants and beneficiaries in cases of intended adverse action such as an action to deny, discontinue, terminate, or change the manner or form of Medicaid services.

9508.3 An adequate notice shall include:

(a) A statement of what action(s) are intended;

(b) The reason(s) for the intended action(s);

(c) Specific law and regulations supporting the action, or the change in federal or District law that requires the action(s);

(d) An explanation of an applicant or beneficiary's right to request an administrative or fair hearing; and

(e) The circumstances under which Medicaid is provided during the pendency of a hearing.

9508.4 A timely notice shall be postmarked at least fifteen (15) calendar days before the date an action would become effective, except as permitted under Subsection 9508.5.

9508.5 The Department may dispense with timely notice, but shall send adequate notice under the following circumstances:

(a) The Department has factual information confirming the death of a beneficiary;

(b) The Department receives a written and signed statement from a beneficiary:

(1) Stating that Medicaid is no longer required; or

(2) Providing information which requires termination or reduction of Medicaid and indicating, in writing, that a beneficiary understands the consequence of supplying the information;

(c) A beneficiary has been admitted or committed to an institution, and no longer qualifies for Medicaid;

(d) A beneficiary's whereabouts are unknown and Department mailings, directed to the beneficiary, has been returned by the post office indicating no known forwarding address;

(e) A beneficiary has been deemed eligible for Medicaid in another state and that fact has been established;

(f) A change in level of medical care has been prescribed by a physician;

(g) Presumptive eligibility granted for a specific period is terminated and the beneficiary has been informed in writing at the time of application that the eligibility automatically terminates at the end of the specified period;

(h) The notice involves an adverse determination made with regard to the preadmission screening requirements of Section 1919(e)(7) of the Act; or

(i) The date of action will occur in less than ten (10) days, in accordance with 42 C.F.R. Section 483.12(a)(5)(ii), which provides exceptions to the thirty (30) day notice requirements of 42 C.F.R. Section 483.12(a)(5)(i).

9508.6 Under the circumstances identified in Subsection 9508.5, the Department shall issue notice no later than the effective date of action.

9508.7 The Department may issue a notice no later than five (5) calendar days before the date of action if the Department has facts related to probable fraud by the beneficiary; and those facts have been verified, if possible, through secondary sources.

9508.8 Applicants and beneficiaries may request, through any of the means described at Subsection 9508.12, an administrative review of an adverse action from the Department of Human Services, Economic Security Administration before requesting a fair hearing. A request for an administrative review shall not affect the right to request a fair hearing.

9508.9 The Department shall grant an opportunity for a fair hearing when:

(a) An application for Medicaid is denied;

(b) Eligibility for Medicaid is suspended;

(c) Eligibility for Medicaid is terminated;

(d) An applicant or beneficiary believes the Department has taken an action which affects the receipt, termination, amount, kind, or conditions of Medicaid in error;

(e) A beneficiary, who is a resident of a skilled nursing facility, believes the Department has wrongly determined that a transfer or discharge from the facility is required;

(f) A beneficiary believes the Department made a wrong determination with regard to the preadmission and annual resident review requirements of Section 1919(e)(7) of the Social Security Act (the Act);

(g) A beneficiary, who is an enrollee in a Managed Care Organization (MCO) or Pre-paid Inpatient Health Plan (PIHP), was denied coverage of or payment for medical services;

(h) A beneficiary who is dissatisfied with the District's determination that disenrollment from a MCO, PIHP, Pre-paid Ambulatory Health Plan, or Primary Care Case Management is appropriate; or

(i) A Medicaid claim was denied or not acted upon with reasonable promptness pursuant to D.C. Official Code Section 4-210.02 and Subsection 9501.9.

9508.10 The Department shall not be required to grant a hearing if the sole issue is a federal or District law requiring an automatic change that adversely affects some or all beneficiaries.

9508.11 The Department may deny or dismiss a request for a fair hearing if:

(a) The applicant or beneficiary withdraws the request in writing; or

(b) The applicant or beneficiary fails to appear at a scheduled hearing without good cause.

9508.12 An individual, an adult who is in the individual's household, or an authorized representative shall submit a fair hearing request via:

(a) Internet;

(b) Telephone;

(c) Mail;

(d) In person; or

(e) Through other commonly available electronic means.

9508.13 An applicant or beneficiary seeking a fair hearing shall submit a fair hearing request no later than ninety (90) days following the date the notice of adverse action is mailed.

9508.14 Where the Department provides notice as required under Subsections 9508.3 through 9508.7, and the beneficiary requests a fair hearing before the date of adverse action, the Department may not terminate or reduce services until a hearing decision is rendered unless:

(a) It is determined at the hearing that the sole issue is one of Federal or District law or policy; and

(b) The Department promptly informs the beneficiary in writing that Medicaid services will be terminated or reduced pending the hearing decision.

9508.15 The Department may reinstate Medicaid services if a beneficiary requests a hearing not more than ten (10) days after the date of action.

9508.16 Reinstated services shall continue until a hearing decision is reached unless, the hearing has determined that the sole issue is one of federal or District law or policy.

9508.17 The Department shall reinstate and continue services until a decision is rendered after a hearing if:

(a) Action is taken without the advance notice required under Subsections 9508.5 through 9508.7;

(b) The beneficiary requests a hearing within ten (10) days from the date that the individual receives the notice of action. The date on which the notice is received is considered to be five (5) days after the date on the notice, unless the beneficiary shows that notice was not received within the five (5)-day period; or

(c) The Department determines that the action resulted from other than the application of federal or District law or policy.

9508.18 If a beneficiary's whereabouts are determined to be unknown, discontinued services shall be reinstated if the beneficiary's whereabouts become known during the time the beneficiary is eligible for services.

9508.19 The Department shall allow an applicant or beneficiary who requests a fair hearing decision no later than fifteen (15) days of the date that notice is mailed to decline receipt of Medicaid pending a fair hearing decision.

9508.20 An appeal to the District Health Benefits Exchange Authority of a determination of eligibility for advanced payments of the premium tax credit or cost-sharing reduction shall trigger a request for a fair hearing under this section.

9508.21 Fair hearings and appeals for the District Medicaid program shall be administered through the Office of Administrative Hearings in accordance with 42 C.F.R. Section 431.10(d) and 42 C.F.R. Section 431.200 *et seq.*, and amendments thereto, 1 DCMR Section 2970 through 1 DCMR Section 2978, and amendments thereto, and D.C. Official Code Section 4-210.01 *et seq.*, and amendments thereto.

9508.22 This section shall apply to all eligibility determinations for Medicaid programs administered by the Department of Health Care Finance under Title XIX and Title XXI of the Act.

9509 [RESERVED]

9510 [RESERVED]

9511 [RESERVED]

9512 [RESERVED]

9513 [RESERVED]

9500.99 DEFINITIONS

For the purposes of this chapter, the following terms shall have the meanings ascribed:

Alien - An individual who is not a Citizen or National of the United States pursuant to 8 U.S.C.A. § 1641 and § 101(a) of the Immigration and Nationality Act, 8 U.S.C.A. § 1101(a).

Applicant - An individual who is seeking an eligibility determination for Medicaid through an application submission or a transfer from another insurance affordability program.

Application - The single streamlined form that is used by the District of Columbia in accordance with 42 C.F.R. § 435.907(b) or an application described in § 435.907(c)(2) of this chapter submitted on behalf of an individual.

Authorized Representative - Legally authorized individual or entity able to consent on behalf of a prospective applicant.

Beneficiary - An individual who has been determined eligible and is currently receiving Medicaid.

Budget Period - The monthly or annual period in which financial eligibility for Medicaid is determined.

Certification Period - Medicaid eligibility is determined for a twelve-month period. This period is called a certification period.

Cost Sharing - When patients pay out-of-pocket for a portion of health care costs not covered by health insurance, including but are not limited to, copays, deductibles, and coinsurance.

Custodial Parent - A court order or binding separation, divorce, or custody agreement establishing physical custody controls; or if there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights pursuant to 42 C.F.R §435.603 (iii)(A)-(B).

Deemed Newborn - A child under the age of one (1) who is automatically eligible for Medicaid pursuant to 42 C.F.R. § 435.117.

Deferred Action for Childhood Arrivals (DACA) - Certain individuals who were brought to the U.S. as children are as described pursuant to the Memorandum from Janet Napolitano, Secretary of Homeland Security, to David V. Aguliar, Acting Commissioner, U.S. Customs and Border Protection; Alejandro Mayorkas, Director, U.S., Citizenship and Immigration Services; John Mortan, Director, U.S. Immigration and Customs Enforcement (June 15, 2012) (on file with the U.S. Department of Homeland Security.

Department - For the purposes of this chapter, the term "the Department" shall refer to the Department of Health Care Finance (DHCF) or its designee.

Dependent Child - A natural or biological, adopted or step-child who is under the age of eighteen (18), or is age eighteen (18) and a full-time student in secondary school (or equivalent vocational or technical training).

Eligibility determination - An approval or denial of eligibility in accordance with 42 C.F.R. § 435.911 as well as a renewal or termination of eligibility in accordance with 42 C.F.R. § 435.916.

Emergency medical condition - A medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity including severe pain so that the absence of immediate medical attention could reasonably be expected to result in one of the following: (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, (3) serious dysfunction of a bodily organ or part.

Fair Hearings - an administrative procedure that gives applicants and beneficiaries the opportunity to contest adverse decisions regarding eligibility and benefit determinations.

Family - The individuals for whom a tax filer claims a deduction for a personal exemption under § 151 of the Code for the taxable year, which may include the tax filer, the tax filer's spouse, and dependents. 26 U.S.C. § 36B(d)(1)(2012).

Family size - The number of persons counted as members of an individual's household for purposes of MAGI Medicaid eligibility. When counting a household that includes a pregnant woman, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

Federal Poverty Level (FPL) - A measure of income levels updated periodically in the Federal Register by the Secretary of Health and Human Services

under the authority of 42 U.S.C. Section 9902(2), as in effect for the applicable budget period used to determine an individual's eligibility in accordance with 42 C.F.R. § 435.603(h).

Household Composition - Determined by individuals living together and their relationships to one another. The composition of the household determines an individual's family size.

Household Income - The MAGI-based income of every individual included in an applicant or beneficiary's household.

Indian - Means any individual who is a member of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. §§ 1601 *et seq*.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Institution - Means Institution and Medical institution, as defined in 42 C.F.R. § 435.1010.

Lawfully Present - Aliens described at 42 C.F.R. Section 152.2 (1),(3)-(7); aliens in a valid nonimmigrant status, as defined in 8 U.S.C. § 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. § 1101(a)(17)); aliens granted an administrative stay of removal under 8 C.F.R. Section 241; aliens lawfully present in American Samoa under the immigration laws of American Samoa; and aliens who are victims of severe trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, as amended (22 U.S.C. § 7105(b)).

Limited or no-English proficiency - As defined by D.C. Official Code § 2-193 (2012 Repl.) as the inability to adequately understand or to express oneself in the spoken or written English language.

Long-term services and supports - Nursing facility services, a level of care in any institution equivalent to nursing facility services; home and community-based services furnished under a waiver or State plan under Sections 1915 or 1115 of the Act; home health services as described in § 1905(a)(7) of the Act and personal care services described in § 1905(a)(24) of the Act.

Lawful Permanent Resident (LPR) - One who was lawfully admitted for permanent residence in accordance with the immigration laws of the United States, such status not having changed since admission. A legalized

alien under IRCA whose status has been adjusted from LTR to LPR by INS.

Medicaid - Means the program established under Title XIX and Title XXI of the Social Security Act, 42 U.S.C. §§ 1396 *et seq*. and Title 29 DCMR, Chapter 9.

Medically Needy - Individuals, as described in 42 U.S.C. § 1396a(a)(10)(A)(ii), who meet non-financial eligibility determination factors but who have incomes over the Medicaid threshold.

Modified adjusted gross income (MAGI) - Income calculated using the financial methodologies used to determine modified adjusted gross income as defined in 26 U.S.C. § 36B(d)(2)(B) and 42 C.F.R. § 435.603.

U.S. National - A person who is a citizen of the U.S. or a person who, though not a citizen of the U.S., owes permanent allegiance to the U.S.

Non-MAGI - Eligibility Groups described at 42 C.F.R. § 435.603 for which MAGI–based methods do not apply.

Parent - A person who has a natural or biological, adopted, or step-child.

Pregnant woman - A female during pregnancy and the post-partum period, which begins on the date the pregnancy ends, extends 60 calendar days, and then ends on the last day of the month in which the 60-day period ends.

Qualified Alien - An alien described in Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1641, as amended (PRWORA), and non-citizens required to be eligible by § 402(b) of the PRWORA, as amended, and non-citizens not prohibited by § 403 of PRWORA, as amended including qualified non-citizens subject to the five (5) year bar identified in 8 U.S.C. § 1613.

Qualified Plan - Profit-sharing, money purchase, defined benefit plans, 401K, and other retirement plans that allow a tax-favored way to save for retirement. Employers may deduct contributions made to the plan on behalf of their employees. Earnings on these contributions are generally tax free until distributed at retirement.

Renewal - Annual review to evaluate continued eligibility for Medicaid.

Satisfactory Immigration Status - An immigration status which does not make the alien ineligible for benefits under the applicable program (See § 121(d)(1)(B)(i)(III)) of IRCA, 42 U.S.C.A. § 1320b-7, note).

Self-employed Simplified Employee Pension (SEP) - A written plan that allows individuals to make contributions toward their own retirement and their employees' retirement without getting involved in a more complex qualified plan.

Sibling - Each of two or more children or offspring having one or both natural, biological, adopted, or step-parents in common.

SIMPLE - An employer sponsored retirement plan offered for small businesses that have 100 employees or less.

State - Includes any of the fifty (50) constituent political entities of the United States and the District of Columbia.

Tax dependent - Tax dependent has the same meaning as the term "dependent" under Section 152 of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under § 151 of the Internal Revenue Code for a taxable year.

Verification plan - the plan describing the verification policies and procedures adopted by the Department in accordance with 42 C.F.R. §§ 435.940-435.965, and § 457.380.

Well-established religious objections - The applicant is a member of a recognized religious sect or division of the sect and adheres to the tenets or teachings of the sect or division and for that reason is conscientiously opposed to applying for or using a national identification number.

Comments on the proposed rule shall be submitted, in writing, to Claudia Schlosberg, JD, Interim Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, , or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA) hereby gives notice, pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), of its intent to adopt the following proposed amendments to Chapter 83 (Rent and Housing Assistance Payments) of Title 14 (Housing) 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*.

The purpose of the proposed amendments is to amend the payment standard to one hundred thirty percent (130%) of the Fair Market Rents for all sized units in the District of Columbia.

Per 1 DCMR 311.4(e), emergency rulemakings are promulgated when the action is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals. There is an urgent need to adopt these emergency regulations to increase the number of Housing Choice Vouchers throughout the District of Columbia.

These emergency regulations were adopted by the Board on March 11, 2015 and became effective immediately. They will remain in effect for up to one hundred twenty (120) days from the date of adoption, until July 10, 2015, or upon publication of a Notice of Final Rulemaking in the *D.C. Register,* whichever occurs first.

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

The amended provisions of Chapter 83, RENT AND HOUSING ASSISTANCE PAYMENTS, of Title 14 DCMR, HOUSING, is proposed as follows:

Section 8300, PAYMENT STANDARD AMOUNT, is amended as follows:

Subsection 8300.2(e) is amended to read as follows:

(e) The Payment Standard up to one hundred thirty percent (130%) of the Fair Market Rents for all size units in all areas of the District of Columbia. Any change to the Payment Standard shall be implemented by regulatory action of the Commission and shall apply to all vouchers issued after the date of the adoption of any regulation modifying the Payment Standard.

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, 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.

3. No facsimile will be accepted.

Comments Due Date: April 20, 2015

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-084
March16, 2015

SUBJECT: Appointment - Deputy Mayor for Education

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) (2014 Repl.), pursuant to section 202 of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007, D.C. Law 17-9, D.C. Official Code § 38-191 (2012 Repl.), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2014 Repl.), and pursuant to the Deputy Mayor for Education Jennifer Niles Confirmation Resolution of 2015, effective March 3, 2015, Res. 21-0029, it is hereby **ORDERED** that:

1. **JENNIFER C. NILES** is appointed Deputy Mayor for Education, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-007, dated January 2, 2015.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to March 3, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-085
March 16, 2015

SUBJECT: Appointment – Deputy Mayor for Planning and Economic Development of the District of Columbia

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) (2014 Repl.), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2014 Repl.), and pursuant to the Deputy Mayor for Planning and Economic Development Brian Kenner Confirmation Resolution of 2015, effective March 3, 2015, Res. 21-0027, it is hereby **ORDERED** that:

1. **BRIAN T. KENNER** is appointed Deputy Mayor for Planning and Economic Development, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-073, dated February 5, 2015.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to March 3, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-086
March 16, 2015

SUBJECT: Appointment – Director, Department of Housing and Community Development of the District of Columbia

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) (2014 Repl.), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2014 Repl.), and pursuant to the Director of the Department of Housing and Community Development Polly Donaldson Confirmation Resolution of 2015, effective March 3, 2015, Res. 21-0028, it is hereby **ORDERED** that:

1. **MARY R. (POLLY) DONALDSON** is appointed Director, Department of Housing and Community Development, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-009, dated January 2, 2015.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to March 3, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-087
March 16, 2015

SUBJECT: Appointment – Director of the 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) (2014 Repl.), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2014 Repl.), and pursuant to the Director of the Office of Planning Eric Shaw Confirmation Resolution of 2015, effective March 3, 2015, Res. 21-0026, it is hereby **ORDERED** that:

1. **ERIC D. SHAW** is appointed Director, Office of Planning, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-023, dated January 8, 2015.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to March 3, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-088
March 16, 2015

SUBJECT: Appointment – Acting Executive Director, Office on Asian and Pacific Islander 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) (2014 Repl.), and pursuant to section 304 of the Office on Asian and Pacific Island Affairs Establishment Act of 2001, effective October 3, 2001, D.C. Law 14-28, D.C. Official Code § 2-1373 (2012 Repl.), it is hereby **ORDERED** that:

1. **DAVID DO** is appointed Acting Executive Director, Office on Asian and Pacific Islander Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2011-16, dated January 2, 2011.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to January 15, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-089
March 16, 2015

SUBJECT: Appointment – Acting Executive Director, Office on Latino 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) (2014 Repl.), and in accordance with section 302 of the District of Columbia Latino Community Development Act, effective September 29, 1976, D.C. Law 1-86, D.C. Official Code § 2-1312 (2012 Repl.), it is hereby **ORDERED** that:

1. **JACKIE REYES-JANES** is appointed Acting Executive Director, Office on Latino Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2012-11, dated January 20, 2012.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to January 2, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-090
March 16, 2015

SUBJECT: Appointment – Director, Serve DC – The Mayor's Office on Volunteerism

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) (2014 Repl.), and Mayor Order 2008-84, dated June 11, 2008, re-designating Serve DC as Serve DC – The Mayor's Office on Volunteerism, it is hereby **ORDERED** that:

1. **KRISTAL KNIGHT** is appointed Director, Serve DC – The Mayor's Office on Volunteerism, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes any prior Mayor's Order or appointment to the extent of any inconsistency.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to January 12, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-091
March 16, 2015

SUBJECT: Appointment – Acting Director, Office of Gay, Lesbian, Bisexual, and Transgender 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) (2014 Repl.), and pursuant to section 3(a) of the Office of Gay, Lesbian, Bisexual, and Transgender Affairs Act of 2006, effective April 4, 2006, D.C. Law 16-89, D.C. Official Code § 2-1383 (2012 Repl.), it is hereby **ORDERED** that:

1. **SHEILA ALEXANDER-REID** is appointed Acting Director of the Office of Gay, Lesbian, Bisexual, and Transgender Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes any prior Mayor's Order or appointment to the extent of any inconsistency.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to January 26, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-092
March 16, 2015

SUBJECT: Appointment – Acting Executive Director, Office 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) (2014 Repl.), and section 3 of the Office and Commission on African Affairs Act of 2006, effective June 8, 2006, D.C. Law 16-111, D.C. Official Code § 2-1392, it is hereby **ORDERED** that:

1. **MAMADOU SAMBA** is appointed Acting Executive Director, Office on African Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes any prior Mayor's Order or appointment to the extent of any inconsistency.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to January 12, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MARCH 25, 2015
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

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

Protest Hearing (Status)* **9:30 AM**
Case # 15-PRO-00007; Exotic Hookah Lounge, 2409 18th Street NW, License #97382, Retailer CR, ANC 1C
Application for a New License

Show Cause Hearing (Status) **9:30 AM**
Case # 14-251-00171; Eclipse Restaurant & Nightclub, Inc., t/a Eclipse Restaurant & Nightclub, 2820 Bladensburg Road NE, License #75424, Retailer CN, ANC 5C
Substantial Change in Operation Without Board Approval, Violation of Settlement Agreement

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CC-00189 and # 14-251-00258; Acott Ventures, t/a Shadow Room 2131 K Street NW, License #75871, Retailer CR, ANC 2A
Sale to Minor Violation (two counts), Failed to Take Steps Necessary to Ascertain Legal Drinking Age (two counts)

Show Cause Hearing* **10:00 AM**
Case # 14-CMP-00581; Big Bear Café, LLC, t/a Big Bear Café, 1700 1st Street NW, License #84379, Retailer CR, ANC 5E
Failed to Post Window Lettering

Show Cause Hearing* **11:00 AM**
Case # 13-CMP-00373; Decatur Liquors, Inc., t/a Uptown Wine & Spirits, 4704 14th Street NW, License #24362, Retailer A, ANC 4C
Sold Fewer Than Six Miniature Bottles of Spirits

Board's Calendar
March 25, 2015

Fact Finding Hearing* **1:30 PM**
Case # 15-251-00031; Ekho Events, Inc., t/a Echostage, 2135 Queen's Chapel Road NE, License #90250, Retailer CN, ANC 5C
Incidents of Unconscious Patrons

Protest Hearing* **4:30 PM**
Case # 14-PRO-00079; Partners At 723 8th Street SE, LLC, t/a The Ugly Mug Dining Saloon, 723 8th Street SE, License #71793, Retailer CR, ANC 6B
Substantial Change (Expansion to 2nd Floor, addition of 144 seats)

Protest Hearing* **4:30 PM**
Case # 15-PRO-00001; Anyado Hospitality Group, LLC, t/a Hush Restaurant & Lounge, 3124 Georgia Ave NW, License #96986, Retailer CT, ANC 1A
Application for a New License

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA

WEDNESDAY MARCH 25, 2015
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-060702 – **Ceiba** – Retail – C – Restaurant – 1341 G STREET NW
[Establishment appears to have ceased operations. The Licensees were advised in a letter dated 2/3/15 to place license in Safekeeping within 10 days and the Licensees did not respond. Internet resources also indicate that the Establishment is closed.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, MARCH 25, 2015
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On March 25, 2015 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#15-251-00044 El Camino Real Restaurant I I, 5217 GEORGIA AVE NW Retailer C Restaurant, License#:ABRA-074996

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2. Case#15-251-00041 Club Timehri, 2439 18TH ST NW Retailer C Tavern, License#: ABRA-077730

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3. Case#15-CMP-00126 Safeway, 1747 COLUMBIA RD NW Retailer B Retail - Grocery, License#: ABRA-072708

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4. Case#15-251-00040 Fairmont Liquor & Grocery, 2633 SHERMAN AVE NW Retailer A Retail - Liquor Store, License#: ABRA-080900

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5. Case#15-251-00052 Bar 7, 1015 1/2 7TH ST NW Retailer C Tavern, License#: ABRA-082350

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6. Case#15-251-00036 Mad Hatter, 1321 CONNECTICUT AVE NW Retailer C Tavern, License#: ABRA-082646

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7. Case#15-CMP-00105 Kokeb Ethiopian Restaurant, 3013 GEORGIA AVE NW Retailer C Restaurant, License#: ABRA-089933

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8. Case#15-CMP-00125 Iron Gate, 1734 - 1738 N ST NW Retailer C Restaurant, License#: ABRA-090284

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9. Case#15-PRO-00001 Hush Restaurant & Lounge, 3124 GEORGIA AVE NW Retailer C Tavern, License#:ABRA-096986

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, MARCH 25, 2015 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request from Landlord for Involuntary Transfer of License placed into Safekeeping by evicted Licensee. ANC 1B. SMD 1B12. Pending Enforcement Matters: 9/19/14, Case #14-CMP-00538, Board referred to staff for settlement for noise and settlement agreement violations; 8/23/14, Case #14-CMP-00555, Board referred to staff for settlement for a noise violation and issued a warning for a posting violation. There is a pending Show Cause Hearing. No conflict with Settlement Agreement. ***New Town Kitchen and Lounge***, 1336 U Street NW, Retailer CR, License No. 093095.

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2. Review Letter from Attorney Stephen J. O'Brien requesting the addition of two additional Vessels to the Licensee's fleet to be operated under one license. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Potomac Riverboat Company, LLC – Cherry Blossom***, 205 The Strand, Alexandria, VA, Retailer CX Marine Vessel, License No. 007235.

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3. Review Request for Permit to administer the Washington, D.C. Alcohol Certification Training Program through the LIQUORexam.com online platform. ***LIQUORexam.com***, Edward D. McLean, 2401 Windsong Trail, Round Rock, Texas.

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4. Review Application for Manager's License. ***Gloria Gladys Campos Verduguez***-ABRA 098285.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

APPLETREE EARLY LEARNING PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Playground

AppleTree Early Learning PCS is seeking proposals for a playground within a 25ft x 36ft surface area. Please contact Rita Hackel Chapin, Chief Operating Officer, for details on the RFP. The deadline for responding to the RFP is March 27th, 2015 at 4pm Eastern. Contact - Rita Hackel Chapin, Chief Operating Officer, 415 Michigan Avenue NE, Washington, DC 20017, (202) 488-3990, Rita.Chapin@appletreeinstitute.org

CENTER CITY PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSAL

Center City Public Charter Schools, Inc. is soliciting proposals from qualified vendors for the following:

Center City Public Charter Schools seeks to redesign the website found at www.centercitypcs.org.

To obtain copies of full RFP's, please visit our website: www.centercitypcs.org. The full RFP's contain guidelines for submission, applicable qualifications and deadlines.

Contact person:

Scott Burns
sburns@centercitypcs.org

CREATIVE MINDS INTERNATIONAL PUBLIC CHARTER SCHOOL

Request for Proposals March 2015

School Relocation/Moving Services

Creative Minds International Public Charter School (CMIPCS) is seeking competitive proposals from qualified vendors to provide relocation/moving services for the relocation of our elementary school (181 students) early summer 2015. Proposals are due no later than 1:00 pm Friday, March 27, 2015. For more information and to schedule a tour of current facility please contact:

James Lafferty-Furphy
james.lafferty-furphy@creativemindspcs.org
220-588-0370

Assumptions and Agreements
Proposals will not be returned. CMIPCS reserves the right to dismiss a proposal without providing a reason. CMIPCS reserves the right to terminate a contract at any time.

Basis for Award of Contract
Proposals must be received by 1pm EST March 27, 2015. Late proposals will not be accepted. CMIPCS reserves the right to award a contract as it determines to be in the best interest of the school.

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Before and After Care

E.L. Haynes Public Charter School ("ELH") is seeking proposals for providing before and after care. The property is located at 4501 Kansas Avenue, NW and 3600 Georgia Ave, NW. The Contract will be assigned to a successful bidder to provide before and after care as well as intersession programming six (6) weeks throughout the year. Applicants may respond to provide services for all or some of the times and locations in the full request for applications.

Proposals are due via email to Richard Pohlman no later than 5:00 PM on Friday, April 3, 2015. We will notify the final vendor of selection by April 17 and the work will begin August 2015. 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

EDUCARE OF WASHINGTON, DC (EDUCARE DC)

REQUEST FOR PROPOSALS

Financial, Accounting and Human Resource Services

Educare DC invites all interested and qualified companies to submit proposals to provide financial, accounting and human resource services for the 2015-2016 school year.

Proposals are due no later than 5:00pm March 30, 2015.

The RFP with bidding requirements and supporting documentation can be obtained on the school's website - www.educaredc.org or by contacting via email:

Dianna Duckett-Washington
Administrative Manager
dwashington@educaredc.org

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections hereby gives notice that there are vacancies in four (4) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 1B04, 4C03, 5A04 and 7F07

Petition Circulation Period: **Monday, March 23, 2015 thru Monday, April 13, 2015**
Petition Challenge Period: **Friday**, **April 17, 2015 thru Thursday, April 23, 2015**

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

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

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

FICTITIOUS BALLOT

WARD EIGHT MEMBER OF THE
COUNCIL OF THE DISTRICT OF COLUMBIA
SPECIAL ELECTION

DISTRICT OF COLUMBIA
TUESDAY, APRIL 28, 2015

INSTRUCTIONS TO VOTER

1. TO VOTE YOU MUST DARKEN THE OVAL (⬭) TO THE LEFT OF YOUR CANDIDATE COMPLETELY.
   An oval (⬬) darkened to the left of any candidate indicates a vote for that candidate.
2. Use only a pencil or blue or black medium ball point pen.
3. If you make a mistake DO NOT ERASE. Ask for a new ballot.
4. For a Write-in candidate, write the name of the person on the line and darken the oval.

DISTRICT OF COLUMBIA

WARD EIGHT
MEMBER OF THE COUNCIL
VOTE FOR NO MORE THAN ONE (1)

⬭ CANDIDATE A
⬭ CANDIDATE B
⬭ CANDIDATE C
⬭ CANDIDATE D
⬭ CANDIDATE E
⬭ CANDIDATE F
⬭ CANDIDATE G
⬭ Write-in _____

End of Ballot

All registered voters residing in Ward 8 are eligible to vote in the Special Election.

FICTITIOUS BALLOT

WARD FOUR MEMBER OF THE
COUNCIL OF THE DISTRICT OF COLUMBIA
SPECIAL ELECTION

DISTRICT OF COLUMBIA
TUESDAY, APRIL 28, 2015

INSTRUCTIONS TO VOTER

1. TO VOTE YOU MUST DARKEN THE OVAL (⬭) TO THE LEFT OF YOUR CANDIDATE COMPLETELY.
   An oval (⬬) darkened to the left of any candidate indicates a vote for that candidate.
2. Use only a pencil or blue or black medium ball point pen.
3. If you make a mistake DO NOT ERASE. Ask for a new ballot.
4. For a Write-in candidate, write the name of the person on the line and darken the oval.

DISTRICT OF COLUMBIA

WARD FOUR
MEMBER OF THE COUNCIL
VOTE FOR NO MORE THAN ONE (1)

⬭ CANDIDATE A
⬭ CANDIDATE B
⬭ CANDIDATE C
⬭ CANDIDATE D
⬭ CANDIDATE E
⬭ CANDIDATE F
⬭ CANDIDATE G

⬭ Write-in _____

End of Ballot

All registered voters residing in Ward 4 are eligible to vote in the Special Election.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FUNDING & PARTNERSHIP AVAILABILITY

TO CONSTRUCT MUNICIPAL WASTEWATER FACILITIES AND IMPLEMENT NONPOINT SOURCE POLLUTION CONTROL AND ESTUARY PROTECTION PROJECTS

The District Department of the Environment (DDOE) announces a request for applications to identify collaborative partners for DDOE's grant submission to the Environmental Protection Agency (EPA), Clean Water State Revolving Fund.

Collaborative partners will support DDOE's efforts to fulfill the EPA's funding opportunity goals and objectives. DDOE will act as the lead agency in the application for grant funding to support the construction of municipal wastewater facilities and implementation of nonpoint source pollution control and estuary protection projects.

Applications are requested for the following eligible project activities:

(1) Planning, design, and construction of publicly owned treatment works on a priority list developed pursuant to Clean Water Act (CWA) Section 216;
(2) Implementation of nonpoint source capital improvements consistent with a US EPA approved DC Nonpoint Source Management Plan and watershed implementation plans, which are developed pursuant to Section 319 of CWA; and
(3) Green infrastructure, water efficiency improvements, energy efficiency improvements, or other environmentally innovative activities as described by the Green Project Reserve (GPR) project eligibility guidance pursuant to P.L. 111-88.

Only projects that meet the eligibility threshold of having a high likelihood of achieving a water quality standard or reducing or eliminating an existing water quality problem will be evaluated, scored, and proceed to inclusion on a draft Project Priority List.

Beginning Friday, March 20, 2015 the full text of the request for partnership applications will be available. A person may obtain a copy of this application by any of the following:

Download, by visiting DDOE website http://ddoe.dc.gov

- Above click on the title/section – **Resource Tab.**
- Next click on – **Grants and Funding.**
- To find the request for applications for partners and instruction documents.

Email a request to: nicole.malloy@dc.gov

In person by coming to the 5th floor reception desk at the following street address to request a hard copy:

District Department of the Environment
1200 First Street, N.E., Fifth Floor
Washington, D.C. 20002

Write DDOE at: (the above address)
Attn: Nicole Malloy

Applicants should direct all questions to: Nicole Malloy at nicole.malloy@dc.gov. Answers to questions will be posted on the DDOE website (www.ddoe.dc.gov/stormwater).

Deadline: **The deadline for application submission is Friday, May 1, 2015 at 4:30 p.m**. Five hard copies of the application must be submitted to the address above, and a complete electronic copy of the application must be emailed to nicole.malloy@dc.gov.

Eligibility: Applicants must be registered to do business in the District of Columbia. A nonprofit organization, educational institution, District government agency or other local organization may apply to partner with DDOE.

Potential Funding: The total anticipated amount of funds that EPA will make available for DDOE and its partners is approximately seven million ($7,000,000) dollars. The final amount will be determined when EPA provides information on the availability of fiscal year 2016 program funds.

Funding Match: Projects that are ultimately deemed eligible and selected for construction are funded at a 55% Federal grant share. The applicant must provide 45% of the selected project's cost from a non-Federal source.

DISTRICT DEPARTMENT OF THE ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

GRANTS FOR THE
Enhancement and Dissemination of the District's Standards and Specifications for Erosion and Sediment Control

The District Department of the Environment ("DDOE") is seeking eligible entities, as defined below, to update and expand the 2003 District of Columbia (District) Standards and Specifications for Soil Erosion and Sediment Control (ESC), and to develop public outreach materials, trainings, and case scenarios. The amount available for the project in this RFA is approximately $150,000. This amount is subject to continuing availability of funding and approval by the appropriate agencies.

Beginning 3/20/2015, the full text of the Request for Applications ("RFA") will be available online at DDOE's website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

Download from DDOE's website, www.ddoe.dc.gov. Select "Resources" tab. Cursor over the pull-down list; select "Grants and Funding;" then, on the new page, cursor down to the announcement for this RFA. Click on "Read More," then download and related information from the "attachments" section.

Email a request to DCESCRFA.grants@dc.gov with "Request copy of RFA 2015-1502-WPD" in the subject line;

Pick up a copy in person from the DDOE reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Julienne Bautista at (202) 299-3345 to make an appointment and mention this RFA by name; or

Write DDOE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Julienne Bautista RE:2015-1502-WPD" on the outside of the letter.

The deadline for application submissions is 4/20/2015, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to DCESCRFA.grants@dc.gov. **For additional information regarding this RFA**, please contact DDOE at DCESCRFA.grants@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;

☐-Faith-based organizations;

☐-Government agencies; and

☒-Universities/educational institutions.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FILING OF AN APPLICATION TO PERFORM VOLUNTARY CLEANUP

82 Eye Street, SE

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the "Act")), the Voluntary Cleanup Program in the District Department of the Environment (DDOE), Land Remediation and Development Branch (LRDB), is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The applicant for real property referenced as 82 Eye Street, SE, Washington, DC 20001, is GDCV EYE STREET, LLC, 8405 Greensboro Drive, Suite 950, McLean, VA 22102. The application identifies the presence of petroleum compounds, metals and other contaminants in the soil and groundwater. The applicant proposes to re-develop the property with a 13-story apartment building.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-6D) for the area in which the property is located. The application is available for public review at the following location:

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

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

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

Please refer to Case No. VCP 2015-032 in any correspondence related to this application.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FILING OF AN APPLICATION TO PERFORM VOLUNTARY CLEANUP

100 Potomac Avenue S.W.

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the "Act")), the Voluntary Cleanup Program in the District Department of the Environment (DDOE), Land Remediation and Development Branch (LRDB), is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The application is for real property currently designated as 100 Potomac Avenue SW, in an area known as Buzzard Point, consisting of Squares/Lots: 661N/0800; 0603S/0800; 0605/0007; 0605/0802, 0607/0013; 0661/0804, 0805; and 0665/0024. The applicant is the District of Columbia Government, John A. Wilson Building, 1350 Pennsylvania Avenue NW, Suite 317, Washington, DC 20004. The application identifies the presence of metals, petroleum compounds (TPH-DRO and TPH-GRO) and Volatile Organic Compounds in soil and groundwater. The applicant intends to re-develop the property into a stadium for the DC United Major League Soccer team.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-6D) for the area in which the property is located. The application is available for public review at the following location:

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

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

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

Please refer to Case No. VCP 2015-031 in any correspondence related to this application.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6826) to Georgetown University to construct and operate a 50 kWe emergency generator set with a 78 hp diesel fired engine at the Alumni Square Mech. Room of Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202 594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 50 kW emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.01
Sulfur Dioxide (SO_2)	0.04
Nitrogen Oxides (NOx)	0.24
Volatile Organic Compounds (VOC)	0.05
Carbon Monoxide (CO)	0.16

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

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

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
4.7	5.0	0.40

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. In addition to Condition II(b) exhaust opacity, measured and calculated as set forth in 40 CFR 86, Subpart I, shall not exceed [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.113]:

   1. 20 percent during the acceleration mode;

   2. 15 percent during the lugging mode;

   3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*

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

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

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

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

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

No written comments or hearing requests postmarked after April 20, 2015 will be accepted.

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR § 210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6827) to Georgetown University to construct and operate a 420 kWe emergency generator set with a 685 hp diesel fired engine at the Central Plant Basement of Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202 594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 420 kW emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.06
Sulfur Dioxide (SO_2)	0.35
Nitrogen Oxides (NOx)	1.80
Volatile Organic Compounds (VOC)	0.42
Carbon Monoxide (CO)	0.99

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

a. 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]

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

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

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

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

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

No written comments or hearing requests postmarked after April 20, 2015 will be accepted.

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6830) to Georgetown University to construct and operate a 275 kWe emergency generator set with a 470 hp diesel fired engine at the LXR Nevils/Walsh Outer Courtyard of Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202 594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 275 kW emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.04
Sulfur Dioxide (SO_2)	0.24
Nitrogen Oxides (NOx)	0.78
Volatile Organic Compounds (VOC)	0.29
Carbon Monoxide (CO)	0.67

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

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

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
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. In addition to Condition II(b), exhaust opacity, measured and calculated as set forth in 40 CFR 86, Subpart I, shall not exceed [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.113]:

    1. 20 percent during the acceleration mode;

    2. 15 percent during the lugging mode;

    3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*

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

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

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

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

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

No written comments or hearing requests postmarked after April 20, 2015 will be accepted.

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6834) to Georgetown University to construct and operate a 300 kWe emergency generator set with a 480 hp diesel fired engine at the New South Outdoor Roof of Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202 594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 300 kWe emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.26
Sulfur Dioxide (SO_2)	0.25
Nitrogen Oxides (NOx)	3.72
Volatile Organic Compounds (VOC)	0.30
Carbon Monoxide (CO)	0.80

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

a. 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]

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

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

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

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

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

No written comments or hearing requests postmarked after April 20, 2015 will be accepted.

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6835) to Georgetown University to construct and operate a 260 kWe emergency generator set with a 394 hp diesel fired engine at the PAC Davis Center of Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202 594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 260 kWe emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.03
Sulfur Dioxide (SO_2)	0.20
Nitrogen Oxides (NOx)	1.04
Volatile Organic Compounds (VOC)	0.24
Carbon Monoxide (CO)	0.57

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

a. 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]

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

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

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

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

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
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FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6837) to Georgetown University to construct and operate a 800 kWe emergency generator set with a 1,175 hp diesel fired engine at the Regents Hall Loading Dock of Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202 594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 125 kW emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.10
Sulfur Dioxide (SO_2)	0.60
Nitrogen Oxides (NOx)	3.09
Volatile Organic Compounds (VOC)	0.73
Carbon Monoxide (CO)	0.69

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

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

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

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

c. In addition to Condition (b), exhaust opacity, measured and calculated as set forth in 40 CFR 86, Subpart I, shall not exceed [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.113]:

1. 20 percent during the acceleration mode;

2. 15 percent during the lugging mode;

3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*

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

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

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

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

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

No written comments or hearing requests postmarked after April 20, 2015 will be accepted.

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6838) to Georgetown University to construct and operate a 750 kWe emergency generator set with a 1,120 hp diesel fired engine at the SWQ P4 Fuel Vault of Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202 594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 400 kWe emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.25
Sulfur Dioxide (SO_2)	0.57
Nitrogen Oxides (NOx)	4.26
Volatile Organic Compounds (VOC)	0.62
Carbon Monoxide (CO)	5.25

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

a. 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]

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

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

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

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR § 210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6931) to Georgetown University to construct and operate a 40 kWe emergency generator set with a 63 hp diesel fired engine at the NW Corner of McDonough Gym NW at Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202-594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 40 kW emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.01
Sulfur Dioxide (SO_2)	0.03
Nitrogen Oxides (NOx)	0.19
Volatile Organic Compounds (VOC)	0.04
Carbon Monoxide (CO)	0.13

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

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

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
7.5	5.0	0.40

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. In addition to Condition (b), exhaust opacity, measured and calculated as set forth in 40 CFR 86, Subpart I, shall not exceed [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.113]:

    1. 20 percent during the acceleration mode;

    2. 15 percent during the lugging mode;

    3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*

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

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

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

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

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1200 First Street NE, 5th Floor
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No written comments or hearing requests postmarked after April 20, 2015 will be accepted.

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR § 210, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6932) to Georgetown University to construct and operate a 600 kWe emergency generator set with a 909 hp diesel fired engine at the MSB/Hariri North End Outside, Georgetown University, located at 3700 O Street NW, Washington, DC 20057. The contact person for facility is Gregory Simmons, Associate Vice President, Facilities Operations, Design and Construction, at 202-594-6523. The applicant's mailing address is 3700 O Street NW, Washington, DC 20057.

Emissions:

Maximum emissions from the 600 kW emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.50
Sulfur Dioxide (SO_2)	0.47
Nitrogen Oxides (NOx)	7.04
Volatile Organic Compounds (VOC)	0.56
Carbon Monoxide (CO)	1.52

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

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

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

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

c. In addition to Condition (b), exhaust opacity, measured and calculated as set forth in 40 CFR 86, Subpart I, shall not exceed [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.113]:

    1. 20 percent during the acceleration mode;

    2. 15 percent during the lugging mode;

    3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*

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

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

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

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

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

Advisory Opinion – 1299-001 – Redacted – Post-employment

VIA EMAIL

February 19, 2015

[redacted]

Dear [redacted]:

This responds to your January 29, 2015, email, by which you request post-employment advice. You explained to a member of my staff in a meeting on January 21, 2015, and in your January 29, 2015, email, that you recently left your position as [redacted] Department of Small and Local Business Development ("DSLBD") and have set up a private business, with a partner, that will advise others on how to comply with Certified Business Enterprise ("CBE") legislation. Specifically, your private business will perform services including compliance monitoring, workforce development monitoring, establishing small business development programs, small business opportunities outreach, and capability assessments.

You asked for guidance on a number of specific questions and stated a clear desire to avoid any public perception that you are violating the District's post-employment rules. Specifically, you asked for advice on the following questions:

1) Your private business is having a launch party in April 2015 and will invite companies that may be interested in its services, including the service of CBE monitoring. Some, though not all, of the companies in attendance may be companies you had substantial dealings with while at DSLBD. In all cases, those in attendance would be using your private business for their future endeavors on matters neither you nor DSLBD has been involved with previously;
2) Your business partner set up a meeting with a development company to discuss future services your company can provide. While [redacted], you worked substantially with that developer on a project [hereinafter, Project 1], which is now complete. That same developer will soon break ground on another project [hereinafter, Project 2], involving a different parcel of land. As [redacted], your only involvement in Project 2 was to sign off on a document. You were not personally and substantially involved in any of the background work. You asked whether you can attend the meeting, which you anticipate will center around new projects the developer will be developing, in which you had no involvement and will be occurring locally, regionally, nationally, and internationally; and

3) Are there any restrictions that preclude your partner from appearing before DSLBD, for any time period, because you were [redacted]?

First, I will review the various post-employment restrictions. Following that, I will respond to your specific questions.

Post–Employment Restrictions

Although the District has in place post-employment rules, they are not meant to prevent District employees from working in the private sector after their government service ends or to be so restrictive as to make following the post-employment rules impossible. There are, however, certain requirements you must follow during three somewhat overlapping post-service time periods.[1] Those time periods are a one-year "cooling-off" period, a two-year ban on behind-the-scenes activities and working on matters over which employees had official responsibility, and a permanent ban on working on particular government matters involving specific parties. I will, in that order, discuss the restrictions imposed in each of the time periods.

One-Year Cooling-Off Period

A former District employee is prohibited, for one year, from having any transactions with the employee's former agency that are 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. Specifically, 6B DCMR § 1811.10 provides:

> A former employee (other than a special government employee who serves for fewer than one-hundred and thirty (130) days in a calendar year) shall be prohibited for one (1) year from having any transactions with the 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.[2]

The restriction in 6B DCMR § 1811.10 "is intended to prohibit the possible use of personal influence based on past government affiliations to facilitate the transaction of business," (6B DCMR § 1811.11), which explains why the one-year prohibition is sometimes referred to as a cooling-off period. Accordingly, the prohibition applies "without regard to whether the former employee had participated in, or had responsibility for, the particular matter, and shall include matters that first arise after the employee leaves government service." *Id.* The prohibition also applies without regard to whether the former employee represents him or herself or someone else, either by appearance before the former agency or through communications with the agency. *See* DCMR § 1811.12.

[1] The discussion of post-employment restrictions that follows is based on 6B DCMR Chapter 18, which was revised and became effective on April 11, 2014.

[2] 6B DCMR § 1811.11 states that the "restriction in Subsection 1811.10 of this section is intended to prohibit the possible use of personal influence based on past government affiliations to facilitate the transaction of business. Therefore, the restriction shall apply without regard to whether the former employee had participated in, or had responsibility for, the particular matter, and shall include matters which first arise after the employee leaves government service."

Therefore, you, as a former District employee, are prohibited for one year from the date of your separation from service from having any transactions with DSLBD that are intended to influence DSLBD on any particular government matter pending before DSLBD or in which DSLBD has a direct and substantial interest. This prohibition applies regardless of whether the matter is a particular government matter involving a specific party and regardless of whether you participated in or had responsibility for that particular matter when you were a DSLBD employee. In addition, this prohibition applies to matters that first arose after you left District service, as long as they concern a particular government matter pending before DSLBD or in which DSLBD has a direct and substantial interest, regardless of whether the matter involves a specific party. Although the term "direct and substantial interest" is undefined in 6B DCMR Chapter 18, it is clear that easily identified matters such as contracts, applications, filings, and particular projects such as a development project involving a particular parcel of land are included in that term.

Two-Year Ban: Behind-the-Scenes Advice and Official Responsibility

Former District government employees also are subject to a two-year ban that can take either or both of two forms. The first prohibits former employees from giving behind-the-scenes advice or assistance to someone else in representing another person before *any* District agency. Specifically, 6B DCMR § 1811.8 prohibits former employees for two years from knowingly "aiding, counseling, advising, consulting, or assisting" in representing any other person (except the District of Columbia) before an agency as to a particular government matter involving a specific party[3] if the former employee participated personally and substantially in that matter as a government employee.

Although the term "participated personally and substantially" is not defined in 6B DCMR § 1899.1, relevant federal regulations do define the term, and I turn to them here.[4] To participate "personally" means to participate "(i) [d]irectly, either individually or in combination with other persons; or (ii) [t]hrough direct and active supervision of the participation of any person he supervises, including a subordinate." 5 C.F.R. § 2641.201(i)(2). To participate "substantially" means that the employee's involvement is "of significance to the matter," 5 C.F.R. § 2641.201(i)(3), and, of note for the purposes of the second form of the two-year ban, "requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue." *Id.* Pursuant to 6B DCMR § 1811.8, then, you are prohibited from giving any behind-the-scenes advice or assistance on any particular matter involving a specific party on which you participated personally and substantially as a government employee.

The second form of the two-year ban prohibits former District employees form working on matters in which they did not participate personally and substantially, but over which they had official responsibility. Specifically, 6B DCMR § 1811.5 prohibits them for two years from

[3] The term "particular government matter involving a specific party" is defined in 6B DCMR § 18991 as "any judicial or other proceeding, application, request for a ruling or other determination, contact, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the District government is a party or has a direct and substantial interest, and which has application to one (1) or more specifically identified persons or entities."

[4] *See* 6B DCMR § 1811.1 ("District employees shall comply with the provisions of 18 U.S.C. § 207 and implementing regulations set forth at 5 C.F.R. Part 2641, Subparts A and B [post-employment conflict of interest provisions].").

knowingly "acting as an attorney, agent, or representative in any formal or informal matter before an agency if [they] previously had official responsibility for that matter."[5]

Permanent Ban for the Lifetime of Particular Matters Involving Specific Parties

A former District government employee also is "permanently prohibited from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency as to a particular matter involving a specific party if the employee participated personally and substantially in that matter as a government employee." 6B DCMR § 1811.3. Similarly, 6B DCMR § 1811.4 provides that a former employee is "permanently prohibited from making any oral or written communication to an agency with the intent to influence that agency on behalf of another as to a particular government matter involving a specific party if the employee participated personally and substantially in that matter as a government employee."

These two provisions, in other words, operate as permanent bans on your undertaking representational activities regarding any particular matters involving specific parties on which you participated personally and substantially (i.e. did substantive work) while in the government's employ. The bans apply for the lifetime of each particular matter involving specific parties.

Specific Questions

With respect to Question #1, involving your private business's launch party, your business is permitted to hold the launch party and you are permitted to attend, even though some of the companies that will be invited are ones with which you had substantial dealings while you worked at DSLBD. Although you had substantial dealings with some of these companies while [redacted], you are not prohibited from dealing with them now that you are in the private sector. You should be mindful, though, of the one-year prohibition against appearing before DSLBD, as explained above. In addition, you are prohibited from revealing confidential information you received or learned in connection with your District government employment.

With respect to Question #2, regarding meeting with a development company with which you worked substantially while [redacted], you are permitted to meet with the developer, even though you worked substantially with that developer while you worked at DSLBD. In terms of Project 1, which you state is now complete, if it were ongoing, you would be prohibited from working in a representational capacity before the District on that project, from the private sector, for the lifetime of that project. This would be so because it is a particular matter involving a specific party in which you participated personally and substantially while [redacted].

With respect to Project 2, because the project involves a different plot of land than Project 1, moved on a different timeline, had a different business plan, and had its own budget, it is a

[5] For purposes of § 1811.5, 6B DCMR § 1811.6 provides that "a matter for which the former government employee had official responsibility is any matter that actually was pending under the former employee's responsibility within a period of one (1) year before the termination of such responsibility." Further, 6B DCMR § 1811.7 provides that the two-year period in 6 DCMR § 1811.5 is to be "measured from the date when the former employee's responsibility for a particular matter ends, not from the termination of government service, unless the two (2) occur simultaneously."

different particular matter from Project 1, even though it involves the same specific parties as Project 1. In addition, from your description of your involvement, which was limited to signing a document, I conclude that you did not participate personally and substantially in that particular matter as a DSLBD employee. Instead, your involvement was one of official responsibility, which triggers the two-year ban, rather than the permanent ban. Accordingly, in two years, you may appear before your former agency, DSLBD, in connection with Project 2. Again, appearance, for the purposes of post-employment, includes all communications with your former agency that are intended to influence that agency on behalf of another person, including in-person meetings, correspondence, emails, and telephone conversations.

In addition, because you did not participate personally and substantially in Project 2 while you worked at DSLBD, you are permitted to do behind-the-scenes work now. You do not have to wait the two years to work behind-the-scenes on something for which you only had official responsibility, as is the case here. Remember, though, that you can never reveal confidential information you received or learned in connection with your District government employment.

With respect to Question #3, whether there are any restrictions that preclude your partner from appearing before DSLBD, for any time period, because you were [redacted], no, there are not. As long as your partner is not a former DSLBD employee subject to the post-employment restrictions outlined above, your partner is not subject to post-employment restrictions merely because he or she is the partner of someone (you) who is subject to post-employment restrictions. Therefore, your partner is permitted to appear before DSLBD now, representing the interests of your private business and those of your clients, without restriction.

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. We encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure.

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.

Sincerely,

_____/s/_____
DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

1299-001

DEPARTMENT OF HEALTH CARE FINANCE
NOTICE OF PUBLIC MEETING

Department of Health Care Finance Pharmacy and Therapeutics Committee

The Department of Health Care Finance (DHCF) Pharmacy and Therapeutics Committee (P&T Committee), pursuant to the requirements of Mayor's Order 2007-46, dated January 23, 2007, hereby announces a public meeting of the P&T Committee to obtain input on the review and maintenance of a Preferred Drug List (PDL) for the District of Columbia. The meeting will be held **Thursday, April 23, 2015, at 2:30pm** in the **10th Floor Main Conference Room at 441 Fourth Street NW, Washington, DC 20001**. Please note that a government issued ID is needed to access the building. Use the **North** Lobby elevators to access the 10th floor.

The P&T Committee will receive public comments from interested individuals on issues relating to the topics or class reviews to be discussed at this meeting. The clinical drug class review for this meeting will include:

Antiemetics/Antivertigo Agents
Bladder Relaxant
BPH Agents
Erythropoiesis Stimulating Agents
Hepatitis C Agents
Histamine-2-Receptor Antagonists
H. Pylori Agents
Hypoglycemic Incretin Enhancers/Mimetics Agents
Hypoglycemics, Insulins
Hypoglycemics, Meglitinides
Hypoglycemics, Metformins
Hypoglycemics, SGLT2 Inhibitors
Hypoglycemics, TZDs
Irritable Bowel Syndrome Agents
Phosphate Binder
Proton Pump Inhibitors
Ulcerative Colitis Agents

Any person or organizations who wish to make a presentation to the DHCF P&T Committee should furnish his or her name, address, telephone number, and name of organization represented by calling (202) 442-9076 **no later than 4:45pm on Wednesday, April 15, 2015**. The person or organization may also submit the aforementioned information via e-mail to Charlene Fairfax (charlene.fairfax@dc.gov).

An individual wishing to make an oral presentation to the P&T Committee will be limited to three (3) minutes. A person wishing to provide written information should supply twenty (20) copies of the written information to the P&T Committee **no later than 4:45pm on April 15, 2015. Handouts are limited to no more than two standard 8-1/2 by 11 inch pages of "bulleted" points (or one page front and back).** The ready-to-disseminate, written information can also be mailed **to arrive no later than Wednesday, April 15, 2015** to:

Department of Health Care Finance
Attention: Charlene Fairfax, RPh, CDE
One Judiciary Square
441 4th Street NW, Suite 900 South
Washington, DC 20001

KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL

REQUESTS FOR PROPOSALS

Multiple Services

Kingsman Academy Public Charter School is accepting proposals with references from qualified vendors for the following services:

- **Human Resources and Employee Benefits**, including benefits management; HR technology; payroll administration; regulatory compliance; employee database/file management; recruiting, hiring, and transition support; time and labor tracking; performance management; policy development; process improvement; and training.
- **Business Insurance** appropriate for a public charter school operating in the District of Columbia.

Email questions, requests for the full RFPs, and proposals to proposals@kingsmanacademy.org with "Human Resources RFP" or "Business Insurance RFP" in the subject line. Deadline for submissions is 12:00 p.m. on Friday, March 27, 2015. **No phone calls please**.

KIPP DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Furniture Services

KIPP DC is soliciting proposals from qualified vendors for a furniture purchase for its 14,000 sf headquarters office space build-out. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals must be uploaded to the website no later than 5:00 P.M., EST, March 27, 2015. Questions can be addressed to lindsay.snow@kippdc.org.

White Boards

KIPP DC is soliciting proposals from qualified vendors for 49 5x16 dry erase white boards. More information on specs and requirements can be found on KIPP DC's website at http://www.kippdc.org/procurement. Quotes must be uploaded to the website no later than 5:00 P.M., EST, March 27, 2015. Questions can be addressed to lindsay.snow@kippdc.org.

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Brokerage Services

KIPP DC intends to enter into a sole source contract with MGA for Brokerage Services for subleasing representation. The decision to sole source is due to the fact that MGA represented KIPP DC in the leasing of the space. The cost of the contract will be approximately $30,000.

MAYA ANGELOU SCHOOLS

REQUEST FOR PROPOSALS

Online personalized-learning system (Software/SaaS)

The Maya Angelou Schools would like to acquire licenses for online personalized-learning software to support student learning, both in credit acquisition and credit recovery. Our organization is a charter LEA in Washington, DC, serving approximately 450 students from 9th grade to young adult, many of whom have not been successful in more traditional academic environments. Services will include:

- A blended learning platform for grades 9-12 encompassing a wide array of disciplines, but with an emphasis on ELA, literacy, and mathematics disciplines.
- Alignment with Common Core standards as implemented and assessed in the District of Columbia.
- Tools for differentiating instruction to students of a variety of ability levels.
- Ability to assign individual units of the curriculum to students who are absent, out of school for administrative reasons, or who need to repeat content for greater mastery.
- Integration with PowerTeacher/PowerSchool is a must.

Proposals **must be submitted by email** to Chris Tessone, ctessone@seeforever.org, by no later than six P.M. on April 1st, 2015.

Evaluation

Proposals will be evaluated based on the following criteria:

- Demonstrated ability to provide a robust blended learning platform meeting above requirements;
- Ability to provide technical assistance, training, and support as needed to implement and maintain the system;
- Backgrounds and expertise of individuals who may be staffed to work with the organization;
- Proposed fees and costs, although the organization is not bound to accept the lowest bid, and the organization reserves the right to negotiate fees with the selected applicant;
- Information obtained through the firm's references and other clients; and
- Best interests of the organization.

Proposal Requirements

The following requirements must be satisfied by a successful proposal:

- The proposal should not exceed 20 pages.
- The proposal should substantially address all the evaluation items named above, including references from clients with contact information.

- A letter signed by an officer of the firm authorized to negotiate on the firm's behalf should be included as the first page of the proposal and should spell out the basic terms of the proposal.
- Any legal claims pending or outstanding against the firm should be spelled out in an addendum to the proposal.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF 2015 BOARD MEETINGS

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated March 5, 2015, of PCSB's intent to hold a public meeting on the following dates:

Monday, March 23, 2015

Monday, April 20, 2015

Tuesday, April 21, 2015

Monday, May 18, 2015

Monday, June 15, 2015

Monday, July 20, 2015

Monday, August 17, 2015

Monday, September 21, 2015

Monday, October 19, 2015

Monday, November 16, 2015

Monday, December 14, 2015

For questions, please call 202-328-2660. An agenda for each meeting will be posted 48 hours in advance of the meetings. The location for all meetings is currently to be determined.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	)	PERB Case No. 11-U-50
Complainant,	)	Opinion No. 1506
v.	)	
District of Columbia Metropolitan Police Department,	)	Decision and Order
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case

On September 14, 2011, Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") filed an unfair labor practice complaint alleging that the Metropolitan Police Department ("MPD")[1] violated D.C. Official Code § 1-617.04(a)(1) and (5) by refusing and/or failing to bargain in good faith regarding the impact and effects of certain proposed scheduling changes in MPD's Crime Scene Search Unit and by engaging in direct dealing with FOP members when MPD sent the members an email on July 19, 2011, about the proposed changes.

The Board affirms the Hearing Examiner's finding and recommendation that MPD did not violate the D.C. Official Code 1-617.04(a)(1) and (5) by refusing to bargain with FOP regarding the impact and effects of the schedule change, as the Hearing Examiner's recommendation was reasonable, supported by the record, and consistent with the Board's precedents established in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia, et al.*, 59 D.C. Reg. 5485, Slip Op. No. 991, PERB Case No. 08-U-19 (2009) and *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia, et al.*, 59 D.C. Reg. 6579, Slip Op. No. 1118, PERB Case

[1] On March 13, 2013, FOP withdrew its claims against three individually named respondents, citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Public Employee Relations Board*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013).

No. 08-U-19 (2011).[2] However, the Board further finds that its affirmation of the Hearing Examiner's recommendation is without precedential value and is limited to these parties and these issues, and that the related precedents established in Slip Op. Nos. 991 and 1118 are herein abandoned. In their place, the Board reaffirms its related holdings in *District of Columbia Nurses Association v. District of Columbia Department of Mental Health*, 59 D.C. Reg. 9763, Slip Op. No. 1259, PERB Case No. 12-U-14 (2012) and *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, 47 D.C. Reg. 1449, Slip Op. No. 607 at p. 3, PERB Case No. 99-U-44 (1999).

In regard to FOP's direct dealing allegation, the Board rejects the Hearing Examiner's findings and recommendation that MPD engaged in direct dealing when Commander Keith Williams met with the shop stewards because that allegation was not raised in FOP's Complaint. Additionally, the Board remands to the Hearing Examiner the unaddressed issue that was alleged in the Complaint of whether MPD violated D.C. Official Code § 1-617.04(a)(1) by engaging in direct dealing with Union members by contacting them directly by email on July 19, 2011, about the proposed schedule changes.

II. Background

In 2011, the Crime Scene Search Unit experienced a shortage of technicians on weekends as each of the technicians "had either Saturday and Sunday or Sunday and Monday as their days off of duty."[3] On July 19, 2011, Commander George Kucik published a new scheduling plan that required employees with weekend days off to rotate their days off to either Tuesday and Wednesday or Wednesday and Thursday once every eight (8) weeks, effective August 28, 2011.[4] On the same day, Lieutenant Michelle Milam sent an email to the Crime Scene Search Unit employees requesting their preferences for days off and shifts.[5]

On July 22, 2011, FOP sent a letter to Chief of Police Cathy Lanier demanding impact and effects ("I&E") bargaining before implementation of the change.[6] Chief Lanier denied FOP's request for I&E bargaining citing Article 24[7] of the parties' collective bargaining agreement, stating it was within management's right to change schedules.[8]

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[2] *See American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003) (holding that the Board will affirm a Hearing Examiner's findings if the findings are reasonable, supported by the record, and consistent with Board precedent).
[3] (R&R at 4).
[4] *Id.*
[5] *Id.* at 4-5.
[6] *Id.* at 5.
[7] **Article 24: Scheduling**
Section 1 – Each member of the Bargaining Unit will be assigned days off and tours of duty that are either fixed or rotated on a known regular schedule. Schedules shall be posted in a fixed and known location. Notice of any changes to their days off or tours of duty shall be made fourteen (14) days in advance. If notice is not given of changes fourteen (14) days in advance the member shall be paid, at his or her option, overtime pay or compensatory

On August 16, 2011, Cdr. Kucik's replacement, Cdr. Williams, met with the shop stewards and discussed, among other topics, the proposed scheduling change.[9] The shop stewards' asked Cdr. Williams not to implement the schedule change. Cdr. Williams later "issued a memorandum and sent an email informing the shop stewards and unit employees that the proposed change would not be implemented."[10]

On September 14, 2011, FOP filed its Complaint alleging that MPD committed unfair labor practices under D.C. Official Code § 1-617.04(a)(1) and (5) when it refused to bargain the impact and effects of its proposed scheduling changes, and when Lt. Milam sent the July 19th email announcing the change and asking Crime Scene Search Unit employees to state their preferences for days off and shifts.[11] MPD denied the allegations in its Answer.[12]

On July 9, 2013, the Hearing Examiner issued her Report and Recommendation, recommending that PERB dismiss the refusal to bargain allegation, but find that MPD had engaged in wrongful direct when Cdr. Williams met with the shop stewards.[13] MPD's exceptions challenged only the Hearing Examiner's finding that Cdr. Williams' meeting with the shop stewards constituted direct dealing. MPD argued that FOP never raised Cdr. Williams' meeting as an allegation of direct dealing in its Complaint, and thus it was improper for the Hearing Examiner to find that such constituted an unfair labor practice in her Report.[14]

II. Analysis

A. FOP's Refusal to Bargain Allegation is Dismissed Because All of the Potential Impacts and Effects FOP Identified Were Purely Related to Scheduling.

The Board will affirm a hearing examiner's findings and conclusions if the findings are reasonable, supported by the record, and consistent with PERB precedent.[15]

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time at the rate of time and one half, in accordance with the provisions of the Fair Labor Standards Act. The notice requirement is waived for those members assigned to the Executive Protection Unit and the Office of Professional Responsibility.

Section 2 – The Chief or his/her designee may suspend Section 1 on a Department wide basis or in an operational unit for a declared emergency, for crime, for an unanticipated event.

Section 3 – Changes in scheduled days off will not be used for discipline except as provided in Article 12, Section 13 of this Agreement.

Section 4 – Shift changes during a scheduled period made voluntarily at the request of an officer and upon approval of the Employer shall not require additional compensation. (Complaint, Attachment 1).

[8] (R&R at 5).

[9] *Id.*

[10] *Id.*

[11] *Id.* at 5-6.

[12] (Answer at 4-7). FOP later filed a Response to MPD's Answer contesting the arguments MPD raised in its Answer. (Response to Answer at 3).

[13] (R&R at 15-29).

[14] (Exceptions at 8-10). FOP filed an Opposition to MPD's Exceptions, to which MPD filed a Reply.

[15] *AFGE v. DC WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

In this case, the Hearing Examiner recommended that PERB dismiss FOP's allegation that MPD wrongfully refused its request to bargain the impact and effects of its proposed schedule changes based on the Board's precedents established in *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19.[16] There, the Board found that MPD was not obligated to bargain the impacts and effects of a proposed schedule change in the Canine Unit that were purely related to scheduling. The Board reasoned that the topic of scheduling was covered by Article 24 of the parties' collective bargaining agreement and that purely scheduling-related disputes should therefore be resolved by the parties' negotiated grievance and arbitration process.[17] Notwithstanding, the Board also held that MPD was obligated to bargain any non-scheduling-related impacts and effects that resulted from the proposed schedule change, such as changes to reporting duty locations, additional foot beats, and/or increased supervision.[18] Accordingly, the Board found that MPD committed an unfair labor practice when it refused to bargain the non-scheduling-related impacts and effects of its proposed Canine Unit schedule changes.[19]

In this case, the Hearing Examiner found, based on the testimony of the witnesses and the evidence presented on the record, that all of the potential impacts and effects FOP identified were purely, "in and of themselves scheduling related matters," and that PERB therefore had no jurisdiction over them.[20] Specifically, the Hearing Examiner found that "the Union could not articulate potential impact or effects on working conditions not related to scheduling"; that "there was not sufficient credible probative testimony to show the employees' duties and responsibilities would change", and that "the evidence presented on the record does not provide a preponderance of evidence that there were conditions of employment or changes to duties and responsibilities that were not directly related to scheduling."[21] The Hearing Examiner, relying on *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19, concluded that MPD therefore had no obligation to bargain the impact and effects of its proposed schedule change. As a result, the Hearing Examiner recommended that PERB dismiss the allegation and defer resolution of FOP's concerns to the parties' negotiated grievance and arbitration procedures.[22]

The Board finds that the Hearing Examiner's conclusions are supported by the record. For example, the Hearing Examiner's overall finding that FOP could not identify any non-scheduling related impacts and effects is supported by Chairman Kristopher Bauman's testimony that, "where the [impacts of MPD's proposal] go beyond scheduling, nobody can know".[23]

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[16] (R&R at 20-21).
[17] *FOP v. MPD, supra*, Slip Op. No. 991 at ps. 10-11, 14-15, PERB Case No. 08-U-19; *and FOP v. MPD, supra*, Slip Op. No. 1118 at 1-2, 5-6, PERB Case No. 08-U-19.
[18] *FOP v. MPD, supra*, Slip Op. No. 1118 at p. 5, PERB Case No. 08-U-19.
[19] *FOP v. MPD, supra*, Slip Op. No. 991 at ps. 14-15, PERB Case No. 08-U-19.
[20] (R&R at 18-19).
[21] (R&R at 20-21).
[22] (R&R at 18-20).
[23] *See* (Transcript at 39).

Furthermore, in regard to FOP's specific claim that bargaining unit members might have missed random drug tests resulting in adverse notes in their personnel files, the Board finds that the Hearing Examiner properly credited the testimony of management that in those instances, the time-keeping official would simply note in the record that the employee was not scheduled to work when the request was made.[24] The Board further finds that it was reasonable for the Hearing Examiner to conclude that FOP's concern was purely related to scheduling based on Cdr. Kucik's testimony that bargaining unit members can sometimes be called for a drug test on their current weekend days off, so the proposed schedule change would not have affected how the situation is currently handled.[25]

Concerning FOP's argument that MPD's proposal would have impacted bargaining unit members who attend regularly scheduled classes or trainings, the Board finds that the Hearing Examiner's conclusion that such was "related to direct scheduling issues … as opposed to matters that changed duties or conditions of employment"[26] was supported by the record based on Cdr. Kucik's testimony that: (a) the rotated days off would have occurred only once every 8 weeks; (b) the members had been given an opportunity to select the days off they wanted; and (c) the specific days off would have been fixed and known well in advance in order to give members enough time to make any necessary personal adjustments.[27]

As for FOP's contention that MPD's proposal would have forced bargaining unit members to work seven (7) consecutive days in violation of D.C. Official Code § 1-612.01(a), the Hearing Examiner found that FOP's argument was merely a question of scheduling that should be resolved "pursuant to [the parties'] grievance procedure."[28] The Board finds that the Hearing Examiner's conclusion was supported by the record based on Cdr. Kucik's testimony that the proposed schedule would not have violated the statute because the consecutive days would have occurred over two separate work weeks.[29] Even if Cdr. Kucik's interpretation of the statute was inaccurate,[30] the Hearing Examiner's conclusion would still be reasonable based on the facts that 1) the number of days in a row an officer is required to work is, on its face, merely a scheduling issue, and 2) MPD's proposal was never implemented, so no violation of the statute under any possible interpretation ever actually occurred.[31]

In sum, the relevant facts of *FOP v. MPD*, *supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19 are almost directly on point with those of this case. Witnesses for both FOP

[24] (R&R at 18).
[25] *See* (Transcript at 78-80, 138-139).
[26] (R&R at 18).
[27] *See* (Transcript at 117-120, 135-137).
[28] (R&R at 19).
[29] *See* (Transcript at 95-96).
[30] The Board notes that it is not opining as to whether or not it agrees Cdr. Kucik's position that D.C. Official Code § 1-612.01(a) only applies if the seven consecutive (7) days occur in a single pay period. Rather, the Board merely highlights the statement to demonstrate that the record supported the Hearing Examiner's conclusion that, for the purposes of this case, FOP's concern was purely a question of scheduling.
[31] *See* (R&R at 20).

and MPD testified that each party recognized and accepted *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19 as having established PERB's current precedent on this issue.[32] Furthermore, neither party excepted to the Hearing Examiner's recommendation to dismiss FOP's allegation based the precedents established in *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19. Therefore, the Board finds that the Hearing Examiner's findings and recommendation based on *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19 were reasonable, supported by the record, and consistent with PERB precedent.[33]

The Board notes, however, that had FOP been able to identify any impacts and effects that were not purely related to scheduling, such as changes in reporting duty locations, additional foot beats, and/or increased supervision,[34] the Hearing Examiner and the Board would have found that MPD's refusal to bargain constituted an unfair labor practice under D.C. Official Code § 1-617.04(a)(1) and (5). But because FOP identified only scheduling related impacts and effects, neither the Hearing Examiner nor the Board could find, under the current precedent,[35] that any such a violation occurred. Accordingly, FOP's refusal to bargain allegation is dismissed with prejudice.

1. The Precedential Impact of the Board's Dismissal is Confined Solely to These Parties and Solely to the Facts of This Case.

Notwithstanding the Board's finding that the Hearing Examiner reasonably relied on and accurately applied to the facts of this case the precedents established in *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19 (pertaining to the duty to bargain scheduling changes under Article 24 of the parties' collective bargaining agreement), the Board hereby abandons those precedents and confines the precedential effect of its above finding to apply only to these parties and only to the facts of this case.[36]

In place of those abandoned precedents, the Board reaffirms its holding in *District of Columbia Nurses Association v. District of Columbia Department of Mental Health*, 59 D.C. Reg. 9763, Slip Op. No. 1259, PERB Case No. 12-U-14 (2012) as the correct approach that should be applied going forward. Therein, the Board stated:

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[32] *See* (Transcript at 19-20, 27-31, 49-50, 76-78, 116-120).
[33] *AFGE v. DC WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.
[34] *See FOP v. MPD, supra*, Slip Op. No. 1118 at p. 5, PERB Case No. 08-U-19.
[35] *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19
[36] *See District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 32 D.C. Reg. 547, Slip Op. No. 97 at p. 2, PERB Case No. 84-A-06 (1985) (in which the Board limited the precedential effect of its decision on future cases); *see also University of the District of Columbia Faculty Association/NEA and University of the District of Columbia*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 7, PERB Case No. 82-N-01 (1982) (in which the Board confined the precedential effect of part of its decision to specific parties); *and International Brotherhood of Police Officers and District of Columbia General Hospital Commission, et al.*, 29 D.C. Reg. 4376, Slip Op. No. 47, PERB Case No. 82-RC-09 (1982) (in which the Board confined the precedential effect of part of its decision to specific facts).

> Tours of duty and work schedules are management rights under Section 1-617.8(a) of the Comprehensive Merit Personnel Act ("CMPA"). The Board has held that "an exercise of management rights does not relieve the employer of its obligation to bargain over impact and effects of, and procedures concerning, the implementation of [that right]." *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994). Unions enjoy the right to impact and effects bargaining concerning a management rights decision only if they make a timely request to bargain. *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 29 D.C. Reg. 2975, Slip Op. No. 43, PERB Case No. 82-N-01 (1982). [Simply notifying the agency of a tour of duty or work schedule change] does not relieve the agency of the requirement to enter into impact and effects bargaining when timely requested by the union.
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> * * *
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> When a union requests impact and effects bargaining, the agency is required to bargain before implementing the change. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, 47 D.C. Reg. 1449, Slip Op. No. 607 at p. 3, PERB Case No. 99-U-44 (1999).[37]

Additional guidance on the duty to engage in impact and effects bargaining can also be found in *IBPO, Local 446 v. DCGH*, *supra*, Slip Op. No. 312, PERB Case No. 91-U-06, wherein the Board noted that there is an important distinction "between [a union's] right to bargain over [an agency's] decision to implement new or change existing bargaining-unit working conditions, …and [the union's] right (and [the agency's] obligation) to bargain over the effects or impact of that decision."[38] In that case, the agency argued that because it followed the collective bargaining agreement's requirements to notify and consult with the union prior to implementing a change, it did not have an obligation to respond to the union's later request to engage in impact and effects bargaining over that change. The Board found that even though the collective bargaining agreement was "clear and unmistakable" with regard to the agency's obligation to notify and consult with the union prior to implementing the change, the agreement was silent with regard to impact and effects bargaining. Therefore, the agency was still obligated to engage in impact and effects bargaining when such was duly requested by the union.[39]

In *FOP v. MPD*, *supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19, the Board erroneously evaluated MPD's right under Article 24 to make schedule changes as a waiver of its

[37] *DCNA v. DMH*, *supra*, Slip Op. No. 1259 at ps. 2-3, PERB Case No. 12-U-14.
[38] *See* p. 4.
[39] *Id*. at ps. 4-5.

duty to bargain the impact and effects of those changes.[40] Instead, the Board should have evaluated MPD's management right to implement scheduling changes and its duty to bargain the impact and effects of those changes as two distinct issues.[41]

Therefore, from this point forward the Board directs that disputes of this nature should be evaluated in accordance with the applicable precedents articulated in *DCNA v. DMH, supra*, Slip Op. No. 1259 at ps. 2-3, PERB Case No. 12-U-14, *IBPO, Local 446 v. DCGH, supra*, Slip Op. No. 312, PERB Case No. 91-U-06, and other similar cases[42], and not on the pertinent holdings in *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19, which the Board herein abandons.[43]

B. The Hearing Examiner's Finding That MPD Engaged in Direct Dealing When Cdr. Williams Met With the Shop Stewards is Rejected Because That Specific Allegation Was Not Raised in FOP's Complaint

The Board rejects the Hearing Examiner's finding that Cdr. Williams' August 19, 2011 meeting with the shop stewards constituted direct dealing in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) because that allegation was not raised in FOP's Complaint.[44]

The Board may not rule on allegations that are not properly before it.[45] PERB Rule 520.11 clearly states that the purpose of an evidentiary hearing "is to develop a full and factual record upon which the Board may make a decision" and that the "party asserting a violation of

[40] *See FOP v. MPD, supra*, Slip Op. No. 991 at ps. 10-11, 14-15, PERB Case No. 08-U-19; *and FOP v. MPD, supra*, Slip Op. No. 1118 at ps. 1-2, 5-6, PERB Case No. 08-U-19.
[41] *See DCNA v. DMH, supra*, Slip Op. No. 1259 at ps. 2-3, PERB Case No. 12-U-14; *see also IBPO, Local 446 v. DCGH, supra*, Slip Op. No. 312 at ps. 4-5, PERB Case No. 91-U-06; *American Federation of Government Employees, Local 1403 and District of Columbia Office of the Corporation Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02 (July 25, 2003) (holding that generally, a management right does not relieve management of the duty to bargain over the impact and effects of, and procedures concerning, the exercise of management rights decisions); *and Washington Teacher's Union, Local 6 AFT, AFL-CIO v. District of Columbia Public Schools*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at ps. 3-4, PERB Case No. 04-U-25 (2014) (holding that even though the employer agency was not required to bargain over its right to abolish bargaining unit positions, it was required to engage in impact and effects bargaining over the abolishment).
[42] i.e. *AFGE, Local 1403 and OCC, supra*, Slip Op. No. 709, PERB Case No. 03-N-02; *and WTU, Local 6 v. DCPS, supra*, Slip Op. No. 1448, PERB Case No. 04-U-25.
[43] *MPD and FOP, supra*, Slip Op. No. 97 at p. 2, PERB Case No. 84-A-06; *UDCFA/NEA and UDC, supra*, Slip Op. No. 43 at p. 7, PERB Case No. 82-N-01; *and IPBO and DC Gen. Hospital Comm., supra*, Slip Op. No. 47, PERB Case No. 82-RC-09.
[44] (R&R at 21-28).
[45] *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, Slip Op. No. 1316 at ps. 5-6, PERB Case No. 09-U-50 (August 24, 2012) (holding that the Board may not rule on allegations that are not properly before it); *Fraternal Order of Police/Department of Corrections Labor Committee v. Department of Corrections*, 49 D.C. Reg. 8933, Slip Op. No. 679, PERB Case Nos. 00-U-36 and 00-U-40 (May 17, 2002) (holding that a hearing examiner correctly did not render findings on an issue that was not raised in the amended complaint); *and Teamsters Local Unions 639 and 730 v. District of Columbia Board of Education*, 49 D.C. Reg. 803, Slip Op. No. 667 at f. 1, PERB Case No. 00-U-27 (October 15, 2001) (in which the Board did not consider the issue of attorneys' fees and interest because those issues were not raised in the original complaint).

the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."[46] Therefore, neither the hearing examiner nor the Board may determine the existence of an unfair labor practice where no unfair labor practice has been alleged.[47] Additionally, a hearing examiner cannot find a violation based on a set of facts that were not alleged in the complaint even if the violation has the same basic legal basis as an allegation that was raised in the complaint (i.e. direct dealing, failure to negotiate, bad faith, etc.).[48] Finally, when a complainant discovers, during the course of a proceeding, another possible violation based on the alleged facts, that party must either amend its complaint to include the newly discovered violation or file a new case in order for the Board to be able to consider that violation. If the complainant fails to do so, the Board cannot consider the new violation in its analysis and resolution of the case.[49]

In the instant case, the plain language of the Complaint demonstrates that FOP's direct dealing allegation was focused on Cdr. Kucik's publishing of the new scheduling plan on July 19, 2011, and Lt. Milam's email from that same day that informed members of the new plan.[50] The Complaint does not include, reference, or raise Cdr. Williams August 19, 2011 meeting with the shop stewards as an allegation of direct dealing.[51] The Complaint does not name Cdr. Williams as an individual respondent and it does not mention Cdr. Williams' meeting with the stewards in its "Factual Background" or "Analysis" sections.[52] Rather, the scope of FOP's allegation is defined and limited by its statement that Chief Lanier, Cdr. Kucik, and Lt. Milam were the only "responsible parties" that had committed unfair labor practices under the alleged facts, and in its statement that by "distributing the electronic mail containing the new scheduling scheme, [MPD] went beyond mere information and opinion gathering concerning its operations, and instead negotiated and dealt directly with FOP members concerning conditions of employment."[53]

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[46] (Emphasis added).
[47] *Id.*
[48] *See FOP v. MPD*, *supra*, Slip Op. No. 1005(b)* at p. 5-8, PERB Case No. 09-U-50 (holding that even though FOP raised an allegation of direct dealing in its complaint based on one specific set of facts, the hearing examiner could not find another direct dealing violation based on another set of facts that were not alleged in the complaint). *(The Board notes for the reader that PERB issued two (2) slip opinions in PERB Case No. 09-U-50 under the number "1005". The first was issued on December 29, 2009, in which the Board denied FOP's request for preliminary relief and assigned the case to be heard by a hearing examiner. The Board has designated that opinion herein as "Slip Op. No. 1005(a)." The second was issued on December 23, 2011, in which the Board evaluated the hearing examiner's Report and Recommendation as well as the parties' exceptions. The Board has designated that opinion herein as "Slip Op. No. 1005(b)").
[49] *See FOP v. MPD*, *supra*, Slip Op. No. 1316 at p. 5-8, PERB Case No. 09-U-50 (holding that when FOP discovered during the course of the hearing that MPD had not produced certain requested documents, FOP should have either amended its complaint to include the allegation or filed a new one, but because FOP failed to do so, it was an error for the Board to have sustained the hearing examiner's finding that MPD committed an unfair labor practice when failed to produce the documents).
[50] *See* (Complaint at 3-6).
[51] *Id.*
[52] *Id.* at 1, 3-6.
[53] *Id.* at 5 (emphasis added).

FOP also did not identify Cdr. Williams' meeting with the shop stewards as an allegation of direct dealing at the Hearing or in its Post-Hearing Brief. For instance, FOP's opening statement at the Hearing identified Cdr. Kucik's and Lt. Milam's July 19, 2011 email as the Union's only allegation of direct dealing.[54] Further, FOP's Post-Hearing Brief only focused on the email, and did not raise any arguments that the Cdr. Williams' meeting also constituted an allegation of direct dealing.[55] Indeed, the entire section of FOP's Brief addressing its direct dealing allegation is titled: "The Department's Memorandum Sent to the FOP Membership on July 19, 2011 Constitutes Illegal Direct Dealing."[56]

Therefore, similar to the Board's holdings in *FOP v. MPD*, *supra*, Slip Op. No. 1005(b), PERB Case No. 09-U-50 and *FOP v. MPD*, *supra*, Slip Op. No. 1316, PERB Case No. 09-U-50, FOP's allegation of the general legal principle of direct dealing with regard to a different incident did not provide a sufficient basis for the Hearing Examiner to find that MPD engaged in direct dealing when Cdr. Williams met with the shop stewards.[57] As such, the Board finds that because Cdr. Williams' meeting was not properly before the Board or the Hearing Examiner for resolution, the Hearing Examiner erred in finding that the incident constituted an unfair labor practice.[58]

Furthermore, PERB's established case law negates the arguments FOP raised in its Opposition to Exceptions. While it is true that the Hearing Examiner must develop a full and factual record pursuant to PERB Rule 520.11, the Board held in *FOP v. MPD*, *supra*, Slip Op. No. 1316, PERB Case No. 09-U-50 that the hearing examiner is limited to an analysis of "the allegations of the complaint."[59] FOP's argument that denying hearing examiners the ability to find unfair labor practices based on facts not alleged in the complaint "would completely defeat the purpose of conducting a hearing, and render meaningless the factual record created in the process" fails because the Board also found in *FOP v. MPD*, *supra*, Slip Op. No. 1316, PERB Case No. 09-U-50 that the only way PERB can address violations discovered during a hearing is for the complainant to file a new complaint or amend its existing complaint to include the newly discovered allegations.[60] Therefore, the potential illegality of Cdr. Williams' meeting was only rendered "meaningless" when FOP failed to amend its Complaint to include the meeting as a separate direct dealing allegation.[61]

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[54] (Transcript at 7).
[55] (Complainant's Post-Hearing Brief at 10-15).
[56] *Id.* at 10.
[57] *See* Slip Op. No. 1005(b) at ps. 10-11; *and* Slip Op. No. 1316 at ps. 5-6.
[58] *Id.* Additionally, as a result of the Board's finding that Cdr. Williams' meeting was not properly before PERB or the Hearing Examiner for disposition, it is not necessary to address the Hearing Examiner's reliance on Chairman Baumann's testimony that the shop stewards were not authorized to bargain on behalf of the Union, or the Hearing Examiner's reliance on various NLRB cases to support her conclusion that speaking with the Union's shop stewards instead of the Union's executive officers constituted direct dealing. Furthermore, the Board offers no opinion as to whether Cdr. Williams' meeting with the shop stewards would have constituted direct dealing in violation of D.C. Official Code §§ 1-617.04(a)(1) or (5) had the issue been properly raised in FOP's Complaint.
[59] *See* ps. 5-8.
[60] *Id.; see also* footnote 49 herein.
[61] *Id.*

While FOP argued that the Hearing Examiner's finding was valid because FOP had raised the "general" allegation of direct dealing in its Complaint, it is clear that paragraphs 8 and 9 of the Complaint focused only on MPD's July 19th email, and did not mention Cdr. Williams' meeting with the shop stewards.[62] As stated previously, a hearing examiner cannot find a violation based on a set of facts that were not alleged in the complaint even if the violation is based on the same basic legal principle as an allegation that was raised in the complaint.[63] Thus, the issue of whether Cdr. Williams meeting with the shop stewards constituted direct dealing was not before the Hearing Examiner for consideration because FOP did not raise that specific allegation in its Complaint.[64]

Next, contrary to FOP's assertion that MPD was not prejudiced by the Hearing Examiner's finding that Cdr. Williams' meeting with the shop stewards constituted direct dealing, the Board finds that MPD was prejudiced by the finding. In *District of Columbia Metropolitan Police Department v. Fraternal Order of Police / Metropolitan Police Department Labor Committee (on behalf of Charles Jacobs)*, 60 D.C. Reg. 3060, Slip Op. No. 1366, PERB Case No. 12-A-04 (2013), the Board upheld an arbitrator's finding that MPD prejudiced an officer when a disciplinary review panel found him guilty of an additional charge the panel had added after the hearing had been held because it denied the officer an opportunity to respond to the allegation and present evidence for his defense.[65] In this case, Cdr. Williams' meeting was not raised as an allegation at any stage of the process until the Hearing Examiner issued her Report and Recommendation, which effectively denied MPD any opportunity to answer the charge or raise a defense. Therefore, the Board finds that MPD was indeed prejudiced by the Hearing Examiner's finding.[66]

Additionally, the Board rejects FOP's assertion that Cdr. Williams' meeting with the shop stewards was not a collateral issue. If FOP had intended to raise the meeting as a central issue, it should have done so in its Complaint, at the Hearing, and in its Post-Hearing briefs. FOP did not do so. Therefore it cannot now reasonably argue that it had intended to focus on the meeting all along.[67]

Finally, the Board finds it is not necessary to address FOP's analysis in its Opposition to Exceptions that Cdr. Williams' meeting with the shop stewards did constitute an instance of direct dealing because, as already discussed, that allegation was not properly raised in FOP's Complaint, and is therefore outside of PERB's authority to consider.[68]

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[62] (Complaint at 5-6).
[63] *FOP v. MPD*, *supra*, Slip Op. No. 1005(b) at p. 5-8, PERB Case No. 09-U-50; *see also* footnote 48 herein.
[64] *Id.*
[65] *See* ps. 3, 9.
[66] *Id.*
[67] *See FOP v. MPD*, *supra*, Slip Op. No. 1005(b) at ps. 10-11, PERB Case No. 09-U-50; *and FOP v. MPD*, *supra*, Slip Op. No. 1316 at ps. 5-6, PERB Case No. 09-U-50.
[68] *Id.*

Based on the foregoing, the Board finds that MPD's Exceptions are not mere disagreements with the Hearing Examiner's conclusion that Cdr. Williams' meeting with the shop stewards constituted a direct dealing violation.[69] Accordingly, the Board rejects the Hearing Examiner's conclusion and recommendation.[70]

C. FOP's Direct Dealing Allegation Regarding MPD's July 19, 2011 Email is Remanded to the Hearing Examiner for Consideration If the Parties Cannot First Stipulate to a Settlement of the Issue.

The Hearing Examiner did not address FOP's allegation that MPD engaged in direct dealing in violation of D.C. Official Code §§ 1-617.04(a)(1) or (5) when it sent the July 19, 2011 email asking members to give their preferences for the rotated days off.[71]

The Board notes that although the Hearing Examiner correctly identified the July 19th email as the basis of FOP's direct dealing allegation, she failed to address or resolve that allegation in her analysis.[72] Notwithstanding, due to the considerable length of time that has passed since the incident, and due to the fact that the proposed schedule changes were never implemented, PERB's Executive Director (or her designee) shall hold an informal conference with the parties in accordance with PERB Rule 500.4 to determine whether this issue is still ripe and/or to discuss possibilities for settlement. If the issue cannot be resolved during said conference, then the allegation will be remanded to the Hearing Examiner to determine, based on PERB precedent and the established record, whether MPD's July 19, 2011 email constituted direct dealing in violation of D.C. Official Code §§ 1-617.04(a)(1) or (5), and to make appropriate recommendations.

D. Conclusion

Based on the foregoing, FOP's allegation that MPD failed to bargain in good faith when it refused to engage in impact and effects bargaining over its proposed schedule change is dismissed,[73] but the Board confines the precedential effect of that finding—which was based on *FOP v. MPD, supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19—to apply only to these parties and only to the facts of this case.[74] From this point forward, the Board directs that disputes concerning an agency's duty to engage in impact and effects bargaining, when requested by a union in response to the agency exercising a management right, are to be evaluated in

[69] *See* (Exceptions to Hearing Examiner's Report and Recommendation); *and Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20 (1996).
[70] *Hoggard, supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.
[71] (R&R at 1, 21-28).
[72] *Id.*
[73] *AFGE v. DC WASA*, *supra*, Slip Op. No. 702, PERB Case No. 00-U-12 (finding that the Board will affirm a hearing examiner's findings and conclusions if the findings are reasonable, supported by the record, and consistent with PERB precedent).
[74] *MPD and FOP*, *supra*, Slip Op. No. 97 at p. 2, PERB Case No. 84-A-06; *UDCFA/NEA and UDC*, *supra*, Slip Op. No. 43 at p. 7, PERB Case No. 82-N-01; *and IPBO and DC Gen. Hospital Comm.*, *supra*, Slip Op. No. 47, PERB Case No. 82-RC-09.

accordance with the applicable precedents articulated in *DCNA v. DMH*, *supra*, Slip Op. No. 1259 at ps. 2-3, PERB Case No. 12-U-14, *IBPO, Local 446 v. DCGH*, *supra*, Slip Op. No. 312, PERB Case No. 91-U-06, and other similar cases,[75] and not on the pertinent holdings in *FOP v. MPD*, *supra*, Slip Op. Nos. 991 and 1118, PERB Case No. 08-U-19, which the Board herein abandons.

Furthermore, the Hearing Examiner's finding that MPD engaged in direct dealing when MPD's Commander met with the FOP Shop Stewards is rejected, and FOP's direct dealing allegation concerning MPD's July 19, 2011 email is remanded to the Hearing Examiner for further analysis, provided the allegation cannot first be resolved by the parties in an informal conference with PERB's Executive Director or her designee, in accordance with this Decision and Order and PERB Rule 500.4.

[75] i.e. *AFGE, Local 1403 and OCC*, *supra*, Slip Op. No. 709, PERB Case No. 03-N-02; *and WTU, Local 6 v. DCPS*, *supra*, Slip Op. No. 1448, PERB Case No. 04-U-25.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's allegation that MPD failed to bargain in good faith when it refused to engage in impact and effects bargaining over its proposed schedule change in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) is dismissed with prejudice.

2. The Hearing Examiner's finding that the meeting MPD's Commander held with FOP's shop stewards constituted direct dealing in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) is rejected, as that incident was not alleged as a violation in FOP's Complaint.

3. PERB's Executive Director (or her designee) will hold an informal conference with the parties in accordance with this Decision and Order and PERB Rule 500.4 to determine whether FOP's allegation that MPD engaged in direct dealing when it sent its July 19, 2011 email to bargaining unit members is still ripe and/or to discuss possibilities for settlement. If the issue cannot be resolved *via* said conference, then the Board remands the allegation to the Hearing Examiner to determine, based on PERB precedent and the established record before her, whether MPD's July 19, 2011 email constituted direct dealing in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5), and to make appropriate recommendations.

4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman and Keith Washington.

August 21, 2014

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-50, Opinion No. 1506 was transmitted *via* File & ServeXpress and Email to the following parties on this the 14th day of January, 2015.

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VIA FILE & SERVEXPRESS AND EMAIL

/s/ Sheryl Harrington
PERB

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner,	PERB Case No. 13-A-08
v.	Opinion No. 1507
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Respondent.	

DECISION AND ORDER

This matter is before the Board upon a timely arbitration review request ("Request") filed by petitioner District of Columbia Metropolitan Police Department ("MPD"), which argues that that the Award is contrary to law and public policy. The respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union") filed an Opposition.

I. Statement of the Case

MPD appeals from determinations that the arbitrator made regarding certain mayoral delegations of authority to the chief of police ("Chief"). The delegations allegedly authorized the Chief to change work schedules in order to implement the Chief's "All Hands on Deck" initiative ("AHOD") in 2010. AHOD involved restricting leave and temporarily changing officers' tours of duty in order to deploy a greater number of officers to patrolling and to other duties dealing with the public during five three-day weekends or "phases." On April 14, 2010, the Chief issued a teletype to the force informing them of the restrictions and phases of the initiative. The first phase of the 2010 AHOD was May 7-10, 2010, and the fifth and last was October 22-24, 2010. (Award at 2-3.) Two later teletypes issued additional directives regarding the 2010 AHOD.

MPD contends that the mayor delegated to the Chief his authority to alter the basic tour of duty established by D.C. Official Code section 1-612.01(b), which provides:

> Except when the Mayor determines that an organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, tours of duty shall be established to provide, with respect to each employee in an organization, that:
>
> (1) Assignments to tours of duty are scheduled in advance over periods of not less than 1 week;
>
> (2) The basic 40 hour workweek is scheduled on 5 days, Monday through Friday when practicable, and the 2 days outside the basic workweek are consecutive;
>
> (3) The working hours in each day in the basic workweek are the same.

The arbitrator found that MPD did not prove a delegation to the Chief of the mayor's authority under section 1-612.01(b). Because the Chief lacked the lawful authority to alter tours of duty, the arbitrator found "violations of Article 1, Section 3 as well as Article 4 [of the parties' collective bargaining agreement] which requires management's rights to be 'exercised in accordance with applicable laws, rules and regulations. . . .'" (Award at 18.)

The arbitrator found that the 2010 AHOD also violated articles 24 and 49 of the collective bargaining agreement. He issued the following award: "The grievance is sustained. The MPD will compensate all FOP members at a rate of time-and-one-half for any violation of Article 24 for all applicable AHOD initiative days announced for 2010." (Award at 20.)

MPD requests that the Board reverse the Award pursuant to its authority to set aside an award where "the award on its face is contrary to law and public policy." D.C. Official Code § 1-605.02(6). The law and public policy upon which MPD relies are Mayor's Orders 2012-28 and 2009-117. MPD contends that, contrary to the arbitrator's findings, those orders delegated to the Chief the authority to order the changes in tours of duty that are the subject of the Union's grievance in this matter. As set forth below, the Board finds that MPD has failed to present statutory grounds for setting aside the Award, noting that MPD does not challenge the basis for the award of compensation and that the challenge it does raise is merely an evidentiary dispute.

II. Discussion

In its Opposition, the Union repeatedly argues that rulings of the arbitrator other than his ruling on the mayor's orders remain unchallenged by MPD. As a result, even if the mayor's orders were to be admitted and found applicable, the decision would remain unchallenged. (Opp'n at 6-7, 18, 21.)

The Union is correct that MPD does not challenge the arbitrator's finding that MPD violated article 49 of the collective bargaining agreement by failing to bargain over the impact of AHOD. More significantly, MPD also does not challenge the arbitrator's findings regarding article 24 of the collective bargaining agreement. Article 24 provides:

> **Section 1**
> Each member of the Bargaining Unit will be assigned days off and tours of duty that are either fixed or rotated on a known regular schedule. Schedules shall be posted in a fixed and known location. Notice of any changes to their days off or tours of duty shall be made fourteen (14) days in advance. If notice is not given of changes fourteen (14) days in advance the member shall be paid, at his or her option, overtime pay or compensatory time at the rate of time and one half, in accordance with the provisions of the Fair Labor Standards Act.
>
> **Section 2**
> The Chief or his/her designee may suspend Section 1 on a Department wide basis or in an operational unit for a declared emergency, for crime, or for an unanticipated event.

(Award at 11.)

Section 2 of article 24 authorizes the suspension of section 1 "for a declared emergency, for crime, or for an unanticipated event." The Union combines "for a declared emergency, for crime" into a single condition for suspension—"a crime emergency"—and asserts that the Chief admitted that she never declared a crime emergency to implement AHOD. (Opp'n at 11, 13, 15, 17.) The arbitrator treats a declared emergency and crime distinctly, but similarly concludes that the Chief did not make the required determination for a suspension of section 1:

> [T]he Chief's determinations, as stated in the All Hands on Deck document, fell short of providing a contractual basis under Article 24, Section 2 to suspend Section 1 for a "declared emergency" or an "unanticipated event." In the context of these two conditions, even assuming that the "crime" element constitutes a separate condition, it is reasonably read as involving more tangible events than occurrences which had been projected several months prior to the predicted dates.

(Award at 18.) The Award orders MPD to "compensate all FOP members at a rate of time-and-one-half for any violation of Article 24 for all applicable AHOD initiative days announced for 2010." (Award at 20.) As the Union points out, that Award, which is tied to article 24, would not be changed if the Board were to set aside the arbitrator's findings that there was no delegation of mayoral authority and that as a result MPD violated articles 1 and 4 of the collective bargaining agreement. For that reason, the Request does not present a basis for setting aside the Award.

Moreover, the Request does not present a basis for modifying or setting aside the arbitrator's findings regarding articles 1 and 4. Those findings result from the arbitrator's evaluation of the Chief's assertion in her Findings in Support of All Hands on Deck, dated May 3, 2010, ("Findings") that "[a]s authorized by the Mayor, I am exercising my authority that allows me to change a member's tour of duty within a work week to a tour different from their

known posted tour of duty." The arbitrator stated that "MPD produced no substantial evidence to support this assertion." (Award at 17.) The Request maintains that Mayor's Order 2012-28 and Mayor's Order 2009-17, both of which constitute law and public policy, contradict the arbitrator on this point. Thus, the Request contends that the arbitrator's conclusion that the Chief did not have delegated authority is contrary to law and public policy and should be reversed. (Request at 7.)

Regarding Mayor's Order 2012-28, MPD asserts that the order "clearly and explicitly grants the Chief of Police the relevant authority, retroactive to February 26, 1997." (Request at 4.) MPD contends that "the Award does not contain any analysis or discussion that would support a conclusion that the Mayor's Order was, in any way, invalid." (Request at 4.) Notwithstanding, a review of the Award discloses that it does support that conclusion. The Award states that "the MPD's reliance upon Mayor's Order 2012-28 is misplaced where the authority was neither adequately nor timely delegated by the Mayor to the MPD or Chief Lanier for the 2010 AHOD." (Award at 17.) The Award does not explain why the authority was not adequately delegated, but the basis for its assertion that the authority was not timely delegated is discernible from the Award. Mayor's Order 2012-28 was dated February 21, 2012 whereas the Chief ordered the scheduling changes in question in April 2010. (Award at 2-4 9, 13, 17.) As we held in connection with the arbitration of the 2011 AHOD, the Board will not second guess an arbitrator's interpretation of Mayor's Order 2012-28 or its alleged retroactivity. *D.C. Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm.*, Slip Op. No. 1494 at p. 4, PERB Case No. 13-A-06 (Nov. 20, 2014).

MPD contends that even if Mayor's Order 2012-28 is deemed inapplicable, Mayor's Order 2009-117 also delegates to the Chief the authority to order the scheduling changes and similarly mandates the arbitrator to arrive at a different result. (Request at 5.) MPD states that "the Award inexplicably holds that there was 'no substantial evidence to support' Chief Lanier's assertion that she was exercising authority delegated from the Mayor." (Request at 6) (quoting Award at 17.) MPD's evidence for the Chief's assertion is her citation to mayor's orders in the fourth "Whereas" clause of the Findings. (Request at 6.) Concerning that citation, the arbitrator said that the Findings "references mayor's orders not contained in this record of the proceedings." (Award at 17.) MPD makes no claim to the contrary. Mayor's Order 2009-117 was not in the record of the arbitration of the 2011 AHOD either. In that case, the Board held to be unreviewable the arbitrator's conclusion that the Findings' reference to the mayor's order was insufficient proof of the delegation in the absence of the order itself in the record as an exhibit. *Metro. Police Dep't,* Slip Op. No. 1494 at p. 4, PERB Case No. 13-A-06. *See also D.C. Metro. Police Dep't and F.O.P./Metro. Police Dep't Labor Comm. (on behalf of Sims)*, 60 D.C. Reg. 9201, Slip Op. No. 1390 at pp. 8-9, PERB Case No. 12-A-07 (2013) (declining to overturn an award based on the petitioner's disagreement with the arbitrator's finding that no record evidence supported tolling of the ninety-day rule).

Accordingly, the Request presents grounds neither for reversing the arbitrator's conclusion regarding delegation nor for setting aside the Award. Therefore, MPD's Request is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's arbitration review request is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairman Charles Murphy and Members Donald Wasserman, Keith Washington, Ann Hoffman, and Yvonne Dixon

Washington, D.C.
January 15, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision in PERB Case No. 13-A-08 was transmitted to the following parties on this the 15th day of January 2015.

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/s/ Sheryl V. Harrington
Sheryl V. Harrington
Secretary

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Child and Family Services Agency,	
Petitioner,	
v.	PERB Case No. 14-A-08
AFSCME, District Council 20, Local 2401 (on behalf of Daniel Goodwin)	Opinion No. 1508
Respondent.	

DECISION AND ORDER

I. Statement of the Case

This matter comes before the Board upon the request of the Child and Family Services Agency ("Agency") to review a grievance arbitration award. The grievant Daniel Goodwin ("Goodwin" or "Grievant") was a vocational specialist at the Agency's Office of Youth Empowerment. He was terminated June 21, 2013. The Union filed a grievance challenging the removal of the Grievant. After the Agency denied the grievance, the Union invoked arbitration. The arbitrator, Barbara B. Franklin, held a hearing and issued an Award that reduced the penalty to a thirty-day suspension. On June 16, 2014, the Agency filed an arbitration review request ("Request") with the Board. On November 14, 2014, pursuant to Rule 538.2 the Board requested the parties to file briefs. The parties filed their briefs on December 11, 2014.

The Agency contends that the Arbitrator exceeded her jurisdiction by adding an element to the charge and violated law and public policy by preventing the Agency from fulfilling its legal mandate to protect neglected and vulnerable youth. For the reasons set forth herein, the Board determines the Arbitrator did not exceed her jurisdiction and that the Award is not contrary to law and public policy.

A. Arbitrator's Factual Findings

The Award states that Goodwin oversaw vocational training programs open to clients of the Agency. One of the Agency's training programs that he oversaw was a culinary certification

training program. A 19-year-old referred to in the Award as JS for reasons of confidentiality was a participant in that program. He was a ward of the Agency living in an Agency group home. JS and the other participants in the program were to be paid forty dollars for each class they attended. After the program ended, JS repeatedly questioned Goodwin about when his check would arrive.

On May 15, 2013, Goodwin drove JS to a store to exchange a pair of boots that JS would need for another Office of Youth Empowerment program, one in construction, that JS was about to start. According to Goodwin, JS questioned Goodwin in a threatening manner about the check for which he was still waiting.

At the hearing, JS testified (and Goodwin denied) that the following events then occurred. On the ride back from the store, Goodwin asked JS, "Do you like to make money?" JS replied that he did. Goodwin then gave JS his phone number and asked him to call him after 6 p.m. that evening. JS testified he called Goodwin after 7 p.m. Goodwin's telephone records show that at 7:26 p.m. his cell phone received a four-minute call from JS's group home.

JS testified that Goodwin told him he would pick him up at the Anacostia Metro Station around 8 p.m. At 7:39, a staff member at the group drove JS to the station, where Goodwin picked him up. Goodwin then drove JS to Goodwin's home. Once there, Goodwin went upstairs to change clothes. Goodwin returned wearing gym clothes that were, in JS's words, "like cut up." The two watched television for a while. After Goodwin commented on the television program a couple times, JS said that he thought he was there to make some money. The Award relates the rest of the conversation:

> The Grievant then asked him questions, such as what JS liked to do for fun, what he did on the weekend, and what he did sexually. When the Grievant asked the last question, JS responded "get me out of here man" and the Grievant immediately drove him back to the group home. The group home log book shows that JS returned home at 10:18 p.m.

(Award 5.) JS testified that upon his return to the group home he told a friend about the incident and was overheard by a staff member, who said he should tell someone about it. The Award continues: "Some days later he reported the incident to a security guard at OYE and Nadya Richberg, the Program Manager for JS's social worker. Ms. Richberg in turn reported the incident to her supervisor, Sara Thankachan, the Administrator of OYE. On May 21, 2013, JS filed a handwritten description of what had occurred." (Award 5.)

After an investigation of JS's allegations, the Agency provided Grievant with an Advanced Written Notice of Removal charging the Grievant with

> 1) engaging in the activity of making unwanted sexual advances to an agency client; and

> 2) failing to maintain a high level of ethical conduct and to avoid any action that might result in the appearance of adversely affecting the confidence of the public in the integrity of the government.

(Award 7.) On July 31, 2013, the Agency's deputy director accepted the recommendation of the Agency's hearing officer that Goodwin be terminated.

The arbitrator noted that JS's account matched records of the group home as well as Goodwin's telephone records and noted that JS accurately described the interior of Goodwin's house. The arbitrator credited JS's testimony over Goodwin's, which involved inconsistent versions of the telephone call and of an alibi that he was at a church on the evening in question. The arbitrator found "that the Grievant spoke with JS during a phone call initiated at 7:26 p.m.; that the Grievant met JS at a previously-designated metro station and drove him to his home; and that the Grievant did not give JS any work to perform while JS was at the Grievant's home." (Award 12.) The arbitrator also stated that Goodwin engaged "in inappropriate conversation with the client." (Award 15-16.)

In addition, the arbitrator observed,

> JS waited six days to report the incident—until after he had met with the Grievant on two different days to ask about the delayed check. . . . It was only after the Grievant and his supervisor told JS on May 21 that the checks still had not arrived that JS asked to speak with Ms. Richberg, at which time he reported his version of the events of May 15. The timing of his accusation suggests that if the Grievant had been able to produce the check, JS might never have made the report. It seems obvious that JS was far more concerned about obtaining the money owed to him than he was disturbed by the Grievant's question on May 15.

(Award 15.)

The arbitrator also found that no prior allegations against Goodwin resulted in discipline beyond alleged oral warnings and that the alleged oral warnings could not serve as the basis for enhanced discipline in this matter. (Award 11.)

B. Arbitrator's Conclusions

The arbitrator found that the Agency did not meet "its burden in establishing that what occurred at the Grievant's home provided cause for terminating his employment." (Award 14.) The arbitrator stated her finding on the charge of making unwanted sexual advances as follows.

> [E]ven accepting the entire account of the incident by JS, whom I have credited, it does not provide sufficient support for the Agency's decision to terminate the Grievant's employment for making "unwanted sexual advances." Accordingly, I find that the Agency did not meet its burden of establishing cause for the termination and thereby violated Article 7 of the parties' bargaining agreement.

(Award 15.)

Regarding the second charge, "failing to maintain a high level of ethical conduct," the arbitrator concluded that Goodwin "engaged in a serious ethical breach by driving a client in his personal vehicle to his home under the guise of providing the client with work that never materialized, and instead watching television and engaging in inappropriate conversation with the client." (Award 15-16.) The arbitrator determined that this offense justified a thirty-day suspension rather than termination:

> [A]lthough the Agency did not meet its burden of establishing that the conduct with which the Grievant was charged supported termination of his employment, I conclude that it was a breach of ethical conduct that justifies the penalty under the Table of Appropriate Penalties of a 30-day suspension.

(Award 16.)

II. Position of the Agency

Article 7 of the parties' collective bargaining agreement says, "Discipline shall be imposed for cause, as provided in the D.C. Official Code § 1-616.51 (2001 ed.)." The Agency contends that review of discipline under the collective bargaining agreement is limited to whether the agency established cause. The Agency claims that the arbitrator exceeded her jurisdiction by overturning the penalty on other grounds.

The Agency notes that the arbitrator credited JS's account and discredited Goodwin's conflicting account. She found that "Goodwin made an inappropriate sexual comment to a foster youth who immediately rejected the comment." (Request 14.) Yet the arbitrator found that the Agency did not meet its burden. In the Agency's view, the arbitrator did so by adding an element that is not part of the charge. The Agency contends that the elements of the charge were (a) a sexual advance or proposition (b) that was unwanted. To those elements the arbitrator added, according to the Agency, the requirement of injury, i.e., a requirement that the sexual advance offended JS. The arbitrator recited at length facts (the money owed to JS and the timing of JS's complaint) that do not relate to whether the incident occurred but instead relate to the degree to which the incident disturbed JS. The Agency concludes that it "met its burden

factually as set forth by the Arbitrator. However, the Arbitrator exceeded her jurisdiction by demanding additional proof not required by law or regulation." (Request 15.)

The Agency further contends that the Award is contrary to law and public policy because it prevents the Agency from fulfilling its mandate of protecting neglected and vulnerable youth. For this mandate the Agency cites title IV, chapter 13 of the D.C. Official Code and the Agency's policy manual. Reinstating Goodwin, who "lured a foster child to his home" on the pretext of offering work and who then inquired about what he liked to do sexually, is contrary to that mandate and violates the trust youth place in the Agency to provide them with care and safety. (Request 16-17.) The Agency also contends that this policy was violated by the Arbitrator's decision not to apply the maximum penalty for Goodwin's alleged sexual advance or proposition.

III. Position of the Union

The Union filed an Opposition to the Request ("Opposition") in which it contends that the Request should be dismissed for insufficient service. The Union attaches to its Opposition e-mails between its counsel and the Executive Director of the Public Employee Relations Board in which counsel for the Union states that she had received a notice from the Executive Director that the Union's response to the Request was due July 1, 2014, but that the Union had never been served with the Request. The Executive Director replied that after receiving that e-mail she obtained the Office of Labor Relations and Collective Bargaining's Request and its June 16, 2014 e-mail to counsel for the Union. The Executive Director forwarded that e-mail to counsel for the Union. (Opp'n Ex. 3.) The Union argues that the only type of electronic service permitted by the Board's rules is service by File & ServeXpress. Citing *AFSCME District Council 20 and Local 2091 v. D.C. Department of Public Works*,[1] the Union asserts that because a party who has not entered an appearance in a case cannot be served through File & ServeXpress, the Board requires initial pleadings to be served by U.S. Mail. (Opp'n 3.)

The Union characterizes the Agency's argument that the arbitrator exceeded her jurisdiction by adding an element to be "nothing more than a basic disagreement with the Arbitrator's reasoning and evidentiary conclusions." (Opp'n 4.) The Union stresses that the Agency refers to the charge as making an unwanted sexual advance or proposition whereas Goodwin was charged with making an unwanted sexual advance. The arbitrator, the Union contends, found that Goodwin's conduct did not constitute a sexual advance, a determination that was "squarely within the confines of the issue presented to her and her charge under the collective bargaining agreement." (Opp'n 6.)

As the arbitrator found that "the Agency did not prove Goodwin made any sexual advance" (Opp'n 7), none of the alleged public policies cited by the Agency were transgressed by the reversal of Goodwin's termination. The Union adds that the Agency's claim that the

[1] 61 D.C. Reg. 1561, Slip Op. No. 1450 at p. 3, 3 n.2, PERB Case No. 14-U-03 (2014).

Award is contrary to law because the arbitrator neglected to impose the maximum penalty is not supported by law and is inconsistent with the Board's precedent.

IV. Discussion

A. Service

The Union misrepresents *AFSCME District Council 20 and Local 2091 v. D.C. Department of Public Works*[2] as *requiring* service of any initial pleading to be by U.S. Mail. In contrast, the case twice states that the Board *permits* service of an initial pleading by U.S. Mail[3] and makes clear that service by mail is only one of the alternative methods of service.[4] Service by e-mail is another permissible alternative method of service. *See NAGE, Local R3-07 v. D.C. Office of Unified Commc'ns*, 60 D.C. Reg. 12123, Slip Op. No. 1409, PERB Case No. 12-U-37 (2013).

The Union does not deny that it was served by e-mail. Accordingly, there is no basis upon which to conclude that service of the Request was insufficient.

B. Jurisdiction of the Arbitrator

The Agency and the Union disagree on whether the arbitrator found that the Agency proved that Goodwin made a sexual advance. The Agency contends that the arbitrator found that Goodwin made a sexual advance but found him not guilty of offending JS, which was not part of the charge. The Union contends that the arbitrator found that the Agency did not prove a sexual advance.[5]

The Union's contention is not supported by what the Arbitrator wrote. Each time the Arbitrator stated her finding on what the Agency failed to prove, she stated the finding with regard to proof of cause *for termination.*

> The remaining question is whether the Agency has also met its burden in establishing that what occurred at the Grievant's home

[2] *Id.*
[3] *Id.* at 3, 3 n.2.
[4] *Id.* at 3 n.2. ("[T]he Board permits alternative methods of service of the initial pleading only, including via U.S. Mail.")
[5] The Union points out that the Request uses the phrase sexual advance or proposition whereas the charge used the phrase sexual advance. However, it was Counsel for the Union who introduced the word proposition into the discussion. In cross-examining JS, Counsel for the Union asked, "Now you testified that Mr. Goodwin took you to his house and propositioned you . . . ?" (Tr. 71.) JS answered yes. (Tr. 72.) The Agency cites this exchange as evidence that there was a proposition. (Request 15.) The Union argues that the Agency's use of advance and proposition interchangeably in its Request is just word play. (Opp'n 6.) If, as seems to be the case, the Agency is using the terms interchangeably, it is using the terms as if they have the same meaning and not as if a proposition were easier to prove.

> provided cause for *terminating* his employment. I conclude that the Agency has not met its burden.

(Award 14) (emphasis added.)

> But, even accepting the entire account of the incident by JS, whom I have credited, it does not provide sufficient support for the Agency's decision *to terminate* the Grievant's employment for making "unwanted sexual advances." Accordingly, I find that the Agency did not meet its burden of establishing cause for the *termination* and thereby violated Article 7 of the parties' collective bargaining agreement.

(Award 15) (emphasis added.) The Arbitrator credited JS's testimony regarding the conduct alleged including Goodwin's ultimate question to JS.[6]

The Agency's interpretation of the Award is also incorrect. The arbitrator did not add an element to the charge, as the Agency argues, but rather found that the charge, though proven, was not cause for termination. That determination was within the arbitrator's discretion. A dispute over the weight and significance of evidence leading an arbitrator to conclude that a termination was not for cause does not state a statutory basis for review. *Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm.,* 61 D.C. Reg. 7380, Slip Op. No. 1473 at p. 5, PERB Case No. 14-A-05 (2014). The arbitrator moved on to the charge of failing to maintain a high level of ethical conduct. The arbitrator found that charge to be proven but found that the penalty imposed was excessive. The arbitrator determined that the appropriate penalty for the ethical misconduct was a thirty-day suspension. Determining the appropriate penalty for that misconduct was within her authority. *Id.*

In making her determinations regarding the two charges, the arbitrator was applying the collective bargaining agreement's requirement that discipline shall be imposed for cause. The Award must be upheld because it was arguably construing or applying that requirement of the collective bargaining agreement. *See D.C. Hous. Auth. v. AFGE (on behalf of Hendrix-Smith) Local* 2725,60 D.C. Reg. 13706, Slip Op. No. 1415 at p. 5, PERB Case No. 13-A-07 (2013). As has often been noted in the Board's decisions, "[I]n most cases, it will suffice to enforce the award that the arbitrator appeared to be engaged in interpretation, and if there is doubt we will presume that the arbitrator was doing just that. . . This view of the 'arguably construing' inquiry no doubt will permit only the most egregious awards to be vacated. But it is a view that respects the parties' decision to hire their own judge to resolve their disputes." *Mich. Family Resources, Inc. v. Serv. Employees Int'l Union, Local 517M,* 475 F.3d 746, 753 (2007), *quoted in F.O.P./Dep't of Corrs. Labor Comm. v. D.C. Dep't of Corrs.*, 59 D.C. Reg. 9798, Slip Op. No.

[6] "This is not to say that the question ascribed to the Grievant was acceptable conduct by an OYE staff member toward a client of that Agency—it most certainly was not." (Award 15.)

1271 at p. 7, PERB Case No. 10-A-20 (2012), and *D.C. Fire & Emergency Med. Servs. v. AFGE Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258 at 4, PERB Case No. 10-A-09 (2012).

C. Law and Public Policy

The Agency cites its governing law, title IV, chapter 13 of the D.C. Official Code, and its policy manual as standing for the policy that the Agency "and its employees are obligated to protect abused and neglected youth and children from further harm and to provide them with services and treatment to promote their health growth and development." (Award 16.) The cited chapter of the D.C. Official Code sets forth the functions and purposes of the Agency. These include

> Encouraging the reporting of child abuse and neglect; . . .
>
> Safeguarding the rights and protecting the welfare of children whose parents, guardians, or custodians are unable to do so; . . .
>
> Ensuring the protection of children who have been abused or neglected from further experiences and conditions detrimental to their healthy growth and development; . . .

D.C. Official Code § 4-1303.01a(b)(2), (6), (8). In addition, the law requires the Agency to "[d]evelop and implement, as soon as possible, standards that provide for quality services that protect the safety and health of children. . . ." D.C. Official Code § 4-1303.03(b)(8).

While these policies are important, nothing in the foregoing statutes expressly or specifically makes reducing the penalty imposed in this case or failing to impose the maximum penalty contrary to law and public policy. *Cf. Univ. of the Dist. of Columbia and AFSCME, Local 2087*, 46 D.C. Reg. 8121, Slip Op. No. 481 at 4 n.3, PERB Case No. 96-A-06 (1996). Accordingly, the Award is sustained.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By vote of Board Chairperson Charles Murphy and Members Donald Wasserman, Ann Hoffman, and Yvonne Dixon. Member Keith Washington dissents.

Washington, D.C.
January 15, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order was served upon the following parties via File and ServeXpress on this the 16th day of January 2015.

Andrew Gerst
Office of Labor Relations and
Collective Bargaining
441 4th Street, NW, Suite 820N
Washington, D.C. 20001

Brenda C. Zwack, Esq.
Murphy Anderson PLLC
1701K Street NW, Suite 210
Washington, D.C. 20006

/s/ Sheryl V. Harrington
Sheryl V. Harrington
Secretary

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

FORMAL CASE NO. 1096, IN THE MATTER OF THE INVESTIGATION IN TO THE REGULATORY TREATMENT OF PROVIDERS OF ELECTRIC VEHICLE CHARGING STATIONS AND RELATED SERVICES,

1. The Public Service Commission of the District of Columbia ("Commission") is extremely pleased with the growth in the number of electric vehicle ("EV") charging stations in the District of Columbia ("District"). Currently, there are at least 57 public EV charging stations in the District, as compared to only 15 in May 2012.[1]

2. Under the Energy Innovation and Savings Amendment Act of 2013, if EV charging station owners and operators are not selling electricity, there is no need to obtain an electric supplier license from the Commission. However, if EV charging station owners and operators are selling electricity, *i.e.*, setting a price to charge EV owners based on the actual amount or units of electricity that is transferred to the EV during a charging session, the EV charging station owner or operator needs to obtain an electric supplier license from the Commission.

3. The Commission's Office of Compliance and Enforcement Staff make periodic site visits to monitor the arrangements at EV charging stations in the District. After the last round of site visits, the Commission determined that a public notice was necessary to remind all owners or operators of EV charging stations of the provisions of the law in the District.

4. Persons with any questions may contact the Commission's Office of Compliance and Enforcement by telephone at: (202) 626-9190.

[1] *Compare* U.S. Department of Energy, Alternative Fuels & Advanced Vehicle Data Center, District of Columbia, http://www.afdc.energy.gov/locator/stations/ (last visited February 24, 2015) with *Formal Case No. 1096, In the Matter of the Investigation in to the Regulatory Treatment of Providers of Electric Vehicle Charging Stations and Related Services*, Notice of Inquiry ¶ 2, published May 25, 2012; 59 D.C. Reg. 21, p. 5797 (2012).

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

GT97-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND ITS RATE SCHEDULE NO. 6,

GT06-1, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND GENERAL SERVICE PROVISION NO. 23,

and

FORMAL CASE NO. 1027, IN THE MATTER OF THE EMERGENCY PETITION OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR AN EXPEDITED INVESTIGATION OF THE DISTRIBUTION SYSTEM OF WASHINGTON GAS LIGHT COMPANY,

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to its authority under D.C. Official Code § 34-802 (2001), and D.C. Official Code § 34-2003 (2014 Supp.) hereby gives notice of its final tariff action to reject the Application of Washington Gas Light Company ("WGL")[1] and to approve the Amended Application of WGL[2] in the above-captioned matter. The Commission issued a Notice of Proposed Tariff ("NOPT"), which was published in the *D.C. Register* on October 31, 2014[3] and an Amended Notice of Proposed Tariff ("Amended NOPT"), which was published in the *D.C. Register* on January 16, 2015,[4] giving notice of the Commission's intent to act on WGL's proposed tariff amendments. No comments were filed in response to either the NOPT or the Amended NOPT.

2. The Application and Amended Application request authority to amend the following tariff page:

GENERAL SERVICE PROVISIONS NO. 26, PLANT RECOVERY ADJUSTMENT
Third Revised Page 61

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1 *See Formal Case No. 1027, In the Matter of the Emergency Petition of the Office of the People's Counsel for an Expedited Investigation of the Distribution System of Washington Gas Light Company, GT97-3, GT06-1* ("*Formal Case No. 1027, GT97-3, GT06-1*"), Letter to Brenda Westbrook-Sedgwick, Commission Secretary, from Cathy Thurston-Seignious, Supervisor, Administrative and Associate General Counsel, Washington Gas Light Company ("Application"), filed October 1, 2014.

2 *Formal Case No. 1027, GT97-3, GT06-1*"), "), Letter to Brinda Westbrook-Sedgwick, Commission Secretary, from Cathy Thurston-Seignious, Supervisor, Administrative and Associate General Counsel, Washington Gas Light Company ("Amended Application"), filed December 19, 2014.

3 61 *D.C. Reg.* 11623 (October 31, 2014).

4 62 *D.C. Reg.* 847 (January 16, 2015).

3. The Commission, at its regularly scheduled open meeting held on March 11, 2015, took final action approving WGL's proposed tariff amendment contained in its Amended Application and rejecting the tariff language included in the Application because the proposed tariff revisions in the Amended Application were more consistent with the directives of Order No. 17615 than the proposed tariff revisions in the Application. The amendments contained in the Amended Application will become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMEND FOR APPOINTMENTS OF NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after April 15, 2015.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on March 20, 2015. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: April 15, 2015**
Recommended for appointment as a DC Notaries Public **Page 2**

Ahmed Ould Sneyba	Mohamed Saleck	Wells Fargo Bank 3325 14th Street, NW	20010
Allen	Chauntell	DVA Federal Credit Union 810 Vermont Avenue, NW, Room 831	20420
Allison	Tanya Lynn	Sandler, Travis & Rosenberg, P.A. 1300 Pennsylvania Avenue, NE, Suite 400	20004
Archer	Ryan	Development Transformations, Inc. 1367 Connecticut Avenue, NW, Suite 210	20036
Armus	Molly	Williamson Law & Policy 1800 K Street, NW, Suite 714	20006
Aslam	Muhammad	Carliner and Remes, PC 1150 Connecticut Avenue, NW, Suite 610	20036
Ayres	Pamela J.	National Museum of Women in the Arts 1250 New York Avenue, NW	20005
Bailey	Rashunda	Consumer Financial Protection Bureau 1625 I Street, NW	20006
Bethea	Princess Teresa	Metropolitan Memorial United Methodist Church 3401 Nebraska Avenue, NW	20016
Billingsley	Michael E.	AmeriSphere Multifamily Finance, LLC 601 Thirteenth Street, NW, Suite 500 North	20005
Briggs-Snodgrass	Robert	Same Day Process Inc. 1413 K Street, NW	20005
Brooks	David Thomas	Akin Gump Strauss Hauer & Feld LLP 1333 New Hampshire Avenue, NW	20036
Caruth	Leanora Cynthia	Government of the District of Columbia, Office of the Chief Financial Officer, Office of Tax and Revenue 1101 4th Street, SW	20024

D.C. Office of the Secretary **Effective: April 15, 2015**
Recommended for appointment as a DC Notaries Public **Page 3**

Chase	Monique	Self 3021 South Dakota Avenue, NE	20018
Claybaugh	Daniel	Manas Development Group 200 Maryland Avenue, NE, Suite 101	20002
Cruzado	Ora L.	Bates White 1300 I Street, NW, Suite 600	20005
Darrah	Jeffrey	District Title 1150 Connecticut Avenue, NW, Suite 210	20036
Derr	Stephanie	Georgetown University 3700 O Street, NW, New South Building, Room B04	20057
Ferguson	Brian B.	DC Office of Human Rights 441 4th Street, NW, 570 North	20001
Flake	Hannah	Land Trust Alliance 1660 L Street, NW, Suite 1100	20036
Foster	Sharon	Anthem Inc. 1001 Pennsylvania Avenue, NW	20004
Frazier	Traci	Miles & Stockbridge, PC 1667 K Street, NW, Suite 800	20006
Friend	Shirley	Birch Horton Bittner & Cherot, P.C. 1156 15th Street, NW, Suite 1010	20005
Gammon	Teresa	Neighborworks America 1718 P Street, NW, Apartment 516	20036
Garrett	Kim R.	Envision Realty 1606 Raleigh Place, SE	20032
Gill	Amy R.	American Farm Bureau Federation 600 Maryland Avenue, SW, Suite 1000W	20024
Han	Steven K.	Citibank 2221 I Street, NW	20037

D.C. Office of the Secretary **Effective: April 15, 2015**
Recommended for appointment as a DC Notaries Public **Page 4**

Harris	Essence T.	Agriculture Federal Credit Union 1400 Independence Avenue, SW, South Building, Room SM2	20250
Heyliger	Victoria	Heyliger Law Officers PLLC 1001 G Street, NW, Suite 800	20001
Hubbard	April	Forest City Washington 301 Water Street, SE, Suite 201	20003
Johnson	Julia	Self (Dual) 1252 First Street, SW	20024
Johnson	Michelle Dee	American Continental Group, Inc. 900 19th Street, NW, Suite 800	20006
Jones	Damara Renee	Atlantic Trust Company 1201 F Street, NW, Suite 900	20004
Jowers	Courtney Blair	Adams and Reese LLP 20 F Street, NW, Suite 500	20001
Kaniewski	Mary May	American Federation of Teachers 555 New Jersey Avenue, NW	20001
Kim	Christine Hyeweon	Altegrity, Inc. 1707 L Street, NW, Suite 700	20036
Kinealy, Jr	David Thomas	Law Office of David Thomas Kinealy, Jr 2141 P Street, NW, Suite 103	20037
Kinley	Sook J.	Henley Park Hotel 929 Massachusetts Avenue, NW	20001
Lehner	Sharon	Davis & Harman, LLP 1455 Pennsylvania Avenue, NW, Suite 1200	20004
Michaelsen	Carol L.	K&L Gates 1601 K Street, NW	20006
Minor	Beverley	Administrative Office of the U.S. Courts 1 Columbus Circle, NE	20544

D.C. Office of the Secretary **Effective: April 15, 2015**
Recommended for appointment as a DC Notaries Public **Page 5**

Moton	Makysha J.	Federal Communications Commission 445 12th Street, SW, Room 5-C867	20554
Parker	Katherine	Blumenthal & Cordone, PLLC 7325 Georgia Avenue, NW	20012
Peters	Sharon T.	The National Capital Bank 316 Pennsylvania Avenue, SE	20003
Pitteringer	Alexander	Quinn Evans Architects 2121 Ward Place, NW, 4th Floor	20037
Queen	A.G.	Southern Baptist Church 134 L Street, NW	20001
Randall	Gary Antonio	Steptoe LLP 1330 Connecticut Avenue, NW	20036
Ricks	Tanya Lynn	Government of the District of Columbia, Taxicab Commission 2235 Shannon Place, SE, Suite 3001	20020
Seyoum	Hagos	Self 907 T Street, NW, Apartment 1	20001
Snow	Aimee L.	US Court of Federal Claims 717 Madison Place, NW	20439
Steiner	Frances	Washington DC Jewish Community Center 1529 16th Street, NW	20036
Sullivan	Gail	Self 817 12th Street, NE	20002
Terrell	Anthonio	Washington Door and Hardware LLC 5764 2nd Street, NE	20011
Trofimova	Victoria D.	Eurasia Foundation 1350 Connecticut Avenue, NW, Suite 1000	20036
Troutman	Diane L.	EOP Group, Inc. 819 7th Street, NW, 4th Floor	20001

D.C. Office of the Secretary **Effective: April 15, 2015**
Recommended for appointment as a DC Notaries Public **Page 6**

Tutt	Shawnieda	Bank of America 888 17th Street, NW	20006
Vans	Crist	AmeriSphere Multifamily Finance, LLC 601 Thirteenth Street, NW, Suite 500 North	20005
Walker	Yolanda	Marshfield Associates 21 Dupont Circle, NW, Suite 800	20036
Watkins	Susan E.	Franck & Lohsen, Architects, Inc 2233 Wisconsin Avenue, NW, Suite 212	20007
Watters	Judy C.	Altegrity, Inc. 1707 L Street, NW, Suite 700	20036
White	Emani Claudette	Wendy H. Schwartz and Associates, PLLC 818 Connecticut Avenue, NW, Suite 315	20006

EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF COMMUNITY AFFAIRS
SERVE DC – THE MAYOR'S OFFICE ON VOLUNTEERISM

Serve DC – The Mayor's Office on Volunteerism announces the availability of AmeriCorps State Formula funding for Fiscal Year 2015 – 2016 to eligible organizations. Subject to the availability of appropriations for Fiscal Year 2015 (FY2015) and release of Application Instructions by the Corporation for National and Community Service (CNCS), new applicants with high-quality proposals will compete nationally with other State and National programs for Formula funds made available through Serve DC and CNCS. The total amount of an applicant's grant request must not exceed $13,730 per Member Service Year. Applicants must request no less than five (5) Member Service Years and $68,650. For Professional Corps, the applicant's grant request must not exceed $1,000 per Member Service Year and must request no less than five (5) Member Service Years and $5,000.

Criteria for Eligible Applicants: Eligible applicants are local nonprofit organizations and/or state and local units of government. Programs applying to Serve DC for funding *must* operate their program only within the District of Columbia. Organizations that have been convicted of a Federal crime are disqualified from receiving funds. An organization described in Section 501(c)(4) of the Internal Revenue Code, 26 U.S.C. 501(c)(4), that engages in lobbying activities is not eligible to apply, serve as a host site for members, or act in any type of supervisory role in the program. **Individuals are not eligible to apply.**

New Applicants: CNCS and Serve DC encourage organizations that have never received funding from CNCS or AmeriCorps to apply for the grants described in this Notice. New organizations should submit applications commensurate with the community need with the understanding that the general practice is to award no more than 50 member slots for new grantees. All eligible applicants must meet all of the applicable requirements contained in the Request for Applications (RFA). The RFA will be available in early April 2015 on Serve DC's website at www.serve.dc.gov or in person at Serve DC's office.

The deadline for submission for concept papers (for new applicants) is April 30, 2015, by 5:00 pm. For continuation applicants, the deadline for application submission in egrants is May 11th, 2015. Continuation applications must be entered in to the CNCS eGrants online system and all required hard-copy documents must be submitted to Serve DC. Late applications will not be accepted. An application is considered late at 5:01 p.m. *Additionally, all applicants are **required** to attend one of the following technical assistance (TA) sessions:*

April 6, 2015 from 2:00-2:30 p.m.
Conference call
Continuation applicants only

April 13, 2015 from 5:30-6:30 p.m.
Frank D. Reeves Municipal Center, 2000 14th Street, NW, Suite 101, Washington, DC 20009
New applicants only

April 20, 2015 from 2:00-3:00 p.m.
Conference call
New applicants only

The in-person session on April 13th will automatically close at 5:45pm. No exceptions will be made; Conference call information will only be available to those who RSVP.

For additional information or to RSVP for one of the technical assistance sessions, please contact by telephone or email:

Yolanda M. Brown
Serve DC – The Mayor's Office on Volunteerism
Frank D. Reeves Municipal Center
2000 14th Street, NW, Suite 101
Washington, DC 20009
yolandam.brown@dc.gov
(202) 727-7943

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18861-A of Justin and Margaret Kitsch, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy (§ 403) and rear yard (§ 404) requirements, to allow a rear deck addition to a row dwelling in the R-4 District at premises 1330 5th Street, N.W. (Square 480, Lot 842).[1]

HEARING DATES: November 18, 2014 and January 13, 2015
DECISION DATE: January 13, 2015

CORRECTED SUMMARY ORDER [2]

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 4, 8, 18, and 36.)

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") 6E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. The ANC submitted a report of support for the application. In its letter the ANC indicated that at a regularly scheduled, duly noticed public meeting on November 6, 2014, with a quorum present, the ANC voted 6-0-0 to support the application. (Exhibit 32.)

The Office of Planning ("OP") submitted two reports. In its original report dated November 11, 2014, OP stated that it could not support the variance relief that was initially requested. (Exhibit 30.) In its supplemental report dated December 2, 2014, OP changed its recommendation and indicated that it supported the amended application for special exception relief. (Exhibit 39.) The District Department of Transportation ("DDOT") submitted a timely report of no objection to the application. (Exhibit 28.)

Three letters of support were filed by neighbors. (Exhibits 22-23, 27.)

The Board closed the record at the end of the hearing. As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to

[1] The Applicant amended the application by changing the request in relief from variances to special exception relief. The caption has been amended accordingly.

[2] The Applicant discovered after the issuance of the original order that the lot was incorrectly indicated in the case description. The Applicant contacted the Office of Zoning and requested a corrected order. Therefore, this order is being issued to correct the lot number from 843 to 842. No other changes have been made to the substance of the original order.

establish the case for a special exception under § 223, not meeting the lot occupancy (§ 403) and rear yard (§ 404) requirements, to allow a rear deck addition to a row dwelling in the R-4 District. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, 403, and 404, and 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 property in accordance with 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 IS HEREBY GRANTED SUBJECT TO THE APPROVED REVISED PLANS IN THE RECORD AT EXHIBIT 35.**

VOTE: 4-0-1 (Lloyd J. Jordan, S. Kathryn Allen, Marnique Y. Heath, and Anthony J. Hood to APPROVE; Jeffrey L. Hinkle, not present or participating.)

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: March 10, 2015

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 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE.

AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18929 of Saint John's College High School, pursuant to 11 DCMR § 3104.1, for a special exception from the private school requirements under § 206.1, to construct a new walkway and additions to an academic building in the R-1-A District at premises 2607 Military Road, N.W. (Square 2308, Lots 804-807).

HEARING DATE: March 3, 2015
DECISION DATE: March 3, 2015

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 ("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") 3/4G and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3/4G, which is automatically a party to this application. The ANC submitted a report in support of the application, in which the ANC indicated that at a properly noticed and duly scheduled public meeting on January 26, 2015, at which a quorum was present, the ANC voted unanimously (5:0) to support the application. (Exhibit 27.) The site is also subject to the Shipstead-Luce Act due to its location adjacent to Rock Creek Park, and was therefore reviewed by the U.S. Commission of Fine Arts ("CFA"). The CFA submitted a letter in support of the application. (Exhibit 21.) No party in opposition appeared at the public hearing.

The Office of Planning ("OP") submitted a timely report on February 23, 2015, recommending approval of the application (Exhibit 32) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report on February 20, 2015, indicating that it had no objection to the application. (Exhibit 31.)

The Advisory Neighborhood Commissioner for Single Member District 3/4G02 submitted a letter in support of the application. (Exhibit 15.)

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 for a special exception under § 206.1, which authorizes the Board to allow a private school within the R-1-A District provided that the standards set forth in §§ 206.2 and 206.3 are met. 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.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 206.1, and 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 property in accordance with 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 is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS IN THE RECORD AT EXHIBIT 30B.**

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE; Marnique Y. Heath not present, not voting, and 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: March 12, 2015

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 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL 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

BZA APPLICATION NO. 18929
PAGE NO. 3

BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18930 of Wallis McClain, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the open and closed court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, to expand an existing garage and construct a two-story rear addition to an existing single-family dwelling in the R-4 District at premises 1102 Park Street, N.E. (Square 987, Lot 17).

HEARING DATE: March 3, 2015
DECISION DATE: March 3, 2015

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 (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") 6A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on February 12, 2015, at which a quorum was in attendance, ANC 6A voted 8-0-0 to support the application.[1] (Exhibit 31.) The Office of Planning ("OP") submitted a timely report and testified at the hearing in support of the application. (Exhibit 28.) The District Department of Transportation ("DDOT") filed a report expressing no objection to the approval of the application. (Exhibit 29.) Four letters of support from adjacent neighbors were submitted in support of the application. (Exhibits 22-25.) A letter of support from the Capitol Hill Restoration Society ("CHRS") was submitted by Gary M. Peterson, Chair of CHRS's Zoning Committee. (Exhibit 26.)

As directed by 11 DCMR § 3119.2, the Board has 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 under §§ 223, 403.2, 406.1, and 2001.3. No parties

[1] The ANC stated their support only on the condition that the accessory building not exceed 16.5 feet in height, as measured from the alley, and that the deck to be constructed as part of the accessory building be situated behind (at the same level as) the storage area proposed as the second floor of the accessory building so that the deck does not directly overlook the alley. (Exhibit 31.) The Applicant revised the plans to meet these requests. (Exhibit 27.)

appeared at the public hearing in opposition to this 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 and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 403.2, 406.1, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations an Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in the accordance with 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. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 27.**

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle and Michael G. Turnbull to APPROVE, Marnique Y. Heath, not participating, not voting; one 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: March 11, 2015

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 TWOYEAR 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 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL 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 OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BYTHE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18937 of Seven Brick Road, LLC, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, the rear yard setback requirements under § 404.1, and the nonconforming structure requirements under § 2001.3, to allow the conversion of a church into a flat in the R-4 District at premises 1401 South Carolina Avenue, S.E. (Square 1060, Lot 100).[1]

HEARING DATE: March 3, 2015
DECISION DATE: March 3, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 3, 23, and 33.)

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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report in support of the application, dated February 12, 2015, indicating that at a duly noticed and scheduled public meeting on February 10, 2015, at which a quorum was in attendance, the ANC voted unanimously (10-0-0) in support of the application. (Exhibits 28 and 34.)

OP submitted a timely report on February 20, 2015, recommending approval of variances from §§ 403.2, 404.1, and 2001.3 to convert and expand a church building into a flat (Exhibit 29) and testified in support of the application, as amended, at the hearing. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 30.)

A letter in support of the application was submitted to the record by the Capitol Hill Restoration Society. (Exhibit 27.) Two letters in opposition from neighbors were submitted to the record. (Exhibits 31-32, and 35.) Two neighbors testified in opposition at the hearing.

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 §

[1] The Applicant amended the application to add variances from the rear yard setback requirements under § 404.1, and the nonconforming structure requirements under § 2001.3 to the original application. (Exhibits 23 and 33.)

3103.2 for area variances from 11 DCMR §§ 403.2, 404.1, and 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 ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR §§ 403.2, 404.1, and 2001.3, the Applicant has met the burden of proof 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 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 the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 21.**

VOTE: **3-0-2** (Lloyd L. Jordan, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE; Marnique Y. Heath, not participating; 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: March 11, 2015

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 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
NOTICE OF FILING
Z.C. Case No. 15-04
(Comstock Sixth Street, LLC – Consolidated PUD and Related Map Amendment @ Square 3788, Lot 814)
March 9, 2015

THIS CASE IS OF INTEREST TO ANC 5A

On March 4, 2015, the Office of Zoning received an application from Comstock Sixth Street, LLC (the "Applicant") for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lot 814 in Square 3788 in Northeast Washington, D.C. (Ward 5), which is located on a site that is bounded by the Emerson Park townhouse development (north), Capital Area Food Bank (west), 6th Place, N.E. (south), and 7th Street, N.E. (east). The property is currently zoned FT/C-M-1 and R-2. The Applicant proposes a PUD-related map amendment to rezone the property, for the purposes of this project, to R-4.

The Applicant proposes to construct 40 single-family row dwellings, each containing three bedrooms and a one-car garage. The overall density will be approximately 0.49 floor area ratio ("FAR"); the lot occupancy will be 18%; and the maximum height will be 40 feet (three stories).

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.