

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council schedules a public hearing on Bill 21-352, Advancing Year Round Access to Shelter Policy and Prevention of Homelessness Amendment Act of 2015
- D.C. Council schedules a public hearing on Bill 21-353, Local Jobs and Tax Incentive Act of 2015
- Office of the Chief Financial Officer releases Tax Year 2016 statutory and special real property tax rates
- Department of Health Care Finance announces intent to provide supplemental payments for outpatient hospital services
- Department of Housing and Community Development announces funding availability for small business technical assistance
- Department of Human Resources changes the definition of dependent child from age twenty-six (26) to twenty-one (21)
- Zoning Commission establishes rules for converting non-residential buildings to apartment houses
- Public Employee Relations Board updates the board's operational regulations

# DISTRICT OF COLUMBIA REGISTER

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MURIEL E. BOWSER  
MAYOR

VICTOR L. REID, ESQ.  
ADMINISTRATOR

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**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](http://www.dccouncil.us).

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**COUNCIL OF THE DISTRICT OF COLUMBIA****PROPOSED LEGISLATION****BILLS**

- |         |  |
|---------|--|
| B21-334 | Procurement Integrity, Transparency, and Accountability Amendment Act of 2015<br><br>Intro. 9-16-15 by Chairman Mendelson and Councilmembers Orange, Grosso, Cheh, Bonds, Silverman, and Allen and referred to the Committee of the Whole with comments from the Committee on Transportation and the Environment |
| B21-335 | Bicycle and Pedestrian Safety Act of 2015<br><br>Intro. 9-16-15 by Councilmember Cheh and referred to the Committee on Transportation and the Environment with comments from the Committee on Judiciary  |
| B21-336 | Closing of Franklin Street, N.W., Evarts Street, N.W., and Douglas Street, N.W. in Square 3128, S.O. 13-09432, Act of 2015<br><br>Intro. 9-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole  |
| B21-337 | D.C. Fiscal Year Designation Amendment Act of 2015<br><br>Intro. 9-16-15 by Councilmember Grosso and referred to the Committee of the Whole with comments from the Committee on Finance and Revenue  |

- B21-340 Athletic Field Naming and Sponsorship Amendment Act of 2015  
Intro. 9-16-15 by Chairman Mendelson and Councilmembers Evans, Allen, and Cheh and referred to the Committee of the Whole with comments from the Committee on Transportation and the Environment
- 
- B21-341 Carry's Way Designation Act of 2015  
Intro. 9-16-15 by Councilmember Allen and referred to the Committee of the Whole
- 
- B21-342 Guethler's Court Designation Act of 2015  
Intro. 9-16-15 by Councilmember Allen and referred to the Committee of the Whole
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- B21-345 Home Security Camera Tax Credit Amendment Act of 2015  
Intro. 9-16-15 by Councilmember Allen and referred to the Committee on Finance and Revenue with comments from the Committee on Judiciary
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- B21-350 Substitute Teacher Leave Clarification Amendment Act of 2015  
Intro. 9-17-15 by Councilmember Grosso and referred to the Committee on Education with comments from the Committee on Business, Consumer, and Regulatory Affairs
- 
- B21-351 Body-Worn Camera Program Regulations Amendment Act of 2015  
Intro. 9-18-15 by Councilmember McDuffie and referred to the Committee on Judiciary
- 
- B21-352 Advancing Year Round Access to Shelter Policy and Prevention of Homelessness Amendment Act of 2015  
Intro. 9-18-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole with comments from the Committee on Health and Human Services

B21-353 Local Jobs and Tax Incentive Act of 2015

Intro. 9-18-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue with comments from the Committee on Business, Consumer, and Regulatory Affairs

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### **PROPOSED RESOLUTIONS**

PR21-304 Reimbursable Details Subsidy Program Resolution of 2015

Intro. 9-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs with comments from the Committee on Judiciary

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PR21-305 Pesticides Information and Control Schedule of Fines Approval Resolution of 2015

Intro. 9-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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PR21-306 Control of Hazardous Air Pollutants Regulations Approval Resolution of 2015

Intro. 9-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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PR21-307 McMillan Townhomes Parcel, Commercial Parcel, and Multifamily Parcels Disposition Extension Approval Resolution of 2015

Intro. 9-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PR21-308 Collective Bargaining Agreement between the District of Columbia and Compensation Unit 13, District of Columbia Nurses Association Approval Resolution of 2015

Intro. 9-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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- PR21-309 ABRA Procedural Amendment Approval Resolution of 2015  
Intro. 9-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-316 8th & O Street, N.W. Surplus Declaration and Approval Resolution of 2015  
Intro. 9-17-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment
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- PR21-317 8th & O Street, N.W., Disposition Approval Resolution of 2015  
Intro. 9-17-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
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- PR21-318 Alcoholic Beverage Control Board Donovan W. Anderson, Esq. Confirmation Resolution of 2015  
Intro. 9-18-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-319 Alcoholic Beverage Control Board Montez Jacques Anderson Confirmation Resolution of 2015  
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- PR21-320 Commissioner of the Department of Insurance, Securities and Banking Stephen Taylor Confirmation Resolution of 2015  
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- PR21-321 Chief Risk Officer of the Office of Risk Management Jed Ross Confirmation Resolution of 2015  
Intro. 9-18-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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PR21-322 Director of the Department of Human Resources Ventris Gibson Confirmation Resolution of 2015

Intro. 9-18-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PR21-323 Director of the Department of General Services Christopher Weaver Confirmation Resolution of 2015

Intro. 9-18-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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PR21-324 Director of the Department of Forensic Sciences Jenifer Smith Confirmation Resolution of 2015

Intro. 9-18-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-325 Local Rent Supplement Program Contract No. 2014-LRSP-03 Approval Resolution of 2015

Intro. 9-17-15 by Retained by the Council with comments from the Committee on Housing and Community Development

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**Council of the District of Columbia  
Committee on Business, Consumer, and Regulatory Affairs,  
Notice of a Public Hearing**

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119 Washington, DC 20004

**Councilmember Vincent B. Orange, Sr., Chair  
Committee on Business, Consumer, and Regulatory Affairs**

**Announces a Public Hearing**

on

- **B21-196, the “Nightlife Regulation Amendment Act of 2015”**

**Monday, October 26, 2015, 10:00 A.M.  
John A. Wilson Building, Room 412  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004**

Councilmember Vincent B. Orange, Sr., announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs, on B21-196, the “Nightlife Regulation Amendment Act of 2015”. The public hearing is scheduled for Monday, October 26, 2015 at 10:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B21-196, the “Nightlife Regulation Amendment Act of 2015”, as introduced, would require establishments holding C/R, C/N, C/T and D/R, D/N, D/T liquor licenses to measure the noise levels coming from their establishments with a decibel meter approved by the Alcoholic Beverage Regulation Administration (“ABRA”) every day they are open from the hours of 9 p.m. to 4 a.m. in order to ensure that these establishments are conforming to the District’s noise restrictions. The bill will require establishments to report their actual noise readings to ABRA on a weekly basis. The Committee previously had a hearing on this measure on July 9, 2015.

After receiving feedback from residents and establishments alike, the Committee worked with ABRA and substantially revised B21-196. The purpose of this hearing is to get testimony on the revised version of B21-196. The modified version of B21-196, would establish a new plainly audible noise standard with specific measurement requirements for on-premises licensed retailers. An ABRA investigator would be able to verify a noise violation without entering a residence. The bill would provide noise protections for commercial areas; in addition, to preserving noise protections for residential areas. This revised bill would prohibit entertainment or the playing of recorded music on an unenclosed outdoor summer garden or sidewalk café after midnight during any day of the week.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at [fcaldwell@dccouncil.us](mailto:fcaldwell@dccouncil.us) and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Friday, October 23, 2015. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Monday, November 9, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

ABBREVIATED/REVISED

CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE

ANNOUNCES A PUBLIC HEARING

on

**Bill 21-218, Lots 804, 814, 818, 820, 822 in Square 1230 Eminent Domain  
Authorization Act of 2015;**

and

**Bill 21-254, Closing of a portion of Washington Avenue, Southwest, and portions of 5A and 5B  
ramps to I-295, and transfer of jurisdiction of the closed portions of Washington Avenue,  
Southwest, 5A and 5B ramps to I-295 and the transfer of jurisdiction of portions of Reservation  
729, S.O. 14-16582A and 14-16582B Act of 2015**

on

**Wednesday, September 30, 2015  
9:30 a.m., Room 120, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Bill 21-218, the "Lots 804, 814, 818, 820, 822 in Square 1230 Eminent Domain Authorization Act of 2015," and Bill 21-254, the "Closing of a portion of Washington Avenue, Southwest, and portions of 5A and 5B ramps to I-295, and transfer of jurisdiction of the closed portions of Washington Avenue, Southwest, 5A and 5B ramps to I-295 and the transfer of jurisdiction of portions of Reservation 729, S.O. 14-16582A and 14-16582B Act of 2015." The hearing will be held at 9:30 a.m. on Wednesday, September 30, 2015 in hearing room 120 of the John A. Wilson Building. **This notice has been revised pursuant to Council Rule 421(c) to reflect a change in the date of the hearing from September 23, 2015 to September 30, 2015.**

The stated purpose of **Bill 21-218** is to authorize the Mayor to assemble Lots 804, 814, 818, 820, and 822 in Square 1230, through the use of eminent domain. Together, these lots comprise what appears to be a public alley in Georgetown regularly used by the public and the city, as well as by adjacent landowners to access their property. Bill 21-218 would authorize the Mayor to take ownership of the parcels for alley purposes. The Committee will use this hearing to explore other options, such as to revoke the recent tax sales of these parcels, or to revise Bill 21-218 to protect the abutting landowners.

The stated purpose of **Bill 21-254** is to order the closing of a portion of Washington Avenue, Southwest, and portions of the 5A and 5B ramps to I-295, and to approve the transfer of jurisdiction of the closed portion of Washington Avenue, the 5A and 5B ramps to I-295, and the transfer of jurisdiction of portions of Reservation 729. Such action will enable the formal and final conveyance of the American Veterans Disabled for Life Memorial site to the National Park Service.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or email Cynthia LeFevre, Legislative Counsel, at clefevre@dccouncil.us, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of

business Monday, September 28, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on September 28, 2015, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of Bills 21-218 and 21-254 can be obtained through the Legislative Services Division of the Secretary of the Council or on <http://lims.dccouncil.us>.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on October 14, 2015.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC HEARING**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC HEARING**

on

**Bill 21-340, Athletic Field Naming and Sponsorship Amendment Act of 2015**

on

**Tuesday, October 13, 2015  
1:00 p.m., Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Bill 21-334, the “Athletic Field Naming and Sponsorship Amendment Act of 2015.” The hearing will be held at 10:30 a.m. on Tuesday, October 13, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of Bill 21-340 is to allow for the temporary designation (naming) of sponsored Department of Parks and Recreation facilities and to clarify that non-profit organizations may sponsor facilities. This legislation would allow for the designation of certain athletic fields in the District that are planned to be substantially improved by a local nonprofit organization. It is intended that the fields would be ceremonially named for prominent local athletes associated with the nonprofit. Such a program of financially supporting fields together with naming them for living individuals cannot without this legislation.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or email Greg Matlesky, Legislative Aide, at [gmatlesky@dccouncil.us](mailto:gmatlesky@dccouncil.us), and to provide your name, address, telephone number, and organizational affiliation and title (if any) by close of business Friday, October 9, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on October 9, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. A copy of Bill 21-340 can be obtained through the Legislative Services Division of the Secretary of the Council’s office or on <http://lims.dccouncil.us>.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, October 19, 2015.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC HEARING**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC HEARING**

on

**Bill 21-352, Advancing Year Round Access to Shelter Policy and Prevention of  
Homelessness Amendment Act of 2015**

on

**Tuesday, October 13, 2015  
2:00 p.m., Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of the Whole on Bill 21-352, the “Advancing Year Round Access to Shelter Policy and Prevention of Homelessness Amendment Act of 2015.” The hearing will be held at 2:00 p.m., or immediately following the preceding hearing, on Tuesday, October 13, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of Bill 21-352 is to authorize the temporary placement of families into emergency shelter in order to allow for a complete assessment of eligibility for shelter and supportive services (“interim eligibility”), to authorize the Mayor to provide shelter to families in private rooms developed to facilitate the eventual closure of DC General Family Shelter, and to create an expedited appeals process for families denied shelter following an interim eligibility placement.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or email Alana Intrieri, Special Counsel to the Chairman, at [aintrieri@dccouncil.us](mailto:aintrieri@dccouncil.us), and to provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Thursday, October 8, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Thursday, October 8, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to three minutes; less time will be allowed if there are a large number of witnesses; longer time may be allowed if arranged in advance. A copy of Bill 21-352 can be obtained through the Legislative Services Division of the Secretary of the Council’s office or on <http://lims.dccouncil.us>.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, October 19, 2015.

**Council of the District of Columbia  
Committee on Finance and Revenue  
Notice of Public Hearing**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

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**COUNCILMEMBER JACK EVANS, CHAIR  
COMMITTEE ON FINANCE AND REVENUE**

**ANNOUNCES A PUBLIC HEARING ON:**

**Bill 21-353 the “Local Jobs and Tax Incentive Act of 2015”**

**Wednesday, October 14 2015**

**10:00 a.m.**

**Room 500 - John A. Wilson Building**

**1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Wednesday, October 14, 2015 at 10:00 a.m. in the Council Chamber, Room 500, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 21-353, the “Local Jobs and Tax Incentive Act of 2015” would amend Chapter 46 of Title 47 of the District of Columbia Official Code to provide a 10-year abatement of real property taxes beginning in 2021, on real property leased by The Advisory Board Company, located on the property described as Square 0450, Lots 0025, 0039, 0041, 0800, 0825, 0830, 0831, and 0832. The annual real property tax abatement amount would be up to \$6 million per year, subject to meeting a target net increase in District resident employee count for that year.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or [sloy@dccouncil.us](mailto:sloy@dccouncil.us), and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, October 13, 2015. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to [sloy@dccouncil.us](mailto:sloy@dccouncil.us) or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC HEARING**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC HEARING**

on

**PR 21-302, Sense of the Council in Support of a ‘Statehood or Else’ Signature Campaign  
Resolution of 2015**

on

**Tuesday, October 27, 2015  
10:30 a.m., Council Chamber, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of the Whole on PR 21-302, the “Sense of the Council in Support of a ‘Statehood or Else’ Signature Campaign Resolution of 2015.” The hearing will be held at 10:30 a.m. on Tuesday, October 27, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR 21-302 is to declare the sense of the Council in support of developing a ‘Statehood or Else’ multi-media campaign with the express goals of producing a petition supporting District of Columbia statehood, collecting one million signatures for the petition, and delivering the one million signature petition to the White House, to all 535 members of Congress, as well as leadership at both the 2016 Republican and the 2016 Democratic National Convention..

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or email Evan Cash, Committee Director, at [ecash@dccouncil.us](mailto:ecash@dccouncil.us), and to provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, October 23, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Friday, October 23, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of PR 21-302 can be obtained through the Legislative Services Division of the Secretary of the Council’s office or on <http://lims.dccouncil.us>.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday, November 10, 2015.



**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON EDUCATION  
NOTICE OF OVERSIGHT ROUNDTABLE**  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**COUNCILMEMBER DAVID GROSSO  
COMMITTEE ON EDUCATION  
ANNOUNCES AN OVERSIGHT ROUNDTABLE**

on the

**Modernization of DC Public Library Facilities**

on

**Thursday, October 22, 2015  
10:00 a.m., Hearing Room 120, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Councilmember David Grosso announces the scheduling of a public oversight roundtable of the Committee on Education on the modernization of DC Public Library facilities. The roundtable will be held at 10:00 a.m. on Thursday, October 22, 2015 in Hearing Room 120 of the John A. Wilson Building.

The purpose of this hearing to discuss the progress of the modernizations to the DC Public Library System's facilities. This roundtable will also cover the plans for the upcoming project at the Martin Luther King Jr. Library facility.

Those who wish to testify are asked to telephone the Committee on Education, at (202) 724-8061, or email Jessica Giles, Committee Assistant, at [jgiles@dccouncil.us](mailto:jgiles@dccouncil.us), and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, October 20, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on October 14, 2015.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC ROUNDTABLE**  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC ROUNDTABLE**

on

**PR 21-308, Collective Bargaining Agreement between the District of Columbia and  
Compensation Unit 13, District of Columbia Nurses Association Approval Resolution of 2015**

on

**Wednesday, September 30, 2015  
10:30 a.m., Hearing Room 120, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public roundtable before the Committee of the Whole on PR 21-308, the “Collective Bargaining Agreement between the District of Columbia and Compensation Unit 13, District of Columbia Nurses Association Approval Resolution of 2015.” The hearing will be held at 10:30 a.m., or immediately following a preceding hearing, on Wednesday, September 30, 2015 in Hearing Room 120 of the John A. Wilson Building.

The stated purpose of PR 21-308 is to approve a compensation agreement between the District government’s Compensation Unit 13 and the District of Columbia Nurses Association. Specifically, the compensation agreement establishes compensation during Fiscal Years 2015-2017 for nurses employed at the Department of Health, Department of Youth Rehabilitation Services, Department on Disability Services, Department of Health Care Finance, Child and Family Services Agency, and the Office of the Chief Medical Examiner.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or to email Christina Setlow, Deputy Committee Director, at [csetlow@dccouncil.us](mailto:csetlow@dccouncil.us), and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Monday, September 28, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Monday, September 28, 2015, the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of PR 21-308 can be obtained on <http://lims.dccouncil.us>, or through the Legislative Services Division (Room 10) of the Secretary of the Council’s office.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on October 5, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
1350 Pennsylvania Avenue, NW, Suite 410  
Washington, DC 20004

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ABBREVIATED NOTICE OF INTENT TO CONSIDER LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to take action in less than fifteen days on PR 21-315, the “965 Florida Ave, N.W., Second Disposition Extension Approval Resolution of 2015” to allow for the proposed resolution to be considered at the October 6, 2015 meeting of the Council. The abbreviated notice is necessary to allow the Council to provide for an extension of time to dispose of the District land necessary to allow the development of 965 Florida Ave, N.W. to proceed before the Council’s original authorization, approved September 22, 2015, expires. Two nearly identical extension resolutions were introduced and withdrawn or deemed disapproved during this Council period because consideration of the underlying disposition was not approved until September 22, 2015.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**Notice of Reprogramming Requests**

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

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

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

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**Reprog. 21-101:** Request to reprogram \$39,000 of Fiscal Year 2015 Special Purpose Revenue funds budget authority from the District Department of Transportation (DDOT) to Pay-As-You-Go (Paygo) Capital Fund was filed in the Office of the Secretary on September 16, 2015. This reprogramming is needed to allow the Transportation Operations Administration without DDOT to make safety improvements around Ketcham Elementary School in accordance with an agreement between the District and the Children's National Health System.

RECEIVED: 14 day review begins September 17, 2015

**Reprog. 21-102:** Request to reprogram \$1,779,433 of Fiscal Year 2015 Special Purpose Revenue funds budget authority from the District Department of Transportation (DDOT) to the Pay-As-You-Go (Paygo) Capital Fund was filed in the Office of the Secretary on September 16, 2015. This reprogramming is needed to support the cost for design completion and construction review of the Capital Crossing project.

RECEIVED: 14 day review begins September 17, 2015

**Reprog. 21-103:** Request to reprogram \$1,179,830 of Local funds budget authority from the Office of the Chief Technology Officer's (OCTO) operating budget to the Pay-As-You-Go (Paygo) capital Fund agency was filed in the Office of the Secretary on September 16, 2015. This reprogramming ensures that OCTO is able to fund the DC STAT project to implement a web-based application that would drive performance improvement and efficiencies within the District government.

RECEIVED: 14 day review begins September 17, 2015

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: September 25, 2015
Petition Date: November 9, 2015
Hearing Date: November 23, 2015

License No.: ABRA-023984
Licensee: Mg Liquors, INC
Trade Name: Barrel House Liquors
License Class: Retailer's Class "A" License
Address: 1341 14th Street, N.W.
Contact: Mesfun Ghebrelul: 202-829-6718

WARD 2

ANC 2F

SMD 2F03

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 1:30pm, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests to transfer to new location at 1339 14th Street, N.W.

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

Sunday through Saturday 9 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: September 25, 2015
Petition Date: November 9, 2015
Hearing Date: November 23, 2015

License No.: ABRA-025796
Licensee: Chinatown Garden, Inc.
Trade Name: Chinatown Garden
License Class: Retailer's Class "C" Restaurant
Address: 618 H Street, N.W.
Contact: Hank Chao: (202) 737-8887

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Change of Hours of operation and alcoholic beverage sales and consumption.

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

Sunday through Thursday 10:20 am - 11 pm, Friday & Saturday 10:20 am - 12 am

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

Sunday through Thursday 10:20 am - 2 am, Friday & Saturday 10:20 am - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: September 25, 2015
Petition Date: November 9, 2015
Hearing Date: November 23, 2015

License No.: ABRA-074503
Licensee: Green Island Heaven and Hell, Inc.
Trade Name: Green Island Cafe/Heaven & Hell
License Class: Retailer's Class "C" Tavern
Address: 2327 18th Street, N.W.
Contact: Mehari Woldemariam: (202) 492-4888

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Summer Garden with seating for 40.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES

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

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

Sunday through Thursday 11 am - 1 am, Friday & Saturday 11 am - 2 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SUMMER GARDEN

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



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: September 25, 2015
Petition Date: November 9, 2015
Hearing Date: November 23, 2015
Protest Hearing Date: January 20, 2016

License No.: ABRA- 099818
Licensee: Silkari East, Inc.
Trade Name: Kouzina Authentic Greek Restaurant
License Class: Retailer’s Class “C” Restaurant
Address: 3234 Prospect Street, N.W.
Contact: Iraklis Karabassis: (202) 333-9792

WARD 2

ANC 2E

SMD 2E05

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 hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for January 20, 2016 at 4:30 pm.

NATURE OF OPERATION

A restaurant serving authentic Greek cuisine and dishes such as fish and meat with a Summer Garden. Total number of seats: 120. Total Occupancy Load: 140. Total number of Summer Garden seats: 50.

HOURS OF OPERATION FOR PREMISES AND SUMMER GARDEN

Sunday through Tuesday 11 am – 11 pm, Wednesday through Thursday 11 am- 12 am, Friday and Saturday 11 am- 1 am

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

Sunday through Tuesday 11 am – 10 pm, Wednesday through Thursday 11 am- 11 pm, Friday and Saturday 11 am- 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: September 25, 2015
Petition Date: November 9, 2015
Hearing Date: November 23, 2015
Protest Date: January 20, 2016

License No.: ABRA-100407
Licensee: Ms. Hana LLC
Trade Name: Mignot
License Class: Retailer's Class "C" Restaurant
Address: 4815 Georgia Avenue, N.W.
Contact: Asefa Rbeka/Akefa Sinarksh: 301-785-0728

WARD 4

ANC 4D

SMD 4D06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 1:30pm on January 20, 2016.

NATURE OF OPERATION

New restaurant. Total Occupancy Load of 60 and seating for 49. American and Ethiopian cuisine. Sandwiches and coffee.

HOURS OF OPERATION

Sunday through Saturday 7am - 11pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Saturday: 11am - 11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: September 25, 2015
Petition Date: November 9, 2015
Hearing Date: November 23, 2015

License No.: ABRA-098330
Licensee: Texas de Brazil (DC), Corp.
Trade Name: Texas de Brazil
License Class: Retailer's Class "C" Restaurant
Address: 455 Massachusetts Avenue, N.W.
Contact: Leila Izzedin: (202) 898-1413

WARD 6 ANC 6E SMD 6E05

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Change of Hours of operation and alcoholic beverage sales and consumption.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SIDEWALK CAFE

Sunday through Saturday 11 am – 11 pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES

Sunday through Saturday 11 am – 2 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SIDEWALK CAFE

Sunday through Saturday 11 am – 12 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: September 25, 2015  
Petition Date: November 9, 2015  
Hearing Date: November 23, 2015  
Protest Date: January 20, 2016

License No.: ABRA- 100436  
Licensee: Via Umbria, LLC  
Trade Name: Via Umbria  
License Class: Retailer’s Class “B” Grocery Store  
Address: 1525 Wisconsin Avenue, N.W.  
Contact: Stephen O’Brien: 202-625-7700

WARD 2

ANC 2E

SMD 2E03

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 hearing date at 10:00 am, 2000 14<sup>th</sup> Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for January 20, 2016 at 1:30 pm.

**NATURE OF OPERATION**

A retailer class ‘B’ full service grocery with a tasting permit.

**HOURS OF OPERATION**

Sunday through Saturday 6 am – 11:30 pm

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

Sunday through Saturday 7 am – 11:30 pm

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

Posting Date: September 25, 2015  
Petition Date: November 9, 2015  
Hearing Date: November 23, 2015  
Protest Date: January 20, 2016

License No.: ABRA-100387  
Licensee: Via Umbria, LLC  
Trade Name: Via Umbria  
License Class: Retailer's Class "C" Restaurant  
Address: 1525 Wisconsin Ave NW  
Contact: Stephen O'Brien: 202-625-7700

WARD 2

ANC 2E

SMD 2E03

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 hearing date at 10:00 am, 2000 14<sup>th</sup> Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for January 20, 2016 at 1:30 pm.

**NATURE OF OPERATION**

A café to be located within a full-service grocery store, selling food and alcoholic beverages for consumption on-premise. No nude performances. Seating for 36 patrons. Total Occupancy Load of 45.

**HOURS OF OPERATION**

Sunday through Saturday 6 am – 11:30 pm

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

Sunday through Saturday 8 am – 11:30 pm

## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PUBLIC HEARING  
AND  
NOTICE TO COMMENT IN WRITINGWeatherization Assistance Program  
Draft State Plan for Fiscal Year 2016: Revision 1**Hearing: Friday, October 30, 2015, 5:00 pm**

Department of Energy and Environment  
1200 First Street, NE, 5<sup>th</sup> Floor  
NoMa-Gallaudet University Metro Stop, Washington, DC

**Written Comments due by: October 30, 2015, 5:00 pm**

DOEE invites the public to present its feedback, input, and comments on the Weatherization Assistance Program (WAP) Draft State Plan 2016 – Revision 1. DOEE intends to review the revised components of the State Plan at the public hearing. Feedback may be expressed in person at the public hearing or in writing.

**Authority** for the program is provided by:

- Department of Energy and Environment Establishment Act of 2005, §§ 101 *et seq.*, effective February 15, 2006, as amended (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2008 Repl. & 2013 Supp.));
- District of Columbia Office of Energy Act of 1980, §§ 2 *et seq.*, effective March 4, 1981, as amended (D.C. Law 3-132; D.C. Official Code §§ 8-171.01 *et seq.* (2008 Repl. & 2013 Supp.));
- Clean and Affordable Energy Act of 2008, §§ 101 *et seq.*, effective Oct. 22, 2008, as amended (D.C. Law 17-250; D.C. Official Code §§ 8-1773.01, 8-1774.01 *et seq.* (2008 Repl. & 2013 Supp.)); and
- Mayor's Order 2006-61, dated June 14, 2006, and its delegations of authority.

**Comments may be provided in person or in writing.** A person need not attend the public hearing in order to submit comments on a State Plan.

**The public hearing** will take place at the above-stated time and place. The public hearing will continue until the presiding officer determines that everyone has had a meaningful opportunity to be heard. The presiding officer may limit the time in which to comment. A person who is unavailable to arrive at the opening time may reserve a time to speak, by contacting DOEE, as described below, in this notice. A person attending the public hearing should check in with the guard in the building lobby, and then go to DOEE's reception desk on the 5<sup>th</sup> floor.

**Written comments** may be submitted directly to DOEE by mail, hand delivery, or email. Instructions for submitting written comments appear below, in this notice. DOEE will accept written comments until Thursday, October 30, 2015 at 5:00 pm

**Obtaining text of the WAP Draft State Plan 2016 – Revision 1.** The document will be available at DOEE’s website and from DOEE’s offices, as described below in this notice. The document will become available on the DOEE web page, described below, in this notice, as follows:

The WAP Draft State Plan 2016 – Revision 1 on Friday, September 25, 2015.

A person may obtain a copy of the document by any of the following methods:

- Download, by visiting DOEE’s website, [doee.dc.gov](http://doee.dc.gov). Look for the title/section, “EnergySmart DC”, click on it, choose “Energy Assistance and Weatherization” and click on it. Scroll down to the section titled “Publications” to find the document’s listing. Click on it. Follow the link to the document in PDF format at the bottom of the page, which can be downloaded;
- Email a request to [WAPStatePlan.Year2016@dc.gov](mailto:WAPStatePlan.Year2016@dc.gov) with “Request copy of WAP Draft State Plan 2016 – Revision 1” in the subject line;
- In person by making an appointment to examine a copy in DOEE's offices at the 5th floor reception desk at the street address below (call DOEE reception at 202-535-2600 and mention the State Plan by name). DOEE is located one block west of the NOMA Red Line Station, at the corner of M Street and First Street NE; or
- Mail, by writing to DOEE at 1200 First Street, N.E., 5th Floor, Washington, DC 20002, “Attn: Request copy of WAP Draft State Plan 2016 – Revision 1” on the outside of the letter.

The State Plan contact: For additional information regarding the public hearing or written comments please send an email to [WAPStatePlan.Year2016@dc.gov](mailto:WAPStatePlan.Year2016@dc.gov).

DOEE appreciates the time, insight, and expertise that go into submitting comments. DOEE will carefully consider all of the comments that it receives.

### **Instructions for Submitting Written Comments**

Written comments should: (1) identify the commenter, and commenter’s organization, if any; and (2) be clearly marked “WAP Draft State Plan 2016 – Revision 1”, and be mailed or hand-delivered to DOEE Energy Administration, Energy Efficiency and Conservation Branch, 1200 First Street, N.E., 5<sup>th</sup> Floor Washington, DC 20002, or emailed to [WAPStatePlan.Year2016@dc.gov](mailto:WAPStatePlan.Year2016@dc.gov).

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
TUESDAY, DECEMBER 8, 2015  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

**TIME: 9:30 A.M.**

**WARD FOUR**

19112            **Application of 307 Taylor St NW LLC**, pursuant to 11 DCMR § 3104.1, for  
ANC-4C           a special exception from the conversion to apartment house requirements  
pursuant to § 336, to permit the conversion of a pre-1958 residential building into  
a three-unit apartment house in the R-4 District at premises 307 Taylor Street  
N.W. (Square 3312, Lot 44).

**WARD TWO**

19124            **Application of Eye Street JV LLC**, pursuant to 11 DCMR §§ 3103.2 and  
ANC-2C           3104.1, for a variance from the closed court width and area requirements under §  
776, and a special exception from the roof structure setback requirements under  
§§ 411 and 770.6, to allow the construction of a new mixed-use residential  
building in the DD/C-3-C District at premises located on Square 453 and Lots 40,  
50, 815-819, 821, 835, and a portion of a public alley to be closed.

**WARD ONE**

19127            **Application of 2800 Sherman, LLC**, pursuant to 11 DCMR §§ 3103.2 and  
ANC-1B           3104.1, for variances from the lot area requirements under § 401.3, the lot  
occupancy requirements under § 403.2, the rear yard requirements under § 404.1,  
the limitation on compact parking space requirements under 2115.2, and special  
exceptions from the height requirements under § 400.23, the lot width  
requirements under § 2604.3, and the accessory parking space location  
requirements under § 2116.5, to construct 11 flats in the R-4 District at premises  
2800 Sherman Avenue N.W. (Square 2857, Lot 818).

**WARD TWO**

19131            **Application of Delta Sigma Theta Sorority, Inc.**, pursuant to 11 DCMR §§  
ANC-2B           3103.2 and 3104.1, for a variance from the non-profit organization requirements  
under § 217.1(b), and a special exception from the non-profit organization  
requirements under § 217.1, to use an existing residential building for a non-  
profit office use in the D/DC/R-5-B District at premises 1711 New Hampshire  
Avenue N.W. (Square 154, Lot 26).



## BZA PUBLIC HEARING NOTICE

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WARD SIX

19135            **Application of Greg Dotson and Janine Benner**, pursuant to 11 DCMR §  
ANC-6B            3104.1, for a special exception under § 223, not meeting the lot area requirements  
                          under § 401, the open court requirements under § 403, and the non-conforming  
                          structure requirements under § 2001.3, to construct a rear addition to an existing  
                          flat in the R-4 District at premises 1118 E Street S.E. (Square 992, Lot 56).

WARD EIGHT

19139            **Application of Sayles Place LLC**, pursuant to 11 DCMR § 3104.1, for a  
ANC-8C            special exception from the new residential developments requirements under §  
                          353, to permit the construction of a new 58 unit apartment building in the R-5-A  
                          District at premises 2645-2651 Sayles Place S.E. (Square 5872, Lots 964, 966,  
                          968, 983, and 985).

WARD FIVE

19141            **Application of Janis C. Gross**, pursuant to 11 DCMR § 3104.1, for a special  
ANC-5A            exception from the carport requirements under § 2300.8, to permit a detached  
                          carport structure in the R-2 District at premises 4608 Sargent Road N.E. (Square  
                          3916, Lot 8).

**PLEASE NOTE:**

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

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

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

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and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

**LLOYD J. JORDAN, CHAIRMAN, MARNIQUE Y. HEATH, VICE CHAIRPERSON, JEFFREY L. HINKLE, FREDERICK L. HILL, 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, November 5, 2015 @ 6:30 P.M.**  
**Jerrily R. Kress Memorial Hearing Room**  
**441 4<sup>th</sup> Street, NW, Suite 220**  
**Washington, DC 20001**

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

**CASE NO. 15-23 (SQ700 Trust, LLC – Capitol Gateway Overlay District Review @ Square 700, Lots 43 and 866)**

**THIS CASE IS OF INTEREST TO ANC 6D**

On September 9, 2015, the Office of Zoning received an application from SQ700 Trust, LLC (the “Applicant”) requesting special exception review and approval of a new residential building, pursuant to the requirements of the Capitol Gateway (CG) Overlay District set forth in 11 DCMR § 1610. In addition, pursuant to 11 DCMR § 1610.7, the Applicant is seeking (i) a variance from the percentage of lot occupancy requirements of 11 DCMR §§ 634.1 and 1601.1, and (ii) a variance from the loading requirements of pursuant to 11 DCMR § 2201.1.

The subject property consists of Lots 43 and 866 in Square 700, having a land area of approximately 35,558 square feet. Square 700 is bounded by M Street to the north, South Capitol Street to the west, Van Street to the east, and N Street to the south, in southeast Washington, DC. The subject property is located in the northern portion of Square 700 and is included within the CR Zone District and is located in the CG Overlay District.

The Applicant proposes to develop the southern portion of the subject property with a new 13-story residential building with frontage on South Capitol and Van Streets, S.E. Three levels of below-grade parking will be provided with access from Van Street, S.E. Overall building height will not exceed 130 feet, and total gross floor area for the building will total approximately 176,485 square feet. A 10-story office building with ground floor preferred uses is to be constructed on the northern portion of the property, consistent with the Zoning Commission approval in Z.C. Order No. 15-11. Access to the parking garage for the office building will be provided from Van Street under a portion of the residential building.

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

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**

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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.

Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusions in the record.

**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.**

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 should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4<sup>th</sup> Street, NW, Washington, DC 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

**DEPARTMENT OF BEHAVIORAL HEALTH**

**NOTICE OF FINAL RULEMAKING**

The Acting Director of the Department of Behavioral Health (DBH), pursuant to the authority set forth in Sections 5113, 5115, 5117, 5118 and 5119 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.04, 7-1141.06, 7-1141.07 and 7-1141.08 (2012 Repl. & 2015 Supp.)) and Sections 5041-5042 of the Fiscal Year 2015 Budget Support Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)), hereby gives notice of the adoption of a new Chapter 10, entitled “Fees and Trainer Expenses for Department of Behavioral Health Training Events”, to Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the fee structure is to allow the DBH Training Institute (Training Institute) to produce high quality educational events conducive to adult learning that offer opportunities for DBH stakeholders and the general public to easily access behavioral healthcare educational opportunities otherwise unavailable in the District. Generating revenue from training events will improve the quality of all Training Institute educational events, expand the training department and course offering/certifications, and offset the current cost burden incurred by DBH for high-quality expert trainers.

A Notice of Proposed Rulemaking was published on June 19, 2015 at 62 DCR 008609. DBH received one comment on the proposed rule requesting that fees only be charged when an external trainer is used for training. The Department assessed the comment and decided that training fees are needed to cover the costs not only of internal and external trainers, but also continuing education units (CEU) costs incurred at DBH trainings. There have been no substantive changes made to the proposed rule. This rule was adopted as final on August 19, 2015 and will be effective on the publication of this notice in the *D.C. Register*.

**Title 22-A DCMR, MENTAL HEALTH, is amended by adding a new Chapter 10 to read as follows:**

**CHAPTER 10            FEES AND TRAINER EXPENSES FOR THE DEPARTMENT OF BEHAVIORAL HEALTH TRAINING EVENTS**

**1000            PURPOSE**

1000.1            This chapter establishes the fee structure for the Department’s training events and the allowable expenses to be paid to external trainers.

**1001            FEES**

1001.1            The Director may charge fees for training programs provided through the Department’s Training Institute that are approved for continuing education contact hours or incur costs associated with production. The Director may waive

fees in his or her discretion for mandatory events or events for consumers and family members. Both governmental and non-governmental employees shall be subject to fees.

1001.2 In charging fees, the Director shall adhere to the following fee schedule:

<b>Number of Contact Hours</b>	<b>Cost</b>
2-4	Not to Exceed \$60.00
5-8	Not to Exceed \$120.00
10-16	Not to Exceed \$240.00
17 or more	Not to Exceed \$480.00

1001.3 The Director may charge a reasonable fee not to exceed five dollars (\$5.00) per registrant to cover the cost of any electronic enrollment and payment system.

**1002 TRAINER FEES**

1002.1 The Department shall not pay any trainer in excess of one-thousand five-hundred dollars (\$1,500.00) a day to participate in a Department-sponsored training event. The Director may in his or her discretion waive this requirement on a case by case basis when the proposed trainer is a national expert with superior qualifications and the waiver is necessary to provide the training.

**1099 DEFINITIONS**

1099.1 When used in this chapter, the following terms shall have the meaning ascribed:

**Contact Hour** – a measure of scheduled instruction or education training provided to the attendees, typically by licensed professionals, as a condition of receiving or maintaining a license, that does not include breaks or other content that does not meet the criteria set for the in the respective sponsorship authority approval guidelines.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health (Department), pursuant to the authority set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2012 Repl.)) and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 35 (Licensing Fees) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to establish certification fees for the health professionals known as “nursing assistive personnel” – dialysis technicians, medication aides, nurse assistants, and patient care technicians.

These amendments were published as Proposed Rulemaking in the *D.C. Register* on July 10, 2015 at 62 DCR 009486. No comments were received and no changes have been made to this rulemaking. The rules were adopted as final on August 27, 2015 and will become effective upon publication of this notice in the *D.C. Register*.

**Chapter 35, LICENSING FEES, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**

**Section 3500, FEES, is amended to include the following, to be inserted in appropriate alphabetical sequence in Subsection 3500.1:**

DIALYSIS TECHNICIAN:

Initial Certification Fee	\$50.00
Endorsement Fee	\$50.00
Reinstatement Fee	\$70.00
Renewal Fee	\$50.00
Inactive Status Fee	\$10.00
Late Renewal Fee	\$20.00
Certificate Duplication Fee	\$34.00
Added Authority Fee	\$10.00

HOME HEALTH AIDE:

Initial Certification Fee	\$50.00
Endorsement Fee	\$50.00
Reinstatement Fee	\$70.00
Renewal Fee	\$50.00
Inactive Status Fee	\$10.00
Late Renewal Fee	\$20.00
Certificate Duplication Fee	\$34.00
Added Authority Fee	\$10.00

MEDICATION AIDE:

Initial Certification Fee	\$50.00
Endorsement Fee	\$50.00
Reinstatement Fee	\$70.00
Renewal Fee	\$50.00
Inactive Status Fee	\$10.00
Late Renewal Fee	\$20.00
Certificate Duplication Fee	\$34.00
Added Authority Fee	\$10.00

PATIENT CARE TECHNICIAN:

Initial Certification Fee	\$50.00
Endorsement Fee	\$50.00
Reinstatement Fee	\$70.00
Renewal Fee	\$50.00
Inactive Status Fee	\$10.00
Late Renewal Fee	\$20.00
Certificate Duplication Fee	\$34.00
Added Authority Fee	\$10.00



## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 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 the intent to take final rulemaking action to adopt the following amendments to Chapter 66 (Professional Counselor) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments is to eliminate the provision in 17 DCMR §§ 6603.1(b) and 6606.1 that allows an applicant to acquire the requisite 3,500 hours of supervised practice necessary for licensure in the District of Columbia, under the supervision of an individual who is licensed in another jurisdiction and is not licensed in the District of Columbia, but “would have been qualified for a license as a professional counselor in the District of Columbia” during the time of the supervision. The Board finds that this provision is not practical, as it would require the supervisee to provide documentation at the time an application is filed from the supervisor, that the Board would have to review for the purpose of determining whether the supervisor would have qualified for licensure during the period of supervision, which may be two to five years after the supervised practice had begun.

The amendments also creates a separate Subsection 6603.4 that allows the Board to extend the period in which supervised experience must be acquired to five years for good cause shown.

These amendments were published as Notice of Proposed Rulemaking on February 20, 2015 at 62 DCR 002351. No comments were received; no changes have been made. These rules were adopted as final on August 27, 2015 and will become effective upon publication in the *D.C. Register*.

**Chapter 66, PROFESSIONAL COUNSELING, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended to read as follows:**

**Section 6603, SUPERVISED EXPERIENCE REQUIREMENTS, is amended as follows:**

**Subsection 6603.1(b) is amended to read as follow:**

6603.1

...

- (b) The experience shall have consisted of a minimum of three thousand five hundred (3,500) hours of professional counseling performed over a period of not less than two (2) years and not more than five (5) years, under the general supervision of a qualified supervisor who shall be a professional counselor, psychologist, psychiatrist, or independent clinical social worker who was licensed in a jurisdiction of the United States during the supervised period.

**Add a new Subsection 6603.4 to read as follows:**

6603.4 Pursuant to § 6603.1(b), the Board may extend the five (5) year limit for good cause. All hours worked in a position in which general counseling services are offered shall be counted toward the minimum required hours.

**Section 6606, PRACTICE OF PROFESSIONAL COUNSELING BY STUDENTS AND GRADUATES, is amended as follows:**

**Subsection 6606.1 is amended to read as follows:**

6606.1 A student or graduate may practice professional counseling in accordance with this section only under the general or immediate supervision of a professional counselor, psychologist, psychiatrist, or independent clinical social worker licensed in the District of Columbia.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 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 the adoption of the following amendment to Chapter 66 (Professional Counseling) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

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.

This amendment was published as Proposed Rulemaking in the *D.C. Register* on March 20, 2015 at 62 DCR 003420. No comments were received; no changes have been made. The rules were adopted as final on August 27, 2015, and will become effective upon publication of this notice in the *D.C. Register*.

**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.

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE OF FINAL RULEMAKING**

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with the provisions of Chapter XXII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-622.01 *et seq.* (2014 Repl.)), hereby gives notice of the adoption of a final rulemaking to amend Chapter 22 (Life Insurance Benefits) of Subtitle B, Title 6 (Government Personnel), of the District of Columbia Municipal Regulations (DCMR).

The rulemaking updates Chapter 22 to amend the definition of dependent child from age twenty-six (26) to twenty-one (21), and to add language for a dependent child through age twenty-four (24) who is also a full-time student. This will align the definition with the current District of Columbia Employee Life Insurance (DCELGI) contract.

No comments were received and no changes were made to the Notice of Proposed Rulemaking published on July 17, 2015 at 62 DCR 009851. The rules were adopted as final on August 26, 2015, and shall become effective upon publication of this notice in the *D.C. Register*.

**Chapter 22, LIFE INSURANCE BENEFITS, Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:**

**Section 2299, DEFINITIONS, is amended to add the definition as follows:**

**Dependent child** - a natural child, adopted child, stepchild, or foster child of an employee, retiree, or annuitant who is any of the following:

- (a) An unmarried dependent child through twenty-one (21) years of age;
- (b) An unmarried dependent child through twenty-four (24) years of age, who is a full-time student; or
- (c) An unmarried child regardless of age who is incapable of self-support because of mental or physical disability that existed before age twenty-one (21).

**PUBLIC EMPLOYEE RELATIONS BOARD****NOTICE OF FINAL RULEMAKING**

The Public Employee Relations Board (“Board”), pursuant to the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, as amended (D.C. Law 2-139; D.C. Official Code § 1-605.02(11) (2014 Repl.)), hereby gives notice of its adoption of a new Chapter 5 (Rules of the Public Employee Relations Board) of Title 6, Subtitle B (Government Personnel) of the District of Columbia Municipal Regulations (DCMR), effective October 1, 2015.

This rulemaking is necessary to amend procedures of the Board and to implement its authority under D.C. Official Code § 1-605.02(11) (2014 Repl.) to conduct its business and carry out its powers and duties. The final rulemaking amends the rules to clarify ambiguities, to improve readability, and to increase efficiency of operations. Election procedures were created to resolve ambiguities in representation proceedings. Filing deadlines and date calculations were revised to make the agency more efficient and to provide more clarity to filers. The rules were also amended to reflect the adoption of electronic filing and to resolve conflicting requirements in the rules’ prior amendments, regarding electronic filing.

The Board’s proposed rulemaking was published in the *D.C. Register* on June 5, 2015, at 62 DCR 8066 to receive comments on the proposed rulemaking. The comment period expired July 31, 2015. On August 20, 2015, the Board met to consider the comments submitted during the public comment period and consideration recommendations from the Executive Director and staff. After consideration of all comments received, the report and recommendations from the Executive Director and staff, the Board voted to amend the DCMR.

The Board decided to reject several new proposed rules based on the comments received from the public. In particular, the Board decided not to adopt proposed Rule 507 in its entirety, proposed Rule 550.6, and some language changes in Rule 515, Rule 527.2 (moving language from 532.1), Rule 560.1, and Rule 561.7(b). No substantive changes were made to the proposed rules.

These rules were adopted as final by the Board on August 20, 2015, and will become effective on October 1, 2015.

**Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended to read as follows:**

**CHAPTER 5                    RULES OF THE PUBLIC EMPLOYEE RELATIONS BOARD****500                    GENERAL PROVISIONS**

500.1                    The District of Columbia Public Employee Relations Board (“Board”) was established in 1979 by § 501 of the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-605.01 *et seq.* (2014 Repl.)) (“CMPA”), and administers the Labor-Management Relations

Program for the District of Columbia pursuant to §§ 1701 – 1718 of the CMPA (D.C. Official Code §§ 1-617.01 *et seq.* (2012 Repl.)).

- 500.2 The five Board members are appointed by the Mayor with the advice and consent of the Council of the District of Columbia. The Board may appoint such employees as may be required to conduct its business.
- 500.3 The Executive Director shall be the principal administrative officer of the Board and performs such duties as designated by the CMPA or as assigned by the Board, including the investigation of all petitions, requests, complaints, and other matters referred or submitted to the Board.
- 500.4 The Executive Director shall be authorized, among other things, to conduct conferences, investigations and hearings, administer oaths, issue subpoenas, sign and issue notices and reports, certify copies of papers and documents, consider timely requests for extensions of time and, pursuant to action by the Board or by an authorized panel thereof, sign and issue decisions and orders made by or on behalf of the Board. A decision made by the Executive Director shall become final unless a party files a motion for reconsideration within thirty (30) days after issuance of the Executive Director's decision.
- 500.5 The duly authorized and official documents of the Board of every description and without exception, including but not limited to decisions, orders, notices, subpoenas and other communications, may be signed on behalf of the Board by the Executive Director or any staff members or agents empowered to sign on the Board's behalf.
- 500.6 The Board shall have the authority to retain legal counsel to represent it in relation to enforcing its orders and otherwise carrying out its powers and duties under the CMPA.
- 500.7 All communications may be addressed to the PUBLIC EMPLOYEE RELATIONS BOARD, 1100 Fourth Street, SW, Suite E630, Washington, D.C. 20024.
- 500.8 The business hours of the office shall be from 8:30 a.m. to 4:45 p.m., Monday through Friday, exclusive of District of Columbia holidays.
- 500.9 The regular meetings of the Board shall be held on the third Thursday of each month unless otherwise scheduled, and shall be held at the Board's offices, unless otherwise specified.
- (a) The official acts of the Board shall be recorded in the minutes of the Board, which shall be certified and maintained by the Executive Director.

- (b) The Board shall not be bound in any way by any action or statement of an individual member or group of members of the Board, except when that action or statement is authorized by an official act of the Board or the provisions of this chapter.
- (c) Unless specifically provided for by a majority of the Board members present or under waiver of the rules, only the following may address the Board or participate in the discussion of matters at regular monthly, special, or emergency meetings of the Board: Members of the Board, the Executive Director, staff, and agents of the Board.
- (d) Notice of Meetings. The Executive Director shall give timely notice of all meetings of the Board to the public, and such notice shall contain the time, date, and location of the meeting and the purpose or agenda of the meeting.

500.10 The Board may hold a special meeting at any time at the request of the Chair, any member of the Board, or the Executive Director.

500.11 Three (3) members shall constitute a quorum. No decision of the Board shall be valid unless supported by the majority of a quorum.

- (a) If a Board member cannot attend a meeting in person, that member may participate in the Board meeting via teleconference upon notice three (3) or more days prior to the Board meeting.
- (b) If a Board member cannot attend a meeting in person or via teleconference, that Board member will provide reasonable notice to the Chair and the Executive Director.
- (c) The Chair will designate one Board member to take notes during any Executive Session.
- (d) If the Government of the District of Columbia is closed due to weather or a national emergency or other event, then a meeting by the Board scheduled to occur during the closure is deemed cancelled.

500.12 The public may inspect the rules, decisions, and public records of the Board upon written request filed within a reasonable time period in advance of inspection. There shall be no prescribed form for requests for inspection. Written requests shall be submitted to the Executive Director.

500.13 Opinions, decisions, and orders of the Board shall be forwarded for publication in the *D.C. Register* within sixty (60) days of issuance, pursuant to D.C. Official Code § 1-605.04 (2014 Repl.).

- 500.14 Any person may request in writing copies of slip opinions of the Board's opinions, decisions, orders, certifications, or other documents, in accordance with D.C. Official Code §§ 2-531 - 2-540 (2012 Repl. & 2014 Supp. ).
- 500.15 The parties to a collective bargaining agreement may submit copies of the agreement to the Board for informational purposes after final execution of the agreement.
- 500.16 A labor organization that represents employees of the District of Columbia Government shall transmit to the Board the name(s), telephone number(s), and mailing address(es) of each appointed and elected office holder.
- 500.17 No party shall engage in any *ex parte* communication with a hearing officer or with any member of the Board regarding proceedings pending before the Board.
- 500.18 *Ex parte* communications, which involve the merits of the case or those which violate other rules requiring submissions to be in writing, are prohibited. Interested parties may make inquiries to the Executive Director about such matters as the status of a case, when it will be heard, and the method of transmitting evidence to the Board. Parties may not make a submission orally, which is required to be in writing, or inquire about such matters as what defense they should use or whether their evidence is adequate.
- 500.19 Except during settlement discussions, *ex parte* communications concerning the merits of any matter before the Board for adjudication, or communications which otherwise violate rules requiring written submission, are prohibited from the time the persons involved have knowledge that the matter may be considered by the Board until the Board has rendered a final decision.
- 500.20 If a prohibited oral communication occurs, the Hearing Examiner or other presiding official shall describe that occurrence on the record with notice to the parties either by filing a memorandum or by making a statement. If a prohibited communication occurs in writing, the Hearing Examiner or presiding official shall file any writing delivered to him or her.
- 500.21 If a Hearing Examiner or the Executive Director determines that a party has initiated a prohibited *ex parte* communication, the Hearing Examiner or the Executive Director may impose such procedural sanctions or remedial actions as may be appropriate under the circumstances.
- 500.22 Opinions, certifications, authorizations, decisions and orders of the Board are final, unless otherwise stated therein, for purposes of judicial review pursuant to D.C. Official Code §§ 1-617.13(c) and 1-605.02(12) (2014 Repl.).

**501 CONSTRUCTION, COMPUTATION AND EXTENSIONS OF TIME,  
FILING AND SERVICE OF DOCUMENTS**



- 501.1 The rules of the Board shall be construed broadly to effectuate the purposes and provisions of the CMPA. When an act is required or allowed to be done within a specified time by these rules, the Board, Chair or the Executive Director shall have the discretion, upon timely request, to order the time period extended or reduced to effectuate the purposes of the CMPA, except that no extension shall be granted for the filing of initial pleadings.
- 501.2 A request for an extension of time shall be in writing and made at least three (3) business days prior to the expiration of the filing period. Exceptions to this requirement may be granted for good cause shown as determined by the Executive Director.
- 501.3 The request for an extension of time shall indicate the purpose and reason for the requested extension of time and the positions of all interested parties regarding the extension. With the exception of the time limit for the filing of the initial pleading that begins a proceeding of the Board, the parties may waive all time limits established by the Board by written agreement in order to expedite a pending matter.
- 501.4 Whenever a period of time is measured from the service of a pleading and service is by first-class U.S. mail, five (5) days shall be added to the prescribed period.
- 501.5 In computing any period of time prescribed by these rules, the time begins to run the day after the event occurs. Whenever the last date to file a document falls on Saturday, Sunday, or a District of Columbia holiday, the period shall extend to the next business day. All prescribed time periods are calendar days, unless specified as business days.
- 501.6 All pleadings filed with the Board shall be in the form designated by these rules. If the Board has not designated a form, the party seeking action by the Board shall use only 8 1/2 x 11 inch plain white paper and shall include the following:
- (a) The name, address, and telephone number of each party, if known;
  - (b) The title of the proceeding and the case number, if known;
  - (c) The name, title, address, and telephone number of the person signing and the date of signing; and
  - (d) A certificate of service.
- 501.7 As illustrated in the following example, all pleadings shall contain a caption setting forth the name of the Board, the title of the proceeding, the case number, if known, and the title of the pleading:

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
PUBLIC EMPLOYEE RELATIONS BOARD

[Name of Party],	)	
Complainant,	)	
	)	
v.	)	PERB Case No. ____
	)	
[Name of Party],	)	
Respondent.	)	

UNFAIR LABOR PRACTICE COMPLAINT

501.8 Every pleading that is filed to initiate a proceeding with the Board shall include the following:

- (a) A concise statement of the nature of the case, the relief requested, and the basis for entitlement; and
- (b) A concise statement of all information deemed relevant, which shall be set forth in numbered paragraphs.

501.9 Pleadings submitted to the Board shall be typed or legibly hand-written, and limited to twenty (20) double-spaced pages. Requests to increase the page limitation shall be timely submitted to the Executive Director. The page limitation of this rule does not apply to pleadings filed with the trier of fact when the trier of fact is not the Board itself.

501.10 [REPEALED].

501.11 An initial pleading shall not be considered filed with the Board, unless it is received electronically pursuant to § 561.

- (a) Exception: A *pro se* individual, acting on his or her own behalf, shall file an initial pleading by personal delivery during business hours as defined in § 500.8. A *pro se* individual may utilize the Board’s public access terminal to upload the document free of charge.
- (b) An initial pleading must be served on the other party or parties by personal delivery, commercial delivery, or U.S. mail.

501.12 Non-initial pleadings must be filed with the Board electronically pursuant to § 561. A party submitting a non-initial pleading to the Board shall concurrently serve a copy of the pleading on every other party, unless otherwise directed by these rules or by instructions from the Board. If a party is represented by an attorney or other representative, it shall be sufficient to serve the attorney or

representative. Every pleading filed with the Board shall include a signed certificate of service naming all other parties and attorneys or representatives, if any, on whom concurrent service was made, and shall state how and when such service was made.

- (a) All non-initial pleadings must be electronically served on every other party through File & ServeXpress, except for service on a *pro se* individual, acting on his or her own behalf. A *pro se* individual may serve a party by personal delivery, commercial delivery, or U.S. mail. Instances where a party has not yet signed up for File & ServeXpress, service on that party may be made through personal delivery, commercial delivery, or U.S. mail.
- (b) A *pro se* individual, acting on his or her own behalf, must be served by personal delivery, commercial delivery, or U.S. mail, unless the *pro se* individual has waived such method of service in writing and agreed to be served by email or electronically.

501.13 An initial pleading that is filed will be assigned a filing date and case number. The Board or its designated representative shall review the pleading to determine whether it was filed in accordance with the procedural requirements of the CMPA and these rules. If the review reveals that the pleading was not filed in accordance with the CMPA or these rules, the Executive Director shall notify the party or the party's representative and allow seven (7) days from the date of notice for the filing deficiencies to be cured. Failure to cure deficiencies shall result in dismissal without further notice.

501.14 Interested persons who wish to intervene in a proceeding shall promptly direct such requests to the Executive Director. The request shall be filed electronically pursuant to § 561 and shall state the grounds for intervention.

501.15 The Board or its designee shall have discretion to grant or deny a request for intervention, basing the decision on the nature of the interests of the intervenor, whether those interests will be adequately protected by existing parties, and the timeliness of the intervenor's request.

501.16 [REPEALED].

501.17 [REPEALED].

501.18 Where there is a change in representation, a representative for a party shall enter a notice of appearance in a case and serve a copy on all parties to the proceeding.

**502 EXCLUSIVE RECOGNITION AND NON-COMPENSATION UNIT DETERMINATION**

502.1 A labor organization seeking exclusive recognition as the representative for an appropriate unit shall file a "Recognition Petition," electronically pursuant to §§ 501 and 561. Evidence of the employees' showing of interest must be submitted to the Board by commercial delivery, U.S. mail, or personal delivery to the Board's office. The Recognition Petition shall include the following:

- (a) A description of the proposed unit including the name, address, and telephone number of the employing agency (and agency subdivision, if any), the number of employees in the proposed unit, and the general classifications of employees;
- (b) The name, address, and telephone number of any other labor organization known to the Petitioner that claims recognition as a representative of any employees in the proposed unit;
- (c) A statement as to whether there is a collective bargaining agreement in effect covering the proposed unit or any part of it, including the effective date and expiration date of any such agreement;
- (d) A statement as to how the employees in the proposed unit share a community of interest, by virtue of such common factors as skills, working conditions, supervision, physical location, organizational structure, distinctiveness of functions performed, or the existence of integrated work processes; and
- (e) A roster of the Petitioner's officers and representatives, a copy of its constitution, its articles of incorporation and bylaws, if any, and a statement of its objectives. The Petitioner shall include a statement that the petitioning labor organization subscribes to the standards of conduct for labor organizations, as set forth in § 1703 of the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-617.03 (2014 Repl.)).

502.2 A petition for exclusive recognition shall be supported by a showing of interest, not more than one (1) year old, that at least thirty percent (30%) of the current employees in the proposed unit desire representation by the Petitioner. Forms of evidence may include the following:

- (a) Current dues deduction authorizations;
- (b) Notarized membership lists;
- (c) Membership cards;
- (d) Individual authorization cards or petitions signed and dated by employees indicating their desire to be represented by the labor organization; or

(e) Other evidence as determined appropriate by the Board.

502.3 Upon service of the recognition petition by the Petitioner, the employing agency shall prepare an alphabetical list of all employees in the proposed unit for the last full pay period prior to the filing of the petition. This list, along with any comments concerning the petition, shall be transmitted to the Board within fourteen (14) days of the agency's receipt of the petition. The Executive Director may request additional payroll records from the agency in order to properly investigate the showing of interest.

502.4 The adequacy of the showing of interest shall be determined administratively by the Board or its designee. While signed and dated authorization cards, in accordance with § 502.2, will always be accepted as adequate evidence, other forms of evidence may be considered adequate by the Board as prescribed under §§ 502.2 above and 502.8(a) below. The showing of interest determination shall not be subject to appeal.

(a) If the petition is amended so as to seek to represent a unit different from that in the original petition, the amended petition must be accompanied by a thirty percent (30%) showing of interest in the new unit. In cases where an agency's staffing fluctuates due to the seasonal nature of the work or in cases where a unit is expanding, a showing of interest is required only among those employees employed at the time the petition is filed.

(b) If the status of employees in the proposed unit is disputed, the Executive Director may conduct such proceedings as are necessary to determine the adequacy of the showing of interest.

(c) If the Executive Director is unable to resolve issues concerning the eligibility of employees or unit appropriateness, a hearing may be ordered in the matter. If the hearing results in a change to the unit, the Executive Director will provide the petitioner with seven (7) days after the issuance of the Hearing Examiner's Report and Recommendation to procure additional evidence of a showing of interest in the changed unit.

502.5 The Board shall maintain the confidentiality of the showing of interest submitted in support of a petition filed under this section or § 505, and this evidence shall not be available for public access.

502.6 Provided that the requirements of §§ 502.1, 502.2, and 502.3 are met, the Executive Director shall prepare a Notice of Recognition Petition to be posted by the employing agency in conspicuous places on all employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The Notice shall be posted within seven

(7) days of the Board's transmittal of the Notice and shall remain posted for fourteen (14) consecutive days. The Notice shall include the following:

- (a) The name of the petitioner;
- (b) A description of the proposed unit;
- (c) The date the Notice was posted;
- (d) The name of any other labor organization currently representing employees in the proposed unit; and
- (e) The requirements for intervention by any other labor organization.

502.7 A labor organization may file an intervention petition within the period required by the Notice and said petition shall contain the same information as required of a petitioner under § 502.1.

502.8 Intervention petition(s) shall be accompanied by the following:

- (a) A showing of interest that at least ten percent (10%) of the employees in the bargaining unit set forth in the petition for exclusive recognition wish to be represented by the intervening labor organization, unless a different unit is proposed by the intervenor, in which case a showing of interest of at least thirty percent (30%) shall accompany the intervenor's petition; or
- (b) Where applicable, a statement that the intervenor is the incumbent exclusive representative of the employees in the proposed unit. The incumbent labor organization shall be allowed to intervene as a matter of right without submitting any showing of interest.
- (c) If the intervenor's showing of interest is insufficient, the request for intervention will be denied, absent withdrawal.

502.9 A petition for exclusive recognition shall be barred if:

- (a) During the previous twelve (12) months, a valid majority status determination has been made for substantially the same bargaining unit, or if during this same period a certification of representative has been issued, or the Board has determined the compensation unit placement, whichever is later.
- (b) A collective bargaining agreement is in effect covering all or some of the employees in the bargaining unit and the following conditions are met:

- (i) The agreement is of three years or shorter duration; provided, however, that a petition may be filed between the one hundred twentieth (120<sup>th</sup>) day and the sixtieth (60<sup>th</sup>) day prior to the scheduled expiration date or after the stated expiration of the contract; or
- (ii) The agreement has a duration of more than three years; provided, however, that a petition may be filed after the contract has been in effect for nine hundred seventy-five (975) days.

502.10 Upon the filing of a petition pursuant to §§ 502.1 or 502.7, the Board shall direct such preliminary investigation as it deems necessary and thereafter shall take appropriate action which may include any one or more of the following:

- (a) Approving a withdrawal request;
- (b) Dismissing the petition;
- (c) Conducting an informal conference;
- (d) Holding a hearing;
- (e) Taking an action as prescribed by §§ 512 and 513.

502.11 Hearings under § 502.10(d) are investigatory and not adversarial. The purpose of hearings under § 502 shall be to develop a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.

502.12 If the choice available to employees in an appropriate unit is limited to the selection or rejection of a single labor organization, the Board may permit the employing agency to recognize the labor organization without an election on the basis of evidence that demonstrates majority status (more than fifty percent (50%)), such as documentary proof not more than one (1) year old, indicating that employees wish to be represented by the petitioning labor organization. In a case of voluntary recognition by the employer, the Executive Director shall review the evidence of majority status and shall recommend to the Board whether certification should be granted without an election.

- (a) If the proposed unit contains professionals and nonprofessionals, recognition without an election may be permitted if a majority of the professional employees petition for inclusion in the unit.

502.13 If the choice available to employees in an appropriate unit includes two (2) or more labor organizations, the Board shall order an election in accordance with these rules.

**503 COMPENSATION UNIT DETERMINATION**

- 503.1 An agency, a labor organization, or a group of labor organizations may file a “Petition for Compensation Unit Determination” seeking a determination of an appropriate unit for the purpose of negotiations for compensation. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561.
- 503.2 The Board may on its own motion initiate proceedings for the determination of units for compensation bargaining absent the filing of a petition by any party.
- 503.3 A petition for the determination of a compensation unit shall meet the requirements of §§ 501 and 561 and shall also include the following:
- (a) The name and address of each personnel authority, agency, and labor organization that may be affected by the petition;
  - (b) A description of the proposed unit, setting forth the numbers and types of employees to be included;
  - (c) A list of the pay, retirement, and other compensation systems to be included in the proposed unit; and
  - (d) A showing that the proposed unit consists of broad occupational groups so as to minimize the number of pay systems.
- 503.4 Upon the filing of a petition or commencement of proceedings by the Board on its own motion for the determination of a compensation unit, the Executive Director shall prepare an official Notice to be posted by the employing agency in conspicuous places on employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The Notice shall be posted within seven (7) days of the Board’s transmittal of the Notice and shall remain posted for fourteen (14) consecutive days thereafter. The Notice shall indicate the following:
- (a) The party or parties that filed the petition or initiated the proceedings;
  - (b) Each labor organization that might be affected by the proposed unit;
  - (c) The proposed unit description;
  - (d) A list of the compensation systems proposed to be included;
  - (e) The date the Notice was posted; and



- (f) A statement that within fourteen (14) days after posting of the Notice of a petition or proceedings for an appropriate compensation bargaining unit, any interested labor organization or person may file written comments. A labor organization may submit a request with the Executive Director to intervene concerning the proposed unit. Any comments or requests to intervene shall meet the requirements of §§ 501 and 561.
- 503.5 The Executive Director shall transmit a copy of the Notice to each labor organization that has exclusive recognition for any employees in the proposed unit and to each affected agency or its representative.
- 503.6 Any labor organization that has exclusive recognition for any employees in the proposed unit shall be permitted to intervene.
- 503.7 Subsequent to the filing of a petition or upon commencement of a proceeding, the Board shall order such preliminary investigation as it deems necessary.
- 503.8 In making its determination regarding an appropriate compensation unit the Board may take any one or more of the following actions:
- (a) Approving a withdrawal request;
  - (b) Dismissing the petition;
  - (c) Conducting an informal conference;
  - (d) Conducting a hearing; or
  - (e) Granting the petition or determining a unit.
- 503.9 Hearings under § 503.8 shall be investigatory and not adversarial. The purpose of hearings under this section shall be to ascertain the facts of the matter(s) at issue by developing a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.
- 503.10 A hearing for the purpose of taking evidence in a unit determination matter may be conducted by the Board or any individual(s) designated by the Board.
- 503.11 If the Board pursuant to § 503.8(d), decides to hold a hearing, the Executive Director shall issue a Notice of Hearing to each personnel authority, agency, and labor organization that may be affected by the unit determination at fourteen (14) days prior to the date of the hearing. The Notice of Hearing shall include the following:
- (a) A statement of the time, place and nature of the hearing;

- (b) The name of the agency and any other party; and
- (c) A description of the proposed unit.

## **504 MODIFICATION OF UNITS**

504.1 A petition for unit modification of either a compensation or non-compensation unit may be filed by a labor organization, by an employing agency, or by both jointly. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561. A unit modification may be sought for any of the following purposes:

- (a) To reflect a change in the identity or statutory authority of the employing agency;
- (b) To add to an existing unit unrepresented classifications or employee positions created since the recognition or certification of the exclusive representative;
- (c) To delete classifications no longer in existence or which, by virtue of changed circumstances, are no longer appropriate to the established unit; or
- (d) To consolidate two (2) or more bargaining units within an agency that are represented by the same labor organization.

504.2 A petition for unit modification shall meet the requirements of §§ 501 and 561 and shall also include the following:

- (a) The names and addresses of all labor organizations and agencies affected by the proposed change;
- (b) A description of each existing unit and the proposed unit, including the name and address of the employer, the number of employees in the existing and proposed units, and the personnel and payroll classifications of the employees;
- (c) The date of recognition or certification of each labor organization for the affected units;
- (d) A copy of the documentation evidencing any existing recognition or certification; and
- (e) A statement setting forth the specific reasons for the proposed modification.

- 504.3 Upon the filing of a petition for unit modification, the Executive Director shall prepare an official Notice to be posted by the employing agency in conspicuous places on employee bulletin boards at work sites of employees in the proposed unit and to be distributed in a manner by which notices are normally distributed. The Notice shall be posted within seven (7) days of the Board's transmittal of the Notice and shall remain posted for fourteen (14) days thereafter. The Notice shall indicate the following:
- (a) The party or parties who filed the petition or initiated the proceedings;
  - (b) The names and addresses of all labor organizations that would be affected by the proposed modification;
  - (c) The existing and the proposed unit descriptions;
  - (d) A list of the compensation systems proposed to be included;
  - (e) The date the Notice was posted; and
  - (f) A statement that within fourteen (14) days after posting of the Notice, any labor organization or person that would be affected may file written comments. Within said fourteen (14) days, any affected labor organization may file with the Executive Director a request to intervene concerning the proposed modification.
- 504.4 All comments or requests to intervene shall meet the requirements of § 501.
- 504.5 Upon the filing of a petition pursuant to § 504, the Board shall direct such preliminary investigation as it deems necessary and thereafter shall take appropriate action, which may be any one or more of the following:
- (a) Approving a withdrawal request;
  - (b) Dismissing the petition;
  - (c) Conducting an informal conference;
  - (d) Holding a hearing; or
  - (e) Granting the modification sought.
- 504.6 Hearings under § 504 shall be investigatory and not adversarial. The purpose of hearings under this section shall be to develop a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.

**505 DECERTIFICATION PETITIONS**

- 505.1 The purpose of a decertification proceeding shall be to determine whether a majority of the employees in an appropriate bargaining unit maintain their desire to be represented by the existing exclusive bargaining representative.
- 505.2 A petition to decertify an exclusive representative may be filed with the Board by an employer, an employee, or employees in the certified or recognized unit of an agency. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561. The petition shall be served on the exclusive representative pursuant to § 501.11 and shall state the following:
- (a) The name, address, and telephone number of the petitioner and of the petitioner's representative if any. (A petitioner's representative under this rule may not be a labor organization).
  - (b) The name, address, and telephone number of the exclusive representative;
  - (c) The name, address, and telephone number of the employer;
  - (d) A specific and detailed description of the bargaining unit including employee classifications or job titles;
  - (e) The approximate number of employees in the bargaining unit;
  - (f) The date that the exclusive representative was recognized and the method of recognition, if known; and
  - (g) A brief description of any collective bargaining agreements covering any employees in the bargaining unit, including the expiration dates of the agreements.
- 505.3 A petition for decertification filed by an employee shall be accompanied by a showing that at least thirty percent (30%) of the employees in the bargaining unit no longer desire to be represented by the exclusive representative.
- 505.4 An employing agency shall not assist an employee or group of employees in the filing of a decertification petition.
- 505.5 A petition for decertification filed by an agency shall be accompanied by a sworn statement and supporting evidence of lack of activity by the exclusive representative.
- 505.6 The exclusive representative shall be given fourteen (14) days from the date of service of the petition to file a response to the decertification petition. If the

exclusive representative does not file a timely response indicating that it desires to continue to represent the employees, the Board may issue a decertification order.

- 505.7 If the exclusive representative files a timely response indicating that it desires to continue to represent the employees and the requirements of §§ 505.2, 505.3 or 505.5 have been met, the Board shall order an election to determine majority status.
- 505.8 Decertification petitions shall not be entertained in the following circumstances:
- (a) The Board has certified within the preceding twelve (12) months the results of an election among all or some of the employees in the bargaining unit or the Board has determined the compensation unit placement, whichever is later.
  - (b) The exclusive representative of the employees in the bargaining unit was voluntarily recognized within the preceding twelve (12) months and the recognition was certified by the Board; or
  - (c) A collective bargaining agreement is in effect covering employees in the bargaining unit; provided, however, that decertification petitions may be filed between the one hundred twentieth (120<sup>th</sup>) day and sixtieth (60<sup>th</sup>) day prior to the scheduled date of expiration of an agreement of three (3) years or less duration, or after the expiration of such an agreement, or at any time after an agreement of more than three years duration has been in effect for nine hundred seventy-five (975) days.
- 505.9 Upon receiving a timely response from the exclusive representative pursuant to § 505.7, a copy of the decertification petition shall be transmitted to the employing agency. The employing agency shall prepare an alphabetical list of all employees in the unit for the last full pay period prior to the filing of the petition. This list, along with any comments concerning the petition, shall be transmitted to the Board within fourteen (14) days of the Board's transmittal of the petition to the agency.
- 505.10 The adequacy of the showing of interest shall be determined administratively by the Board or its designee. The showing of interest determination shall not be subject to appeal.
- 505.11 Provided that the requirements of §§ 505.2, 505.3 and 505.9 are met, the Executive Director shall prepare a Notice to be posted by the employing agency in conspicuous places on all employee bulletin boards at work sites of employees in the unit and to be distributed in a manner by which notices are normally distributed. The Notice shall be posted within seven (7) days of the Board's transmittal of the Notice and shall remain posted for fourteen (14) consecutive days. The Notice shall include the following:

- (a) The name of the petitioner;
- (b) A description of the unit;
- (c) The date the Notice was posted;
- (d) The name of the labor organization currently representing employees in the unit; and
- (e) The requirements for intervention by any other labor organization.

505.12 A labor organization may file an intervention petition within the period required by the Notice, and said petition shall contain the same information as required under § 505.2.

505.13 Intervention petition(s) shall be accompanied by a showing of interest that at least ten percent (10%) of the employees in the bargaining unit set forth in the decertification petition wish to be represented by the intervening labor organization, unless a different unit is proposed by the intervenor, in which case a showing of interest of at least thirty percent (30%) shall accompany the intervenor's petition.

505.14 Upon the filing of a petition pursuant to §§ 505.2 or 505.12, the Board shall direct such preliminary investigation as it deems necessary and thereafter shall take appropriate action, which may include any one or more of the following:

- (a) Approving a withdrawal request;
- (b) Dismissing the petition;
- (c) Conducting an informal conference;
- (d) Holding a hearing;
- (e) Taking an action as prescribed by §§ 512 and 513.

505.15 Hearings under § 505.14(d) are investigatory and not adversarial. The purpose of hearings under § 505 shall be to develop a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.

505.16 When there is no intervening labor organization, an election to decertify an incumbent exclusive representative is not held if the incumbent provides the Executive Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election is held if the intervening labor

organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

## **506 CLARIFICATION OF UNITS**

506.1 A petition filed for clarification of an existing unit may be filed by the agency or by the labor organization which is party to the certification. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561. In addition, the petition shall be in the same form and contain the same information (as appropriate) that is required by §§ 502 or 503; plus:

- (a) A description of the existing unit; and
- (b) A statement of why the proposed clarification is requested.

506.2 The Board shall grant or deny the petition following an appropriate investigation and recommendation to the Board by the Executive Director or a Hearing Examiner.

## **510 ELECTION PROCEDURES: GENERAL**

510.1 Representation elections shall be conducted by the Board or by an impartial body selected by the mutual agreement of the parties and approved by the Board.

510.2 All elections shall be by secret ballot.

510.3 The Board or other impartial body conducting the election shall furnish an official Notice setting forth the details of the election to the employing agency and to the labor organization(s) that are parties to the proceeding. This Notice shall be posted not less than seven (7) days before the date of the election and shall remain posted until after the election. Copies of the Notice shall be distributed in a manner by which notices are normally distributed.

510.4 In any election, each party to the election may be represented at each polling place by an equal, predesignated number of poll watchers of its choice, subject to limitations that are mutually agreed upon by the parties and approved by the Board, or are prescribed by the Board.

- (a) Each party must submit the names(s) of its designated observer(s) to the Executive Director prior to the day of the election.
- (b) The observers represent their principals, challenging voters and generally monitoring the election process.

510.5 Where an election involves a bargaining unit containing professional and non-professional employees, all professional employees shall be given two ballots:

one for indicating whether they desire a combined professional/nonprofessional unit and a second for indicating the choice of representative, if any.

- 510.6 If the choice available to employees in an appropriate unit is limited to the selection or rejection of a single labor organization, the employing agency has submitted a written waiver of a hearing, and the Board cannot determine whether a majority of the proposed bargaining unit wish to be represented by the petitioning labor organization or the employing agency chooses not to voluntarily recognize the appropriate unit; an election pursuant to §§ 512 or 513 will be conducted.
- 510.7 Parties are encouraged to enter into election agreements. If the parties are unable to agree on procedural matters, specifically, the eligibility period, method of election, dates, hours, or locations of the election, the Executive Director will decide election procedures and issue a Direction of Election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.
- 510.8 When there is no intervening labor organization, an election is not held if the petitioner provides the Executive Director with a written request to withdraw the petition. When there is an intervenor and the petitioner provides the Executive Director with a written request to withdraw the petition, an election is held if the intervening labor organization presents a thirty percent (30%) showing of interest within the time period established by the Executive Director.
- 510.9 The parties may consent to an election prior to the holding of a hearing on the appropriateness of the unit. A ballot cast by an employee whose eligibility status is challenged will be segregated from the remainder of the ballots cast and will not be tallied unless the challenged ballot(s) is/are determinative of the election and after a hearing on the employee's eligibility has been concluded and a determination is made that the employee is eligible to vote.

## **511 ELECTION PROCEDURES: ELIGIBILITY**

- 511.1 To be eligible to vote in an election, an employee shall have been employed in the bargaining unit during the payroll period immediately prior to the date on which the Board ordered the election or as otherwise determined by the Board or consented to by the parties and shall still be employed in the bargaining unit on the date of the election. A list of employees eligible to vote in the election will be provided to designated election officials within seven (7) days of approval of an election agreement or seven (7) days after the Executive Director has directed an election, whichever occurs first. Where the election will be conducted by mail, the employing agency must provide a copy of the employee list in the form of mailing labels or in a format in which the information can be readily transferred to mailing labels.



- 511.2 To be eligible to vote in a runoff election, an employee shall have been eligible to vote in the original election and still be employed in the bargaining unit on the date of the runoff.
- 511.3 The Board's agent or any authorized observer may challenge the eligibility of any voter, and in so doing shall state the reason for the challenge. A voter whose identity has been challenged may establish his or her identity by showing any piece of identification acceptable to the Board's agent.
- (a) An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Board's agent are unable to resolve the challenged ballot(s) before the tally of ballots, the Board's agent will impound and preserve the unresolved challenged ballot(s) until the Board or the Executive Director makes a determination regarding the eligibility of the voter.
- 511.4 A challenged ballot shall be placed in a "challenged ballot" envelope. The envelope shall be sealed by the Board's agent and initialed by the observers. The reason for the challenge and the voter's name shall be marked on the envelope and the envelope shall be placed in the ballot box.
- 511.5 The Board's agent shall attempt to resolve ballot challenges before the ballots are counted.

## **512 ELECTION PROCEDURES: MAIL BALLOTS**

- 512.1 When an election is to be conducted by mail ballot, the procedures in this section shall apply, unless otherwise agreed to by the parties and approved by the Board.
- 512.2 Each eligible voter shall be mailed a packet containing a ballot, ballot envelope, pre-addressed stamped return envelope, and instructions.
- 512.3 The instructions shall advise the voter to mark his or her ballot without identifying marks, place the ballot in the ballot envelope, seal the ballot envelope and place it in the return envelope, seal the return envelope, which shall be signed by the voter, and mail it to the designated post office box or address provided in the instructions. The instructions shall also advise the voter of the date by which envelopes must be received. Ballots not returned by U.S. mail will not be accepted.
- 512.4 When the election includes a vote on a combined professional/nonprofessional unit, the appropriate voters shall be mailed separate ballots and ballot envelopes for unit preference and for choice of representative. These voters shall be instructed to mark the ballots separately, place them in their respective ballot envelopes, and place both ballot envelopes in the return envelopes.

- 512.5 The parties may designate an equal number of representatives, as set by the Board, to observe the tallying of the ballots. Ballots shall be tallied on a date set by the Board.
- 512.6 Ballots shall remain unopened and be kept in the custody of the Board's agent until the date set for tallying. On the date set for tallying, the representatives and the Board's agent shall have an opportunity to challenge any ballots prior to the opening of the return envelopes.
- 512.7 A voter shall mark an (X) or a (√) in the circle or block designating his or her choice in the election. The intent of the voter, if clearly ascertainable from the ballot itself, shall be followed in assessing the marking of the ballot.
- 512.8 If the ballot is defaced, torn, or marked in such a manner that it is not understandable or identifies the voter, the ballot shall be declared void. Only ballots received prior to the tally will be counted.
- 512.9 Challenged ballots shall be handled in accordance with § 511.4.
- 512.10 All ballots that have not been challenged shall be separated from their return envelopes and commingled prior to tallying. The ballots shall be tallied in accordance with § 514.

### **513 ELECTION PROCEDURES: ON-SITE ELECTIONS**

- 513.1 The procedures set forth in this section shall apply to an election conducted on-site, unless otherwise agreed to by the parties and approved by the Board.
- 513.2 The Board's agent or another impartial entity, mutually selected by the parties and approved by the Board, shall designate the areas in proximity to the polling place in which electioneering shall be prohibited.
- 513.3 A ballot box shall be examined in the presence of the observers immediately prior to the opening of the polls and shall be sealed following the observers' inspection of the polls and the ballot box. The seal shall allow for one opening on the top of the ballot box for voters to insert their ballots.
- 513.4 A voter shall mark an (X) or a (√) in a circle or block designating his or her choice in the election. The intent of the voter, if clearly ascertainable from the ballot itself, shall be followed in assessing the marking of the ballot.
- 513.5 If the ballot is defaced, torn, or marked in such a manner that it is not understandable or identifies the voter, the ballot shall be declared void.
- 513.6 If the voter inadvertently spoils a ballot, the ballot may be returned to the Board's agent who shall give the voter another ballot. The spoiled ballot shall be placed in

a “spoiled ballot” envelope. The envelope shall be sealed by the Board’s agent and initialed by the observers, and the Board’s agent shall place the envelope in the ballot box.

- 513.7 A voter shall fold his or her ballot so that no part of its face is exposed, and on leaving the voting booth, shall deposit the ballot in the ballot box.
- 513.8 Each ballot box shall be sealed by the Board’s agent and initialed by the observers after each election session and so kept until the re-opening of the polls and shall remain in the custody of the Board’s agent until the tallying of the ballots.
- 513.9 The Board’s agent may, upon request of a voter, privately assist the voter to mark his or her ballot.
- 513.10 Each party may designate representative(s) to observe the tallying of the ballots.
- 513.11 Upon conclusion of the polling, ballots shall be tallied in accordance with § 514.
- 513.12 If there is only one polling location, ballots shall be tallied at the polling site. If there is more than one polling location the Board’s agent, upon conclusion of the voting, shall seal the ballot boxes, each of which shall be initialed by the observers, and transport them to a predetermined central location. When all of the ballot boxes have arrived, they shall be opened by the Board’s agent in the presence of observers and the ballots shall be commingled for tallying.

#### **514 ELECTION PROCEDURES: TALLYING**

- 514.1 Representation will be determined by the majority of the valid ballots cast. Ballots shall be tallied in the presence of the parties’ observers. The count shall proceed as set forth in this section.
- 514.2 The Board’s agent shall segregate the challenged ballots. The challenged ballots shall be opened and counted only if they have been resolved by the parties and they could be determinative of the outcome of the election.
- 514.3 If challenged ballots have not been resolved, and if the challenges could affect the outcome of the election, the Board shall treat the challenges in the same manner as objections to the election. (See § 515.)
- 514.4 When the election includes a vote on a combined professional/nonprofessional unit, the ballots on unit preference shall be tallied first. If a majority of the professional employees casting valid ballots votes for a combined unit, the ballots on choice of representative, if any, shall be tallied together. If the majority of professional employees voting fails to vote for a combined unit, the ballots on choice of representative, if any, shall be tallied separately.

514.5 The Board shall preserve all ballots until the conclusion of any related proceedings.

514.6 The participants in the tally are the Board's agents and official observers, in the numbers necessary. Members of the press and other interested persons may be present to the extent permitted by the physical facilities and the permission of the owner of the premises being used. The Board agent in charge of the election has discretion to limit the number of participants.

## **515 CERTIFICATION OF ELECTION RESULTS**

515.1 Each party to the election shall be served with a copy of the report of election results prepared by the Executive Director, which shall include the tally of ballots and a certificate of service.

515.2 Within seven (7) days after the tally of ballots has been served, any party to the election proceeding may file with the Board objections to the election procedure or to any conduct which may have improperly affected the results of the election. The objecting party shall include a specific statement of the reasons for each objection.

515.3 The Board shall certify the results of each election within fourteen (14) days after the final tally of ballots and, within seven (7) days after the certification of election results has been served, the Board shall issue to the parties a certification of representative if:

- (a) The challenged ballots are insufficient in number to affect the results of the election;
- (b) No objections have been filed; and
- (c) One labor organization has received a majority of the ballots cast.

515.4 If the challenged ballots are sufficient in number to affect the results of the election or if objections are filed, the Executive Director, or other person designated by the Board, shall conduct an investigation and, if necessary, hold a hearing, and make a report of findings to the Board. If the Board has reason to believe that such allegations or challenges may be valid, the Board shall hold a hearing on the matter within two (2) weeks after the date of receipt of the objection. Any hearing held pursuant to this section shall be considered investigatory and not adversarial. The purpose of hearings under this section shall be to ascertain the facts by developing a full and factual record upon which the Board may make a decision. The procedures of §§ 550-557 shall apply to the hearing.

- 515.5 If the Board determines that the challenge(s), if any, have been properly resolved and/or that the objections, if any, are without merit or insufficient to warrant setting aside the election, the Board shall issue a certification of representative, if appropriate, or a certification that no union has been selected.
- 515.6 A runoff may not be held until the Board or the Executive Director has ruled on objections to the election and determinative challenged ballots. An election shall be declared “inconclusive” if there are no challenges that affect the results, but none of the choices on the ballot receives a majority of the valid ballots cast.
- 515.7 If an election is declared inconclusive, the Board shall declare the election null and void and order that another election be conducted providing for a selection from among the original choices, except that if in the inconclusive election there were three or more choices on the ballot, only the two choices that received the most votes shall appear on the ballot in the subsequent election. In the event of a tie in the second election, the Board shall certify the election results indicating that no representative has been selected.

## **516 PETITIONS TO AMEND CERTIFICATION**

- 516.1 An exclusive representative shall file a petition with the Board to amend its certification whenever there is a change in the identity of the exclusive representative that does not raise a question concerning representation (e.g., whether the employees have designated a particular organization as their bargaining agent). A change in the identity of the representative that does not raise a question concerning representation may include a change in the name of the labor organization. A petition raising a question concerning representation shall also meet the requirements of § 502. The petition shall be filed electronically with the Board pursuant to §§ 501 and 561. The petition shall meet the requirements of §§ 501 and 561 and shall also contain the following:
- (a) The name, address, and telephone number of the employer as shown in the certification;
  - (b) The name, address, and telephone number of the exclusive representative, as shown in the certification;
  - (c) The name, address, and telephone number of petitioner’s representative; and
  - (d) A description of the proposed amendment.
- 516.2 The Board shall grant or deny the petition following the appropriate investigation which may include a hearing and recommendation to the Board by the Executive Director.

**520 UNFAIR LABOR PRACTICE COMPLAINTS**

- 520.1 The rules in this section detail the procedures for initiating, processing, and resolving complaints that an employer, employees, or a labor organization has committed or is committing an unfair labor practice in violation of D.C. Official Code § 1-617.04 (2014 Repl.).
- 520.2 An unfair labor practice complaint may be filed with the Board by a labor organization, an agency, or an aggrieved person.
- (a) The complaint shall be filed electronically with the Board pursuant to §§ 501 and 561.
  - (b) Exception: In accordance with § 501.11, a *pro se* individual, acting on his or her own behalf, shall file a complaint by personal delivery during business hours as defined in § 500.8. An individual acting *pro se* may utilize the Board's public access terminal to upload the document.
- 520.3 Unfair labor practice complaints shall be filed according to the procedures under §§ 501 and 561, shall be signed by the complainant, and shall contain the following:
- (a) The name, address, and telephone number of the complainant;
  - (b) The name, address, and telephone number of the respondent;
  - (c) The name, address, and telephone number of the complainant's representative, if any;
  - (d) A clear and complete statement of the facts constituting the alleged unfair labor practice, including date, time and place of occurrence of each particular act alleged, and the manner in which D.C. Official Code § 1-617.04 (2014 Repl.) of the CMPA is alleged to have been violated;
  - (e) A statement of the relief sought;
  - (f) A statement as to the existence of any related proceedings or other proceedings involving matters related to the complaint, and the status or disposition of those proceedings; and
  - (g) A copy of the collective bargaining agreement, if any.
- 520.4 Unfair labor practice complaints shall be filed not later than one hundred twenty (120) days after the date on which the alleged violations occurred. A complaint may be amended as a matter of course prior to the filing of an answer. Once an answer is filed, a complaint may be amended by motion. Any new allegations

raised in the amended complaint shall be filed not later than one hundred twenty (120) days after the date on which the alleged violations occurred.

520.5 A complainant may withdraw a complaint without prejudice at any time prior to the filing of an answer. If a complainant fails to prosecute a complaint, the Executive Director may dismiss the complaint with prejudice, after providing the complainant with notice.

520.6 A respondent shall file, within fourteen (14) days from service of the complaint, an answer containing a statement of its position with respect to the allegations set forth in the complaint. The answer shall also include a statement of any affirmative defenses, including, but not limited to, allegations that the complaint fails to allege an unfair labor practice or that the Board otherwise lacks jurisdiction over the matter.

The answer shall include a specific admission or denial of each allegation or issue in the complaint or, if the respondent is without knowledge thereof, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall clearly meet the substance of the allegation.

520.7 A respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing. The failure to answer an allegation shall be deemed an admission of that allegation.

520.8 The Board or its designated representative shall investigate each complaint. The investigation may include an investigatory conference with the parties. The parties shall submit to the Board or its designated representative evidence relevant to the complaint. Such evidence may include affidavits or other documents, and any other material matter.

520.9 If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board or its designated representative shall issue a Notice of Hearing and serve it upon the parties.

All parties shall be given at least fourteen (14) days' notice of the hearing, except where the Board determines that this notice period should be abbreviated.

520.10 If the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.

520.11 The purpose of hearings under this section is to develop a full and factual record upon which the Board may make a decision. The party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a

preponderance of the evidence. The procedures of §§ 550 - 557 shall apply to the hearing.

- 520.12 Following a hearing, the hearing examiner shall submit a report and recommendations to the Board not later than thirty-five (35) days following the submission of post-hearing briefs, if any, or following the conclusion of closing arguments.
- 520.13 Parties may file exceptions and briefs in support of the exceptions not later than fourteen (14) days after service of the hearing examiner's report and recommendations. A response or opposition to the exceptions may be filed by a party not later than fourteen (14) days after service of the exceptions. A party may request oral argument before the Board, stating the reasons for the request. The Board may grant the request if in the Board's view such argument would be helpful.
- 520.14 The Board shall reach its decision upon a review of the entire record. The Board may adopt the recommended decision to the extent that it is supported by the record.
- 520.15 The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may be granted where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy may be inadequate.

## **526 IMPASSE RESOLUTION PROCEEDINGS: COMPENSATION NEGOTIATIONS**

- 526.1 When it appears that an impasse has been reached during collective bargaining negotiations regarding compensation matters, the Executive Director may be notified in writing by one or both of the parties. The notice of impasse shall meet the requirements of §§ 501 and 561 and shall include, in addition, the following:
- (a) The name(s) of the chief negotiator(s) for each party;
  - (b) The expiration date of the existing collective bargaining agreement (if any);
  - (c) A description of the unit affected by the impasse, including the approximate number of employees in the unit;
  - (d) The date when negotiations commenced and the date of the last meeting; and



- (e) The nature of the matters in dispute and any other relevant facts, including a list of specific labor organization and/or employer demands upon which impasse has been reached.

526.2 Upon receipt of a notice of impasse concerning compensation negotiations, other than an automatic impasse as prescribed under D.C. Official Code § 1-617.17(f) (2014 Repl.), the Executive Director shall verify with the other party (unless jointly filed) that the parties are at impasse. Upon verification or receipt of a joint notice of impasse, the Executive Director shall consult with the parties regarding their choice of mediator, if any.

526.3 If the parties are unable to agree upon a mediator, the Executive Director shall appoint one or request that the Federal Mediation and Conciliation Service provide one.

Any information disclosed by the parties to a mediator, including all records, reports and documents prepared or received by the mediator in the performance of his or her duties shall be deemed confidential.

526.4 If mediation does not resolve an impasse within thirty (30) days or any shorter period designated by the mediator, the Executive Director shall appoint a Board of Arbitration as required by D.C. Official Code § 1-617.17 (2014 Repl.); provided, however, that the appointment of a Board of Arbitration under D.C. Official Code §§ 1-617.17 (f)(2) and (3) (2014 Repl.), shall only be upon the request of a party.

526.5 Arbitration awards shall be in writing, and served on all parties within forty-five days after the board of arbitration has been established. The award shall in all respects conform to D.C. Official Code § 1-617.17(f) (1), (2), and (3) (2014 Repl.).

## **527 IMPASSE RESOLUTION PROCEEDINGS: NON-COMPENSATION NEGOTIATIONS**

527.1 Upon receipt of a request for impasse resolution concerning terms and conditions of employment other than compensation, or upon its own motion, the Board may declare an impasse when the following has occurred:

- (a) After a reasonable period of negotiations, further negotiation appears to be unproductive; or
- (b) An impasse is declared in compensation negotiations covering the same employees as the terms and conditions negotiations.

527.2 Upon receipt of a request for impasse resolution procedures for non-compensation matters, the Executive Director shall initiate an informal inquiry. If the Executive

Director determines that the parties have been unable to reach agreement, despite diligent efforts, the Executive Director shall consult with the parties regarding their choice of impasse resolution procedures. The parties may decide, by mutual agreement, to engage in any of the impasse resolution procedures outlined in D.C. Official Code § 1-617.02(c) (2014 Repl.).

527.3 If the parties are unable to agree upon a mediator, the Executive Director shall appoint one or request that the Federal Mediation and Conciliation Service provide one.

Any information disclosed by the parties to a mediator, including all records, reports and documents prepared or received by the mediator in the performance of his or her duties shall be deemed confidential.

527.4

- (a) If the parties have not reached agreement on the type of impasse resolution procedures to be utilized, the Board may direct fact-finding procedures in the following manner:
  - (i) The parties may jointly request the assignment of a specific fact-finder, fact-finder selection service, or request that the designated mediator also serve as the fact-finder or as a member of a fact-finding panel;
  - (ii) If the parties are unable to make a selection from a list supplied by the Board, the Board shall assign a fact-finder or panel of its choice or fact-finder selection service;
- (b) The fact-finder shall provide the services defined under the term “fact-finding” in § 599;
- (c) The fact-finder shall meet with the parties within seven (7) days after appointment, hold conferences and hearings, if necessary, to facilitate the fact-finding process and take such other steps as necessary to investigate, and to effect settlement of the impasse through fact-finding;
- (d) The fact-finder shall make a written report of findings of fact and recommendations for resolution of the impasse. The Board may set a deadline for the submission of the report, which shall be submitted confidentially to the parties and to the Board, unless the parties resolve the dispute prior to the submission of the written report; and
- (e) If the parties are unable to resolve the dispute within seven (7) days after the Board receives the report and recommendations, the Board may make

the report and recommendations public using the news media or other appropriate means.

527.5 The Board may direct that interest arbitration procedures for non-compensation matters be utilized as follows:

- (a) The parties may jointly request the assignment of a particular arbitrator, or the use of a particular arbitration selection service. If the parties do not make such a request(s), the Executive Director shall submit to each of the parties a list of at least five (5) names of arbitrators;
- (b) Each party shall have seven (7) days from the date of the submission in which to examine the list, cross off as many as two (2) names, number the remaining names in order of preference and return the list to the Executive Director;
- (c) The Executive Director shall appoint an arbitrator with due consideration for the order of preference indicated by the parties;
- (d) If the appointed arbitrator declines or is unable to serve, the Executive Director may appoint another arbitrator from the original list who was not previously rejected by either party;
- (e) Parties to any negotiations may, by agreement, provide for an alternative method for the selection of one or more arbitrators. In such instances, §§ 527.5(a-d) shall apply only in the event of the failure to select an arbitrator by the alternative method;
- (f) Within seven (7) days after appointment, the arbitrator and the parties, with the assistance of the Executive Director, if necessary, shall jointly select a date, time, and place for the hearing; and
- (g) Arbitration awards shall be in writing and signed by the arbitrator and shall be served on the parties within thirty (30) days after the arbitrator has been appointed, unless otherwise agreed to by the parties. A statement of the arbitrator's fee and expenses shall be submitted with the award.

527.6 When fact-finding and arbitration proceedings are directed by the Board in non-compensation matters, they may proceed in the absence of any party who, after due notice, fails to be present and fails to obtain an adjournment.

## **532 NEGOTIABILITY APPEAL PROCEEDINGS**

532.1 If in connection with collective bargaining, an issue arises as to whether a proposal is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board. The appeal shall be filed electronically

with the Board pursuant to §§ 501 and 561. If the Board or its designee determines that an impasse has occurred regarding non-compensation matters, and an issue of negotiability exists at the time of such impasse determination, the negotiability issue must be withdrawn or a negotiability appeal filed with the Board within seven (7) days of the Board's determination as to the existence of an impasse. Except when otherwise ordered by the Board in its discretion, impasse proceedings shall not be suspended pending the Board's determination of a negotiability appeal.

532.2 A negotiability appeal shall meet the requirements of §§ 501 and 561 and shall include the following:

- (a) The name, title, address, and telephone number of the chief negotiator for each party;
- (b) A short and plain statement of the negotiability issue(s), including a copy of the proposal(s) at issue and specific reference to any applicable statute, regulation(s), or collective bargaining agreement provisions; and
- (c) Any written communication from the other party to the negotiation asserting that a proposal is nonnegotiable.

532.3 An answer to a negotiability appeal shall state in short and plain terms the party's position on each negotiability issue raised in the appeal.

532.4 Negotiability Appeal and Answer – Filing

Except as provided in § 532.1, a negotiability appeal shall be filed within thirty-five (35) days after a written communication from the other party to the negotiations asserting that a proposal is nonnegotiable or otherwise not within the scope of collective bargaining under the CMPA. An answer to the negotiability appeal, if any, shall be filed within fourteen (14) days after the date of service of the appeal.

532.5 Upon the expiration of the period for filing the appeal and response with the Board, the Executive Director shall:

- (a) Make a prompt preliminary determination whether to require expedited briefing of the matter, with written briefs to be submitted within no more than fourteen (14) days; and
- (b) Refer the matter to the Board, either without such briefing or after receipt of the briefing, provided for in paragraph (a).

532.6 In deciding whether to require expedited briefing of the matter prior to submission of the matter to the Board, the Executive Director shall take into consideration the

potential value of such briefing to the prompt resolution of the case by the Board and any potential delay in Board consideration that such briefing may cause.

532.7 After receiving a case under § 532.5(b), the Board shall expeditiously take one or more of the following actions:

- (a) Issue a written decision;
- (b) If no briefing has yet been received, order the submission of written briefs to be submitted within fourteen (14) days;
- (c) Order oral argument in the matter, to be scheduled, without written briefs, within fourteen (14) days;
- (d) Order a hearing which may include briefs and arguments; or
- (e) Direct the parties to informal mediation or conference with the Executive Director or any staff members or agents empowered to conduct informal mediation on the Board's behalf.

532.8 Notice of any hearing ordered pursuant to § 532 shall be issued at least seven (7) days prior to the date of the hearing. The hearing shall be conducted in accordance with §§ 550-557.

532.9 The Board shall issue a decision on negotiability as soon as possible following final submission of the matter.

### **538 GRIEVANCE ARBITRATION REVIEW REQUEST**

538.1 A party to a grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Board not later than twenty-one (21) days after service of the award. The review request shall be filed electronically with the Board pursuant to §§ 501 and 561. Service of the arbitration award on a party shall be deemed completed by the Board upon personal delivery during business hours, depositing the document in the United States mail, properly addressed, first class postage prepaid, electronic mail, or by facsimile transmission. Whenever an award is served by U.S. mail, five (5) days shall be added to the prescribed period of time to file a request for review with the Board. The arbitration review request shall be designated "Arbitration Review Request" and shall contain the following information, set forth in numbered paragraphs:

- (a) The name, address, and telephone number of the agency (or agency subdivision) involved, including the name of the person to contact;
- (b) The name, address, and telephone number of the labor organization having exclusive recognition, including the name of the person to contact;

- (c) The name, address, and telephone number of the arbitrator;
- (d) A statement of the reasons for requesting review of the award;
- (e) A copy of the award and affidavit or other proof of the date of service of the award; and
- (f) Any other portion of the arbitration record upon which parties intend to rely in the arbitration review request.

538.2 An opposition to the arbitration review request may be filed with the Board by the other party to the arbitration proceeding not later than fourteen (14) days after service of the request. The Board may issue a Decision and Order requiring the parties to submit additional briefs. The parties will then have fourteen (14) days from the issuance of the Board's Decision and Order to file briefs concerning the matter. Oral arguments may be permitted at the discretion of the Board.

538.3 In accordance with D.C. Official Code § 1-605.02(6) (2014 Repl.), the only grounds for an appeal of a grievance arbitration award to the Board are the following:

- (a) The arbitrator was without authority or exceeded the jurisdiction granted;
- (b) The award on its face is contrary to law and public policy; or
- (c) The award was procured by fraud, collusion or other similar and unlawful means.

538.4 The Board, after consideration of the review request, the opposition, and briefs and oral arguments, if any, shall make a determination which may reject the request for lack of jurisdiction or sustain, set aside or remand the award in whole or in part. The parties to an arbitration review request are responsible for preparing and filing with PERB any portion of the arbitration record, in addition to the arbitration award, upon which they intend to rely in the arbitration review request. The Board will base its decision on the record submitted by the parties, subject to the Board's limited authority to review arbitration awards pursuant to D.C. Official Code § 1-605.02(6) (2014 Repl.) and § 538.3.

#### **544 STANDARDS OF CONDUCT COMPLAINTS**

544.1 The provisions of D.C. Official Code § 1-617.03 (2014 Repl.), concerning the Standards of Conduct for labor organizations, shall apply to any labor organization that has been accorded exclusive recognition pursuant to D.C. Official Code §§ 1-617.10(a) or 1-617.11(b) (2014 Repl.), or that is seeking to be certified as an exclusive representative by the Board.

- (a) The complaint shall be filed electronically with the Board pursuant to §§ 501 and 561.
- (b) Exception: In accordance with § 501.11, a *pro se* individual, acting on his or her own behalf, shall file a complaint by personal delivery during business hours as defined in § 500.8. A *pro se* individual may utilize the Board's public access terminal to upload the document.

544.2 Any individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations may file a complaint with the Board for investigation and appropriate action. The Standards of Conduct set forth in D.C. Official Code § 1-617.03(a) (2014 Repl.) are as follows:

- (a) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;
- (b) The exclusion from office in the organization of any person identified with corrupt influences;
- (c) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;
- (d) Fair elections; and
- (e) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

544.3 A standards of conduct complaint shall be designated "Standards of Conduct Complaint," shall meet the requirements of §§ 501 and 561, and shall contain the following information:

- (a) The name, address, and telephone number of the complainant(s), including the name of the person to contact;
- (b) The name, address, and telephone number of the labor organization having or seeking exclusive recognition, including the name of the person to contact;
- (c) A statement of the reasons for the complaint, including the date, time, place, and person(s) involved in each occurrence;

(d) A statement of the relief sought.

544.4 A complaint alleging a violation under this section shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred. A complaint may be amended as a matter of course prior to the filing of an answer. Once an answer is filed, a complaint may be amended by motion. Any new allegations raised in the amended complaint shall be filed not later than one hundred twenty (120) days from the date the alleged violation(s) occurred.

544.5 A complainant may withdraw a complaint without prejudice at any time prior to the filing of an answer. If the complainant fails to prosecute a complaint, the Executive Director may dismiss the complaint with prejudice, after providing the complainant with notice.

544.6 A respondent shall file, within fourteen (14) days from service of the complaint, an answer containing a statement of its position with respect to the allegations set forth in the complaint. The answer shall also include a statement of any affirmative defenses, including, but not limited to, allegations that the complaint fails to allege a standards of conduct violation or that the Board otherwise lacks jurisdiction over the matter.

The answer shall include a specific admission or denial of each allegation or issue in the complaint or, if the respondent is without knowledge thereof, the answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall clearly meet the substance of the allegation.

544.7 A respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing. The failure to answer an allegation shall be deemed an admission of that allegation.

544.8 The Board or its designated representative shall investigate each complaint. The investigation may include an investigatory conference with the parties. The parties shall submit to the Board or its designated representative evidence relevant to the complaint. Such evidence may include affidavits or other documents, and any other material matter.

544.9 If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board or its designee shall issue a Notice of Hearing and serve it upon the parties.

All parties shall be given at least fourteen (14) days' notice of the hearing, except where the Board determines that this notice period should be abbreviated.



- 544.10 If the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.
- 544.11 The purpose of hearings under this section is to develop a full and factual record upon which the board may make a decision. The party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. The procedures of §§ 550-557 shall apply to the hearing.
- 544.12 Not later than thirty-five (35) days following a hearing and the submission of post-hearing briefs or the conclusion of closing arguments, if any, the hearing examiner shall submit a report and recommendation to the Board.
- 544.13 Parties may file exceptions and briefs in support of the exceptions not later than fourteen (14) days after service of the hearing examiner's report and recommendations. A response or opposition to the exceptions may be filed by a party not later than fourteen (14) days after service of the exceptions. A party may request oral argument before the Board, stating the reasons for the request. The Board may grant the request if in the Board's view such argument would be helpful.
- 544.14 The Board shall reach its decision upon a review of the entire record. The Board may adopt the recommended decision to the extent that it is supported by the record.
- 544.15 The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may be granted where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged violation is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy may be inadequate.

## **550 HEARINGS**

- 550.1 In any proceeding when a hearing is to be held, the Executive Director or any other authorized agent of the Board may meet with the parties to conduct one or more pre-hearing conferences to do any one or more of the following:
- (a) Delineating the issues;
  - (b) Agreeing on such facts, matters, and procedures as will facilitate and expedite the case; and
  - (c) Exchanging lists of witnesses and exhibits.

- 550.2 No statement or communication made during the course of a pre-hearing conference may be offered as evidence in the same or a subsequent proceeding except upon agreement by all parties.
- 550.3 A party to a proceeding before the Board may be represented by a designated representative. The representative shall file a notice of appearance with the Board. Once a notice of appearance has been filed, the provisions applicable to a party under § 501.12 are applicable to a party's representative.
- 550.4 When a hearing has been directed by the Board or Executive Director, unless otherwise provided by these rules or directed by the Board, the Executive Director shall issue a Notice of Hearing to all parties to the proceeding at least fourteen (14) days prior to the scheduled date of the hearing. The hearing shall be conducted at the time and place specified in the Notice of Hearing and shall be open to the public.
- 550.5 Postponements of hearings shall not be granted except for sufficient cause as determined by the Executive Director. Requests for postponements shall comply with §§ 501 and 561 and shall also meet the following requirements:
- (a) Alternate dates for any rescheduled hearings shall be given; and
  - (b) The positions of all other parties regarding the postponement requested shall be ascertained in advance by the requesting party and set forth in the request.
- 550.6 Except under extraordinary circumstances, no request for postponement shall be granted during the seven (7) days immediately preceding the date of a hearing.
- 550.7 Any party intending to introduce documentary exhibits at a hearing shall make every effort to furnish a copy of each proposed exhibit to each of the other parties at least seven (7) days before the hearing.
- 550.8 Where a copy of an exhibit has not been tendered to the other parties because it was not available prior to the opening of the hearing, a copy of such exhibit shall be furnished to each of the other parties at the outset of the hearing.
- 550.9 One (1) copy of each documentary exhibit shall be submitted to the hearing examiner at the time the exhibit is offered in evidence at the hearing, unless otherwise requested by the hearing examiner.
- 550.10 Objections to an exhibit shall be reserved until the exhibit is offered into evidence.
- 550.11 Any party intending to call witnesses to testify at the hearing shall furnish a list of proposed witnesses to each of the other parties at least seven (7) days before the

hearing. The party calling the witness is responsible for notifying the witness of the time and place of the hearing and, for witnesses who are employees of the District Government, so informing the representative of record for the District Government in the proceeding.

- 550.12 Hearings shall be presided over by a Hearing Examiner, who is a representative of the Board. Hearing Examiners shall have full authority to conduct a hearing unless restricted by the Board.
- 550.13 Hearing Examiners shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. Hearing Examiners shall have all powers necessary to that end including, but not limited to, the power to:
- (a) Administer oaths and affirmations;
  - (b) Request the issuance of subpoenas;
  - (c) Rule upon motions;
  - (d) Compel discovery of evidence ruled competent, relevant and material and not cumulative;
  - (e) Regulate the course of the proceeding, fix the time and place of any continuance of a hearing or conference, and exclude persons from such hearings or conferences for contumacious conduct;
  - (f) Call and examine witnesses and introduce or exclude documentary or other evidence;
  - (g) Recommend to the Board dismissal of a case with prejudice based on a settlement agreement reached by the parties; and
  - (h) Take any other appropriate action authorized by statute, these rules, or the Board.
- 550.14 All objections to evidence shall be raised before and presented to the Hearing Examiner. Any objection not made before the Hearing Examiner shall be deemed waived unless the failure to make such objection is excused by the Board because of extraordinary circumstances.
- 550.15 Unless otherwise specified in the CMPA or in these rules, a party with the burden of proof shall carry that burden by a preponderance of the evidence.
- 550.16 In hearings before Hearing Examiners, strict compliance with the rules of evidence applied by the courts shall not be required. The Hearing Examiner shall

admit and consider proffered evidence that possesses probative value. Evidence that is cumulative or repetitious may be excluded.

550.17 The Hearing Examiner may impose procedural sanctions upon the parties as necessary to serve the ends of justice, including, but not limited to, the instances set forth below.

550.18 If a party fails to comply with an order for the production of evidence within the party's control or for the production of witnesses, unless for good cause, the Hearing Examiner may:

- (a) Draw an inference in favor of the requesting party with regard to the information sought;
- (b) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;
- (c) Permit the requesting party to introduce secondary evidence concerning the information sought; and
- (d) Strike any part of the pleadings or other submissions of the party failing to comply with such request that relate to the requested information.

550.19 If a party fails to prosecute a cause of action, the Hearing Examiner may recommend that the Board or Executive Director dismiss the action with prejudice or rule against the defaulting party.

550.20 The Hearing Examiner or Executive Director may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this section.

550.21 If a hearing has been held, the Board may adopt the recommended decision of a Hearing Examiner to the extent that it is supported by the record, reasonable, and consistent with the Board's precedent.

## **551 RECORDING OF HEARINGS**

551.1 When a hearing is directed by the Board, the Board shall make arrangements for the hearing to be recorded by stenographic or other means that adequately preserves the record. The parties may order transcripts and shall bear the cost of any transcripts that they order. Transcripts shall be available for review at the Board's offices upon appropriate arrangements being made.

## **552 SUBPOENAS**

- 552.1 Application for issuance of a subpoena requiring a person to appear and testify at a specific place and time shall be made in writing to the Executive Director. All requests for *subpoenas ad testificandum* shall clearly identify the person subpoenaed and be accompanied by a forty dollar (\$40) per diem consisting of a certified check or money order payable to each person subpoenaed.
- 552.2 Application for issuance of a subpoena requiring a person to produce documents (including writings, drawings, graphs, charts, photographs, electronic records and other recordings, and other data compilations from which information may be obtained) at a specific time and place shall be made in writing to the Executive Director.
- 552.3 An applicant for a subpoena shall arrange for service. The following rules shall apply to service of subpoenas:
- (a) Personal service. Service of a subpoena may be made by any person who is not a party to the proceeding and who is at least eighteen (18) years of age. Service of the subpoena shall be attested to in an affidavit by the person making such service. The attesting affidavit shall state the date, time, and method of service.
  - (b) Service by certified mail. Service of a subpoena may be made by certified mail. If the subpoena is served by certified mail, a copy of the document shall be addressed to the person or business entity to be served, at his or her residence, principal office or place of business. The return receipt shall be proof of service of the document.
- 552.4 Any motion to limit or quash the subpoena shall be filed within seven (7) days after service of the subpoena or on the date for compliance with the subpoena, whichever is earlier. Such motions shall set forth all assertions of privilege, burdensomeness, irrelevancy or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits, and other supporting documentation.
- 552.5 In the case of contumacy or failure to obey a subpoena issued, the Board, pursuant to D.C. Official Code § 1-605.02(16) (2014 Repl.), may request enforcement of the subpoena in the Superior Court of the District of Columbia.
- 552.6 Board employees may not be subpoenaed.
- 552.7 When an employee of the District of Columbia government receives a subpoena to appear as a witness on behalf of any party in connection with a proceeding before the Board under the CMPA, the employing District of Columbia agency shall make the employee available to furnish sworn statements or affirmation or to appear as a witness at hearings. When providing such statements or testimony, a

witness shall be on official duty status and shall not be required to use annual leave.

### **553 MOTIONS**

553.1 All motions shall briefly state the relief sought and shall set forth, with particularity, the grounds therefor. A motion, other than one made at a hearing, shall be filed with the Board and meet the requirements of §§ 501 and 561.

553.2 Any response to a written motion shall be in writing and filed within seven (7) days after service of the motion. The Executive Director may allow additional responses by the moving or responding party upon a request made within seven (7) days of service of a pleading.

553.3 The Executive Director may refer motions made prior to the issuance of the Hearing Examiner's Report and Recommendation to the Hearing Examiner. Motions made during a hearing shall be ruled on by the Hearing Examiner, except when the Hearing Examiner refers the matter to the Board. All rulings on motions shall be in writing, except that such rulings made at the hearing may be stated orally on the record.

### **554 INTERLOCUTORY APPEALS**

554.1 Unless expressly authorized by the Board, interlocutory appeals to the Board of rulings by the Executive Director, Hearing Examiner or other Board agents shall not be permitted. Exceptions to such rulings shall be considered by the Board when it examines the full record of the proceeding.

### **555 ORAL ARGUMENTS/BRIEFS AND SUBMISSIONS**

555.1 Any party shall be entitled, upon request, to a reasonable time for oral argument prior to the close of the hearing, except that upon the agreement of all parties or at the direction of the hearing examiner, the parties may submit written closing arguments instead of post-hearing briefs.

555.2 Any party may submit to the Hearing Examiner a brief, which meets the requirements of §§ 501 and 561. Briefs or written closing arguments shall be filed not later than thirty-five (35) days after the transcript becomes available and the parties are so informed. The Executive Director may, for good cause shown, extend the time for the filing of briefs.

### **556 HEARING EXAMINER'S REPORT/EXCEPTIONS**

556.1 In all proceedings conducted by a Hearing Examiner, the Hearing Examiner shall prepare a Report and Recommendation after the close of the hearing and the receipt of briefs, if any, and shall submit it to the Executive Director.

- 556.2 Copies of the Hearing Examiner's Report and Recommendation shall be forwarded to the parties' representatives by the Executive Director.
- 556.3 Within fourteen (14) days after service of the Report and Recommendation, any party may file precise, specific, written exceptions with the Board. Written exceptions shall meet the requirements of §§ 501 and 561.
- 556.4 An opposition to exceptions may be filed within fourteen (14) days after service of the exceptions.
- 556.5 The Board may order additional briefs where it deems appropriate. The Board may also order oral argument on its own motion or upon motion of a party.

**557 DISQUALIFICATION**

- 557.1 A Hearing Examiner or Board member shall withdraw from proceedings whenever that person has a conflict of interest.
- 557.2 In any case in which a Hearing Examiner fails to withdraw from a proceeding as has been requested by a party, the Hearing Examiner shall state the reason for his or her decision on the record. The Board shall consider the request at the time the entire case is transmitted and shall take appropriate action.

**558 VOLUNTARY AND MANDATORY SETTLEMENT OR ADJUSTMENT OF DISPUTES**

- 558.1 It is Board policy to encourage voluntary efforts of parties to settle or adjust disputes involving issues of representation, unfair labor practices, standards of conduct, or issues arising during negotiations.
- 558.2 Parties' efforts at resolution and any settlements or adjustments reached shall be consistent with the provisions, purposes, and policies of the CMPA.
- 558.3 No admissions, offers of settlement, or proposals of adjustment made during such efforts toward resolution may be used in any proceeding as evidence or as an admission of a violation of any law or regulation.
- 558.4 At the discretion of the Board, all parties filing pleadings before the Board shall submit to the mandatory mediation program established by the Board.
- 558.5 The Board or its designee shall designate the mediator in each matter.
- 558.6 The parties shall make a good faith effort in all mediations before the Board to resolve the issues in dispute as identified in the pleadings submitted to the Board.

Party representatives at the mandatory mediation proceedings must have the settlement authority of the party.

558.7 Parties must inform the Board when they have multiple cases pending, which raise common issues. The Board encourages the resolution and consolidation of multiple cases for the purpose of mediation.

558.8 If mediation does not resolve a dispute within a reasonable period of time, the Executive Director may terminate mediation and continue proceedings for resolution of the matter pursuant to these rules and the CMPA.

## **559 FINALITY OF BOARD DECISION AND ORDER**

559.1 The Board's Decision and Order shall become final thirty (30) days after issuance unless the Order specifies otherwise. Issuance is considered completed upon service on the parties in the matter.

559.2 The Board's Decision and Order shall not become final if any party files a motion for reconsideration within fourteen (14) days after issuance of the Decision, or if the Board reopens the case on its own motion within fourteen (14) days after issuance of the Decision, unless the Order specifies otherwise.

559.3 Upon issuance of an Opinion on any motion for reconsideration of a Decision and Order, the Board's Decision and Order shall become final.

559.4 Administrative remedies are considered exhausted when a Decision and Order becomes final in accordance with this section.

## **560 ENFORCEMENT**

560.1 If any respondent fails to comply with the Board's Decision within the time period specified in § 559.1, the prevailing party may petition the Board to enforce the Order.

(a) The petition shall be filed electronically with the Board pursuant to §§ 501 and 561.

(b) Exception: In accordance with § 501.11, a *pro se* individual, acting on his or her own behalf, shall file a petition by personal delivery during business hours as defined in § 500.8. A *pro se* individual may utilize the Board's public access terminal to upload the document.

560.2 The responding party shall have fourteen (14) days from service to respond to the petition.



560.3 Failure by the responding party to file an answer may be construed as an admission of the petitioner's allegations.

**561 ELECTRONIC FILING**

561.1 All pleadings, motions, memoranda of law, orders, or other documents shall be filed electronically through File & ServeXpress, except for such documents as may be excluded by these rules or by order of the Board or Executive Director.

561.2 [REPEALED].

561.3 Unless the Board orders otherwise, an original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document and shall be made available, upon reasonable notice, for inspection by other counsel or the Board. From time to time, it may be necessary to provide the Board with a hard copy of an electronically filed document.

561.4 Any pleading filed electronically shall be considered filed with the Board at the time the transaction is completed ("authorized date and time"). Any document filed with the Board before midnight Eastern Time is deemed filed with the Board on that date; however, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Board is not open for business shall be deemed to have been filed on the day and at the time of the next opening of the Board for business.

561.5 File & ServeXpress is hereby appointed the Agent of the Board as to the electronic filing, receipt, service, and/or retrieval of any pleading or document maintained electronically. Upon filing and receipt of a document, File & ServeXpress shall issue a confirmation that the document has been received. The confirmation shall serve as proof that the document has been filed. A filer will receive an email notification of document(s) that the Board subsequently rejects, and may be required to refile the document(s) to meet necessary filing requirements.

561.6 If the electronic filing is not filed with the Board because of: (1) an error in the transmission of the document to File & ServeXpress, which was unknown to the sending party; (2) File & ServeXpress's failure to process the electronic filing upon receipt; or (3) other technical problems that the filer might experience, the Board or Executive Director may upon satisfactory proof enter an order permitting the document to be filed *nunc pro tunc* to the date it was first attempted to be filed electronically.

561.7 Documents filed electronically shall comply with the following requirements:

- (a) In accordance with § 501, all electronically filed pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules

governing formatting of paper pleadings, and in such other and further format as the Board may require from time to time;

- (b) Every pleading, document, and instrument electronically filed shall be deemed to have been signed by the attorney or declarant and shall bear a facsimile or typographical signature of such person, along with the typed name, address, and telephone number. Typographical signatures shall be styled “/s/ name” and shall be treated as personal signatures for all purposes under these rules; and
- (c) Where counsel is filing a pleading in consolidated cases, a single filing in the lead case is deemed to be filed in all cases consolidated with it.

561.8 [REPEALED].

561.10 The Board may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of this section.

561.11 A motion to file documents under seal shall be filed and served electronically. Redacted copies of documents filed under seal may be filed and served electronically. Documents filed under seal containing confidential information may be filed conventionally (in physical form) or as a sealed electronic document.

## **566 LIST OF NEUTRALS**

566.1 The Board shall establish and maintain a list of persons qualified to act as neutrals in resolving disputes. The list shall specify, for each person, the capacities (i.e. mediator, fact-finder, arbitrator, hearing examiner) for which that person is qualified. Unless otherwise specified by these rules or the parties’ mutual agreement, the selection of mediators, fact-finders and arbitrators shall be made in order from the list of neutrals maintained by the Board, assuming the availability of the selected neutral. Nomination of a person to the list referred to in this section may be made by a member of the Board, the Executive Director, or any other person including the nominee, by writing to the Executive Director. The nomination shall include the following information:

- (a) The name, occupation, residence, and business address and telephone numbers of the nominee;
- (b) A brief statement of the nominee’s related experience and education that serve as qualifications for appointment;
- (c) Any relevant professional, civic, or social association memberships of the nominee;

- (d) The name, address, telephone number and occupation of the nominator (if different from the nominee);
- (e) A statement of the association between the nominator and the nominee (where they are different persons) and of its duration; and
- (f) A statement of any association the nominee has or had, other than as a neutral, with an agency or with a labor organization that represents or seeks to represent employees in the District of Columbia Government.

566.2 In making appointments to the list, the Board shall consider such factors as experience and training, membership on other recognized mediation or arbitration panels, education, prior published awards, current advocacy in employment relations matters, potential conflicts of interest, letters of recommendations supporting the application and any other relevant material supplied by the applicant or requested by the Board. Special consideration will be granted to applicants who are residents of the District of Columbia.

566.3 Every person appointed to the list shall file a fee schedule with the Board. An individual on the list who is selected to serve in a case as a mediator, fact finder or arbitrator, shall not charge a fee greater than that listed in the fee schedule he or she has filed with the Board. A minimum of thirty (30) days prior written notice shall be given to the Board of changes in fee schedules.

566.4 Requests for panels from the Board's list shall be submitted on a form developed by the Board and shall include the following:

- (a) The name, address, and telephone number of the party or parties submitting the request and of any other party to the matter;
- (b) The name, address, and telephone number of a party or all parties' representative;
- (c) The type of service requested; and
- (d) A brief description of the nature of the dispute, including unresolved issues, to the extent known.

566.5 Whenever the Board provides parties with a panel selected from the list, the Board shall also provide copies of the biographical sketches and fee schedules of the panelists.

566.6 Parties may jointly request that panels submitted to them contain or omit specific individuals. No party may unilaterally make such a request.

## **567 AMENDMENT TO RULES**

- 567.1 Whenever the Board deems amendment of these rules to be in the public interest, it shall give notice of the proposed amendments to all labor organizations and personnel authorities of the District of Columbia Government. Copies of the proposed amendments shall be posted as appropriate and published in the *D.C. Register*.
- 567.2 Any interested person may petition the Board in writing for amendments to any portion of the rules and regulations and provide specific proposed language together with a statement of grounds in support of the amendment.
- 567.3 Any person desiring to comment on a proposed amendment may do so within the time specified by the Board in the Notice of the proposed amendment. Comments shall be in writing and shall meet the requirements of § 501, or as otherwise stated in the Notice.

## 599 DEFINITIONS

- 599.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Agency** - Any entity that is so defined in the CMPA.

**Arbitrator** - A neutral person selected by the parties or appointed by the Board or by the Executive Director to resolve disputed labor-management issues by issuing a final and binding decision after presentation by the parties of evidence and argument.

**Days** - Calendar days, unless otherwise specified.

**Board** - The District of Columbia Public Employee Relations Board.

**Decision-making personnel** - Any Hearing Examiner, employee, or Board Member of the Board who reasonably may be expected to participate in the decision-making process of the Board.

**Ex parte Communication** - Any oral or written communication between decision-making personnel of the Board and an interested party to a proceeding without providing the other parties the opportunity to participate.

**Fact-finding** - The procedure in which one or more neutral persons review the positions of the parties in a negotiation impasse with a view towards focusing attention on the issues in dispute and resolving differences as to facts.

**Impasse** - The point in collective bargaining negotiations at which no further progress can be made by the parties without the intervention of a neutral third party, except as otherwise defined by the CMPA for compensation bargaining.

**Interested party** - Any party or representative of a party involved in a proceeding before the Board; or any other person who might be affected by the outcome of a proceeding before the Board.

**Issuance** - The date of service on one or more parties of a decision, order, or correspondence from the Board.

**Mediation** - The procedure in which a neutral person is selected or appointed to attempt to persuade the parties to a labor-management dispute to compromise or otherwise settle their differences by a solution which they reach themselves.

**Panel** - Either three members of the Board who have been designated to hear a particular matter brought before the Board or a tripartite committee of arbitrators who have been appointed to hear a particular matter.

**Party** - Any person, employee, group of employees, organization, agency, or agency subdivision initiating such a proceeding as authorized by these rules or named as a participant in such a proceeding or whose intervention in a proceeding has been granted or directed under the authority of the Board.

**Pleadings** - Complaint(s), petition(s), appeal(s), request(s) for review or resolution, motion(s), exception(s), brief(s), and responses to the foregoing.

**Pro se individual** - A party who is not represented by legal counsel nor represented in proceedings before the Board by a representative from a labor organization.

**Showing of Interest** - Proof offered to the satisfaction of the Board establishing that a percentage (as defined by these rules) of employees in a proposed or existing unit desires representation by a petitioner seeking exclusive recognition or by another labor organization seeking to intervene in a representation proceeding, or that the unit employees no longer desire representation by a labor organization.

## ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

**NOTICE OF FINAL RULEMAKING****AND****Z.C. ORDER NO. 14-11(1)****Z.C. Case No. 14-11****(Text Amendment – 11 DCMR)****(Technical Correction to Z.C. Order No. 14-11)****September 10, 2015**

The Zoning Commission for the District of Columbia (Commission) pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of the adoption of amendments to §§ 330, 336, 401, and 3202 of Title 11 (Zoning), of the District of Columbia Municipal Regulations (DCMR). The final rulemaking is effective upon publication of this notice in the *D.C. Register*.

Z.C. Order No. 14-11 became effective on June 26, 2015. Z.C. Order No. 14-11, among other things, amended rules governing the conversion of residential buildings and non-residential buildings to apartment houses. The rules provided circumstances in which building permit applications to convert residential buildings would be processed under the rules in place on July 17, 2014. The amendments as published inadvertently failed to provide similar vesting rules for the conversion of non-residential buildings to apartment houses, although that was the Commission's intent.

The Office of Planning brought this information to the attention of the Commission through a report dated July 10, 2015, and recommended amendments to correct the omission, as well as other minor clarifying changes to the new rules. The Commission considered whether to propose the amendments at its public meeting held July 13<sup>th</sup>. Because of the potential adverse impact of the omission on pending developments, the Commission took emergency action to adopt the amendment and also authorized the publication of the rules in a notice of emergency and proposed rulemaking. Also, because the proposed amendments were technical in nature, the Commission determined that no public hearing was required, pursuant to the Consent Calendar provisions set forth in 11 DCMR § 3030 and, for that same reason, no referral to the National Capital Planning Commission was required.

A notice of emergency and proposed rulemaking was published in the *D.C. Register* on July 31, 2015, at 62 DCR 10432. No comments were received in response.

The Commission took final action to adopt the amendments at a special public meeting on September 10, 2015, at which time it included several minor revisions suggested by the Office of the Attorney General after consultation with the Office of Planning.

The first revision permits an applicant for a building permit subject to the vesting provisions of § 3202.10 (grandfathered applicant) to choose to have that application processed under the amendments to the R-4 regulations as adopted in Z.C. Order 14-11. Subsection 3202.10 requires

the Zoning Administrator to review permits submitted by grandfathered applicants under the R-4 rules in place on July 17, 2014.

However, a grandfathered applicant may not wish for that to happen if the conversion fails to meet the minimum lot area requirement of § 401.3. That is because the new rules permit special exception relief from the requirement, whereas the former rules require a variance. As proposed, § 3202.10 does not appear to allow a grandfathered applicant to choose by which set of R-4 rules to be bound.

The Commission believes that this choice should be permitted and therefore adds new § 3202.11. The new provision also allows a grandfathered applicant to amend a pending Board of Zoning Adjustment application to reflect the zoning relief needed under the R-4 rules now in effect, if being bound by those rules will be that applicant’s choice when filing for a building permit. The Commission wishes to stress that § 3202.11 does not permit a non-grandfathered building permit applicant to choose to have the former rules applied, nor would it permit a grandfathered applicant to pick and choose among the two sets of R-4 rules.

A second set of revisions would clarify that the term “application” as used in § 3202.10(b)(3) refers to an application for a variance, special exception, design, or concept design and not an “Application” for a building permit that is referred to in the introductory paragraph of the subsection. Because this same language is used in §§ 3202.8 and 3202.9, the same revisions to those provisions are being made.

Finally, the Commission made a correction to its amendment of § 400.1 to clarify that a height of forty (40) feet is permitted in the R-4 zone for “new construction of 3 or more immediately adjoining one- or two-family row dwellings, built concurrently on separate record lots.” The addition of the underlined phrase is needed because the term “row dwelling” could be misinterpreted as applying only to one- (1) family row dwellings. However, in R-4 zones both one- (1) family and two- (2) family dwellings may be constructed in a row and it was the Commission’s intention to apply its amendment to both types of row dwellings.

The Commission made no other changes in the text as published in the notice of emergency and proposed rulemaking.

Z.C. Order No. 14-11 included a table that summarized the circumstances under which a building permit will be processed under the Zoning Regulations in place on July 17, 2014. The following is an update of that table to indicate the added vesting that results from the Commission’s adoption of these amendments, with the added vesting shown in underlined and **bold** type:

<b>Type of Construction in R-4 Zone District</b>	<b>Circumstance</b>	<b>Date(s)</b>
New one-family dwelling or flat, or an addition to: (a) an existing one-family dwelling; (b) an existing flat; or (c) an existing apartment house.	Filing of building permit application (including a foundation-to-grade permit application) legally filed with, and accepted as complete by DCRA.	Prior to February 1, 2015

Type of Construction in R-4 Zone District	Circumstance	Date(s)
Conversion of a residential building to apartment house.	Filing of building permit application (including a foundation-to-grade permit) legally filed with, and accepted as complete by the DCRA.	Prior to July 17, 2014
<b><u>Conversion of a non-residential building to apartment house.</u></b>	<b><u>Filing of building permit application (including a foundation-to-grade permit) legally filed with, and accepted as complete by DCRA.</u></b>	<b><u>Prior to June 26, 2015</u></b>
<b><u>Construction involving the conversion of a non-residential building to an apartment house</u></b> and all residential construction.	Project has an unexpired approval of variance or special exception by the BZA or an unexpired approval of a design or concept design by HPRB (or staff) or CFA.	Approved prior to the effective date of the amendments; or Approved after the effective date, but application filed prior thereto, <b><u>except that a building permit applicant for conversion of a non-residential building to an apartment house may choose to have the application processed pursuant to the R-4 rules in place as of June 26, 2015.</u></b>

All pending building permit applications for other types of construction involving a non-residential building or structure will be processed in accordance with the Zoning Regulations in place on the date upon which the permit is issued.

**Title 11 DCMR, ZONING, is amended as follows:**

**Chapter 3, R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS, are amended as follows:**

**Section 330, R-4 DISTRICTS: GENERAL PROVISIONS, § 330.7, is amended to strike the phrase “building or structure shall” in the introductory text and replacing it with the phrase “building shall”, to strike the phrase “building or structure” in paragraph (d), and to insert the phrase “either structurally or through increasing the number of units,” in paragraph (h) so that the subsection reads as follows:**

330.7 Conversion of an existing non-residential building or structure existing prior to May 12, 1958, to a residential building shall be permitted as a matter of right in the R-4 Zone District subject to the following conditions:

- (a) There is an existing non-residential building on the property at the time of filing an application for a building permit;
- (b) The maximum height of any addition to the existing structure shall not exceed thirty-five feet (35 ft.);



- (c) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;
- (d) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;
- (e) A roof top architectural element original to the structure such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;
- (f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;
- (g) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator; and
- (h) An apartment house in an R-4 Zone District converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to §§ 3104.1 and 3104.3 and § 337.

**Section 336, CONVERSION OF A RESIDENTIAL BUILDING EXISTING PRIOR TO MAY 12, 1958, TO APARTMENT HOUSES (R-4), § 336.13, is amended by adding a reference to new § 3202.10 and inserting the phrase “either structurally or through increasing the number of units” so that the subsection reads as follows:**

336.13 An apartment house in an R-4 Zone District, converted from a residential building prior to June 26, 2015, or converted pursuant to §§ 3202.8, 3202.9, or 3202.10, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to §§ 3104.1 and 3104.3 and this subsection.

**Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, Section 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), § 400.1, is amended by striking from the “R-4” portion of its table the phrase “residential row dwellings” and inserting the phrase “one- or two-family row dwellings” in its place so that the subsection reads as follows:**

400.1 Except as specified in this chapter and in Chapters 20 through 25 of this title, the height of buildings or structures in a Residence District shall not exceed that given in the following table:

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ZONE DISTRICT	MAXIMUM HEIGHT (Feet)	MAXIMUM HEIGHT (Stories)
R-1-A, R-1-B, R-2, R-3, R-5-A	40	3
R-5-B	50	no limit
R-5-C	60	no limit
R-5-D	90	no limit
R-5-E	90	no limit
<b>R-4 ZONE DISTRICT</b>		
New construction of 3 or more immediately adjoining one- and two-family row dwellings built concurrently on separate record lots	40	3
All other structures	35	3

**Chapter 32, ADMINISTRATION AND ENFORCEMENT, § 3202, BUILDING PERMITS, is amended as follows:**

**Subsection 3202.4 is amended by adding a reference to new § 3202.10 so that the subsection reads as follows:**

3202.4 Except as provided in §§ 3202.8, 3202.9, and 3202.10, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:

- (a) The permit holder shall begin construction work within two (2) years of the date on which the permit is issued; and
- (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

**Subsections 3202.8 and 3202.9 are amended by twice inserting the word “Permit” prior to the word “Application” in the introductory paragraphs and by twice inserting the phrase “the variance, special exception, design, or concept design,” in paragraph (3) of each subsection so that the subsection reads as follows:**

3202.8 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Permit Application) for construction of a new one- (1) family dwelling or flat, or for construction of an addition or alteration to an existing one- (1) family dwelling or an existing flat not involving a conversion to an apartment house, or an addition or alteration to an existing apartment house in the R-4 Zone District shall be processed, and any work authorized by the permit may be carried to completion pursuant to the provisions of the R-4 regulations in place as of July 17, 2014, if:

- (a) The Permit Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs prior to February 1, 2015; or
- (b) The project has:
  - (1) An unexpired approval of a variance or special exception by the Board of Zoning Adjustment; or
  - (2) An unexpired approval of a design or concept design by the Historic Preservation Review Board (including a delegated approval made pursuant to 10-C DCMR §§ 319 through 321), or the Commission of Fine Arts; and
  - (3) The vote to approve the variance, special exception, design, or concept design or the delegated action occurred:
    - (A) Prior to June 26, 2015; or
    - (B) On or after June 26, 2015, and the application for the variance, special exception, design, or concept design was filed prior thereto.

3202.9 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Permit Application) for construction involving the conversion of a one- (1) family dwelling or flat to an apartment house in the R-4 Zone District shall be processed, and any work authorized by the building permit may be carried to completion pursuant to the provisions of the R-4 regulations in place as of July 17, 2014, if:

- (a) The Permit Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs prior to July 17, 2014; or
- (b) The project has:
  - (1) An unexpired approval of a variance or special exception by the Board of Zoning Adjustment; or
  - (2) An unexpired approval of a design or concept design by the Historic Preservation Review Board (including a delegated approval made pursuant to 10-C DCMR §§ 319 through 321), or the Commission of Fine Arts; and
  - (3) The vote to approve the variance, special exception, design, or concept design or the delegated action occurred:

- (A) Prior to June 26, 2015; or
- (B) On or after June 26, 2015, and the application for the variance, special exception, design, or concept design was filed prior thereto.

**New §§ 3202.10 and 3202.11 are added to read as follows:**

3202.10 Notwithstanding § 3202.4 and except as provided in § 3202.11, a building permit application (including a foundation-to-grade permit application) (the Permit Application) for construction involving the conversion of an existing non-residential building to an apartment house in the R-4 Zone District shall be processed, and any work authorized by the building permit may be carried to completion pursuant to the provisions of the R-4 regulations in place as of July 17, 2014, if:

- (a) The Permit Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs prior to June 26, 2015; or
- (b) The project has:
  - (1) An unexpired approval of a variance or special exception by the Board of Zoning Adjustment; or
  - (2) An unexpired approval of a design or concept design by the Historic Preservation Review Board (including a delegated approval made pursuant to 10-C DCMR §§ 319 through 321), or the Commission of Fine Arts; and
  - (3) The vote to approve the variance, special exception, design, or concept design or the delegated action occurred:
    - (A) Prior to June 26, 2015; or
    - (B) On or after June 26, 2015, and the application for the variance, special exception, design, or concept design was filed prior thereto.

3202.11 Notwithstanding § 3202.10, an applicant for a building permit described in § 3202.10 may choose to have its building permit application processed in accordance with the R-4 regulations in place as of June 26, 2015 by indicating its choice in writing as part of its building permit application. A Board of Zoning Adjustment application may be amended to reflect the applicant's intended choice.

On July 13, 2015, upon a motion by Commissioner Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the publication of a notice of proposed rulemaking for this case, at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On September 10, 2015, upon a motion by Commissioner Miller, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order, at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on September 25, 2015.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

**NOTICE OF FINAL RULEMAKING**

**AND**

**Z.C. ORDER NO. 14-11(1)**

**Z.C. Case No. 14-11**

**(Text Amendment – 11 DCMR)**

**(Technical Correction to Z.C. Order No. 14-11)**

**September 10, 2015**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

**DEPARTMENT OF ENERGY AND ENVIRONMENT****NOTICE OF SECOND PROPOSED RULEMAKING****District of Columbia Mold Assessment and Remediation Licensure Regulations**

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in Sections 103(b)(1)(B)(ii)(III) and 107(4) 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)(III) and 8-151.07(4) (2013 Repl. & 2015 Supp.)); Title III, Subtitle B of the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.* (2013 Repl. & 2015 Supp.)); Section III.18 of Mayor's Order 2006-61, dated June 14, 2006; and Mayor's Order 2015-191, dated July 23, 2015, hereby gives notice of the intent to promulgate a new Chapter 32 (Mold Licensure and Certification) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), the Mold Assessment and Remediation Licensure Regulations.

This rulemaking implements the provisions of Title III, Subtitle B of the Air Quality Amendment Act of 2014 by providing mold licensure and certification mechanisms for all mold assessment or remediation professionals who operate in the District of Columbia. This rulemaking also sets a threshold above which a property owner must employ assessment and remediation professionals if the property is rented for residential use.

**The Certification and Licensure Program: Purpose and Description**

The proposed rulemaking establishes a certification and licensure program for mold assessment and remediation professionals that offer their services in the District of Columbia. It is the interpretation of the Department that the intent of the regulation and the authorizing statute is to prevent fraudulent operators from offering their services without being certified or licensed and thereby guaranteeing a basic level of competence in the performance of this activity. The Department has determined that all professionals – without respect to the location of the work performed – who perform mold assessment or remediation should be certified and licensed to prevent unscrupulous actors from exploiting a perceived gap in regulatory authority. All persons who offer these services are required to be licensed by the Department.

The certification mechanism describes the criteria by which the Director may recognize the certification of an independent body as the basis for licensure granted by the District. The Director may recognize one or more bodies based on these criteria and may withdraw the recognition of the certifying body and any licensure based on that certification if the Director determines the certifying body is no longer operating in a method consistent with standards necessary to protect the health and welfare of the residents of the District of Columbia.

Through this rulemaking, the Department is establishing a licensure program. To obtain a license to perform mold assessment or remediation, the applicant must be certified by a recognized body and apply to the Department. Consistent with the provisions of the Air Quality Amendment Act

of 2014, no person may offer mold assessment or remediation services in the District of Columbia without a license from the Department.

**The Threshold: Purpose and Description**

Under the authority granted by the Act, the Department has established a threshold of ten square feet (10 ft.<sup>2</sup>) of affected indoor mold growth as the concentration above which a landlord must enlist the services of a mold professional. The Department chose square footage as a method of establishing the threshold because it provides a readily discernible and measurable method, without additional technical measurements, allowing for an easily accessible measure that non-technical persons can use to trigger the protections of the Act.

**Changes from the First Proposed Rulemaking to the Second Proposed Rulemaking**

The Department issued a first proposed rulemaking, formally known as the “Notice of Proposed Rulemaking,” and a Draft Guidance Document, on April 3, 2015, with the public comment period ending on May 4, 2015. 62 DCR 3941 (April 3, 2015). Additionally, on May 29, 2015, the Department issued a notice for a public outreach meeting on June 30, 2015, to allow concerned residents to provide additional feedback on the proposed regulations. 62 DCR 6954 (May 29, 2015 – Part 1). The comments and the Department’s responses to the comments are located on the Department’s website at <http://doee.dc.gov>. Also during this time, the Department discussed the proposed regulations with a broad group of stakeholders that represented the interests of tenants, property owners, mold and laboratory professionals, and mold professional certification organizations.

This rulemaking is being proposed for a second time to address several public comments. First, the Department has lowered the threshold from twenty-five (25) to ten square feet (10 ft.<sup>2</sup>) of affected indoor mold growth as the concentration above which a landlord must enlist the services of a mold professional. Additionally, the Department has included a training requirement that licensees must meet once the Department approves of training providers. The Department has also lowered the cost of initial application from \$400 to \$300, while setting the fee for reciprocity (licensed by another state) applications at \$300. The Department has made other minor revisions to improve clarity and to make terms more consistent with industry standards. Notably, the Department has combined the requirements of the former Clearance Report and the Certificate of Mold Damage Remediation into one document, titled the “Verification Report.” Also to remove ambiguity, the Department has revised the definition of “visible” and the term “contiguous” to “affected” and its corresponding definition.

**Title 20, ENVIRONMENT, is amended by adding a new Chapter 32 as follows:**

**CHAPTER 32                    MOLD LICENSURE AND CERTIFICATION**

- 3200 Purpose and Scope
- 3201 Exceptions and Threshold for Mold Professionals
- 3202 Requirements and Fees To Obtain a License
- 3203 Scope of Mold Licenses



- 3204 Prohibitions and Licensee Obligations
- 3205 Minimum Performance Standards and Work Practices for Licensees
- 3206 Minimum Work Guidelines and Requirements for Non-Licensees: Assessment
- 3207 Licensee Insurance Requirements
- 3208 Applicant and Licensee Training Requirements
- 3209 Notification Requirements
- 3210 Indoor Mold Remediation Professional Record-keeping Requirements
- 3211 Inspection
- 3212 Denial, Suspension, Modification, or Revocation of Licenses
- 3213 Enforcement and Penalties
- 3299 Definitions

### **3200 PURPOSE AND SCOPE**

- 3200.1 The purpose of this chapter is to implement Title III of the Air Quality Amendment Act of 2014 (Act), effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.* (2012 Repl. & 2014 Supp.)).
- 3200.2 This chapter establishes (1) a licensing program for indoor mold assessment and remediation professionals performing work on all properties in the District of Columbia, (2) a ten affected square feet (10 ft.<sup>2</sup>) threshold level of indoor mold contamination for residential property, and (3) guidelines for residential indoor mold assessment and remediation below the threshold level.
- 3200.3 Indoor mold remediation obligations of residential property owners and tenants are stated in D.C. Official Code § 8-241.04 (2012 Repl. & 2014 Supp.).

### **3201 EXCEPTIONS AND THRESHOLD FOR MOLD PROFESSIONALS**

- 3201.1 This chapter shall not apply to:
  - (a) The following activities when not conducted for the purpose of complying with D.C. Official Code § 8-241.04 (2012 Repl. & 2014 Supp.):
    - (1) Routine cleaning;
    - (2) The diagnosis, repair, cleaning, or replacement of plumbing, heating ventilation, air conditioning, electrical, or air duct systems or appliances;
    - (3) Commercial or residential real estate inspections; or
    - (4) The incidental discovery or emergency containment of indoor mold growth during the conduct or performance of services listed in this subsection.

- (b) The repair, replacement, or cleaning of construction materials during the construction of a structure; or
- (c) A pest control inspection conducted by a person regulated under Chapter 23 of this title.

3201.2 A license shall not be required under this chapter to perform mold assessment or remediation in a residential property containing a total surface area of less than ten affected square feet (10 ft.<sup>2</sup>) of indoor mold growth.

3201.3 A license shall not be required under this chapter to perform mold assessment or remediation in an outdoor area or a non-residential property.

3201.4 A license shall not be required under this chapter to perform mold assessment or remediation when it is performed by the owner of a residential dwelling unit when the dwelling unit is owner occupied.

3201.5 An individual shall not be required to be licensed under this chapter to perform mold assessment or mold remediation while supervised by a licensee.

3201.6 An individual shall not be required to be licensed under this chapter if they are currently licensed by the District of Columbia or another jurisdiction in another field (including, but not limited to, medicine, architecture, or engineering) who provide to a licensee only consultation related to that other field. In such a case, the responsibility for the project or activity remains with the licensee.

3201.7 An individual shall not be required to be licensed under this chapter if they are performing the regulated activities of a licensed insurance adjuster, including investigation and review of losses to insured property, assignment of coverage, and estimation of the usual and customary expenses due under the applicable insurance policy, including expenses for reasonable and customary mold assessment and remediation.

3201.8 An individual who is performing mold assessment or remediation under the licensing exemption(s) of § 3201.2 and identifies indoor mold growth of ten affected square feet (10 ft.<sup>2</sup>) or more shall:

- (a) Immediately cease all assessment or remediation work; and
- (b) Advise the person requesting the assessment or remediation that the exemption under § 3201.2 is no longer applicable and that any additional work in the area shall be conducted by a licensee under this chapter.

## **3202 REQUIREMENTS AND FEES TO OBTAIN A LICENSE**

3202.1 An individual shall not engage in the business of mold assessment or mold

remediation without a license issued pursuant to this section.

- 3202.2 Each individual applying for a license under this chapter shall be at least eighteen (18) years old at the time of application.
- 3202.3 An individual applying for a license under this chapter shall apply to the Department after passing an examination approved by the Department pursuant to this subsection.
- 3202.4 The Department may administer an examination following the standards enumerated in this section to assist in the licensure of indoor mold assessment and remediation professionals.
- 3202.5 The Department may approve examinations offered by organizations that are recognized in the mold assessment or mold remediation industry. The Department may also approve other states' examinations. The Department's website shall contain an active list of approved examinations.
- 3202.6 The Department shall adhere to the following standards for approval of mold assessment and remediation examinations:
- (a) The examination shall be proctored;
  - (b) The mold assessment examination shall cover:
    - (1) The physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate a hypothesis about the origin, identity, location, and extent of amplification of indoor mold growth; and
    - (2) Mold remediation strategies.
  - (c) The mold remediation examination shall cover remediation planning and the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter.
- 3202.7 The Department may consider the following standards when approving an examination:
- (a) The overall difficulty of the examination, including the depth and variety of questions, and the score required to pass;
  - (b) The examination covers topics referenced in § 3208.7; and
  - (c) The recognized organization providing the examination requires examinees to participate in initial and refresher training, following the

standards in § 3208, in the areas of mold assessment or remediation.

- 3202.8 An individual shall have either passed a Department-approved examination or recertified their credential no more than two (2) years prior to submitting an application to the Department.
- 3202.9 An individual applying to be licensed as an indoor mold assessment or remediation professional shall meet one or more of the following education and experience requirements of this subsection:
- (a) At least a two (2) year associate degree, or the equivalent, with at least thirty (30) semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of one (1) year of documented relevant field experience;
  - (b) A certified industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least six (6) months of documented relevant field experience; or
  - (c) A high school diploma or the equivalent with a minimum of three (3) years of documented relevant field experience.
- 3202.10 An applicant for an indoor mold assessment or remediation professional license shall submit a completed application that includes the following:
- (a) A fee of three hundred dollars (\$300) for an initial application.
  - (b) Documentation that the applicant meets the following requirements:
    - (1) The age requirement, as specified in § 3202.2;
    - (2) The examination requirement, as specified in §§ 3202.4 or 3202.5;
    - (3) One of the educational and experience requirements, as specified in § 3202.9;
    - (4) The insurance requirement, as specified in § 3207;
    - (5) Upon Department approval of training providers, the training requirements, as specified in § 3208; and
    - (6) Any other information that the Department requires for a complete application.

- (c) For a renewal, submit the evidence required in subparagraphs (b)(2), (4), (5), and (6), and a fee of one hundred and five dollars (\$105).

3202.11 Submission of a current, valid license for mold assessment or remediation that is issued by another state, as approved by the Department following the standards established in this section, is sufficient for practice as an indoor mold assessment or remediation professional in the District of Columbia, if the applicant includes in an application to the Department:

- (a) A fee of three hundred dollars (\$300) for an initial application.
- (b) Documentation that the applicant meets the following requirements:
  - (1) The applicant is licensed and in good standing by an approved state; and
  - (2) Any other information that the Department requires for a complete application.
- (c) For a renewal, submit the evidence required in paragraph (b) and a fee of one hundred and five dollars (\$105).

3202.12 The term of each license shall be two (2) years.

3202.13 A licensee whose license has expired but continues to hold himself or herself out as an indoor mold assessment or remediation professional is in violation of this chapter.

3202.14 Beginning in 2017, license fees charged by the Department may be adjusted annually based on the change in the Consumer Price Index value published by the U.S. Department of Labor for all-urban consumers.

**3203 SCOPE OF MOLD LICENSES**

3203.1 An indoor mold assessment professional is permitted to:

- (a) Record visual observations and take on-site measurements, including temperature, humidity, and moisture levels, during an initial or post-remediation mold assessment;
- (b) Collect samples for mold analysis during a mold assessment;
- (c) Plan surveys to identify conditions favorable for indoor mold growth or to determine the presence, extent, amount, or identity of mold or suspected mold in a building;

- (d) Conduct activities recommended in a plan developed under paragraph (c) of this subsection and describe and interpret the results of those activities;
- (e) Determine locations at which the licensee or individuals under the licensee’s supervision shall record observations, take measurements, or collect samples;
- (f) Prepare a mold assessment report, including the observations made, measurements taken, and locations and analysis;
- (g) Develop a mold management plan for a building or dwelling unit, including recommendations for periodic surveillance, response actions, and prevention and control of indoor mold growth;
- (h) Prepare a mold remediation protocol, including the evaluation and selection of appropriate remediation strategies, personal protective equipment, engineering controls, project layout, post-remediation verification evaluation methods and criteria, and preparation of plans and specifications; and
- (i) Evaluate a mold remediation project for the purpose of verifying that indoor mold identified for the remediation project has been remediated as outlined in a mold remediation protocol.

3203.2 An indoor mold remediation professional is permitted to:

- (a) Perform mold remediation, as defined in § 3299.1;
- (b) Prepare a mold remediation work plan providing instructions for the remediation efforts to be performed for a mold remediation project;
- (c) Conduct and interpret the results of activities recommended in a mold remediation work plan developed under paragraph (b) of this subsection; and
- (d) Complete appropriate sections of a verification report, as defined in § 3299.1.

**3204 PROHIBITIONS AND LICENSEE OBLIGATIONS**

3204.1 An individual shall not perform indoor mold assessment or remediation in the District of Columbia, unless licensed by the Department, or exempted by § 3201.

3204.2 A person shall not use the name or title of “licensed,” “professional,” “certified,” or any other term or terms that communicates a level of expertise in mold assessment or remediation, unless that person is an individual licensed by the

Department or employs individuals who are licensed with the Department.

3204.3 All persons using such names or titles as referenced in § 3204.2 shall have readily available their name and license number or the name and license number of the individual(s) who are an employee of that person and who are also licensed by the Department.

3204.4 All licensees shall:

- (a) Perform only services that they are licensed to conduct;
- (b) Meet or exceed the minimum industry standards for mold assessment and remediation and the standards set in this chapter;
- (c) Disclose any known or potential conflict of interest to any party affected by such conflicts;
- (d) To the extent required by law, keep confidential any personal information (including medical conditions) obtained during the course of a mold-related activity;
- (e) Promptly furnish required documents or information to the Department and promptly respond to requests for information from the Department;
- (f) Maintain knowledge and skills for continuing professional competence;
- (g) Promptly report alleged misrepresentation or violations of the Act or this chapter to the Department;
- (h) Competently and efficiently perform their duties and report to the Department incompetent, illegal, or unethical conduct of any licensee; and
- (i) Supervise any person assisting with the licensee's work and ensure that supervisees are following best practices and applicable laws and regulations.

3204.5 Licensees shall not:

- (a) Perform both mold assessment and mold remediation on the same project;
- (b) Accept or offer any compensation to any other mold licensee or their company for the referral of any mold-related business;
- (c) Assess or remediate any property in which the indoor mold assessment professional or indoor mold remediation professional or their company has any financial interest;

- (d) Misrepresent any professional qualifications or credentials;
- (e) Provide any information to the Department or client that is false, deceptive, or misleading;
- (f) Work if impaired as a result of drugs, alcohol, sleep deprivation, or other conditions and not allow supervisees to work if the licensee knows or reasonably should know that the supervisee is impaired;
- (g) Make any false, misleading, or deceptive claims, or claims that are not readily subject to verification, in any advertising, announcement, presentation, or competitive bidding;
- (h) Make a representation that is designed to take advantage of the fears or emotions of the public or a customer;
- (i) Retaliate against any person who reported in good faith to any District of Columbia agency, department, or instrumentality, alleged incompetent, illegal, or unethical conduct; or
- (j) Supervise the work of more than ten (10) individuals at one time.

## 3204.6

Indoor mold assessment professionals shall:

- (a) Provide to the client a mold assessment report following an initial mold assessment;
- (b) If the licensee includes the results of the initial assessment in a mold remediation protocol or a mold management plan, not provide a separate assessment report;
- (c) If indoor mold growth is identified in a mold assessment, provide to the client a mold remediation protocol before a remediation project begins;
- (d) Within ten (10) days, after successful completion of remediation activities, provide a verification report to the client and the appropriate indoor mold remediation professional or, if an indoor mold assessment professional ceases to be involved with a project before it passes verification, provide a final status report to the client and the appropriate indoor mold remediation professional; and
- (e) In all issued reports, protocols, or other documents, include the date when the document was issued to the client and all indoor mold assessment professionals' names, license numbers, and, if applicable, business name and addresses.



- 3204.7 When conducting mold remediation, indoor mold remediation professionals shall:
- (a) Provide to a client a mold remediation work plan for the project before the mold remediation preparation work begins;
  - (b) Inquire of the client or property owner whether any known or suspected hazardous materials, including lead-based paint and asbestos, are present in the project area, and, if present, follow appropriate work practices in accordance with District and federal law;
  - (c) Provide to the property owner a completed verification report not later than the tenth (10<sup>th</sup>) day after receiving the verification report from the indoor mold assessment professional; and
  - (d) In all issued reports, plans, or other documents, include the date when the document was issued to the client and all indoor mold remediation professionals' names, license numbers, and, if applicable, business name and addresses.

**3205 MINIMUM PERFORMANCE STANDARDS AND WORK PRACTICES FOR LICENSEES**

- 3205.1 Indoor mold assessment professionals shall adhere to the following minimum standards:
- (a) If an indoor mold assessment professional determines that personal protective equipment should be used during a mold assessment project, the indoor mold assessment professional shall ensure that all individuals who engage in assessment activities and who will be, or are anticipated to be, exposed to indoor mold growth are provided with, fit tested for, and trained on the appropriate use and care of the specified personal protective equipment;
  - (b) If samples for laboratory analysis are collected during the assessment:
    - (1) Sampling and analysis shall be performed according to industry best practices;
    - (2) Preservation methods shall be implemented for all samples where necessary;
    - (3) Proper sample documentation, including the sampling method, the sample identification code, each location and material sampled, the date collected, the name of the person who collected the samples, and the project name or number, shall be recorded for each sample;

and

- (4) Proper chain of custody procedures shall be used;
- (c) If mold remediation is to be conducted by an indoor mold remediation professional, prepare a mold remediation protocol that is specific to each remediation project and provide the protocol to the client before the remediation begins. The mold remediation protocol shall specify:
- (1) The rooms or areas where the work shall be performed;
  - (2) The estimated quantities of materials to be cleaned or removed;
  - (3) The methods to be used for each type of remediation in each area;
  - (4) The personal protective equipment to be used by indoor mold remediation professionals. A minimum of an N-95 respirator is recommended during mold-related activities when indoor mold growth could or will be disturbed. An indoor mold assessment professional may specify additional or more protective personal protective equipment if he or she determines that it is warranted;
  - (5) The proposed types of containment, as described in (d) of this subsection, to be used during the project in each area; and
  - (6) The proposed verification procedures and criteria, as described in paragraph (h) of this subsection, for each type of remediation in each area;
- (d) Containment shall be specified in a mold remediation protocol when indoor mold growth affects a total surface area of ten affected square feet (10 ft.<sup>2</sup>) or more, unless the indoor mold assessment professional describes in the mold remediation protocol why containment is not necessary;
- (e) If walk-in containment is used, supply and return air vents shall be covered with plastic, and air pressure within the walk-in containment shall be lower than the pressure in building areas adjacent to the containment;
- (f) An indoor mold assessment professional indicating a specific disinfectant, biocide, or antimicrobial coating in a mold remediation protocol shall recommend only products or brands if it is registered by the District of Columbia and the United States Environmental Protection Agency for the intended use and uses consistent with the manufacturer's labeling instructions;
- (g) A decision by an indoor mold assessment professional to use products in

paragraph (f) of this subsection shall take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with such products; and

- (h) In the remediation protocol for the project, the indoor mold assessment professional shall specify:
  - (1) At least one industry-recognized analytical method for use within each remediated area to determine whether the indoor mold growth identified for the project has been remediated as outlined in the mold remediation protocol;
  - (2) The criteria to be used for evaluating analytical results to determine whether the mold remediation project is verified as complete;
  - (3) That post-remediation assessment shall be conducted while walk-in containment is in place, if walk-in containment is specified for the project; and
  - (4) The procedures to be used in determining whether the underlying causes of the mold identified for the project have been remediated so that it is reasonably certain that the mold will not return from those same causes.

3205.2 Indoor mold remediation professionals shall adhere to the following standards:

- (a) An indoor mold remediation professional shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation protocol, and provides specific instructions or standard operating procedures for how a mold remediation project shall be performed. The indoor mold remediation professional shall provide the mold remediation work plan to the client before site preparation work begins;
- (b) If an indoor mold assessment professional specifies in the mold remediation protocol that personal protective equipment is required for the project or if the indoor mold remediation professional determines that individuals require personal protective equipment, the indoor mold remediation professional shall provide the specified personal protective equipment to all individuals who engage in remediation activities and who will, or are anticipated to, disturb or remove indoor mold growth. The recommended minimum personal protective equipment is an N-95 respirator;

- (c) Containment specified in the remediation protocol shall be used on a mold remediation project;
- (d) If walk-in containment is used, supply and return air vents shall be covered with plastic, and air pressure within the walk-in containment shall be lower than the pressure in building areas adjacent to the containment;
- (e) Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas and shall meet the following requirements:
  - (1) The signs shall be at least eight (8) inches by ten (10) inches in size and shall bear the words “NOTICE: Mold remediation project in progress” in black on a yellow background; and
  - (2) The text of the signs shall be legible from a distance of ten (10) feet;
- (f) No person shall remove or dismantle any walk-in containment structures or materials from a project site prior to receipt, by the indoor mold remediation professional overseeing the project, of a written notice from an indoor mold assessment professional that the project has been verified as complete as described under § 3299.1;
- (g) Disinfectants, biocides, and antimicrobial coatings may be used only if their use is specified in a mold remediation protocol, if they are registered by the District of Columbia and the United States Environmental Protection Agency for the intended use, and if the use is consistent with the manufacturer’s labeling instructions; and
- (h) If a protocol specifies the use of such a product, as referenced in paragraph (g), but does not specify the brand or type of product, an indoor mold remediation professional may select the brand or type of product to be used, subject to the other provisions of this chapter.

**3206 MINIMUM WORK GUIDELINES AND REQUIREMENTS FOR NON-LICENSEES: ASSESSMENT**

- 3206.1 In general, an indoor mold assessment professional should be consulted when assessing the extent of a moisture problem, indoor mold growth, and performing other related activities.
- 3206.2 The following guidelines are applicable to non-licensed individuals performing mold assessment on areas potentially affected by less than ten square feet (10 ft.<sup>2</sup>) of indoor mold growth; unless exempt by § 3201, a non-licensed individual shall not perform mold assessment on indoor mold growth when it is equal to or greater

than ten affected square feet (10 ft.<sup>2</sup>).

- 3206.3 Prior to taking any steps to clean, scrape, remove, paint over, or otherwise remediate any indoor mold growth, a visual inspection should be performed that assesses the following:
- (a) The extent of water damage, indoor mold growth, and affected building materials;
  - (b) Crawl spaces, attics, behind wallboards, carpet backing and padding, wallpaper, baseboards, insulation, and other materials that are suspected of hiding indoor mold growth;
  - (c) Ventilation systems for damp conditions and indoor mold growth on system components, like filters, insulations, and coils or fins; and
  - (d) Certain materials that are susceptible to indoor mold growth when damp, including ceiling tiles, paper-covered gypsum wallboard (drywall), structural wood, and other cellulose-containing surfaces.
- 3206.4 If assessment work might disturb indoor mold growth, personal protective equipment, like gloves and respiratory protection, should be worn.
- 3206.5 If indoor mold growth or water-damaged materials are visually identified, remediation shall be conducted in accordance with the guidance document published by the Department.
- 3206.6 If indoor mold growth equal to or greater than ten affected square feet (10 ft.<sup>2</sup>) is visually identified, the property owner, unless if exempt by § 3201.4, shall hire an indoor mold assessment professional who is licensed pursuant to § 3202 to conduct an indoor mold assessment.

### **3207 LICENSEE INSURANCE REQUIREMENTS**

- 3207.1 An indoor mold assessment professional shall maintain general liability and errors and omissions insurance coverage of at least one million dollars (\$1,000,000) for preliminary and post-remediation mold assessment.
- 3207.2 An indoor mold remediation professional shall maintain a general liability insurance policy in an amount of at least one million dollars (\$1,000,000) that includes specific coverage for mold-related and general pollution claims.
- 3207.3 An indoor mold assessment professional or an indoor mold remediation professional shall maintain the applicable insurance policy unless covered under an employer's policy.

**3208 APPLICANT AND LICENSEE TRAINING REQUIREMENTS**

- 3208.1 Upon the Department's approval of training organizations, applicants and licensees shall meet the training requirements in this section.
- 3208.2 The same training performed to obtain and maintain a third-party accreditation can be used to meet the requirements in this section.
- 3208.3 Applicants and licensees shall take and complete training performed by Department-approved training providers.
- 3208.4 The Department shall require the following individuals to complete twenty-four (24) hours of training, with a minimum of four (4) hours of hands-on training, no more than two (2) years prior to submission of the application:
- (a) Applicants seeking an initial District indoor mold assessment or remediation professional license; and
  - (b) Applicants that have allowed their District indoor mold assessment or remediation professional license to lapse for two (2) years or more.
- 3208.5 The Department shall require the following individuals to complete four (4) hours of refresher training no more than two (2) years prior to submission of the application: licensees seeking to renew a District indoor mold assessment or remediation professional license that either have not allowed their license to lapse or have allowed their license to lapse for less than two (2) years.
- 3208.6 Upon the Department's approval of training organizations, the Department shall develop and maintain an active list of approved training providers on its website.
- 3208.7 The Department shall consider the following standards when approving twenty-four (24) hour training courses:
- (a) For an indoor mold assessment professional, the course shall address the following topics:
    - (1) Role and responsibilities of an indoor mold assessment professional;
    - (2) Background information on mold, including health effects;
    - (3) Employee personal protective equipment;
    - (4) Workplace safety hazards, including other environmental hazards, such as lead and asbestos;

- (5) Knowledge of building construction related to eliminating moisture problems, including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials;
  - (6) Current relevant industry work practices and standards, including the use and reading of moisture meters and an understanding of HVAC systems;
  - (7) Pre-assessment planning and interpretation of previous mold assessment records;
  - (8) Mold assessment report development and recordkeeping;
  - (9) Inspection and sampling techniques for mold assessment;
  - (10) Designing a mold management plan, mold remediation protocol, and verification report;
  - (11) Public, employee, and building occupant relations;
  - (12) Liability and insurance issues relating to mold assessment; and
  - (13) Supervisory techniques for mold assessment activities including implementation of required work practices and prevention of unsafe work practices.
- (b) For an indoor mold remediation professional, the course shall address the following topics:
- (1) Role and responsibilities of an indoor mold remediation professional;
  - (2) Background information on mold including health effects;
  - (3) Employee personal protective equipment;
  - (4) Workplace safety hazards, including other environmental hazards such as lead and asbestos;
  - (5) Knowledge of building construction related to eliminating moisture problems, including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials;
  - (6) Current relevant industry work practices, including the use and

reading of moisture meters, duct cleaning, and use of drying equipment;

- (7) Pre-remediation planning and interpretation of a mold assessment report and a mold remediation protocol;
- (8) Designing a mold remediation work plan;
- (9) Liability and insurance issues relating to mold remediation;
- (10) Recordkeeping for mold remediation projects; and
- (11) Supervisory techniques for mold remediation activities including implementation of required work practices and prevention of unsafe work practices.

- (c) For an indoor mold assessment and remediation professional, the course should address the District's mold statute (D.C. Official Code §§ 8-231.01 *et. seq.* (2012 Repl. & 2014 Supp.)) and this chapter.

3208.8 The Department shall consider the following standards when approving refresher training courses lasting four (4) hours: Comprehensive review of the respective twenty-four-hour (24) course topics with specific emphasis and update on current relevant mold assessment and remediation industry work practices and standards.

3208.9 When considering training providers for approval, the Department shall give preference to training providers that meet the following standards:

- (a) Instructors and guest speakers present in person at least fifty percent (50%) of the classroom instruction and all of the hands on instruction;
- (b) Courses that require hands-on practical training are presented in an environment that permits each student to have actual experience performing tasks associated with mold-related activities;
- (c) Student-to-instructor ratios and facilities are conducive to learning;
- (d) Those providing training have experience, education, or training in teaching workers or adults in the areas of mold assessment, remediation, or a related field;
- (e) Development and implementation of plans to maintain and improve the quality of the training program to reflect innovations in the field;
- (f) The provider is not also providing a Department-approved third-party examination;



- (g) The provider requires students to pass a closed-book, fifty (50) question multiple choice examination after training to ensure retention of topics covered by the course, requiring a passing score of seventy percent (70%) or higher; and
- (h) Upon the student passing training examinations in paragraph (g), the provider issues completion certificates to the students.

### **3209 NOTIFICATION REQUIREMENTS**

3209.1 An indoor mold assessment professional shall notify the Department when he or she determines that a property is impacted by indoor mold growth affecting a total surface area of ten affected square feet (10 ft.<sup>2</sup>) or more in accordance with the following requirements:

- (a) The notification shall include the address of the site, a short description of the building and its mold condition, building owner, the date(s) of the assessment, and the name and license number of the indoor mold assessment professional; and
- (b) The notification shall be provided to the Department no more than five (5) calendar days after issuance of a mold assessment report, mold remediation protocol, or a mold management plan.

3209.2 An indoor mold remediation professional shall notify the Department of a planned mold remediation at a property, when indoor mold growth affects a total surface area of ten affected square feet (10 ft.<sup>2</sup>) or more in accordance with the following requirements:

- (a) The notification shall include the address of the site, a short description of the building, the building owner, the start date, the anticipated stop date, and the name and license number of the indoor mold remediation professional;
- (b) The indoor mold remediation professional shall notify the Department at least five (5) calendar days prior to the date when remediation is scheduled to start;
- (c) After notification, if the scheduled start date changes, the indoor mold remediation professional shall provide the Department with the proper scheduled date at least five (5) calendar days prior to the scheduled start of remediation;
- (d) After notification, if the scheduled stop date changes by more than one (1) calendar day, the indoor mold remediation professional shall provide the

Department with the proper stop date as soon as practicable but no later than one (1) calendar day after the indoor mold remediation professional is aware of the new stop date;

- (e) The notification requirements of paragraphs (b), (c), and (d) do not apply in the event of an emergency, however in an emergency the indoor mold remediation professional shall provide the Department with a notification according to paragraph (a) as soon as practicable but no later than the following business day after the indoor mold remediation professional identifies the emergency; and
- (f) The notification requirements of paragraphs (b), (c), and (d) do not apply when, previously unknown to the indoor mold remediation professional, indoor mold growth exceeding ten affected square feet (10 ft.<sup>2</sup>) is revealed during the remediation process, in which case the indoor mold remediation professional shall provide the Department with a notification according to paragraph (a) as soon as practicable but no later than the following business day after the indoor mold growth is revealed.

### **3210 INDOOR MOLD REMEDIATION PROFESSIONAL RECORD-KEEPING REQUIREMENTS**

3210.1 An indoor mold remediation professional shall maintain the following records and documents on-site at a project for its duration:

- (a) A copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan;
- (b) A listing of the names and applicable license numbers for all individuals working on the remediation project; and
- (c) The written contract between the indoor mold remediation professional or his/her employer and the client, and any written contracts related to the mold remediation project between the indoor mold remediation professional or his/her employer and any other party.

### **3211 INSPECTION**

3211.1 The Department may inspect or investigate the business practices of any person that it has reason to believe is licensed in accordance with this chapter, holding themselves out as an indoor mold assessment or remediation professional, or performing work that shall only be performed by an indoor mold assessment or remediation professional.

3211.2 The Department, upon presenting proper identification, shall have the right to enter at all reasonable times any area or environment, including, but not limited

to, any containment area, building, construction site, storage, or office area, or vehicle to review and copy records or question any person for the purpose of ensuring compliance with this chapter.

- 3211.3 If a person denies access to the Department acting pursuant to the authority of the Act or this chapter, the Department may apply for an administrative search warrant in a court of competent jurisdiction, in addition to other actions authorized by law and regulations.

**3212 DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSES**

- 3212.1 The Department shall initiate an action denying, suspending, modifying, or revoking a license by issuing a notice of denial, suspension, modification, or revocation.

- 3212.2 Except as provided in § 3212.5, 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 ground 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.

- 3212.3 The Department may issue a notice of denial, suspension, modification, or revocation, if the Department finds that the applicant or license holder:

- (a) Has failed to comply with a provision of the Act or a rule in this chapter;

- (b) Has misrepresented facts relating to a mold-related activity to a client, the Department, or other District agency;
- (c) Has made a false statement or misrepresentation material to the issuance, modification, or renewal of a license;
- (d) Has submitted a false or fraudulent record, invoice, or report;
- (e) Has a history of repeated violations of District regulation; or
- (f) Has had a certification or license denied, revoked, or suspended either by the Department or by another state or jurisdiction.

3212.4 Pursuant to § 3213.3, 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 license should not be denied, revoked, modified, or suspended.

3212.5 The Department may immediately suspend a license to protect the public health, safety, or welfare, or the environment. The suspension shall be immediately effective pending further investigation.

3212.6 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.

3212.7 An individual whose license has been revoked or denied by the Department shall not be eligible to apply for any license available under this chapter until a period of ninety (90) days has passed after the effective date of such suspension, revocation or denial.

### **3213 ENFORCEMENT AND PENALTIES**

3213.1 The Department may enforce a violation of the Act or this chapter by issuing one or more of the following:

- (a) Notice of Violation;
- (b) Notice of Infraction;
- (c) Cease and Desist Order, which shall take effect immediately, or a Compliance Order;
- (d) Notice of suspension, revocation, or denial of a license pursuant to § 3212; or

- (e) Any other order necessary to protect human health or the environment, or to implement this chapter consistent with the purposes of the Act.

3213.2 Orders issued pursuant to § 3213.1(b), (c), and (e):

- (a) Shall identify the name and address of the recipient;
- (b) Shall identify the alleged violation or threatened violation;
- (c) May require the respondent to conduct corrective action;
- (d) Shall make clear the basis for the order and that the respondent's failure to take the measures directed will constitute an additional violation of the Act or the chapter; and
- (e) Shall state the process for objecting to the order.

3213.3 A person may object to an order by requesting a hearing within fifteen (15) calendar days of service, or twenty (20) calendar days if service is made by United States mail, as follows:

- (a) If specific instructions are not on the order, the owner, individual, firm, or entity shall file a written request for a hearing, including the grounds for the objection, with 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.*), in accordance with the Rules of Practice and Procedure of the Office of Administrative Hearings set forth in Title 1 DCMR Chapter 28;
- (b) If a hearing is not requested within the specified time period, the order becomes final and remains in effect until the Department determines that any applicable corrective actions have been completed; and
- (c) A hearing request does not stay the effective date of a Cease and Desist Order.

3213.4 The Department may also initiate a civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, preliminary injunction, or other relief necessary for enforcement of these rules.

## **3299 DEFINITIONS**

3299.1 When used in this chapter or Title III of the Air Quality Amendment Act of 2014, the following words and phrases shall have the meaning as described:

**Affected** – in close proximity, likely impacted from the same source of water intrusion or moisture accumulation.

**Certified industrial hygienist** - an industrial hygienist who is certified by the American Board of Industrial Hygiene.

**Certified safety professional** - any individual who has been certified by the American Society of Engineers, American Board of Industrial Hygiene, or other nationally recognized health and safety industry organization, as determined by the Department.

**Conflict of interest** - because of other past, present, or future planned activities or relationships, the licensee is unable, or potentially unable, to render impartial services to the client.

**Containment** – a component or enclosure designed or intended to prevent the release of mold or mold-containing dust or materials into surrounding areas in the building during mold-related activities.

**Containment area** – an area that has been enclosed to prevent the release of mold or mold-containing dust or materials into surrounding areas.

**Department** – The Department of Energy and Environment or its successor agency.

**Dwelling Unit** – a room or group of rooms used or designed to be used in whole or in part for permanent occupation and that has permanent provisions for living, sleeping, eating, and sanitation, for one or more persons, but does not include a unit within a hotel, motel, dormitory, or seasonal or transient facility.

**Emergency** – a situation in which water damage has occurred and a delay in mold remediation would allow indoor mold growth to increase.

**Final Status Report** – a document issued by an indoor mold assessment professional that includes:

- (a) A description of relevant worksite observations;
- (b) The type and location of relevant measurements made and samples collected at the worksite;
- (c) Relevant data obtained at the worksite, such as temperature, humidity, and material moisture readings;
- (d) The results of analytical evaluation of the samples collected at the

worksite;

- (e) Copies of relevant photographs; and
- (f) Any conclusions that the indoor mold assessment professional has drawn.

**Indoor mold assessment professional** – an individual who conducts mold assessment as defined in this section and who is licensed under this chapter as an indoor mold assessment professional.

**Indoor mold growth** – mold that exists on an interior surface of a building, including common spaces, utility spaces, HVAC, or other systems, and is visible.

**Indoor mold remediation professional** – an individual who conducts mold remediation as defined in this section and who is licensed under this chapter as an indoor mold remediation professional.

**License** – any license issued by the Department under this chapter.

**Licensee** – an individual licensed under this chapter to perform mold assessment or remediation.

**Mold** – living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

**Mold analysis** – the examination of a sample collected during a mold assessment for the purpose of:

- (a) Determining the amount or presence of or identifying the genus or species of any living or dead mold or related parts (including spores and hyphae) present in the sample;
- (b) Growing or attempting to grow fungi for the purposes of paragraph (a); or
- (c) Identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and microbial volatile organic compounds, present in the sample.

**Mold assessment** - an inspection, investigation, or survey, including by visual observation or other means, of a dwelling unit or other structure regarding the presence, identification, or evaluation of mold that may include one or more of the following:

- (a) The development of a mold assessment report;
- (b) The development of a mold remediation protocol;
- (c) The development of a mold management plan; and
- (d) The collection or analysis of a mold sample(s).

**Mold assessment report** - a document prepared by an indoor mold assessment professional for a client that describes any observations made, measurements taken, and locations and analytical results of samples taken during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol.

**Mold management plan** - a document prepared by an indoor mold assessment professional for a client that provides guidance on how to prevent and control indoor mold growth at a location.

**Mold professional** – indoor mold assessment and indoor mold remediation professionals.

**Mold-related activities** - the performance of a mold assessment, mold remediation, or related activities.

**Mold remediation** - the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter.

**Mold remediation protocol** - a document, prepared by an indoor mold assessment professional for a client, that:

- (a) Includes relevant photograph(s) of the scene of mold remediation prior to remediation;
- (b) Specifies the estimated quantities and locations of materials to be remediated; and
- (c) Specifies the proposed remediation methods and verification criteria for each type of remediation in each type of area for a mold remediation project.

**Mold remediation work plan** - a document, prepared by an indoor mold remediation professional that fulfills all of the requirements of the mold remediation protocol and provides specific instructions or standard operating procedures for how a mold remediation project shall be



performed.

**Person** - an individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, District government entity, or any other association of individuals.

**Personal Protective Equipment** – items worn on an individual that limit their exposure to mold, including but not limited to gloves, goggles, respirators, and body suits.

**Preventive activities** - actions intended to prevent future indoor mold growth at a remediated area, including repairing leaks and other sources of water intrusion, and applying biocides or anti-microbial compounds.

**Professional engineer** - an engineer registered in a United States or Canadian jurisdiction.

**Professional registered sanitarian** - a sanitarian registered in a United States or Canadian jurisdiction, or by a Department-approved national organization.

**Project** - mold-related activities at a particular address for which a specific start date and a specific stop date is or will likely be provided.

**Registered Architect** - An architect registered in a United States or Canadian jurisdiction.

**Relevant field experience** - experience that involves:

- (a) For a mold indoor mold assessment professional: conducting microbial sampling or investigations; or
- (b) For a mold indoor mold remediation professional: mold remediation as defined in this section.

**Residential Property** - a building that contains one or more dwelling units, including common areas. Each street address constitutes a different residential property.

**Routine cleaning** - cleaning that is ordinarily done on a regular basis.

**Start date** - the date on which the mold remediation begins. Preparation work is not considered mold remediation.

**Stop date** - the date following the day on which an indoor mold assessment professional issues a verification report to the client and the applicable

indoor mold remediation professional.

**Supervise or supervision** - to direct and exercise control over the activities of an individual by being physically present at the job site or, if not physically present, accessible by telephone within ten minutes and able to be at the site within one hour of being contacted.

**Survey** - an activity undertaken in a building to determine the presence or absence, location, or quantity of indoor mold or to determine the underlying condition(s) contributing to indoor mold growth, whether by visual or physical examination or by collecting samples of potential mold for further analysis.

**Verification report** - a document that an indoor mold assessment professional issues when the indoor mold assessment professional determines that a project's remediation has been successful. The report includes:

- (a) A description of relevant worksite observations;
- (b) The type and location of relevant measurements made and samples collected at the worksite;
- (c) Relevant data obtained at the worksite, including but not limited to temperature, humidity, and material moisture readings;
- (d) The results of analytical evaluation of the samples collected at the worksite;
- (e) Copies of relevant photographs;
- (f) If necessary, recommendations of specific professional disciplines that may be needed to determine that the cause and origin of moisture leading to indoor mold growth has been properly remediated;
- (g) If additional professional disciplines are recommended in paragraph (f), a statement that the project's verified completion is contingent upon said discipline(s) performing work that remediates the cause and origin of moisture leading to indoor mold growth;
- (h) An area for the indoor mold remediation professional that worked on the project to include his or her name, signature, company name, and license number, with language stating "I hereby certify that I completed mold remediation on this project"; and
- (i) Clear statements that:

- (1) All project areas are free from visible mold, and visible dust and debris as they are related to the project;
- (2) All work has been completed in compliance with the remediation protocol;
- (3) All identified underlying causes of the mold have been remediated so that it is reasonably certain that the mold will not return from these same causes; and
- (4) The project is verified as complete.

**Visible** - capable of being seen with the naked eye, either by a lay person following the guidelines in § 3206, or by an indoor mold assessment professional following the standards in this chapter and best industry practices.

Please direct all comments on these proposed rules, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* care of “Mold Licensure Regulations”, Department of Energy and Environment, 1200 First Street NE, 5th Floor, Washington D.C. 20002, by US mail, or via email at [moldlicensure.regs@dc.gov](mailto:moldlicensure.regs@dc.gov). Copies of the proposed rule may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above for a small fee to cover the cost of reproduction or on-line at <http://doee.dc.gov/moldlicensureregs>.

## OFFICE OF TAX AND REVENUE

NOTICE OF PROPOSED RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 47-1335 (2012 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2014 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of its intent to amend Chapter 3 (Real Property Taxes) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments to Section 319 (Special Deed Tax Sale) are necessary for the conduct of a special deed sale in accordance with D.C. Official Code § 47-1353(a)(1).

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

**Chapter 3, REAL PROPERTY TAXES, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:**

**Subsection 319.2 of Section 319, SPECIAL DEED TAX SALE, is amended to read as follows:**

319.2 Bid back real properties may be sold:

- (a) On a one-by-one, first-come first-served basis; when so sold, no sooner than ten (10) business days after OTR publishes a list of bid backs for sale, a purchaser shall have first submitted a written offer, received by the Chief of the Assessment Services Division within OTR, clearly describing the real property by square suffix and lot, or parcel and lot, numbers; any offer shall only be deemed accepted by OTR after payment has been effectuated on the terms specified by OTR to that purchaser; or
- (b) Through a sealed bid process for a single portfolio; when so sold, a list of all bid back real properties (described by square suffix and lot, or parcel and lot, numbers) purchased with corresponding tax owed, including accruals, shall have been posted to OTR's Web site; the sealed bid process shall continue with Subsections 319.3 through 319.9 of this section, below.
- (c) This subsection shall not be construed to limit the use of other processes to

sell bid backs as permitted by law, including sales to the District or an instrumentality thereof, to a non-profit, or at a discount sale.

Comments on this proposed rulemaking should be submitted to Robert McKeon, Deputy Chief Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C. Register*. Robert McKeon may be contacted by: mail at D.C. Office of Tax and Revenue, 1101 4<sup>th</sup> Street, SW, Suite 750, Washington, DC 20024; telephone at (202) 442-6513; or email at [robert.mckeon@dc.gov](mailto:robert.mckeon@dc.gov). Copies of this rule and related information may be obtained by contacting Robert McKeon as stated herein.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; 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) (2014 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to §§ 1901-1902, 1904-1909, 1911-1912, 1937, and 1999, and new § 1938, 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 general standards for the services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

The Notice of Final Rulemaking for amendments to 29 DCMR §§ 1901-1902, 1904-1909, 1911-1912, and 1937, was published in the *D.C. Register* on May 2, 2014, at 62 DCR 004406. These rules amend the previously published final rules by: (1) changing the name of Art Therapies to Creative Arts Therapies; (2) adding Companion to the list of covered services; (3) deleting Shared Living from the list of covered services; (4) clarifying the eligibility requirements related to intellectual disability; (5) allowing a waiver of the requirement that the owner/operator have a specific degree and years of experience; (6) requiring that providers of residential and day/vocational services show evidence of fiscal and organization accountability; (7) modifying training requirements for a provider staff person who works exclusively as a driver; (8) requiring providers to participate and cooperate with the reporting requirements pursuant to D.C. Law 2-137, the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.01 *et seq.*); (9) modifying requirements for CPR and First Aid certification; (10) clarifying the educational requirements for Direct Support Professionals who were educated outside of the United States; (11) requiring that a Direct Support Professional be acceptable to the person for whom they are providing services; (12) requiring that providers report all reportable incidents to the Department on Disability Services; (13) adding support plan to the list of required records; (14) clarifying the requirements for daily progress notes; (15) amending Section 1937 on cost reports and audits;

(16) adding a new Section 1938 entitled Home and Community-Based Setting Requirements; (17) amending Subsection 1909.1 to clarify that DHCF and or its designees shall have access to all waiver provider locations, including access to the people receiving supports and all records in any form, and clarifying the meaning of “records” for purposes of this section; (18) adding certain definitions including definitions for Group Home for a Person with an Intellectual Disability, Living Wage, and SMARTER Goals, and (19) clarifying the requirements for Intellectual Disability and Qualified Development Disabilities Professional.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District’s most vulnerable residents. As discussed above, these amendments implement a new service and clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on September 12, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until January 8, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking. 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*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29, PUBLIC WELFARE, of the DCMR, is amended as follows:**

**Section 1901, COVERED SERVICES AND RATES, is deleted in its entirety and amended to read as follows:**

**1901 COVERED SERVICES AND RATES**

1901.1 Services available under the Waiver shall include the following:

- (a) Creative Arts Therapies;
- (b) Behavioral Supports;
- (c) Companion;
- (d) Day Habilitation;
- (e) Dental;
- (f) Employment Readiness;
- (g) Environmental Accessibilities Adaptations;
- (h) Family Training;
- (i) Host Home without Transportation;

- (j) Individualized Day Supports;
- (k) In-Home Supports;
- (l) Occupational Therapy;
- (m) One-Time Transitional Services;
- (n) Personal Care Services;
- (o) Personal Emergency Response System (PERS);
- (p) Physical Therapy;
- (q) Residential Habilitation;
- (r) Respite;
- (s) Skilled Nursing;
- (t) Small Group Supported Employment;
- (u) Speech, Hearing and Language Services;
- (v) Supported Employment;
- (w) Supported Living;
- (x) Supported Living with Transportation;
- (y) Vehicle Modifications; and
- (z) Wellness Services.

1901.2 Medicaid provider reimbursement for Waiver services shall be made according to the District of Columbia Medicaid fee schedule available online at: <https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload>.

**Subsections 1902.1 and 1902.4, of Section 1902, ELIGIBILITY REQUIREMENTS, are amended to read as follows:**

- 1902.1 Any person eligible to receive Waiver services shall be a person who currently receives services from DDS/DDA and meets all of the following requirements:
- (a) Has a special income level up to three hundred percent (300%) of the SSI federal benefit or be aged and disabled with income up to one hundred percent (100%) of the federal poverty level or be medically needy as set forth in 42 C.F.R. §§ 435.320, 435.322, 435.324 and 435.330;
  - (b) Has an intellectual disability as defined in D.C. Official Code § 7-1301.03(15A), which, when establishing qualifying intelligence quotient (IQ), includes consideration of the standard error of measurement associated with the particular IQ test, and requires adaptive deficits across at least two of the following three domains: conceptual, practical, and social;
  - (c) Is eighteen (18) years of age or older;
  - (d) Is a resident of the District of Columbia as defined in D.C. Official Code § 7-1301.03(22);



- (e) Has a Level of Care (LOC) determination that the person requires services furnished in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or be a person with related conditions pursuant to the criteria set forth in § 1902.4; and
- (f) Meets all other eligibility criteria applicable to Medicaid recipients including citizenship and alienage requirements.

## 1902.4

A person shall meet the LOC determination set forth in § 1902.1(e) if one of the following criteria has been met, taking into consideration the standard error of measurement for the IQ test:

- (a) The person's primary disability is an intellectual disability with an intelligence quotient (IQ) of fifty-nine (59) or less;
- (b) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has at least one (1) of the following additional conditions:
  - (1) Mobility deficits;
  - (2) Sensory deficits;
  - (3) Chronic health problems;
  - (4) Behavior problems;
  - (5) Autism;
  - (6) Cerebral Palsy;
  - (7) Epilepsy; or
  - (8) Spina Bifida.
- (c) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has severe functional limitations in at least three (3) of the following major life activities:
  - (1) Self-care;
  - (2) Understanding and use of language;
  - (3) Functional academics;
  - (4) Social skills;
  - (5) Mobility;
  - (6) Self-direction;
  - (7) Capacity for independent living; or
  - (8) Health and safety.
- (d) The person has an intellectual disability, has severe functional limitations in at least three (3) of the major life activities as set forth in § 1902.4(c)(1) through § 1902.4(c)(8), and has one (1) of the following diagnoses:
  - (1) Autism;

- (2) Cerebral Palsy;
- (3) Prader Willi; or
- (4) Spina Bifida.

**Section 1904, PROVIDER QUALIFICATIONS, is deleted in its entirety and amended to read as follows:**

**1904 PROVIDER QUALIFICATIONS**

1904.1 HCBS Waiver provider agencies shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the Medicaid provider enrollment application and the following organizational information:

- (a) A resume and three (3) letters of reference demonstrating that the owner(s)/operators(s) have a degree in the Social Services field or a related field with at least three (3) years of experience of working with people with intellectual and developmental disabilities; or a degree in a non-Social Services field with at least five (5) years of experience working with people with intellectual and developmental disabilities, unless waiver by the Department on Disability Services Deputy Director for the Developmental Disabilities Administration;
- (b) Documentation proving that the program manager of the HCBS Waiver provider agency has a Bachelor's degree in the Social Services field or a related field with at least five (5) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities or a Master's degree in the Social Services field or a related field with at least three (3) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities;
- (c) A copy of the business license issued by the Department of Consumer and Regulatory Affairs (DCRA);
- (d) A description of ownership and a list of major owners or stockholders owning or controlling five percent (5%) or more outstanding shares;
- (e) A list of Board members and their affiliations;
- (f) A roster of key personnel, with qualifications, resumes, background checks, local license, if applicable, and a copy of their position descriptions;
- (g) A copy of the most recent audited financial statements of the agency performed by a third-party Certified Public Accountant or auditing company (not applicable for a new organization);

- (h) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreements, if applicable;
- (i) A copy of the Bylaws or similar documents regarding conduct of the agency's internal affairs;
- (j) A copy of the certificate of good standing from the DCRA;
- (k) Organizational policies and procedures, such as personnel policies and procedures required by DDS and available at:  
<http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1>;
- (l) A continuous quality assurance and improvement plan that includes community integration and person-centered thinking principles and values as intentional outcomes for persons supported;
- (m) A copy of professional/business liability insurance of at least one million dollars (\$1,000,000) prior to the initiation of services, or more as required by the applicable Human Care Agreements;
- (n) A sample of all documentation templates, such as progress notes, evaluations, intake assessments, discharge summaries, and quarterly reports;
- (o) For providers of Supported Living, Supported Living with Transportation, Host Homes, and Residential Habilitation, a Continuity of Operations Plan;
- (p) For providers, of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, evidence fiscal and organizational accountability; and
- (q) Any other documentation deemed necessary to support the approval as a provider.

1904.2

Professional service provider applicants who are in private practice as an independent clinician and are not employed by an enrolled HCBS Waiver provider agency of residential or day/vocational services or a Home Health Agency, shall complete and submit to DDS the Medicaid provider enrollment application and the following:

- (a) Documentation to prove ownership or leasing of a private office, even if services are always furnished in the home of the person receiving services;
- (b) A copy of a professional license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided; and
- (c) A copy of the insurance policy verifying at least one million dollars (\$1,000,000) in liability insurance.

1904.3 Home Health Agencies shall complete and submit to DDS the Medicaid provider enrollment application and the following documents:

- (a) A copy of the Home Health Agency license pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules; and
- (b) If skilled nursing is utilized, a copy of the registered nurse or licensed practical nurse license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided.

1904.4 In order to provide services under the Waiver and qualify for Medicaid reimbursement, DDS approved HCBS Waiver providers shall meet the following requirements:

- (a) Maintain a copy of the approval letter issued by DHCF;
- (b) Maintain a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for services under the Waiver;
- (c) Obtain a National Provider Identification (NPI) number from the National Plan and Provider Enumeration System website;
- (d) Comply with all applicable District of Columbia licensure requirements and any other applicable licensure requirements in the jurisdiction where services are delivered;
- (e) Maintain a copy of the most recent Individual Support Plan (ISP) and Plan of Care that has been approved by DDS for each person;

- (f) Maintain a signed copy of a current Human Care Agreement with DDS for the provision of services, if determined necessary by DDS;
- (g) Ensure that all staff are qualified, properly supervised, and trained according to DDS policy;
- (h) Ensure that a plan is in place to provide services for non-English speaking people pursuant to DDA's Language Access Policy available at: <http://dds.dc.gov/publication/language-access-policy>;
- (i) Offer the Hepatitis B vaccine to all employees with potential exposure;
- (j) Ensure that staff are trained in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), as set forth in 29 C.F.R. § 1910.1030;
- (k) Ensure compliance with the provider agency's policies and procedures and DDS policies such as, reporting of unusual incidents, human rights, language access, employee orientation objectives and competencies, individual support plan, most integrated community based setting, health and wellness standards, behavior management, and protection of the person's funds, available at: <http://dds.dc.gov/page/policies-and-procedures-dda>;
- (l) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, complete mandatory training in Person-Centered Thinking, Supported Decision-Making, Supporting Community Integration, and any other topics as determined by DDS;
- (m) Provide a written staffing schedule for each site where services are provided, if applicable;
- (n) Maintain a written staffing plan, if applicable;
- (o) Develop and implement a continuous quality assurance and improvement system, that includes person-centered thinking, community integration, and compliance with the HCBS Settings Rule, to evaluate the effectiveness of services provided;
- (p) Ensure that a certificate of occupancy is obtained, if applicable;
- (q) Ensure that a certificate of need is obtained, if applicable;

- (r) Obtain approval from DDS for each site where residential, day, employment readiness, and supported employment services are provided prior to purchasing or leasing property;
- (s) Ensure that, if services are furnished in a private practice office space, spaces are owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice;
- (t) Ensure that a sole practitioner shall individually supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner;
- (u) Complete the DDA abbreviated readiness process, if applicable; and
- (v) Adhere to the specific provider qualifications in each service rule.

1904.5 Each service provider under the Waiver for which transportation is included or otherwise provided shall:

- (a) Ensure that each vehicle used to transport a person has valid license plates;
- (b) Ensure that each vehicle used to transport a person has at least the minimum level of motor vehicle insurance required by law;
- (c) Present each vehicle used to transport a person for inspection by a certified inspection station every six (6) months, or as required in the jurisdiction where the vehicle is registered, and provide proof that the vehicle has passed the inspection by submitting a copy of the Certificate of Inspections to DDS upon request, except in circumstances where transportation is not included in the Waiver service;
- (d) Ensure that each vehicle used to transport a person is maintained in safe, working order;
- (e) Ensure that each vehicle used to transport a person meets the needs of the person;
- (f) Ensure that each vehicle used to transport a person has seats fastened to the body of the vehicle;
- (g) Ensure that each vehicle used to transport a person has operational seat belts;
- (h) Ensure that each vehicle used to transport a person can maintain a temperature conducive to comfort;

- (i) Ensure that each vehicle used to transport a person is certified by the Washington Metropolitan Area Transit Commission, except in circumstances where transportation is not included in the Waiver service;
- (j) Ensure that each person is properly seated when the vehicle is in operation;
- (k) Ensure that each person is transported to and from each appointment in a timely manner;
- (l) Ensure that each person is provided with an escort on the vehicle, when needed;
- (m) Ensure that each vehicle used to transport a person with mobility needs is adapted to provide safe access and use;
- (n) Ensure that each staff/employee/contractor providing services meets the requirements set forth in § 1906 of these rules, except that a staff/employee/ contractor who works exclusively as a driver is exempt from § 1906.1(h), but must be trained on use of the vehicle safety restraints and any specific safety needs of the person being transported; and
- (o) Ensure that each staff/employee/contractor providing services be certified in Cardiopulmonary Resuscitation (CPR) and First Aid.

**Subsection 1905.10 of Section 1905, PROVIDER ENROLLMENT PROCESS, is amended to read as follows:**

1905.10 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR; to the provider certification standards established by DDS, currently known as the Provider Certification Review process; to all policies and procedures promulgated by DDS that are applicable to providers during the provider's participation in the Waiver program; and to participation and cooperation in the reporting requirements pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by the Superior Court of the District of Columbia.

**Section 1906, REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS, is deleted in its entirety and amended to read as follows:**

**1906 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS**

1906.1 The basic requirements for all employees and volunteers providing direct services are as follows:

- (a) Be at least eighteen (18) years of age;
- (b) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;
- (c) Possess a high school diploma, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;
- (d) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;
- (e) Complete pre-service and in-service training as described in DDS policy;
- (f) Have the ability to communicate with the person to whom services are provided;
- (g) Be able to read, write, and speak the English language;
- (h) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and
- (i) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*) for the following employees or contract workers:
  - (1) Individuals who are unlicensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code, who assist licensed health professionals in providing direct patient care or common nursing tasks;
  - (2) Nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides; and
  - (3) Housekeeping, maintenance, and administrative staff who may foreseeably come in direct contact with Waiver recipients or patients.



(j) Be acceptable to the person for whom they are providing supports.

1906.2 Volunteers who work under the direct supervision of an individual licensed pursuant to Chapter 12 of Title 3 of the D.C. Official Code shall be exempt from the unlicensed personnel criminal background check requirement set forth in § 1906.1(i).

**Section 1907, INDIVIDUAL SUPPORT PLAN (ISP), is deleted in its entirety and amended to read as follows:**

**1907 INDIVIDUAL SUPPORT PLAN (ISP)**

1907.1 The ISP is the plan that identifies the supports and services to be provided to the person and the evaluation of the person’s progress on an on-going basis to assure that the person’s needs and desired outcomes are being met, based on what is important to and for the person, specifically including identifying the person’s interest in employment, identifying goals for community integration and inclusion, and determining the most integrated setting available to meet the person’s needs.

1907.2 The ISP shall include all Waiver and non-waiver supports and services the person is receiving or shall receive consistent with his or her needs.

1907.3 The ISP shall be developed by the person and his or her support team using Person-Centered Thinking and Discovery tools and skills.

1907.4 At a minimum, the composition of the support team shall include the person being served, his or her substitute decision maker, if applicable, the DDS Service Coordinator and other individuals chosen by the person.

1907.5 The ISP shall be reviewed and updated annually by the support team. The ISP shall be updated more frequently if there is a significant change in the person’s status or any other significant event in the person’s life which affects the type or amount of services and supports needed by the person or if requested by the person.

1907.6 The Plan of Care shall be derived from the ISP and shall describe the frequency and types of services to be provided to the person, and the providers of those services.

1907.7 The provider shall:

- (a) Ensure that the service provided is consistent with the person’s ISP and Plan of Care;

- (b) Participate in the annual ISP and Plan of Care meeting or Support Team meetings when indicated; and
- (c) Develop the documents described under § 1909.2(i), including goals and objectives, within thirty (30) days of the initiation of services, which shall address how the service will be delivered to each person, after notification by DDS that a service has been authorized.

- 1907.8 DHCF shall not reimburse a provider for services that are not authorized in the ISP, not included in the Plan of Care, furnished prior to the development of the ISP, furnished prior to receiving a service authorization from DDS, or furnished pursuant to an expired ISP.
- 1907.9 Each provider shall submit to the person's DDS Service Coordinator a quarterly report which summarizes the person's progress made toward achieving the desired goals and outcomes and identification and response to any issue relative to the provision of the service.
- 1907.10 Each provider shall submit to the DDS Court Liaison and to the person's DDS Service Coordinator an annual court status report not less than fifteen (15) business days prior to the annual review hearing for the person, pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by the Superior Court of the District of Columbia. Each provider shall provide the annual court status report to the person's court appointed attorney not less than ten (10) business days prior to the annual review hearing of the person. Each provider shall cooperate with DDS to ensure that any necessary corrections to the annual court status report are made and submitted promptly and prior to the annual review hearing for the person.

**Section 1908, REPORTING REQUIREMENTS, is deleted in its entirety and amended to read as follows:**

**1908 REPORTING REQUIREMENTS**

- 1908.1 Each Waiver provider shall submit quarterly reports to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.
- 1908.2 For purposes of reporting, the first quarter shall begin on the effective date of a person's ISP.
- 1908.3 Each Waiver provider shall submit assessments, quarterly reports as set forth in § 1909.2(n), documents as described in § 1909.2(i), and physician orders, if applicable, to the DDS Medicaid Waiver unit for the authorization of services.

- 1908.4 Each Waiver provider shall complete all documents required for authorization of services as set forth in each service rule and shall submit the documents to the DDS Service Coordinator at the pre-ISP meeting.
- 1908.5 Failure to submit all required documents prior to the effective date of the ISP may result in a delay of the approval of services. Any failure on the part of the provider to submit required documents to approve service authorizations will result in sanctions by DDS up to and including a ban on authorizations for new service recipients. Service interruptions to the waiver participant due to the service provider's failure to submit required documentation will initiate referrals to a choice of a new service provider to ensure a continuation of services for the waiver participant. The date of the authorization of services shall be the date of receipt of the required documents by the Medicaid Waiver Unit, if the documents are submitted after the effective date of the ISP.
- 1908.6 Each Waiver provider shall report on a quarterly basis to the person served, his or her family, as applicable, guardian and/or surrogate decision maker and the DDS Service Coordinator about the programming and support provided to fulfill the objectives and outcomes identified in the ISP and Plan of Care, and any recommended revisions to the ISP and Plan of Care, when necessary, to promote continued skill acquisition, no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.
- 1908.7 Each Waiver provider shall report all reportable incidents and all serious reportable incidents to DDS pursuant to the timelines established under DDA's Incident Management and Enforcement Policy and Procedures, available at: <http://dds.dc.gov/page/policies-and-procedures-dda>.

**Subsections 1909.1, 1909.2 and 1909.5 of Section 1909, RECORDS AND CONFIDENTIALITY OF INFORMATION, are amended, and a new Subsection 1909.10 is added, to read as follows:**

- 1909.1 Each Waiver provider shall allow appropriate personnel of DHCF, DDS and other authorized agents of the District of Columbia government or of other jurisdictions where services are provided, and the federal government full access, whether the visit is announced or unannounced, to all waiver provider locations, including access to the people receiving supports and all records, in any form. For purposes of this section, the term 'records' includes, but is not limited to, all information relating to the provider, the services and supports being provided, and the people for whom services are provided; any information which is generated by or in the possession of the provider; the information required by D.C. Law 2-137; and any information required by the regulations implementing the HCBF waiver program.
- 1909.2 Each Waiver provider entity shall maintain the following records, if applicable, for each person receiving services for monitoring and audit reviews:

- (a) General information including each person's name, Medicaid identification number, address, telephone number, date of birth, sex, name and telephone number of emergency contact person, physician's name, address and telephone number, and the DDS Service Coordinator's name and telephone number;
- (b) A copy of the most recent DDS approved ISP and Plan of Care indicating the requirement for and identification of a provider who shall provide the services in accordance with the person's needs;
- (c) A record of all service authorization and prior authorizations for services;
- (d) A record of all requests for change in services;
- (e) The person's medical records;
- (f) A discharge summary;
- (g) A written staffing plan, if applicable;
- (h) A back-up plan detailing who shall provide services in the absence of staff when the lack of immediate care poses a serious threat to the person's health and welfare;
- (i) Documents which contain the following information:
  - (1) The results of the provider's functional analysis for service delivery;
  - (2) A schedule of the person's activities in the community, if applicable, including strategies to execute goals identified in the ISP and the date and time of the activity, The staff as identified in the staffing plan;
  - (3) Teaching strategies utilized to execute goals in the ISP and the person's response to the teaching strategy; and
  - (4) A support plan with SMARTER goals and outcomes using the information from the DDS approved person-centered thinking and discovery tools, the functional analysis, the ISP, Plan of Care, and other information as appropriate to assist the person in achieving their goals;
- (j) Any records relating to adjudication of claims;

- (k) Any records necessary to demonstrate compliance with all rules and requirements, guidelines, and standards for the implementation and administration of the Waiver;
- (l) An annual supervision plan for each staff member who is classified as a Direct Support Professional (DSP), developed and implemented by a provider designated staff member, containing the following information:
  - (1) The name of the DSP and date of hire;
  - (2) The DSP's place of employment, including the name of the provider entity or day services provider;
  - (3) The name of the DSP's supervisor who shall have at least two (2) years' experience working with persons with intellectual and developmental disabilities;
  - (4) A documentation of performance goals for the DSP;
  - (5) A description of the DSP's duties and responsibilities;
  - (6) A comment section for the DSP's feedback;
  - (7) A statement of affirmation by the DSP's supervisor confirming statements are true and accurate;
  - (8) The signature, date, and title of the DSP; and
  - (9) The signature, date, and title of the DSP's supervisor.
- (m) Progress notes, as set forth in each service rule, containing the following information:
  - (1) The progress in meeting the specific goals in the ISP and Plan of Care that are addressed on the day of service and relate to the provider's scope of service;
  - (2) The health or behavioral events or change in status that is not typical to the person;
  - (3) Evidence of all community integration and inclusion activities attended by the person and related to the person's ISP goals and for each, 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 recommends the use of the Learning Log for recording this information;

- (4) The start time and end time of any services received including the DSP's signature; and
  - (5) The matters requiring follow-up on the part of the Waiver service provider or DDS.
- (n) Reports on a quarterly basis, containing the following information:
- (1) An analysis of the goals identified in the ISP and Plan of Care and monthly progress towards reaching the goals;
  - (2) The service interventions provided and the effectiveness of those interventions;
  - (3) A summary analysis of all habilitative support activities that occurred during the quarter;
  - (4) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, the quarterly report shall include information on the person's employment, including place of employment, job title, hours of employment, salary/hourly wage, information on fringe benefits, and current checking, savings and burial fund balances, as applicable; and
  - (5) Any modifications or recommendations that may be required to be made to the documents described under § 1909.2(i), ISP, and Plan of Care from the summary analysis.

1909.5 Each Waiver provider shall ensure the person's privacy including securing service records for each person in a locked room or file cabinet and limiting access only to authorized individuals; and shall not post mealtime protocols, clinical therapy schedules, or any other health information.

1909.10 DHCF shall retain the right to conduct audits at any time. Each Waiver provider shall allow access, during on site audits or review by DHCF or U.S. Department of Health and Human Services auditors, to relevant financial records.

**Section 1911, INDIVIDUAL RIGHTS, is deleted in its entirety and amended to read as follows:**

**1911 INDIVIDUAL RIGHTS**

1911.1 Each Waiver provider shall develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (a) Be treated with courtesy, dignity, and respect;
- (b) Direct the person-centered planning of his or her supports and services;
- (c) Receive treatment, care, and services consistent with the ISP;
- (d) Receive services by competent personnel who can communicate with the person;
- (e) Refuse all or part of any treatment, care, or service and be informed of the consequences;
- (f) Be free from mental and physical abuse, neglect, and exploitation from staff providing services;
- (g) Be assured that for purposes of record confidentiality, the disclosure of the contents of his or her personal records is subject to all the provisions of applicable District and federal laws and rules;
- (h) Voice a complaint regarding treatment or care, lack of respect for personal property by staff providing services without fear of retaliation;
- (i) Have access to his or her records; and
- (j) Be informed orally and in writing of the following:
  - (1) Services to be provided, including any limitations;
  - (2) The amount charged for each service, the amount of payment received/authorized for him or her and the billing procedures, if applicable;
  - (3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party source;
  - (4) Acceptance, denial, reduction, or termination of services;
  - (5) Complaint and referral procedures including how to file an anonymous complaint;
  - (6) The name, address, and telephone number of the provider;
  - (7) The telephone number of the DDS customer complaint line;

- (8) How to report an allegation of abuse, neglect and exploitation;
- (9) For people receiving residential supports, the person's rights as a tenant, and information about how to relocate and request new housing.

**Subsections 1912.1 and 1912.6 of Section 1912, INITIATING, CHANGING, OR TERMINATING ANY APPROVED SERVICE, are amended to read as follows:**

- 1912.1 A provider shall hold a support team meeting and provide each person receiving Waiver services at least thirty (30) calendar days advance written notice of intent to initiate, suspend, reduce, or terminate services and shall offer a meeting to explain the notice. A copy of the notice shall also be provided to DDS and DHCF. If DDS intends to suspend, reduce or terminate services, DDS shall also provide written notice which complies with the requirements set forth in this section.
- 1912.6 In the event of a person's death, a provider shall comply with all written notice requirements and any policies established by DDA in accordance with DDA's Incident Management and Enforcement Policy and Procedures available at: <http://dds.dc.gov/page/policies-and-procedures-dda>.

**Subsection 1937.1 of Section 1937, COST REPORTS AND AUDITS, is amended to read as follows:**

- 1937.1 **Beginning October 1, 2015**, each waiver provider of residential habilitation, host home, supported living, supported living with transportation, day habilitation, in-home supports, individualized day supports, respite, employment readiness and supported employment services shall report costs to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception, on request. Such cost reporting will be for the purpose of informing rate setting parameters to be the most cost-effective for the government and to reimburse allowable costs for the providers. All cost reports shall cover a twelve (12) month cost reporting period. DHCF shall provide a cost report template.

**A new Section 1938, HOME AND COMMUNITY-BASED SETTING REQUIREMENTS, is added to read as follows:**

**1938 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS**

- 1938.1 All Supported Living, Supported Living with Transportation, Host Home, Respite Daily, Residential Habilitation, Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment and Employment Readiness settings must:



- (a) Be chosen by the person;
- (b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint;
- (c) Be physically accessible to the person and allow the person access to all common areas;
- (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy, and opportunities for employment and meaningful non-work activities in the community;
- (e) Provide information on individual rights; and
- (f) Allow visitors at any time, with any exception based on the person's assessed need and justified in his or her person-centered plan.

1938.2 All Supported Living, Supported Living with Transportation, Host Home, Residential Habilitation, and Respite Daily, settings must:

- (a) Be integrated in the community and support access to the greater community;
- (b) Provide opportunities for the person to engage in community life;
- (c) Allow full access to the greater community;
- (d) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under relevant landlord/tenant law. This applies equally to leased and provider owned properties.
- (e) Develop and adhere to policies which ensure that each person receiving services has the right to the following:
  - (1) Privacy in his or her personal space, including entrances that are lockable by the person (with staff having keys as needed);
  - (2) Freedom to furnish and decorate his or her personal space (with the exception of Respite Daily);
  - (3) Control over his or her personal funds and bank accounts;

- (4) Privacy for telephone calls, texts and/or emails; and
- (5) Access to food at any time.

1938.3 Any deviations from the requirements in § 1938.2(e) must be supported by a specific assessed need, justified in the person's person-centered Individualized Support Plan, and reviewed and approved as a restriction by the Provider's Human Rights Committee.

**Section 1999, DEFINITIONS, is deleted in its entirety and amended to read as follows:**

**1999 DEFINITIONS**

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

**Abbreviated Readiness Process** - A process that assures that existing providers that have been approved as HCBS Waiver providers possess and demonstrate the capability to effectively serve people with disabilities and their families by providing the framework for identifying qualified providers ready to begin serving people in the Waiver and assisting those providers already in the DDS/DDA system who may need to improve provider performance.

**Archive** – Maintenance and storage of records.

**Group Home for a Person with an Intellectual Disability** - Shall have the same meaning as Group Home for Mentally Retarded Persons and shall meet the definitions and licensure requirements as set forth in Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules.

**HCBS Settings Rule** – The Centers for Medicare & Medicaid Services (CMS) issued a final rule effective March 17, 2014, that contains a new, outcome-oriented definition of home and community-based services (HCBS) settings. The purpose of the federal regulation, in part, is to ensure that people receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree as people who do not receive HCBS. The HCBS Settings Rule is available at 79 Fed. Reg. 2947 (January 16, 2014).

**Home Health Agency** - Shall have the same meaning as "home care agency" and shall meet the definitions and licensure requirements as set forth in the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules.

**Individual Support Plan (ISP)** - Identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met.

**Intellectual Disability** - Means a substantial limitation in capacity that manifests before eighteen (18) years of age and is characterized by significantly below-average intellectual functioning, existing concurrently with two (2) or more significant limitations in adaptive functioning as defined in D.C. Official Code § 7-1301.03(15A). The determination of intellectual functioning includes consideration of the standard error of measurement associated with the particular intelligence quotient (IQ) test. The adaptive functioning deficits must cross at least two of the following three domains: conceptual, practical, and social.

**Intermediate Care Facility for Individuals with Intellectual Disabilities** - Shall have the same meaning as an "Intermediate Care Facility for Individuals with Mental Retardation" as set forth in Section 1905(d) of the Social Security Act.

**Living Wage** - Living Wage refers to minimum hourly wage requirements as set forth in Title I of the Living Wage Act of 2006, effective June 9, 2006 (D.C. Law 16-18; D.C. Official Code §§ 2-220.01 to .11). The law provides that District of Columbia government contractors and recipients of government assistance (grants, loans, tax increment financing) in the amount of \$100,000 or more shall pay affiliated employees wages no less than the current living wage rate.

**Qualified Intellectual Disabilities Professional (QIDP)** - Also known as Qualified Developmental Disabilities Professional or QDDP, is someone who oversees the initial habilitative assessment of a person; develops, monitors, and review ISPs; and integrates and coordinates Waiver services.

**Plan of Care** - A written service plan that meets the requirements set forth in Subsection 1907.6 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

**Provider** - Any entity that meets the Waiver service requirements, has signed a Medicaid Provider Agreement with DHCF to provide those services, and is enrolled by DHCF to provide Waiver services.

**Registered Nurse** - An individual who is licensed or authorized to practice registered nursing pursuant to 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.*), as amended, or licensed as a registered nurse in the jurisdiction where services are provided.

**Service Coordinator** – The DDS staff responsible for coordinating a person’s services pursuant to their ISP and Plan of Care.

**Serious Reportable Incident** - Events that due to severity require immediate response, notification to, and investigation by DDS in addition to the internal review and investigation by the provider agency. Serious reportable incidents include death, allegations of abuse, neglect or exploitation, serious physical injury, inappropriate use of restraints, suicide attempts, serious medication errors, missing persons, and emergency hospitalization.

**Skilled Nursing** - Health care services that are delivered by a registered or practical nurse acting within the scope of their practice and shall meet the definitions and licensure requirements as set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), as amended, and implementing rules.

**SMARTER Goals** – Means goals that are: Specific, Measureable, Attainable, Relevant and Time-Bound, Evaluated and Revisable.

**Waiver** - Shall mean the HCBS Waiver for Individuals with Intellectual and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and CMS, as may be further amended and approved by the Council and CMS.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained 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 (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 amendments to Section 1936, entitled “Wellness Services,” 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 Register (DCMR).

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

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). The amendment must also be approved by CMS, which will affect the effective date of the emergency rulemaking.

Wellness services are designed to promote and maintain good health and assist in increasing the person’s independence, participation, emotional well-being, and productivity in their home, work, and community. Wellness services consist of the following five (5) types of services: bereavement counseling, fitness training, massage therapy, nutrition evaluation/consultation, and sexuality education. The current Notice of Final Rulemaking for 29 DCMR § 1936 (Wellness Services) was published in the *D.C. Register* on December 13, 2013, at 60 DCR 016834. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 22, 2015, at 62 DCR 006728. That emergency and proposed rulemaking, which was adopted on May 8, 2015, but was never effective because the Waiver amendment has not been approved by CMS, amended the previously published final rules to: (1) clarify the purpose of wellness services; (2) add small group fitness services; (3) clarify the requirements for a person to receive bereavement services; (4) describe the requirements for an assessment, service plan, progress notes, and quarterly report; (5) clarify the provider’s role in the person’s support team; (6) eliminate language regarding Direct Support Professional requirements; (7) add provider qualifications for fitness; (8) require that the provider be chosen by the person and/or his substitute decision-maker; (9) clarify service limitations; (10) increase rates to reflect market research; and (11) add definitions for small group fitness and stages of change. DHCF received written comments but no substantive changes were made.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of wellness services. The new requirements will enhance the quality of these services. Therefore, in order to ensure that the person's health, safety, and welfare are not threatened by lack of access to wellness services provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rules were adopted on September 14, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until January 12, 2016, unless superseded by publication of the Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking.

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 1936, WELLNESS SERVICES, 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:**

**1936 WELLNESS SERVICES**

1936.1 The purpose of this section is to establish standards governing Medicaid eligibility for wellness 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 wellness services in order to receive reimbursement.

1936.2 Wellness services are designed to promote and maintain good health, The provision of these services shall be based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her Individual Service Plan (ISP). Wellness services assist in increasing the person's independence, participation, prevent further disability, maintain health and increase emotional well-being, and productivity in their home, work, and community.

1936.3 The wellness services eligible for Medicaid reimbursement are:

- (a) Bereavement Counseling;
- (b) Fitness Training;
- (c) Massage Therapy;

- (d) Nutrition Evaluation/Consultation; and
- (e) Sexuality Education.

- 1936.4 Fitness training is available as either an individual service, or in small group 1:2 setting, based upon the recommendation of the person's support team. When a person is enrolled in small group fitness, efforts should be made to match the person with another beneficiary of his or her choosing, or, if not available, with a person who has similar skills and interests.
- 1936.5 To be eligible for Medicaid reimbursement of bereavement counseling:
- (a) The person must have experienced a loss through death, relocation, change in family structure, or loss of employment;
  - (b) The service must be recommended by the person's support team; and
  - (c) The service shall be identified as a need in the person's ISP and Plan of Care.
- 1936.6 To be eligible for Medicaid reimbursement of sexuality education, the services shall be:
- (a) Recommended by the person's support team; and
  - (b) Identified as a need in the person's ISP and Plan of Care.
- 1936.7 To be eligible for Medicaid reimbursement of fitness training and massage therapy, the services shall be:
- (a) Recommended by the person's support team;
  - (b) Identified as a need in the person's ISP and Plan of Care; and
  - (c) Ordered by a physician.
- 1936.8 To be eligible for Medicaid reimbursement of nutritional evaluation/consultation services, each person shall meet one or more of the following criteria:
- (a) Have a history of being significantly above or below body weight;
  - (b) Have a history of gastrointestinal disorders;
  - (c) Have received a diagnosis of diabetes;
  - (d) Have a swallowing disorder; or

- (e) Have a medical condition that can be a threat to health if nutrition is poorly managed.

1936.9 In addition to the requirements set forth in § 1936.8, nutritional evaluation/consultative services shall be:

- (a) Recommended by the person's support team;
- (b) Identified as a need in the person's ISP and Plan of Care based upon the Stage of Change the person is in;
- (c) Ordered by a physician; and
- (d) Targeted to the identified Stage of Change.

1936.10 The specific wellness service delivered shall be consistent with the scope of the license or certification held by the professional. Service intensity, frequency, and duration shall be determined by the person's individual needs and documented in the person's ISP and Plan of Care.

1936.11 In order to be eligible for Medicaid reimbursement, each professional providing wellness services shall:

- (a) Conduct an intake assessment within the first four (4) hours of service delivery with long term and short term goals;
- (b) Develop and implement a person-centered plan consistent with the person's choices, goals and prioritized needs that describes wellness strategies and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP. The plan shall include treatment strategies including direct therapy, caregiver training, monitoring requirements and instructions, and specific outcomes;
- (c) Deliver the completed plan to the person, family, guardian, residential provider, or other caregiver, and the Department on Disability Services (DDS) Service Coordinator prior to the Support Team meeting;
- (d) Participate in the ISP and Support Team meetings, when invited by the person, to provide consultative services and recommendations specific to the wellness professional's area of expertise with the focus on how the person is doing in achieving the functional goals that are important to him or her;



- (e) Provide necessary information to the person, family, guardian, residential provider, or other caregivers and assist in planning and implementing the approved ISP and Plan of Care;
- (f) Record progress notes on each visit which contain the following:
  - (1) The person's progress in meeting each goal in the ISP;
  - (2) Any unusual health or behavioral events or change in status;
  - (3) The start and end time of any services received by the person; and
  - (4) Any matter requiring follow-up on the part of the service provider or DDS.
- (g) Submit quarterly reports in accordance with the requirements in Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR; and
- (h) Conduct periodic examinations and modify treatments for the person receiving services, as necessary.

1936.12

In order to be eligible for Medicaid reimbursement, each professional providing nutrition evaluation/consultation services shall comply with the following additional requirements, as needed:

- (a) Conduct a comprehensive nutritional assessment within the first four (4) hours of delivering the service;
- (b) Conduct a partial nutritional evaluation to include an anthropometric assessment;
- (c) Perform a biochemical or clinical dietary appraisal;
- (d) Analyze food-drug interaction potential, including allergies;
- (e) Perform a health and safety environmental review of food preparation and storage areas;
- (f) Assess the need for a therapeutic diet that includes an altered/textured diet due to oral-motor problems;
- (g) Conduct a needs assessment for adaptive eating equipment and dysphagia management;

- (h) Conduct a nutrition evaluation and provide consulting services on a variety of subjects, including recommendations for the use of adaptive equipment, to promote improved health and increase the person's ability to manage his or her own diet or that of his or her child(ren) in an effective manner; and
- (i) Provide education to include menu development, shopping, food preparation, food storage, and food preparation procedures consistent with the physician's orders.

1936.13 Each professional providing wellness services shall be employed by a Home and Community-Based Services Waiver provider agency or by a professional service provider who is in private practice as an independent clinician as described in Subsection 1904.2 of Title 29 DCMR.

1936.14 Each provider shall comply with the requirements set forth under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1936.15 In order to be eligible for Medicaid reimbursement, professionals delivering wellness services shall meet the following licensure and certification requirements:

- (a) Bereavement counseling services shall be performed by a professional counselor licensed pursuant to 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. & 2014 Supp.)) and certified by the American Academy of Grief Counseling as a grief counselor;
- (b) Fitness services shall be performed by professional fitness trainers who have been certified by the American Fitness Professionals and Associates, or who have a bachelor's degree in physical education, health education, exercise, science or kinesiology, or recreational therapists;
- (c) Dietetic and nutrition counselors shall be licensed pursuant to 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. & 2014 Supp.)); and
- (d) Massage Therapists shall be licensed pursuant to 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. & 2014 Supp.)) and certified by the National Verification Board for Therapeutic Massage and Bodywork.

- 1936.16 In order to be eligible for Medicaid reimbursement, sexuality education services shall be delivered by:
- (a) A Sexuality Education Specialist who is certified to practice sexuality education by the American Association of Sexuality Educators, Counselors and Therapists Credentialing Board; or
  - (b) Any of the following professionals with specialized training in Sexuality Education:
    - (1) Psychologist;
    - (2) Psychiatrist;
    - (3) Licensed Clinical Social Worker; or
    - (4) Licensed Professional Counselor.
- 1936.17 Each Wellness service provider, and professional, without regard to their employer of record, shall be selected by the person receiving services or his or her authorized representative, and shall be answerable to the person receiving services.
- 1936.18 Any provider substituting treating professionals for more than a two (2) week period or four (4) visits due to emergency or availability events shall request a case conference with the DDS Service Coordinator to evaluate the continuation of services.
- 1936.19 In order to be eligible for Medicaid reimbursement, services shall be authorized in accordance with the following requirements:
- (a) DDS shall provide a written service authorization before the commencement of services;
  - (b) The provider shall conduct an intake assessment and develop a person-centered plan within the first four (4) hours of service delivery which: (1) describes wellness strategies and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools; and (2) includes training goals and techniques in the ISP that will assist the caregivers;
  - (c) The service name and provider entity delivering services shall be identified in the ISP and Plan of Care; and
  - (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received.

- 1936.20 Each Provider shall comply with the requirements described under Section 1908 (Reporting Requirement), Section 1909 (Records and Confidentiality of Information), and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1936.21 Wellness services shall be limited to one hundred (100) hours per calendar year per service. Additional hours may be authorized before the expiration of the ISP and Plan of Care year and when the person's health and safety are at risk. Requests for additional hours may be approved when accompanied by a physician's order or if the request passes a clinical review by staff designated by DDS.
- 1936.22 The person may utilize one (1) or more wellness services in the same day, but not at the same time.
- 1936.23 The Medicaid reimbursement rate for wellness services shall be:
- (a) Sixty dollars and eighty cents (\$60.80) per hour for Massage Therapy;
  - (b) Seventy-five dollars and ninety-six cents (\$75.96) per hour for Sexuality Education;
  - (c) Seventy-five dollars (\$75.00) per hour for Fitness Training;
  - (d) Forty-five dollars (\$45.00) per hour for Small Group Fitness Training;
  - (e) Sixty-five dollars (\$65.00) per hour for Nutrition Counseling; and
  - (f) Sixty-five dollars (\$65.00) per hour for Bereavement Counseling.
- 1936.24 The billable unit of service for wellness services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

**Section 1999, DEFINITIONS, is amended by adding the following:**

**Small group fitness training** – Exercise training designed to improve health and wellness delivered in small group settings at a ratio of one-to-two for people who want to exercise with a partner.

Comments on these emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov), or

online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; 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 Chapter 41 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled “Medicaid Reimbursement for Intermediate Care Facilities for Individuals with Intellectual Disabilities.”

These emergency and proposed rules update the current reimbursement rates for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid services (CMS) requires states to comply with upper payment limits (UPL) under 42 C.F.R. Part 447, and submit annual UPL demonstrations. ICFs/IID are among the services that must comply with the regulatory payment limits under 42 C.F.R. § 447.272. The District’s UPL demonstration for Fiscal Year (FY) 2015 revealed that FY 2013 payments exceeded billed charges. In order to achieve UPL compliance, the District is proposing new reimbursement rates in FY 2016 for ICFs/IID in accordance with the existing rate methodology. This emergency and proposed rulemaking also clarifies that acuity determinations may be performed by DHCF or its designee and corrects a couple of clerical errors. The decrease in aggregate expenditures related to the reimbursement rate updates is approximately \$8.8 million for FY 2016.

Emergency rulemakings are implemented only for the immediate preservation of the public peace, health, safety, welfare, or morals. This emergency rulemaking is necessary in order to: 1) ensure that the reimbursement rates best support UPL compliance for ICFs/IID; 2) prevent any encumbrance in the funding of care; and 3) ensure that care is maintained in facilities that serve some of the District’s most vulnerable individuals with high clinical needs. The new rates ensure sufficient financial resources are available to provide the highest level of health care services and supports to these individuals. Emergency action is necessary for the immediate preservation of the health, safety, and welfare of the persons who are in need of services provided in an ICF/IID.

The emergency rulemaking was adopted on September 14, 2015 and shall become effective for services rendered on or after October 1, 2015. The emergency rules will remain in effect for one hundred and twenty (120) days or until January 12, 2016, 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*.

**Chapter 41 of Title 29, PUBLIC WELFARE, DCMR, is amended to read as follows:**

**CHAPTER 41            MEDICAID REIMBURSEMENT FOR INTERMEDIATE CARE  
FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL  
DISABILITIES**

**4100            GENERAL PROVISIONS**

- 4100.1            This chapter shall establish principles of reimbursement that shall apply to each intermediate care facility for individuals with intellectual disabilities (ICF/IID) participating in the District of Columbia Medicaid program.
- 4100.2            For an ICF/IID to be eligible to receive reimbursement under this chapter, it shall be certified as an Intermediate Care Facility by the Health Regulation and Licensing Administration (HRLA) in the Department of Health (DOH), pursuant to 22 DCMR §§ 3100 *et seq.* for a period up to fifteen (15) months.
- 4100.3            Medicaid reimbursement to ICFs/IID for services provided beginning on or after October 1, 2012, shall be on a prospective payment system consistent with the requirements set forth in this chapter.
- 4100.4            The Department of Health Care Finance (DHCF) shall pay for ICF/IID services through the use of rates that are reasonable and adequate to meet the costs that are incurred by efficiently, economically operated facilities in order to provide services in conformity with applicable District and federal laws, regulations, and quality and safety standards. DHCF used the following financial principles in developing the reimbursement methodology described in this chapter:
- (a)            Basing payment rates on the acuity of each individual, as determined by DHCF, or its designee;
  - (b)            Establishing uniform reimbursement of services constituting the active treatment program for individuals who meet the requirements of 42 C.F.R. § 483.440(a);
  - (c)            Establishing consistent payment rates for the same classes of facilities serving individuals with comparable levels of need; and
  - (d)            Establishing one (1) day, inclusive of residential care and active treatment, as the unit of service.
- 4100.5            The reimbursement rates paid to ICFs/IID for Medicaid individuals residing in the facility shall be equal to one hundred percent (100%) of the following components:
- (a)            Residential component base rate determined by acuity level, as defined in § 4101 of this chapter, and inclusive of the following:

- (1) Direct service;
  - (2) All other health care and program related expenses;
  - (3) Non-personnel operations;
  - (4) Administration;
  - (5) Non-Emergency Transportation;
  - (6) Capital; and
  - (7) Allowable share of the Stevie Sellows Intermediate Care Facility for the Intellectually and Developmentally Disabled Quality Improvement Fund Assessment.
- (b) Services constituting an active treatment program, described in § 4103, as set forth in the individual's Individual Service Plan (ISP); and
- (c) Payments associated with participation in quality improvement initiatives, as set forth in § 4104.

4100.6 The reimbursement rates paid to ICFs/IID shall exclude all of the following services that are provided outside of the ICF/IID:

- (a) Inpatient and outpatient hospital visits;
- (b) Physician and specialty services;
- (c) Clinic services;
- (d) Emergency department services;
- (e) Services delivered by any other long-term care facility;
- (f) Durable medical equipment, prosthetic, orthotic, and supply items that either require prior authorization or are solely for the use of one (1) individual (such as a wheelchair); and
- (g) Prescription drug costs, excluding copays for individuals who are also subject to the *Evans* court order.

4100.7 Medicaid reimbursement to each ICF/IID shall comply with the "Policy on Reserved Beds," as set forth on page 2 of Attachment 4.19C of the State Plan for Medical Assistance.



- 4100.8 An organization related to an enrolled ICF/IID (“related organization”) may furnish services and supplies under the prudent buyer concept, provided the costs of such services and supplies are consistent with costs of such items furnished by independent third party providers in the same geographic area. These requirements shall apply to the sale, transfer, leaseback, or rental of property, plant, or equipment or purchase of services of any facility or organization.
- 4100.9 In accordance with 42 C.F.R. § 456.360, the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), and implementing rules, a qualified physician shall certify that an individual needs ICF/IID services. The certification shall be made at the time of admission for current Medicaid individuals, or for individuals who apply for Medicaid while residing in an ICF/IID, before any payment is made to the facility.
- 4100.10 Recertification of an individual’s need for continued ICF/IID services is required, at minimum, twelve (12) months following the date of the previous certification, pursuant to 42 C.F.R. § 456.360(b).
- 4100.11 A Medicaid individual shall be assessed by an interdisciplinary team within thirty (30) days of admission to an ICF/IID. This determination shall provide the foundation for requests to elevate an acuity level assignment beyond Acuity Level 1.

#### **4101 ACUITY LEVEL ASSIGNMENTS**

- 4101.1 Reimbursement rates shall be differentiated based on the individual’s acuity level, as recommended by DDS, through the Level of Need Assessment and Risk Screening Tool (LON), and interdisciplinary teams of health and habilitation professionals, pursuant to the Individual Service Plan (ISP).
- 4101.2 Acuity levels higher than Acuity Level 1 (Base), specific to the medical and health needs of each qualified individual, shall be requested by the ICF/IID, recommended by DDS, and approved by DHCF.
- 4101.3 Reimbursement under this chapter shall be governed according to the following acuity levels:
- (a) Acuity Level 1 (Base) shall represent the health, habilitation, and support needs of a beneficiary whose level of care determination (LOC) reflects a need for ICF/IID services. Acuity Level 1 shall be the base acuity level.
  - (b) Acuity Level 2 (Moderate) shall represent the health, habilitation, and support needs of a beneficiary who:
    - (1) Meets the requirements of § 4101.3(a); and

- (2) Requires moderate levels of services in order to effectively support functional impairments, as described in § 4101.6.
- (c) Acuity Level 3 (Extensive – Behavioral) shall represent the health, habilitation, and support needs of a beneficiary who:
  - (1) Meets the requirements of § 4101.3(a); and
  - (2) Requires services and interventions that can address conditions associated with an extensive intellectual and developmental disability and significant behavioral challenges as described in § 4101.7.
- (d) Acuity Level 4 (Extensive – Medical) shall represent the health, habilitation, and support needs of a beneficiary who:
  - (1) Meets the requirements of § 4101.3(a); and
  - (2) Requires services and interventions that can address conditions associated with a significant intellectual and developmental disability and significant medical and support challenges as described in § 4101.8.
- (e) Acuity Level 5 (Pervasive) shall represent the health, habilitation, and support needs of a beneficiary who:
  - (1) Meets the requirements of § 4101.3(a);
  - (2) Requires services and interventions that can address conditions associated with a pervasive intellectual and developmental disability; and
  - (3) Exhibits dangerous behaviors or conditions that require one-to-one (1:1) supervision for twenty-four (24) hours per day or less, as described in § 4101.9.
- (f) Acuity Level 6 (Pervasive Plus Skilled Nursing) shall represent the health, habilitation, and support needs of a beneficiary who:
  - (1) Meets the requirements of § 4101.3(a);
  - (2) Requires services and interventions that can address conditions associated with a pervasive level of care to accommodate individuals with dangerous behaviors or conditions that require one to one (1:1) supervision twenty-four (24) hours per day; and

- (3) Requires extensive skilled nursing services as described in § 4101.10.
- 4101.4 For purposes of reimbursement, a beneficiary admitted on or after October 1, 2012, shall be assumed to be at Acuity Level 1 (Base). An ICF/IID may request through, and with supporting documentation by, DDS that DHCF assign a beneficiary to an enhanced level, above Acuity Level 1. This request must be accompanied by documentation submitted by the ICF/IID that justifies the enhanced acuity level.
- 4101.5 In order for a beneficiary to qualify at an acuity level beyond Acuity Level 1 (Base), the ICF/IID shall ensure that qualified health and habilitation practitioners assess each beneficiary using the LON.
- 4101.6 A beneficiary shall qualify for Acuity Level 2 (Moderate) when assessed to have at least one (1) of the following characteristics:
- (a) Is unable to perform two (2) or more activities of daily living (ADL);
  - (b) Is non-ambulatory;
  - (c) Is unable to evacuate self without assistance in the event of a fire or other emergency situation;
  - (d) Is assessed to lack life safety skills to ensure self-preservation; or
  - (e) Has a diagnosis of one (1) of the following conditions:
    - (1) Blindness;
    - (2) Deafness;
    - (3) Autism Spectrum Disorder; or
    - (4) Epilepsy.
- 4101.7 A beneficiary shall qualify for Acuity Level 3 (Extensive – Behavioral) when he or she is dually diagnosed with an intellectual and developmental disability and with one (1) or more behavioral disorders that:
- (a) Are assaultive, self-abusive, including pica, or aggressive;
  - (b) Require a Behavior Support Plan (BSP) which shall be based on current data and targets the identified behaviors; and

- (c) Require intensive staff intervention and additional staff resources to manage the behaviors set forth in § 4101.8(a).
- 4101.8 A beneficiary shall qualify for Acuity Level 4 (Extensive – Medical) when he or she requires skilled nursing and extensive health and habilitation supports on a daily basis. Skilled nursing and extensive health and habilitation supports shall be prescribed by the individual’s primary care physician or advanced practice registered nurse (APRN).
- 4101.9 A beneficiary shall qualify for Acuity Level 5 (Pervasive) when he or she requires one-to-one (1:1) staffing and exhibits one (1) or more of the following characteristics:
- (a) Has a history of, or is at high risk for, elopement resulting in risk to the beneficiary or others;
  - (b) Exhibits behavior that is life-threatening to the beneficiary or others;
  - (c) Exhibits destructive behavior that poses serious property damage, including fire-setting;
  - (d) Is a sexual predator; or
  - (e) Has a history of, or is at high risk for, falls with injury and a primary care physician or advanced practice registered nurse order for one-to-one (1:1) supervision.
- 4101.10 A beneficiary shall qualify for Level 6 (Pervasive Plus Skilled Nursing) if the beneficiary requires at least one (1) type of skilled nursing that shall be ordered by a primary care physician or advanced practice registered nurse and provided, at a minimum, on an hourly basis.
- 4101.11 For a beneficiary who requires services at or above Acuity Level 4, the prescription of the physician or advanced practice registered nurse, shall specify the type, frequency, scope, and duration of the skilled nursing and health and habilitation support services required.
- 4101.12 The number of one-to-one (1:1) staffing hours shall be approved by DHCF using results from assessments conducted by ICFs/IID. Under Levels 5 and 6 (Pervasive and Pervasive Plus Skilled Nursing), DHCF’s approval shall be based on having staff member(s) assigned to the beneficiary who have no other duties while assigned to the beneficiary.
- 4101.13 Each ICF/IID shall have responsible direct care staff on duty and awake on a twenty-four (24) hour basis when residents are present in the facility to ensure prompt, appropriate action in the event of injury, illness, fire, or other emergency.

- 4101.14 Acuity level assignments shall be renewed annually. Each ICF/IID shall be responsible for requesting renewal of the beneficiary's acuity level assignment by compiling and submitting the beneficiary's information in the required format(s) at least twenty (20) days before the ISP effective date. Each ICF/IID shall ensure that the individual has an approved acuity level assignment by the ISP effective date. At minimum, the ICF/IID shall provide DHCF with the following:
- (a) Level of Need Assessment and Risk Screening Tool (LON); and
  - (b) Current ISP document including medical, psychological, occupational or physical therapy assessment, or in the absence of a current ISP document, evidence of consensus by a majority of the members of the beneficiary's interdisciplinary team for the proposed acuity level assignment.
- 4101.15 Late submission of the documentation required for renewals as set forth in § 4101.14 shall result in payment at the rates that correspond to Acuity Level 1 (Base) beginning on the first day following the expiration of the assignment. DHCF shall not make retroactive adjustments to the reimbursement rates for late submissions of renewal documentation.
- 4101.16 Additional documentation shall be required to support the acuity level assignment for a beneficiary. Depending on acuity level, additional documentation shall be required as follows:
- (a) For Acuity Level 3 (Extensive – Behavioral) the following additional documentation is required:
    - (1) A BSP addressing the targeted behaviors;
    - (2) A written behavior plan that shall be based on current data and which targets the identified behaviors; and
    - (3) A concise statement that summarizes thirty (30) days of behavioral data prior to the date of the request and justification of the need for intensive staff intervention and additional staff resources to manage targeted behaviors.
  - (b) For Acuity Level 4 (Extensive – Medical) documentation that includes an order for daily skilled nursing and extensive health supports prepared by the beneficiary's primary care physician or an advance practice registered nurse is required.
  - (c) For Acuity Level 5 (Pervasive) the following additional documentation is required:

- (1) A concise statement setting forth the presenting problem that necessitates one to one (1:1) supervision and the number of requested one to one (1:1) hours;
  - (2) Evidence of a history or risk of elopement that results in risk to the beneficiary and/or others;
  - (3) Evidence of behavior that is life threatening to self and/or others;
  - (4) Evidence of destructive behavior causing serious property damage, including fire starting;
  - (5) Evidence of sexually predatory behavior;
  - (6) Evidence of a history of, or risk of, falls with injury, and an order from the beneficiary's primary care physician or APRN;
  - (7) A BSP that shall be based on current data and targets the behaviors identified;
  - (8) A job description for one to one (1:1) staff based on the beneficiary's individual needs; and
  - (9) Thirty (30) days of behavioral data prior to the date of the request in support of the targeted behaviors.
- (d) For Acuity Level 6 (Pervasive plus Skilled Nursing) the following additional documentation is required:
- (1) An order for skilled nursing services prepared by the beneficiary's primary care physician or APRN;
  - (2) A concise statement setting forth the presenting problem that necessitates one to one (1:1) supervision and skilled nursing and the number of requested one to one (1:1) hours; and
  - (3) A job description for one to one (1:1) staff based on the beneficiary's individual needs.

4101.17 Documentation required to review a beneficiary's acuity level shall be submitted to DHCF within sixty (60) days of the event that necessitates assignment to a higher acuity level.

4101.18 On a case-by-case basis, DHCF shall consider requests for retroactive adjustment to a beneficiary's acuity level that may result in a change to the reimbursement

rate. DHCF decisions shall be based on the facility's submission of required documentation as set forth below:

- (a) A concise statement setting forth the situation that necessitates retroactive adjustment;
- (b) Evidence of the higher acuity level for the specified period of time for which the change in acuity level is requested. This evidence shall include the LON and other clinical and professional documentation such as discharge planning notes, physician's notes, other clinician's notes, interdisciplinary team meeting notes, and healthcare reports for the same defined period of time; and
- (c) Evidence that a higher level of service was delivered for the defined period and that the higher level of service delivered is that required for the higher acuity level. This evidence shall include documentation of staffing levels detailing hours and types of services delivered for each day in the defined period of time. Evidence shall also include the identity of the specific staff delivering the higher acuity services and an attestation from the staff of the higher acuity service they delivered.

4101.19 Any retroactive adjustment based on § 4101.18 shall be limited to the time that has lapsed since the date of the beneficiary's last continuous stay review, as set forth in § 4109.

4101.20 DHCF, or its designee, shall have access to all approved ISP documents.

4101.21 Each ICF/IID shall notify DHCF of the transfer or death of a beneficiary at least seven (7) business days after the date of the event.

## **4102 REIMBURSEMENT METHODOLOGY**

4102.1 The rates for ICF/IID services were developed based on Fiscal Year (FY) 2010 cost data reported by providers of different sizes serving individuals at varying acuity levels. The rates shall vary based on staffing ratios, facility size, and beneficiary acuity level.

4102.2 For the purposes of rate-setting, and independent of the classification used by the Department of Health for licensing, DHCF shall classify ICFs/IID as follows:

- (a) Class I - A facility with five (5) or fewer licensed beds; and
- (b) Class II - A facility with six (6) or more licensed beds.

4102.3 The residential component of the rate, as described in § 4100.5(a), shall be based on a model that includes the following seven (7) cost centers:

- (a) The “Direct Service” cost center, which shall include expenditures as follows:
- (1) Nurses, including registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants (CNAs);
  - (2) Qualified Intellectual Disabilities Professionals (QIDPs);
  - (3) House managers;
  - (4) Direct Support Personnel;
  - (5) Allocated time of staff with administrative duties and who are also utilized in direct service support, subject to the results of a time study or time sheet process that has been approved by DHCF; and
  - (6) Fringe benefits, including but not limited to required taxes, health insurance, retirement benefits, vacation days, paid holidays, and sick leave.
- (b) The “All Other Health Care and Program Related” cost center, which shall include expenditures for:
- (1) Pharmacy co-pays and over-the-counter medications;
  - (2) Medical supplies;
  - (3) Therapy costs, including physical therapy, occupational therapy, and speech therapy;
  - (4) Physician services;
  - (5) Behavioral health services provided by psychologists or psychiatrists;
  - (6) Nutrition and food;
  - (7) Medical record maintenance and review;
  - (8) Insurance for non-direct care health staff;
  - (9) Quality Assurance;
  - (10) Training for direct care staff;
  - (11) Program development and management, including recreation;



- (12) Incident management; and
- (13) Clothing for beneficiaries.
- (c) The “Non-Personnel Operations” cost center, which shall include expenditures for:
  - (1) Food service and supplies related to food service;
  - (2) Laundry;
  - (3) Housekeeping and linen; and
  - (4) Non-capital repair and maintenance.
- (d) The “Administration” cost center which shall include expenditures for:
  - (1) Payroll taxes;
  - (2) Salaries and consulting fees to non-direct care staff;
  - (3) Insurance for administrators and executives;
  - (4) Travel and entertainment;
  - (5) Training costs;
  - (6) Office expenses;
  - (7) Licenses;
  - (8) Office space rent or depreciation;
  - (9) Clerical staff;
  - (10) Interest on working capital; and
  - (11) Staff transportation.
- (e) The “Non-Emergency Transportation” cost center, which shall include expenditures for:
  - (1) Vehicle license, lease, and fees;
  - (2) Vehicle maintenance;

- (3) Depreciation of vehicle;
  - (4) Staffing costs for drivers and aides not otherwise covered by, or in excess of costs for, direct support personnel;
  - (5) Fuel; and
  - (6) Vehicle insurance.
- (f) The “Capital” cost center, which shall include expenditures for leased, owned, or fully depreciated properties, less all amounts received for days reimbursed pursuant to the “Policy on Reserved Beds,” as set forth on page 2 of Attachment 4.19C of the State Plan for Medical Assistance, for the following:
- (1) Depreciation and amortization;
  - (2) Interest on capital debt;
  - (3) Rent;
  - (4) Minor equipment;
  - (5) Real estate taxes;
  - (6) Property insurance;
  - (7) Other capital; and
  - (8) Utilities, including electricity, gas, telephone, cable, and water.
- (g) The “Stevie Sellows Intermediate Care Facility for the Intellectually and Developmentally Disabled Quality Improvement Fund Assessment” cost center shall include only the allowable share of the Assessment expenditure consistent with 42 U.S.C. § 1396(b)(w) and 42 C.F.R. §§ 433.68, 433.70 and 433.72.

4102.4 Fiscal Year (FY) 2013 rates shall be based on Fiscal Year (FY) 2010 cost data reported by providers, legal requirements, and industry standards, and shall be paid for services delivered beginning on October 1, 2012 through September 30, 2013. FY 2013 rates, and all rates thereafter, shall be set forth in this chapter. FY 2013 rates were developed based upon the following assumptions:

- (a) FY 2013 Non-Personnel Operations per diem rates shall be based on FY 2010 costs, inflated twelve percent (12%);

- (b) FY 2013 Capital per diem rates shall be based on FY 2010 costs, inflated fifteen percent (15%);
- (c) FY 2013 rates for the cost centers described in § 4102.4(a) and (b) shall be calculated as the quotient of total industry expenditures divided by the total number of industry licensed bed days as reported for FY 2010;
- (d) The FY 2013 rate for Non-Emergency Transportation shall be eighteen dollars (\$18) per person, per day; and
- (e) Capital expenditures for Class I and Class II facilities shall be calculated separately.

## 4102.5

FY 2014 rates shall be based on the reported FY 2013 cost reports, adjusted for inflation, in accordance with the index described in § 4102.13. In establishing the rates for FY 2014, DHCF shall use FY 2013 rates as a baseline to compare to the FY 2013 cost reports. After inflationary adjustments, DHCF may make operational adjustments as described in this section to each cost center based on the provider's actual reported costs. These adjustments may increase or decrease the per diem rates for each cost center. For services rendered on or after January 1, 2014, DHCF shall also incorporate the following rate setting principles:

- (a) Effective January 1, 2014, and on October 1, annually thereafter, DHCF may make appropriate outlier adjustments when the entire ICF/IID provider community experiences uncharacteristically low or high costs (*e.g.*, wage increases) experienced by the entire ICF/IID provider community and supported by legislative or other unanticipated changes. With respect to the Capital cost center, market induced fluctuations in the cost of items comprising that rate (*e.g.*, property appreciation/depreciation, significant increase in the cost of utilities, etc.) shall be documented and confirmed using information from the Bureau of Labor Statistics, the Consumer Price Index, the District of Columbia Office of Tax and Revenue, and other relevant indices or reports;
  - (1) All adjustments shall be limited to one (1) time in any given fiscal year.
  - (2) Except for the Capital cost center, operational adjustments shall be subject to a five percent (5%) maximum. Operational adjustments to the Capital cost center shall be subject to a maximum of ten percent (10%);
  - (3) An outlier adjustment shall not exceed the amount of the rebased cost center, subject to the upper payment limit;

- (4) Except for inflationary adjustments, all other adjustments under this section shall be supported through provider documentation and data reflecting the economic landscape of the Washington, D.C. Metropolitan area;
- (5) All adjustments described in § 4102.5 shall be limited to fiscal years when rebasing does not occur;
- (6) “Operational Adjustment” shall refer to an adjustment made to any cost center based on information reflected in an ICF/IIDs cost report (*i.e.*, actual reported costs). These reported costs will be compared to the actual reported aggregate costs for all ICF/IIDs. An operational adjustment provides a mechanism for DHCF to address under- or over-payments that are identified after comparing the projections used to determine the rate with the provider’s actual costs; and
- (7) “Outlier Adjustment” shall refer to an adjustment made after the ICF/IID submits a cost report and the actual reported costs reflect uncharacteristically low or high costs. In order to qualify for an outlier adjustment, the unexpected expense must impact all of the District’s ICF/IIDs.

- (b) Effective January 1, 2014, the rate for Non-Emergency Transportation shall be twelve dollars and sixteen cents (\$12.16).

4102.6 For dates of service on or after October 1, 2016, final reimbursement rates for the residential component will be based on providers’ FY 2014 cost reports subject to audit and adjustment by DHCF.

4102.7 Direct Service cost center reimbursement rates shall be calculated based on staffing ratios, facility size, and individuals’ acuity levels. All rates shall accommodate the following staffing patterns:

- (a) Two (2) Direct Support Personnel (DSP) at three (3) shifts per day for three hundred sixty-five (365) days per year, at the following staffing ratios:
  - (1) Class I Facilities: One (1) DSP to every two (2) individuals (1:2); and
  - (2) Class II Facilities: One (1) DSP to every three (3) individuals (1:3).
- (b) One (1) LPN for each facility at one (1) shift per day for three hundred sixty-five (365) days per year, for all ICFs/IID;

- (c) One (1) additional LPN for each ICF/IID at one (1) shift per weekend day (Saturday and Sunday) for fifty-two (52) weeks per year. This staffing pattern shall apply only to Class II facilities;
- (d) One (1) RN, one (1) QIDP, and one (1) house manager, each at one (1) shift per day for two hundred sixty (260) days per year, at a ratio of one (1) staff person to every twelve (12) individuals (1:12) for all ICFs/IID;
- (e) For services provided to individuals assigned to acuity levels higher than Acuity Level I, an ICF/IID shall be paid rates that can accommodate additional staffing needs as follows:
  - (1) Acuity Level 2 (Moderate) rates shall also include one (1) additional DSP at three (3) shifts per day for three hundred sixty-five (365) days per year, at a staffing ratio of one (1) DSP for every two (2) individuals (1:2) for all ICFs/IID;
  - (2) Acuity Level 3 (Extensive – Behavioral) rates shall also include costs associated with two (2) additional DSPs. The rates for Acuity Level 3 shall include one (1) DSP at three (3) shifts per day for three hundred sixty-five (365) days per year, at a staffing ratio of one (1) DSP staff member for every two (2) individuals for all ICFs/IID. The rate shall also include one (1) DSP at two (2) shifts per day for three hundred sixty-five (365) days per year, at a staffing ratio of one (1) DSP staff member for every two (2) individuals for all ICFs/IID;
  - (3) Acuity Level 4 (Extensive – Medical) rates shall also include costs associated with one (1) additional LPN at two (2) shifts per day for three hundred sixty-five (365) days per year, for all ICFs/IID. Class II facilities shall also receive a rate that includes one (1) certified nurse aide (CNA) at two (2) shifts per day for three hundred sixty-five (365) days per year;
  - (4) Acuity Level 5 (Pervasive) rates shall vary based on the number of one-to-one services prescribed for a beneficiary. Acuity Level 5 rates shall also include one (1) DSP at two (2) or three (3) shifts per day, for five (5) or seven (7) days per week for fifty-two (52) weeks per year, at a staffing ratio of one (1) DSP to one (1) beneficiary (1:1); and
  - (5) Acuity Level 6 (Pervasive Plus Skilled Nursing) rates shall vary based on the number of one-to-one services prescribed for a beneficiary. Acuity Level 6 rates shall also include one (1) LPN at one (1), two (2), or three (3) shifts per day for seven (7) days per

week for fifty-two (52) weeks per year, at a staffing ratio of one (1) LPN to one (1) beneficiary (1:1).

- (f) The base salaries used in the development of FY 2013 rates for direct care staff wages and salaries, subject to adjustment for inflation using the Centers for Medicare and Medicaid Services (CMS) Skilled Nursing Facility Market Basket Index, shall be as follows:
  - (1) DSP: Twelve dollars and fifty cents (\$12.50) per hour;
  - (2) LPN: Twenty one dollars (\$21.00) per hour;
  - (3) CNA: Sixteen dollars and eighty-three cents (\$16.83) per hour;
  - (4) House Manager: Forty-five thousand dollars (\$45,000) per year;
  - (5) RN: Seventy thousand dollars (\$70,000) per year; and
  - (6) QIDP: Sixty thousand dollars (\$60,000) per year.
- (g) Salaries set forth in Section 4102.7(f) shall be treated as follows:
  - (1) “Paid time off” shall include the addition of eighty (80) hours of paid leave. Holiday pay shall include the addition of forty-four (44) hours to ensure that the rate includes the rate of pay plus one-half (1/2) the rate of pay (time and one-half) for holidays worked;
  - (2) Salaries shall be inflated by twenty percent (20%) and paid leave and holiday pay shall be inflated by twelve percent (12%), to accommodate fringe benefits; and
  - (3) All rates shall include paid time off and holiday pay for all hourly full-time equivalents (FTEs).
- (h) Beginning in FY 2014 and each fiscal year thereafter, Direct Care Staff Compensation shall be inflated by the greater of any adjustment to the living wage or the associated costs of benefits and inflation based on the CMS Skilled Nursing Facility Market Basket Index or other appropriate index if the CMS Skilled Nursing Facility Market Basket Index is discontinued.

4102.8 The “All Other Health Care and Program Related Expenses” cost center reimbursement rates shall be calculated based on the facility size and the direct care cost center rate, which varies by staffing ratios and individuals’ acuity levels. The rate for this cost center shall be calculated as a fixed percentage of the rate for direct services, at twelve percent (12%) for Class I facilities and at seventeen percent (17%) for Class II facilities.

- 4102.9 The “Non-Personnel Operations” cost center reimbursement rates shall be calculated based on industry average reported costs. The Non-Personnel Operations reimbursement rate shall be equal to the industry average reported expenses per licensed bed day for the line items included in the cost center, and shall be uniformly set for all providers.
- 4102.10 During FY 2013, the “Administration” cost center reimbursement rates shall be calculated based on the staffing ratios, facility size, and individuals’ acuity levels. The Administration reimbursement rate shall vary based on the nature of ownership of the physical premises where the ICF/IID is housed. The Administration rate shall be a uniform percentage of the sum of the rates for all other cost centers and acuity levels. Beginning January 1, 2014, and on October 1, 2014 and annually thereafter, reimbursement rates for the Administration cost center shall be uniform for Class I and Class II facilities. The Administration rate shall be a uniform percentage of the sum of the Acuity Level I (Base) rates comprising the Residential cost center for leased, Class I facilities, as set forth in this Chapter.
- 4102.11 The “Non-Emergency Transportation” cost center reimbursement rates shall be based on the industry average expenses divided by the total number of licensed bed days. Beginning January 1, 2014, and on October 1, 2014 and annually thereafter, Non-Emergency Transportation cost center reimbursement rates shall be based on actual, reported costs.
- 4102.12 The “Capital” cost center reimbursement rates shall be determined in accordance with 42 C.F.R. § 413.130 and based on the industry average reported expenses per licensed bed day for the line items included in this cost center as described in § 4102.3. The rate shall vary based on the nature of ownership of the physical premises where the ICF/IID is housed. The Capital rate for leased premises shall be equal to the industry average reported expenses per licensed bed day for the line items included. The Capital rate for provider-owned premises shall be equal to fifty percent (50%) of the rate for leased premises. The Capital rate for fully depreciated premises shall be equal to fifty percent (50%) of the rate for provider owned premises. The Capital rate shall also be subject to the following principles:
- (a) When a sale/leaseback of an existing ICF/IID facility occurs, the ICF/IID’s allowable capital related cost may not exceed the amount that the seller/lessor would have recorded had the seller/lessor retained legal title;
  - (b) Depreciation shall incorporate the following principles:
    - (1) When depreciated buildings and building improvements are acquired, the cost basis of the depreciable asset shall be the lesser of the cost or acquisition value of the previous owner(s) less all

reimbursement attributable to the asset as determined by DHCF or the fair market value of the asset at time of acquisition. Notwithstanding, if the seller makes the full payback in accordance with § 4102.12(b)(6), the cost basis to the new owner shall be the lesser of the fair market value or the purchase price;

- (2) Facilities shall employ the straight-line method for calculating depreciation subject to the limits set forth in §§ 4102.12(b)(3)-(6) below. Accelerated methods for calculating depreciation shall not be allowed. Subject to the limits set forth in §§ 4102.12(b)(3)-(6), the annual depreciation expense of an asset shall be determined by dividing the basis of the asset reduced by any estimated salvage or resale value by the estimated years of useful life of the asset at the time it is placed in service;
- (3) Depreciation expense of buildings and building improvements shall be limited to the basis of each asset and shall not exceed the basis of such assets less the aggregate amount received in reimbursement for such assets in the current and prior years;
- (4) Fully depreciated buildings and building improvements subsequently sold or disposed of shall be subject to payback by the owner to the program of all depreciation expense paid to the owner and all previous owners when such assets are no longer used to provide ICF/IID services or have been transferred to new owners in an arm's length transaction, provided that such payback shall be reduced by all amounts previously paid back, if any, by prior owners;
- (5) ICFs/IID shall estimate assets' years of useful life in accordance with the most recent edition of "Estimated Useful Lives of Depreciable Hospital Assets" published by the American Hospital Association, or if not applicable, relevant guidance issued by the U.S. Internal Revenue Service. Subject to the limits set forth in paragraphs (d) and (e), depreciation expense for the year of disposal can be computed by using either the half-year method or the actual time method;
- (6) Assets shall be recorded using historical cost, except for donated assets which shall be recorded at fair market value at the time received and based on the lesser of at least two (2) bona fide appraisals. Costs during the construction of an asset, consulting and legal fees, interest, and fund raising, should be capitalized as a part of the cost of the asset;



- (7) When an asset is acquired by a trade-in, the cost of the new asset shall be the sum of the book value of the old asset and any cash or issuance of debt as consideration paid;
- (8) Facilities that previously did not maintain fixed asset records and did not record depreciation in prior years shall be entitled to any straight-line depreciation of the remaining useful life of the asset. The depreciation shall be based on the cost of the asset or fair market value of a donated asset at the time of purchase, construction or donation over its normal useful life. Fully depreciated assets shall not be included in the Capital cost center, except for the costs associated with utilities and relevant leasehold improvements. No depreciation may be taken on an asset that would have been fully depreciated if it had been properly recorded at the time of acquisition;
- (9) Leasehold improvements made to rental property by the lessor shall be depreciated over the lesser of the asset's useful life or the remaining life of the lease;
- (c) On a case by case basis, DHCF may reimburse an ICF/IID by providing an offset to capital costs that shall be equal to the daily amount computed under this subsection in situations when DDS has not filled vacant bed space(s). The ICF/IID shall receive the product of the capital cost multiplied by the administrative rate anytime this payment is made;
- (d) The daily cost described in § 4102.12(c) shall be computed as the capital component of the daily per-diem rate, multiplied by the number of vacant bed space(s); and
- (e) ICFs/IID shall incur costs and provide DHCF with proof of the vacant bed space in order to be eligible.

4102.13 Effective October 1, 2013, and annually thereafter, the per diem rates for “Non-Personnel Operations”, “Non-Emergency Transportation”, “Capital”, and “Active Treatment” cost centers shall be adjusted for inflation in accordance with the Centers for Medicare and Medicaid Services (CMS) Skilled Nursing Facility Market Basket Index or other appropriate index if the CMS Skilled Nursing Facility Market Basket Index is discontinued.

4102.14 The Stevie Sellows Intermediate Care Facility for the Intellectually and Developmentally Disabled Quality Improvement Fund Assessment shall be a broad based assessment on all ICF/IID providers in the District of Columbia at a uniform rate of five and one-half percent (5.5%) of each ICF/IID’s gross revenue. The allowable cost of the Assessment shall be calculated consistently with 42 U.S.C. § 1396(b)(w) and 42 C.F.R. §§ 433.68, 433.70, and 433.72.

4102.15 Beginning October 1, 2015, ICF/IID reimbursement rates, shall be as follows:

	Beds	Facility	Direct care staffing FY 16	Other health care & program FY 16	Non-Pers Oper FY 16	Transp. FY 16	Capital FY 16	Admin FY 16	Active FY 16	Tx FY 16	Tax FY 16	Total FY 16	Rate
Base	4 - 5	Leased	\$320.02	\$41.60	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$33.25		\$637.85	
		Owned	\$320.02	\$41.60	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$31.57		\$605.51	
		Depreciated	\$320.02	\$41.60	\$19.77	\$12.57	\$15.33		\$90.14	\$27.47		\$526.90	
	6	Leased	\$240.73	\$43.33	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$28.69		\$550.41	
		Owned	\$240.73	\$43.33	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$27.15		\$520.88	
		Depreciated	\$240.73	\$43.33	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$26.38		\$506.11	
Moderate	4 - 5	Leased	\$320.02	\$41.60	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$33.25		\$637.85	
		Owned	\$320.02	\$41.60	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$31.57		\$605.51	
		Depreciated	\$320.02	\$41.60	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$30.72		\$589.34	
	6	Leased	\$312.05	\$56.17	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$33.32		\$639.20	
		Owned	\$312.05	\$56.17	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$31.78		\$609.67	
		Depreciated	\$312.05	\$56.17	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$31.01		\$594.90	
Extensive behavioral	4 - 5	Leased	\$391.35	\$50.87	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$37.69		\$722.87	
		Owned	\$391.35	\$50.87	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$36.00		\$690.54	
		Depreciated	\$391.35	\$50.87	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$35.16		\$674.37	
	6	Leased	\$359.60	\$64.73	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$36.41		\$698.40	
		Owned	\$359.60	\$64.73	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$34.87		\$668.86	
		Depreciated	\$359.60	\$64.73	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$34.10		\$654.09	
Extensive medical	4 - 5	Leased	\$431.59	\$56.11	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$40.19		\$770.85	
		Owned	\$431.59	\$56.11	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$38.50		\$738.51	
		Depreciated	\$431.59	\$56.11	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$37.66		\$722.34	
	6	Leased	\$374.71	\$67.45	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$37.39		\$717.21	
		Owned	\$374.71	\$67.45	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$35.85		\$687.67	
		Depreciated	\$374.71	\$67.45	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$35.08		\$672.90	

<b>Pervasive 8 h / 7 d</b>	4 - 5	Leased	\$462.67	\$60.15	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$42.12	\$807.90
		Owned	\$462.67	\$60.15	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$40.43	\$775.56
		Depreciated	\$462.67	\$60.15	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$39.59	\$759.40
	6	Leased	\$383.38	\$69.01	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$37.95	\$727.99
		Owned	\$383.38	\$69.01	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$36.41	\$698.46
		Depreciated	\$383.38	\$69.01	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$35.64	\$683.69
<b>Pervasive 8 h / 5 d</b>	4 - 5	Leased	\$417.33	\$54.25	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$39.30	\$753.86
		Owned	\$417.33	\$54.25	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$37.61	\$721.52
		Depreciated	\$417.33	\$54.25	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$36.77	\$705.35
	6	Leased	\$338.04	\$60.85	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$35.01	\$671.56
		Owned	\$338.04	\$60.85	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$33.47	\$642.02
		Depreciated	\$338.04	\$60.85	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$32.70	\$627.25
<b>Pervasive 16 h</b>	4 - 5	Leased	\$605.32	\$78.69	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$50.98	\$977.96
		Owned	\$605.32	\$78.69	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$49.30	\$945.62
		Depreciated	\$605.32	\$78.69	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$48.45	\$929.45
	6	Leased	\$526.02	\$94.68	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$47.21	\$905.58
		Owned	\$526.02	\$94.68	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$45.67	\$876.04
		Depreciated	\$526.02	\$94.68	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$44.90	\$861.27
<b>Pervasive 24 h</b>	4 - 5	Leased	\$747.96	\$97.24	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$59.85	\$1,148.02
		Owned	\$747.96	\$97.24	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$58.16	\$1,115.68
		Depreciated	\$747.96	\$97.24	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$57.32	\$1,099.51
	6	Leased	\$668.67	\$120.36	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$56.47	\$1,083.16
		Owned	\$668.67	\$120.36	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$54.93	\$1,053.62
		Depreciated	\$668.67	\$120.36	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$54.16	\$1,038.85
<b>Nursing 1:1 8 h / 7 d</b>	4 - 5	Leased	\$543.15	\$70.61	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$47.12	\$903.85
		Owned	\$543.15	\$70.61	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$45.43	\$871.51
		Depreciated	\$543.15	\$70.61	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$44.59	\$855.34
	6	Leased	\$463.86	\$83.49	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$43.18	\$828.18
		Owned	\$463.86	\$83.49	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$41.64	\$798.65
		Depreciated	\$463.86	\$83.49	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$40.87	\$783.88

<b>Nursing 8 h / 5 d</b>	4 - 5	Leased	\$472.24	\$61.39	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$42.71	\$819.31
		Owned	\$472.24	\$61.39	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$41.03	\$786.97
		Depreciated	\$472.24	\$61.39	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$40.18	\$770.80
	6	Leased	\$392.94	\$70.73	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$38.57	\$739.91
		Owned	\$392.94	\$70.73	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$37.03	\$710.37
		Depreciated	\$392.94	\$70.73	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$36.26	\$695.60
<b>Nursing 16 hours</b>	4 - 5	Leased	\$766.28	\$99.62	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$60.99	\$1,169.85
		Owned	\$766.28	\$99.62	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$59.30	\$1,137.51
		Depreciated	\$766.28	\$99.62	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$58.46	\$1,121.34
	6	Leased	\$686.98	\$123.66	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$57.66	\$1,105.96
		Owned	\$686.98	\$123.66	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$56.12	\$1,076.42
		Depreciated	\$686.98	\$123.66	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$55.35	\$1,061.65
<b>Nursing 24 hours</b>	4 - 5	Leased	\$989.41	\$128.62	\$19.77	\$12.57	\$61.30	\$59.19	\$90.14	\$74.85	\$1,435.85
		Owned	\$989.41	\$128.62	\$19.77	\$12.57	\$30.65	\$59.19	\$90.14	\$73.17	\$1,403.51
		Depreciated	\$989.41	\$128.62	\$19.77	\$12.57	\$15.33	\$59.19	\$90.14	\$72.33	\$1,387.34
	6	Leased	\$910.11	\$163.82	\$19.77	\$12.57	\$55.99	\$59.19	\$90.14	\$72.14	\$1,383.73
		Owned	\$910.11	\$163.82	\$19.77	\$12.57	\$28.00	\$59.19	\$90.14	\$70.60	\$1,354.19
		Depreciated	\$910.11	\$163.82	\$19.77	\$12.57	\$14.00	\$59.19	\$90.14	\$69.83	\$1,339.42

**4103 ACTIVE TREATMENT SERVICES**

- 4103.1 An individual residing in an ICF/IID shall receive continuous active treatment services, consistent with the requirements set forth in 42 C.F.R. § 483.440. Active treatment services shall vary depending on the needs of the beneficiary, as determined by the interdisciplinary team.
- 4103.2 An ICF/IID shall ensure that a beneficiary receives active treatment services on a daily basis. The ICF/IID may affiliate with outside resources to assist with program planning and service delivery or the facility may provide active treatment services directly.
- 4103.3 A program of active treatment services shall include aggressive, consistent implementation of a program of specialized training, treatment, health services, and other related services that is directed towards:
- (a) The acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and
  - (b) The prevention or deceleration of regression or loss of current optimal functional status.
- 4103.4 In accordance with 42 C.F.R. §§ 483.440(c) - (d), an interdisciplinary team shall determine the type of active treatment services that a beneficiary needs based on preliminary evaluations, assessments, and re-assessments. Each beneficiary's active treatment requirements shall be described in his Individual Program Plan (IPP), pursuant to 42 C.F.R. § 483.440(c). The ICF/IID shall ensure that each beneficiary receives all of the services described in the IPP.
- 4103.5 For dates of service on or after January 1, 2014, the per diem reimbursement rate for active treatment shall equal the average of FY13 active treatment rates multiplied by two hundred sixty (260) days of service, to account for the maximum days of service provided, inclusive of holidays, and divided by three hundred sixty-five (365).

**4104 SUPPLEMENTAL PAYMENT FOR QUALITY OF CARE IMPROVEMENTS**

- 4104.1 Consistent with the requirements set forth in the Stevie Sellows Intermediate Care Facility for the Intellectually and Developmentally Disabled Quality Improvement Act of 2005, effective March 8, 2006 (D.C. Law 16-68; D.C. Official Code §§ 47-1270 *et seq.*), implementing rules, and subsequent amendments, beginning in FY 2014 an ICF/IID that meets the criteria in this section shall be eligible to receive a supplemental payment based on the cost of training provided to employees other than managers, administrators, and contract employees.

- 4104.2 In addition to the aggregate per diem described in § 4102, an ICF/IID may receive an additional payment for participation in quality improvement initiatives that are intended to increase the qualifications of employees by making available educational opportunities.
- 4104.3 To qualify for a supplemental payment for quality improvements under this Section for a fiscal year, an ICF/IID shall, by June 30 of the preceding fiscal year, provide DHCF with documentation verifying that it:
- (a) Has a legally binding written agreement with its employees to fund quality of care improvements through measurable efforts to develop and improve staff skills by increasing staff training and educational opportunities;
  - (b) Has written procedures outlining the process, such as arbitration, for employees to follow to enforce this agreement. The process shall:
    - (1) Be expeditious;
    - (2) Be economical for the employees; and
    - (3) Provide for a neutral decision maker to resolve disputes; and
  - (c) Has provided copies of the agreement and the written procedures to its employees and their representatives.
- 4104.4 To establish the cost amount for purposes of determining the facility's supplemental payment amount, an ICF/IID shall provide DHCF with documentation verifying the amount of training costs no later than June 30 of the preceding fiscal year.
- 4104.5 The training cost amount shall include the cost of providing training for employees other than managers, administrators, and contractors, and shall be the actual costs incurred by the facility in providing training to these employees. For training costs to be included, the training shall be:
- (a) Related to patient care;
  - (b) Related to improving the skills, competency, and qualifications of employees in providing care; and
  - (c) Approved by DHCF.
- 4104.6 In order to be eligible for the supplemental payment, an ICF/IID shall incur costs and provide DHCF with evidence that payment has been made in full. Acceptable forms of evidence shall include a copy of any invoice(s) for training costs and cancelled check(s) reflecting the facility's payment of the invoice(s).

- 4104.7 All supplemental payments shall be subject to a uniform percentage of thirteen percent (13%) for administrative costs for FY 2013. The administrative cost percentage may be adjusted in subsequent fiscal years. Adjusted rates will be set forth in the *D.C. Register*.
- 4104.8 Supplemental payments associated with the costs of implementing quality improvement initiatives shall be recorded as an offset to the costs incurred, and shall be included in the cost report submitted annually.
- 4104.9 The supplemental payments described in this section shall not be used to enhance training or educational opportunities for management, administration, and contractual staff.
- 4104.10 The amount and availability of the supplemental payment shall be contingent upon the availability of funding from DHCF. If the total amount of payments to be made to all eligible providers exceeds the amount of available funds, then payments made to all eligible facilities shall be proportionately reduced.
- 4104.11 DHCF shall issue a Notice of Eligibility and Proposed Reimbursement to each provider within sixty (60) days of receipt of all required information. The written notice shall contain at a minimum all of the following information:
- (a) A determination indicating whether the provider is eligible or ineligible to receive the supplemental payment;
  - (b) If a provider is determined to be ineligible to receive the supplemental payment, a written statement explaining why the facility is ineligible; and
  - (c) Language describing the procedures and timeframes for requesting an administrative review with DHCF.
- 4104.12 A provider who disagrees with the Notice of Eligibility and Proposed Reimbursement may request an administrative review by submitting a written request for an administrative review to DHCF within thirty (30) days after the date of the Notice of Eligibility and Proposed Reimbursement.
- 4104.13 The written request for an administrative review shall include:
- (a) The reason(s) for the request, including an identification of the specific item(s) to be reviewed; and
  - (b) Supporting documentation.
- 4104.14 No later than ninety (90) days after receipt of all requests for administrative review DHCF shall issue a Final Notice of Eligibility and Reimbursement to each

provider that has applied for the supplemental payment. The notice shall contain at a minimum the following information:

- (a) A final determination indicating whether the provider is eligible to receive the supplemental payment. If ineligible, the notice shall contain a written statement explaining why the provider is ineligible;
- (b) The total amount of the supplemental payment, including the annual salary, benefit, and training cost amounts;
- (c) The annual number of employee hours excluding managers, administrators, and contract employees;
- (d) The timeframe for payment of the supplemental payment; and
- (e) Language describing the procedures and timeframes for requesting an appeal with the Office of Administrative Hearings (OAH).

4104.15 A provider who disagrees with the Final Notice of Eligibility and Reimbursement may file an appeal with the OAH within forty-five (45) days of the date of the Final Notice of Eligibility and Reimbursement.

4104.16 Any adjustments to the supplemental payment as a result of a decision rendered by the OAH shall be offset against payments the following fiscal year.

#### **4105 REBASING**

4105.1 Effective October 1, 2016, final reimbursement rates for the residential component will be based on providers' FY 2014 cost reports subject to audit and adjustment by DHCF. Subsequent rebasing to adjust the residential component will occur every three (3) years thereafter.

#### **4106 COST REPORTING AND RECORD MAINTENANCE**

4106.1 Each ICF/IID shall report costs annually to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception. All cost reports shall cover a twelve (12) month cost reporting period unless the facility obtains advance permission from DHCF to allow an alternative reporting period, for good cause.

4106.2 In accordance with instructions from DHCF, providers shall file an initial interim cost report.

4106.3 A cost report that is not completed in accordance with the requirements of this section shall be considered an incomplete filing, and DHCF shall notify the



ICF/IID within thirty (30) days of the date on which DHCF received the incomplete cost report.

- 4106.4 DHCF shall issue a delinquency notice if the ICF/IID does not submit the cost report as specified in § 4106.1 and has not previously received an extension of the deadline for good cause.
- 4106.5 Late submission of cost reports shall result in a refundable withholding of an amount equal to seventy-five percent (75%) of the facility's total payment for the month that the cost report was due, and the same amount shall be withheld each month until the cost report is received.
- 4106.6 The costs described in § 4102 shall be reported on a cost report template developed by DHCF. The cost report shall be completed in accordance with accompanying instructions. The cost report instructions shall include, at minimum, guidelines and standards for determining and reporting allowable costs.
- 4106.7 If the ICF/IID utilizes outside resources pursuant to § 4103.2, the ICF/IID shall submit the cost reports or invoices provided by the outside resources as an attachment to the submitted cost report required under § 4106.6. Where the active treatment program is provided in house, the provider shall provide its own cost report in the active treatment section of the cost report.
- 4106.8 In the absence of specific instructions or definitions contained in the accompanying regulations, cost report forms, and instructions, the treatment and allowability of costs shall be determined in accordance with the Medicare Principles of Reimbursement, 42 C.F.R. Part 413, and the interpretation found in the relevant Provider Reimbursement Manual.
- 4106.9 A facility reporting expenditures associated with holiday pay within the Direct Service cost center, as described under §§ 4102.7 and 4103.5, shall submit supporting documentation, along with the cost report, to DHCF, or its designee. Supporting documentation required under this section shall include employee timesheets or comparable document(s)
- 4106.10 Any allocated time claimed under § 4102.3(a)(5) shall be supported by contemporaneous time sheets attested to by the persons concerned, or a random moment time study designed and reviewed by an independent firm. Such documentation shall be submitted with the cost report in support of all amounts claimed.
- 4106.11 All of the facility's accounting and related records, including the general ledger and records of original entry, and all transaction documents and statistical data, shall be permanent records and be retained for a period of not less than five (5) years after the filing of a cost report.

- 4106.12 If the records relate to a cost reporting period under audit or appeal, records shall be retained until the audit or appeal is complete.
- 4106.13 In accordance with § 4100.9, the ICF/IID shall disclose a list of related organizations, associated amounts, and the reason(s) for payment to each related organization in the cost report.
- 4106.14 Costs incurred during a period when an ICF/IID is subject to denial of payment for new admissions, described in § 4112, shall be included on the cost report for the period during which payment was denied, in order to accurately determine rates in subsequent periods.

#### **4107 FISCAL ACCOUNTABILITY**

- 4107.1 Beginning in FY 2014, except for the Administration, Capital, and Active Treatment cost centers, each facility shall spend at least ninety-five percent (95%) of the rate under each cost center on service delivery to Medicaid individuals. Facilities expending less than ninety-five percent (95%) of each cost center shall be subject to repayment requirements.
- 4107.2 Beginning in FY 2014, each ICF/IID shall spend one hundred percent (100%) of the rate for Active Treatment on service delivery to Medicaid individuals. Facilities expending less than one hundred percent (100%) of the rate for Active Treatment shall be subject to repayment requirements. Effective January 1, 2014, each ICF/IID shall spend one hundred percent (100%) of the rate associated with the Capital cost center. A facility that fails to expend one hundred percent (100%) on capital shall be subject to repayment requirements.
- 4107.3 The repayment amount described in § 4107.1 shall be the difference between ninety-five percent (95%) of the rate component and the facility's reported expenses. The repayment amount for Active Treatment described in § 4107.2 shall be the difference between one hundred percent (100%) of the payments made for active treatment services and reported expenses for active treatment services. The repayment amount for Capital costs shall be the difference between one hundred percent (100%) of the payments made for Capital costs and reported Capital expenses.
- 4107.4 In accordance with D.C. Official Code § 47-1272(c), DHCF, or its designee, has the right to inspect payroll and personnel records to support the Department's obligations pursuant to the Living Wage Act of 2006, effective March 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 47-1270 *et seq.*), and implementing regulations.

- 4107.5 DHCF shall evaluate expenditures subject to the requirements in this section through annual review of cost reports. DHCF, or its designee, shall review each cost report for completeness, accuracy, compliance, and reasonableness through a desk audit.
- 4107.6 On-site audits shall be conducted not less than once every three (3) years. Each ICF/IID shall allow access, during on-site audits or review by DHCF or U.S. Department of Health and Human Services auditors, to relevant financial records and statistical data to verify costs previously reported to DHCF.
- 4107.7 DHCF shall issue a notice to each ICF/IID that is required to repay as set forth in this section. The notice shall set forth the repayment amount and include language describing the procedure and timeframes for requesting an appeal before OAH. Filing an appeal with OAH shall not stay any action to recover the amounts prescribed in this section.

#### **4108 RIGHT TO APPEAL**

- 4108.1 DHCF shall issue a notice to each beneficiary when DHCF disapproves the acuity level assignment submitted by the provider. The notice shall comply with District and federal law and rules. A copy of the notice shall also be sent to the provider. If the beneficiary consents, a provider may appeal the determination described in this section on behalf of the beneficiary.
- 4108.2 For Fiscal Years 2013 and after, DHCF shall send a transmittal to all providers notifying them of the rates.
- 4108.3 Provider appeals shall be limited to challenges based on acuity level assignments and audit adjustments.
- 4108.4 At the conclusion of each rebasing year audit or any other required audit, an ICF/IID facility shall receive an audited cost report including a description of each audit adjustment and the reason for each adjustment. An ICF/IID facility that disagrees with the audited cost report may request an administrative review of the audited cost report by sending a written request for administrative review to DHCF within thirty (30) days of the date of receipt of the audited cost report.
- 4108.5 For annual cost reports submitted by the ICF/IID facility, any determinations made following reviews conducted by DHCF shall be communicated to the ICF/IID Facility within thirty (30) days. Within thirty (30) days of the date of receipt of the DHCF communication on the submitted annual cost report, an ICF/IID facility that disagrees with the determination may request an administrative review by sending a written request for administrative review to DHCF.

- 4108.6 The written request for an administrative review shall include an identification of the specific audit adjustment to be reviewed, the reason for the request for review of each audit adjustment and supporting documentation.
- 4108.7 DHCF shall mail a formal response to the ICF/IID facility no later than forty-five (45) days from the date of receipt of the written request for administrative review.
- 4108.8 Decisions made by DHCF and communicated in the formal response may be appealed, within thirty (30) days of the date of DHCF's letter notifying the facility of the decision, to OAH.
- 4108.9 Filing an appeal with OAH pursuant to this section shall not stay any action to recover any overpayment to the ICF/IID, and the provider shall be immediately liable to the program for overpayments set forth in the Department's decision.

#### **4109 UTILIZATION REVIEW REQUIREMENTS**

- 4109.1 In accordance with 42 C.F.R. § 456.401, each ICF/IID shall develop, implement, and maintain a written Utilization Review Plan (URP) for each Medicaid beneficiary receiving services furnished by the ICF/IID. The URP shall provide for a review of each beneficiary's need for the services that the ICF furnished him or her.
- 4109.2 Utilization review for ICFs/IID enrolled in D.C. Medicaid may be conducted by any of the following:
- (a) The ICF/IID;
  - (b) DHCF or its designee; or
  - (c) Any other approved method.
- 4109.3 The URP shall, at minimum, include the following:
- (a) A description of how utilization review shall be performed;
  - (b) The frequency of utilization review;
  - (c) Assurances and documentation establishing that the personnel who shall perform utilization review meet the requirements of 42 C.F.R. § 456.406;
  - (d) Administrative staff responsibilities related to utilization review;
  - (e) The types of records maintained by the utilization review team;

- (f) The types and frequency of any reports developed by the utilization review team, and related plan for dissemination; and
- (g) The procedures that shall be used when corrective action is necessary.

4109.4 In accordance with 42 C.F.R. §§ 456.431 - 456.438, each URP shall establish a process whereby each individual residing in the ICF/IID receives continued stay reviews, at minimum, every six (6) months.

4109.5 The URP shall establish written methods and criteria used to conduct continued stay reviews. The URP shall also set forth enhanced criteria used to assess a case if the individual's circumstances reflect any of the following associations:

- (a) High costs;
- (b) Frequent and excessive services; or
- (c) Attended by a physician or other practitioner whose practices reflect questionable billing patterns or misrepresentation of facts needed in order to secure claims reimbursement, including but not limited to ordering and/or providing services that are not medically necessary or that fail to meet professionally recognized standards of care.

**4110 TERMINATION AND ALTERNATIVE SANCTIONS FOR ICF/IID NONCOMPLIANCE**

4110.1 In order to qualify for Medicaid reimbursement, intermediate care facilities for persons with intellectual and developmental disabilities (ICFs/IID) shall comply with federal conditions of participation (CoPs), pursuant to 42 C.F.R. §§ 483.400-483.480. The CoPs include adherence to acceptable standards in the following areas:

- (a) Governing body and management;
- (b) Client protections;
- (c) Facility staffing;
- (d) Active treatment services;
- (e) Client behavior and facility practices;
- (f) Health care services;
- (g) Physical environment; and

(h) Dietetic services.

4110.2 An ICF/IID that fails to maintain compliance with the CoPs may be subject to alternative sanctions and/or termination of its participation in the Medicaid program.

**4111 ALTERNATIVE SANCTIONS FOR ICFs/IID – NON-IMMEDIATE JEOPARDY**

4111.1 In accordance with Section 1902(i)(1)(B) of the Social Security Act, the District of Columbia may impose alternative sanctions against an ICF/IID when that facility fails to meet the CoPs, but the violation does not place beneficiary health or safety in immediate jeopardy.

4111.2 In lieu of terminating the provider agreement, DHCF may impose one (1) or more alternative sanctions against an ICF/IID as set forth below:

- (a) Denial of payment, as described in § 4112;
- (b) Directed Plan of Correction (DPoC), as described in § 4113;
- (c) Directed In-Service Training (DIST), as described in § 4114; or
- (d) State Monitoring, as described in § 4115.

4111.3 DHCF shall determine the appropriateness of alternative sanctions against an ICF/IID upon notification by the Department of Health that an ICF/IID is not in compliance with any of the federal CoPs. A determination to terminate a provider from the Medicaid program, or to impose an alternative sanction shall be made based on the following factors:

- (a) Seriousness of the violation(s);
- (b) Number and nature of the violation(s);
- (c) Potential for immediate and serious threat(s) to ICF/IID residents;
- (d) Potential for serious harm to ICF/IID residents;
- (e) Any history of prior violation(s) and/or sanction(s);
- (f) Actions or recommendations of DDS, developmental disability advocacy groups, or health care entities;
- (g) Mitigating circumstances; and

(h) Other relevant factors.

4111.4 DHCF shall issue a written notice to each ICF/IID notifying the facility of termination of the Medicaid provider agreement or the imposition of an alternative sanction. The written notice shall comply with District and federal law and rules.

4111.5 All costs associated with the imposition of an alternative sanction against an ICF/IID pursuant to these rules shall be borne by the facility.

#### **4112 DENIAL OF PAYMENT**

4112.1 Pursuant to Section 1902(i) of the Act and 42 C.F.R. § 442.118, and in lieu of termination in situations where residents are not in immediate jeopardy, DHCF may initiate a one-time denial of payment for claims associated with new admissions at ICFs/IID that fail to comply with one (1) or more of the CoPs for Medicaid enrollment.

4112.2 The denial of payment term shall be eleven (11) months in duration, beginning on the first day of the month after DHCF imposes the denial of payments.

4112.3 DHCF shall also deny payment to ICFs/IID if DOH previously initiated enforcement actions due to immediate jeopardy, and the facility has failed to mitigate the circumstances that caused immediate jeopardy.

4112.4 DHCF, in coordination with DOH, shall notify the ICF/IID that it is subject to denial of payment. The written notification shall indicate the following:

- (a) The ICF/IID has up to sixty (60) days to correct the cited deficiencies; and
- (b) The procedures that shall commence once the sixty (60) days have lapsed, pursuant to § 4112.5.

4112.5 If the ICF/IID does not correct the violations within the sixty (60) day timeframe, DHCF shall notify the facility of its intention to deny payment. This written notification shall include:

- (a) Reasons for denial of payment;
- (b) Information on the right to request a hearing through OAH, pursuant to 29 DCMR §§ 1300 *et seq.*;
- (c) Details of public notice; and
- (d) The effective date for denial of payments.

- 4112.6 If an ICF/IID appeals DHCF's decision to deny payment, DHCF shall notify the provider that the effective date of the sanction, established in § 4112.2, shall be suspended until the appeal is resolved.
- 4112.7 If denial of payment is upheld at the appeal, the DHCF shall notify the facility and the public at least thirty (30) days before the newly established effective date of the sanction.
- 4112.8 DHCF, in coordination with other District agencies, shall monitor the facility's progress in improving cited violation(s) throughout the eleven (11) month period.
- 4112.9 The Director of DHCF shall consider modifying or rescinding denial of payment upon the occurrence of one of the following:
- (a) Circumstances have changed and resulted in alterations of the CoPs violation(s) in such a manner as to immediately jeopardize patient health and safety; or
  - (b) The ICF/IID achieves full compliance with the CoPs in fewer than eleven (11) months; or
  - (c) The ICF/IID makes significant progress in achieving compliance with the CoPs through good faith efforts.
- 4112.10 DHCF shall terminate the provider agreement of an ICF/IID that has been unable to achieve compliance with the CoPs during the full eleven (11) month period of denial of payment. Termination shall be effective on the first day following the last day of the denial payment period.
- 4112.11 An ICF/IID provider agreement that is subject to denial of payment shall be automatically extended for the eleven (11) month period if the provider agreement does not lapse on or before the effective date of denial of payments.
- 4112.12 ICF/IID provider agreements that are subject to denial of payment may only be renewed when the denial period expires or is rescinded.
- 4113 DIRECTED PLAN OF CORRECTION (DPoC)**
- 4113.1 In lieu of termination in situations where the ICF/IID is not in compliance with the federal CoPs, and residents are not in immediate jeopardy, DHCF may require an ICF/IID to take prompt, timely action specified by DHCF to achieve and maintain compliance with CoPs and other District of Columbia Medicaid requirements. These actions specified by DHCF shall constitute a Directed Plan of Correction (DPoC).



- 4113.2 The DPoC shall be developed in coordination with and approved by DOH, DHCF, and DDS, incorporating findings from DDS' Continuous Quality Improvement Plan.
- 4113.3 The DPoC shall specify:
- (a) How corrective action shall be accomplished for beneficiaries found to have been affected by the deficient practice and include remedies that shall be implemented;
  - (b) How the facility shall identify other individuals who may have been affected by the same deficient practice but not previously identified, and how the facility shall act to remedy the effect of the deficient practices for these individuals;
  - (c) What measures and actions shall be put into place to ensure that the deficient practice(s) is/are being corrected and future noncompliance prevented;
  - (d) Timelines, including major milestones for completion of all corrective action in the DCoP;
  - (e) How compliance shall be determined; and
  - (f) How the DPoC relates to other alternative sanctions.
- 4113.4 A state monitor shall oversee implementation of the DPoC and evaluate compliance with the plan.
- 4113.5 DHCF may terminate the Medicaid provider agreement of an ICF/IID that is unable to meet the timeline for completion of all corrective actions in the DCoP.

#### **4114 DIRECTED IN-SERVICE TRAINING (DIST)**

- 4114.1 In lieu of termination in situations where the ICF/IID is not in compliance with federal CoPs, but residents are not in immediate jeopardy, DHCF may require an ICF/IID to implement Directed In-Service Training (DIST) for deficiencies determined by the District to be correctable through education. This alternative sanction shall require the staff and relevant contractors of the ICF/IID to attend in-service trainings and demonstrate competency in the knowledge and skills presented during the trainings.
- 4114.2 DHCF, in consultation with DOH and DDS, shall develop the areas for ICF/IID staff and contractor training by incorporating the findings from the Continuous Quality Improvement Plan.

- 4114.3 Facilities shall use training programs developed by well-established organizations with prior experience and expertise in training, services for individuals with intellectual disabilities, and the operation of ICF/IID to meet training requirements described in this section. All programs and personnel used to deliver the training shall be approved by DHCF prior to their use.
- 4114.4 The ICF/IID shall bear the expense of the DIST.
- 4114.5 A state monitor shall oversee implementation of DIST, and shall ensure compliance with the requirements.
- 4114.6 DHCF may terminate the provider agreement of an ICF/IID that is unable to meet the timeline for full and successful completion of the DIST.

#### **4115 STATE MONITORING**

- 4115.1 State monitoring shall be the District's oversight of efforts made by the ICF/IID to correct cited deficiencies. State monitoring shall be a safeguard against the facility's further noncompliance.
- 4115.2 The following entities may serve as the State Monitor:
- (a) DOH;
  - (b) DHCF;
  - (c) DDS; or
  - (d) A District of Columbia contractor that meets the following requirements:
    - (1) Is not a designee or current contractor of the monitored facility;
    - (2) Does not have an immediate family member who is a resident of the facility;
    - (3) Is not a person who has been terminated for cause by the facility; and
    - (4) Is not a former contractor who has had a contract canceled, for cause, by the facility.
- 4115.3 State monitoring shall be discontinued under the following circumstances:
- (a) The facility's provider agreement is terminated;

- (b) The facility has demonstrated to the satisfaction of the District of Columbia that it substantially complies with the CoPs as described in § 4113; or
- (c) The facility has demonstrated to the satisfaction of the District of Columbia that it has substantially implemented the DIST as described in § 4114.

#### **4116 ACCESS TO RECORDS**

- 4116.1 Each ICF/IID shall grant full access to all records during announced and unannounced audits and reviews by DHCF personnel, representatives of the U.S. Department of Health and Human Services, and any authorized agent(s) or official(s) of the federal or District of Columbia government.

#### **4199 DEFINITIONS**

- 4199.1 For purposes of this chapter, the following terms shall have the meanings ascribed:

**Active Treatment** - A program of specialized and generic training, treatment, health services, and related services designed toward the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible, and the prevention or deceleration of regression or loss of current optimal functional status. These services shall be provided consistent with Federal standards.

**Activities of Daily Living** - The ability to bathe, transfer, dress, eat and feed oneself, engage in toileting, and maintain bowel and bladder control (continence).

**Acuity Level** - The intensity of services required for a Medicaid beneficiary residing in an ICF/IID. Individuals with a high acuity level require more care; those with lower acuity levels require less care.

**Administrator** - An individual responsible for the administration or implementation of ICF/IID policies or procedures, and other roles other than delivering services directly related to resident treatment and care, food service, or maintenance of the facility.

**Allowable costs** - Actual costs, after appropriate adjustments, incurred by an ICF/IID, which are reimbursable under the Medicaid program.

**Base year** - The standardized year on which rates for all facilities are calculated to derive a prospective reimbursement rate.

**Behavior Support Plan** - A written document requested by the Individual Support Team that is developed by a psychologist or psychology associate and incorporated into the Individual Support Plan. If developed by a psychology associate, the plan shall be approved by the psychologist.

**Current Individual Support Plan (ISP)** - An Individual Support Plan with a range of effective dates that includes the date on which the plan is being reviewed.

**Depreciation** - The systematic distribution of the cost or other basis of depreciable assets, less salvage value, over the estimated useful life of the assets.

**Direct service costs** - Costs incurred by a provider that are attributable to the operation of providing services to individuals.

**Elopement** - To run away; abscond.

**Employee** - A worker in an ICF/IID that does not serve as a manager or administrator, and is not under contract to provide professional services.

**Facility** - An intermediate care facility for individuals with intellectual disabilities.

**Habilitation** – The process by which an individual is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment, including, in the case of a person committed under D.C. Official Code § 7-1304.06a, to refrain from committing crimes of violence or sex offenses, and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency.

**Holiday pay** – The term used in a labor agreement, provider policy, or in the absence of either, by the U.S. Department of Labor.

**Individual Support Plan (ISP)** - The document produced through coordinated efforts of ICFs/IID and DDS. The ISP is the successor to the Individual Habilitation Plan as defined in the court-approved *Joy Evans* Exit Plan. For purposes of Medicaid reimbursement, the individual program plan, as described in 42 C.F.R. § 483.440(c), shall be included within the ISP.

**Industry Average** - The sum of total industry expenditures divided by total industry licensed bed days per reported fiscal year costs.

**Interdisciplinary team** - A group of persons, with special training and experience in the diagnosis and habilitation of individuals with

intellectual and developmental disabilities, with the responsibility to perform a comprehensive evaluation of each beneficiary and participating in the development, implementation, and monitoring of the beneficiary's individual habilitation plan. The "core team" shall include the individual, the individual's representative, the service coordinator, and relevant clinical staff.

**Level of Care Determination (LOC)** - The assessment used by DDS to determine a beneficiary's eligibility for ICF/IID services.

**Level of Need Assessment and Risk Screening Tool (LON)** - The comprehensive and uniform assessment tool developed by DDS that determines the beneficiary's individual support needs and identifies potential risks to be addressed by the interdisciplinary team.

**Licensed bed days** - Three hundred and sixty-five (365) days or the number of days of that calendar year.

**Life safety skills** - An individual's ability to protect oneself from perceived and apparent risks and life-threatening situations such as fires, evacuation emergencies, traffic, and ingestion of toxic substances.

**Manager** - An individual who is responsible for the administration of an ICF/IID facility inclusive of human resources, maintenance, and policy management.

**Non-ambulatory** - A beneficiary who spends all of his or her time out of bed in a wheelchair or a chair.

**One-to-One** - An altered staffing pattern that allows one staff to provide services to an individual with intellectual disabilities exclusively for an authorized period of time.

**Owner** - A person who is a sole proprietor, partner, or corporate stockholder-employee owning any of the outstanding stock of the contracted provider.

**Per diem rate** - The rate per day established by DHCF.

**Professional services** - Services provided pursuant to any legal arrangement, which include occupational and speech therapies and nursing care services provided by an individual or a corporation.

**Quality of care improvements** - The same definition as set forth in D.C. Official Code § 47-1270, and any subsequent amendments thereto.

**Related organization** - In accordance with 42 C.F.R. § 413.17(b)(1), an organization is related to an ICF/IID when the ICF/IID, to a significant extent, is associated or affiliated with, or has control over, or is controlled by the organization furnishing the services, facilities, or supplies.

Comments on the proposed rule shall be submitted, in writing, to Claudia Schlosberg, J.D., 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](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2015-210  
September 17, 2015

**SUBJECT:** Establishment — District of Columbia Healthcare Alliance Pharmacy and Therapeutics Committee

**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 (2014 Repl.), it is hereby **ORDERED** that:

- I. **Establishment:** There is hereby established in the Department of Health Care Finance (DHCF), the District of Columbia Healthcare Alliance Pharmacy and Therapeutics Committee (**Committee**).
- II. **Mission:** The Committee shall, with the approval of the Director of DHCF, develop and maintain the District of Columbia Healthcare Alliance Drug Formulary for the District of Columbia Healthcare Alliance Program. The Committee shall also recommend policies and best practice approaches that would help evaluate and select drugs of proven safety and therapeutic benefits and make them available to beneficiaries of the District of Columbia Healthcare Alliance Program.
- III. **Composition:**
  1. The Committee shall be composed of the following twenty-one (21) members, who shall be appointed by the Director of DHCF:
    - a. The Medical Director of DHCF, who shall serve as the chairperson of the Committee and shall be a non-voting member of the Committee; except that the Medical Director may vote when there is a tie vote among the voting members of the Committee;
    - b. The DHCF Healthcare Delivery Management Administration (HCDMA) Director, who shall serve as the vice chairperson of the Committee and, in the absence of the Medical Director, shall serve as the chairperson of the Committee;
    - c. Four (4) physicians practicing in the District of Columbia and providing services to District of Columbia Healthcare Alliance beneficiaries;
    - d. Three (3) employees of the Department of Health Care Finance;

- e. The medical director and the pharmacy manager of each of the three (3) managed care organizations (MCOs) providing services to District of Columbia Healthcare Alliance beneficiaries. The Director of DHCF, in appointing these members, shall designate one (1) representative of each MCO as a voting member of the Committee and one (1) representative of each MCO as a non-voting member of the Committee;
- f. Two (2) employees of the pharmacy benefit manager (PBM) that administers the prescription drug program for the DC Healthcare Alliance;
- g. Two (2) employees of the Department of Health's pharmaceutical warehouse; and
- h. Two (2) representatives from the District of Columbia Pharmacy Providers Network (DCPPN), both of whom shall serve as non-voting members of the Committee.

IV. **Conflict of Interest:** Each member of the Committee shall sign a conflict of interest statement delineating his or her economic or other relationships (for example, contracts, employment, grants, etc.) with entities that may be affected by formulary decisions. If a conflict of interest arises for any Committee member regarding an entity potentially affected by a drug coverage decision, the member shall immediately disclose the conflict and recuse himself or herself from deliberation and debate and from making recommendations and from participating in the decision-making process related to any matter related to the conflict of interest.

V. **Terms:**

1. The Director of DHCF shall appoint the four (4) physician members of the Committee to serve for terms of three (3) years; The Director of DHCF shall appoint members to fill the remainder of unexpired terms as vacancies occur. No physician member of the Committee shall be appointed for more than three (3) terms.
2. The other members of the Committee shall serve at the pleasure of the DHCF Director; provided, each such member shall serve only during his or her incumbency as an employee or representative of the agency or entity for which he or she was appointed.
3. The Committee may establish subcommittees when deemed necessary to provide technical or professional support to achieve the Committee's purpose. Non-members may be appointed to subcommittees with the approval of the Medical Director of DHCF.

VI. **Meetings:**



1. The Committee shall meet at the call of the chairperson. Meetings shall be held at least once quarterly.
2. Each Committee member shall receive written notice of the date, time, place, and agenda of a scheduled meeting not less than fourteen (14) days before a meeting.
3. The presence of fifty percent (50%) or more of the voting Committee members shall constitute a quorum for the purpose of the Committee taking official action.
4. Interested parties shall have the opportunity to provide written comments on all Committee actions after such actions are made public.

VII. **Compensation:** All members of the Committee shall serve without additional compensation.

VIII. **Duties:** The Committee shall:

1. Develop and maintain the District of Columbia Healthcare Alliance Drug Formulary for the District of Columbia Healthcare Alliance pharmacy management system, with the approval of the DHCF Director;
2. Monitor the District of Columbia Healthcare Alliance pharmacy management system with approval by the DHCF Director;
3. Review utilization of pharmaceuticals that are included in the District of Columbia Healthcare Alliance Drug Formulary and pharmaceuticals that are not included in the District of Columbia Healthcare Alliance Drug Formulary to ensure drugs of proven cost-effectiveness are available and used by beneficiaries of the District of Columbia Healthcare Alliance program;
4. Recommend and promote the safety, effectiveness, and affordability of Food and Drug Administration (FDA) approved drugs for the District of Columbia Healthcare Alliance by ensuring that the development and management of the District of Columbia Healthcare Alliance Drug Formulary is based on established clinical evidence and appropriate utilization management programs;
5. Review all requests for formulary changes, new drugs, existing drug classes, new clinical indications, therapeutic advantages, new chemical entities, and new safety information using established evidence for efficacy, safety, and quality to accommodate beneficiaries' needs and advances in pharmacotherapy while preventing unnecessary duplications of the same basic drug or its combination in the District of Columbia Healthcare Alliance Drug Formulary;
6. Provide recommendations regarding policies and procedures related to the process of formulary development, review, and change;

- 7. Support educational programs promoting appropriate drug use and formulary implementation; and
  - 8. Identify problems with formulary development and management programs and propose ideas that help resolve identified problems and accomplish the objectives of the District of Columbia Healthcare Alliance program.
- IX. **Administration**: DHCF shall provide administrative support to the Committee.
- X. **Applicability Date**: The Committee shall begin operating in accordance with this Order after the Committee members have been sworn in.
- XI. **EFFECTIVE DATE**: This Order shall be effective immediately.

  
MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-211  
September 17, 2015

**SUBJECT:** Appointment — District of Columbia Commission on Persons with Disabilities

**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 the Disability Rights Protection Act of 2006, effective, March 8, 2007, D.C. Law 16-239, D.C. Official Code § 2-1431.01 *et seq.* (2012 Repl.) Mayor's Order 2009-165, dated September 25, 2009, it is hereby **ORDERED** that:

1. **KAMILAH MARTIN-PROCTOR** is appointed as a public member of the District of Columbia Commission on Persons with Disabilities, replacing Arthur Ginsberg, to complete the remainder of a three year term to end September 30, 2016.
2. **EFFECTIVE DATE:** This Order shall become *nunc pro tunc* to July 31, 2015.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2015-212  
September 17, 2015

**SUBJECT:** Reappointments and Appointments — State Advisory Panel on Special Education for 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.), and in accordance with Mayor's Order 2012-48, dated April 5, 2012, it is hereby **ORDERED** that:

1. **AARON MCCORMICK** is appointed as a member of the State Advisory Panel on Special Education (the "**Panel**"), replacing Kim Acquaviva, and shall serve for a term to end on September 17, 2016.
2. **BRIANNA COPLEY** is appointed as a teacher representative to the Panel, replacing Kaitlin Settle, and shall serve at the pleasure of the Mayor.
3. **ZALIKA BROWN** is appointed as an administrator of programs for children with disabilities to the Panel, replacing Sara Sasnett, and shall serve at the pleasure of the Mayor.
4. **NICOLE LEE-MWANDHA** is appointed as a member of the Panel representing the education rights of students and parents experiencing homelessness in the District of Columbia, replacing Ja'Sent Brown, and shall serve in that capacity at the pleasure of the Mayor.
5. **ANDREW REESE** is appointed as a member of the Panel representing the Rehabilitation Services Administration, replacing Rebecca Salon, and shall serve in that capacity at the pleasure of the Mayor.
6. **ROCHANDA HILIGH-THOMAS**, who was appointed by the Mayor on September 17, 2012, pursuant to Mayor's Order 2012-148, is reappointed as a member to the Panel, and shall serve for a term to end on September 17, 2016.
7. **MOLLY WHALEN**, who was appointed by the Mayor on September 17, 2012, pursuant to Mayor's Order 2012-148, is reappointed as a member to the Panel, and shall serve for a term to end on September 17, 2016.

- 8. **JULIE CAMERATA**, who was appointed by the Mayor on September 17, 2012, pursuant to Mayor's Order 2012-148, is reappointed as a member to the Panel, and shall serve for a term to end on September 17, 2016.
- 9. **BETSY CENTOFANTI**, who was appointed by the Mayor on September 17, 2012, pursuant to Mayor's Order 2012-148, is reappointed as a member to the Panel, and shall serve for a term to end on September 17, 2016.
- 10. **CLAUDIA SAULS**, who was appointed by the Mayor on September 17, 2012, pursuant to Mayor's Order 2012-148, is reappointed as a member to the Panel, and shall serve for a term to end on September 17, 2016.
- 11. **SHAWN ULLMAN**, who was appointed by the Mayor on September 17, 2012, pursuant to Mayor's Order 2012-148, is reappointed as a member to the Panel, and shall serve for a term to end on September 17, 2016.
- 12. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-213  
September 17, 2015

**SUBJECT:** Appointment — Chairperson, District of Columbia Healthy Youth and Schools Commission

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and pursuant to section 702 of the Healthy Schools Act of 2010, effective July 27, 2010, D.C. Law 18-209; D.C. Official Code § 38-827.02 (2012 Repl.), it is hereby **ORDERED** that:

1. **JEFF TRAVERS** is appointed as the Chairperson of the Healthy Youth and Schools Commission, replacing Alexandra M. Ashbrook, whose term expired on May 1, 2015, and shall serve at the pleasure of the Mayor.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-214  
September 17, 2015

**SUBJECT:** Reappointment and Appointment – District of Columbia Developmental Disabilities Fatality Review Committee


**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 of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2) (2004 Repl.), and in accordance with Mayor's Order 2009-225, dated December 22, 2009, as amended by Mayor's Order 2013-154, dated August 26, 2013, it is hereby **ORDERED** that:

1. **CAREN KIRKLAND** is appointed, to the District of Columbia Developmental Disabilities Fatality Review Committee (the "**Committee**"), as a public member replacing Victor Robinson, and shall serve for a three-year term to end on March 7, 2018.
2. **MARIANNE VAIL** is reappointed, to the Committee, as a public member and a clinician with experience in the evaluation and treatment of persons with intellectual and developmental disabilities, for a two-year term to end on March 7, 2017.
3. **EFFECTIVE DATE:** This Order shall be effective immediately.



MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-215  
September 17, 2015

**SUBJECT:** Reappointment and Appointment — Green Building Advisory Council

**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 in accordance with section 10 of the Green Building Act of 2006 (Act), effective March 8, 2007, D.C. Law 16-234, D.C. Official Code § 6-1451.09 (2014 Supp.), it is hereby **ORDERED** that:

1. **WILLIAM UPDIKE** is reappointed as a member of the Green Building Advisory Council, representing the Director of the Department of Energy and Environment (DOEE), and shall serve in that capacity for a term to end two years from the effective date of this order, at the pleasure of the Mayor.
2. **KARANJA SLAUGHTER** is appointed as a member of the Green Building Advisory Council, replacing Michael P. Kelly, representing the Director of the Department of Housing and Community Development (DHCD), and shall serve in that capacity for a term to end two years from the effective date of this order, at the pleasure of the Mayor.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA



GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-216  
September 17, 2015

**SUBJECT:** Appointment — Eastern Market Community Advisory Committee

**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 12(a) of the Eastern Market Real Property Asset Management and Outdoor Vending Act of 1988, effective April 16, 1999, D.C. Law 12-288, D.C. Official Code § 37-111(a) (2012 Repl.), it is hereby **ORDERED** that:

- 1. **JONATHAN PAGE** is appointed as a member of the Eastern Market Community Advisory Committee, replacing Neil Albert, and shall serve at the pleasure of the Mayor for a two year term to begin October 6, 2017.
  
- 3. **EFFECTIVE DATE:** This Order shall be effective October 6, 2015.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-217  
September 17, 2015

**SUBJECT:** Reappointment — District of Columbia Commemorative Works Committee

**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 412 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective April 4, 2001, D.C. Law 13-275, D.C. Official Code § 9-204.12 (2012 Repl.), it is hereby **ORDERED** that:

1. **BRENT SISCO** is reappointed as a designee representative for the Department of Public Works to the District of Columbia Commemorative Works Committee, and shall serve in that capacity at the pleasure of the Mayor.
2. **EFFECTIVE DATE:** This Order shall be effective immediately.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2015-218  
September 17, 2015

**SUBJECT:** Reappointments and Appointments — Mayor's Interfaith Council

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and in accordance with Mayor's Order 2011-110, dated June 20, 2011, it is hereby **ORDERED** that:

1. **FATHER DAVID BAVA** is reappointed as a member of the Mayor's Interfaith Council (the "Council"), and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
2. **IMAM JOHARI ABDUL-MALIK** is reappointed as a member to the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
3. **IMAM TALIB MUTTAQEE SHAREEF** is reappointed as a member to the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
4. **RABBI M. BRUCE LUSTIG** is reappointed as a member to the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2017.
5. **RABBI SCHMUEL A. HERZFELD** is reappointed as a member to the, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
6. **REVEREND DR. E. GAIL ANDERSON HOLNESS** is reappointed as a member to the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
7. **REVEREND DR. JAMES COLEMAN** is reappointed as a member to the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.

8. **REVEREND DWAYNE JOHNSON** is reappointed as a member to the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2017.
9. **REVEREND GRAYLAN SCOTT HAGLER** is reappointed as a member to the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
10. **REVEREND KEITH W. BYRD, SR.** is reappointed as a member and designated as the Chairperson of the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
11. **REVEREND SUSAN TAYLOR** is reappointed as a member to the Council, and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
12. **BISHOP SHIRLEY HOLLOWAY** is appointed to the Council, replacing Carol Flett as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
13. **FATHER EVELIO MENJIVAR** is appointed to the Council, replacing Wallace C. Smith as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
14. **SHEIKH AHMED SY** is appointed to the Council, replacing Michael D. Scott as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
15. **MINISTER DARRELL SMITH-BEY** is appointed to the Council, replacing Henry Y. White as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
16. **RABBI GERY SEROTTA** is appointed to the Council, replacing Louis Schockley, Jr. as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2017.
17. **REVEREND DR. SIDNEY FOWLER** is appointed to the Council, Canon Jan Nylor Cope as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2017.
18. **REVEREND DR. SUSAN NEWMAN MOORE** is appointed to the Council, replacing Kendrick E. Curry as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2017.

- 19. **REVEREND MICHAEL E. BELL, SR.** is appointed to the Council, replacing Donald Isaac as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2017.
- 20. **REVEREND ADEMYIWA BAMIDURO** is appointed to the Council, replacing David Freshour as a member and shall serve in that capacity at the pleasure of the Mayor for a three (3) year term, to end July 29, 2018.
- 21. **EFFECTIVE DATE:** This Order shall be effective immediately.

  
MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-219  
September 17, 2015

**SUBJECT:** Reappointment and Appointment — District of Columbia Water and Sewer Authority Board of Directors

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and pursuant to section 204(a)(3)(A) of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996, D.C. Law 11-111, D.C. Official Code § 34-2202.04(a)(3)(A) (2012 Repl.), it is hereby **ORDERED** that:

1. **JAMES W. PATTESON** is appointed as the principal member from Fairfax County, Virginia, on the District of Columbia Water and Sewer Authority Board of Directors replacing Edward L. Long Jr., for a full term to end September 12, 2019, or until a successor is appointed.
2. **SARAH MOTSCH** is appointed, as the alternate member from Fairfax County, Virginia, on the District of Columbia Water and Sewer Board of Directors, replacing James W. Patteson, for a full term to end September 12, 2019, or until a successor is appointed.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-220

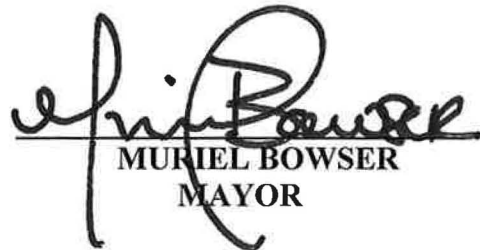
September 17, 2015

**SUBJECT:** Delegation — Authority the General Counsel of the Mayor to Exempt Former Government Employees from Restrictions on Post-Employment Practices


**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2014 Repl.), it is hereby **ORDERED** that:

1. The General Counsel to the Mayor is delegated the authority of the Mayor under 6B DCMR § 1811.15 to exempt former government employees from the restrictions on post-employment practices set forth in 6B DCMR § 1811.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2015-221  
September 18, 2015

**SUBJECT:** Appointment – Acting Director, Department of General Services

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code §§ 1-204.22(2) (2014 Repl.), and pursuant to section 1024 of the Department of General Services Establishment Act of 2011, effective September 14, 2011 (D.C. Official Code § 10-551.03 (2013 Repl.)), it is hereby **ORDERED** that:

1. **REAR ADMIRAL CHRISTOPHER E. WEAVER, USN, RETIRED**, is appointed Acting Director, Department of General Services, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2015-038, dated January 14, 2015.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to September 8, 2015.




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MURIEL BOWSER  
MAYOR

ATTEST:   
 LAUREN C. VAUGHAN  
 SECRETARY OF THE DISTRICT OF COLUMBIA



**ACADEMY OF HOPE ADULT PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Development/Fundraising Consultant**

Academy of Hope Adult Public Charter School solicits expressions of interest in the form of proposals with references from qualified vendors the services listed below.

**Business Services:**

1. Development Fundraising Contractor

Please visit [www.aohdc.org](http://www.aohdc.org) for full details. Questions and proposals may be e-mailed to [aoh@aohdc.org](mailto:aoh@aohdc.org) with the subject line in the type of service. Deadline for submissions is **4:00 pm September 24th**. Appointments for presentations will be scheduled at the discretion of the school office **after** receipt of proposals only.

E-mail is the preferred method for responding but you can also mail proposals and supporting documents to the following address:

Academy of Hope Adult Public Charter School  
601 Edgewood St. NE, Ste. 25  
Washington, DC 20017

**ACHIEVEMENT PREPARATORY ACADEMY  
PUBLIC CHARTER SCHOOL**

**PUBLIC NOTIFICATION**

**National School Lunch Program**

Achievement Preparatory Academy (Achievement Prep) participates in the National School Lunch Program (NSLP), and as part of the renewal process, the school is required to inform the community about the program. Achievement Prep follows the laws and regulations to participate in the NSLP.

The U.S. Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form.

You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov).

Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

Also, the District of Columbia Human Rights Act, approved December 13, 1977 (DC Law 2-38; DC Official Code §2-1402.11(2006), as amended) states the following:

Pertinent section of DC Code § 2-1402.11:

It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation of any individual. To file a complaint alleging discrimination on one of these bases, please contact the District of Columbia's Office of Human Rights at (202) 727-4559 or [ohr@dc.gov](mailto:ohr@dc.gov).

**ACHIEVEMENT PREPARATORY ACADEMY  
PUBLIC CHARTER SCHOOL (APrep)**

**REQUEST FOR PROPOSALS**

**Moving and Furniture Services**

**Achievement Prep PCS (APrep) is seeking a competitive bid moving/move management and furniture services following the expansion of a public charter school facility. Proposals must be received by Friday, October 2, 2015. Please find RFP specifications at [www.achievementprep.org](http://www.achievementprep.org) under News.**

APrep is seeking competitive bids for Moving and Furniture Services, including but not limited to: moving approximately 60% of exiting furniture from the current to the new facility on the same site; moving and storage of approximately 20% of existing furniture for 6 months; discarding 20% of existing furniture; and procuring furniture for the expansion classrooms, cafeteria, health suite, gymnasium, administrative offices, teacher workspaces, specialized instruction classrooms (art, music, science, and media lab), resource rooms (special education, math specialist, and reading specialist), conference room, and reception area.

APrep is looking for itemized pricing options that include moving and installing current furniture, packing and boxing books and supplies, and the facilitation of new furniture purchases, delivery, and installation. Vendor may provide moving services only or furniture services only. However, preference will be given to those that can provide both services. Bids must include evidence of experience in field, qualifications and estimated fees.

Please send proposals to [bids@achievementprep.org](mailto:bids@achievementprep.org) and include "RFP Moving and Furniture Services" in the heading.

Proposals must be received no later than 5pm on Friday October 5, 2015.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, SEPTEMBER 30, 2015  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S  
WASHINGTON, D.C. 20009

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

**Protest Hearing (Status) 9:30 AM**  
**Case # 115-PRO-00082;** Good Essen-U Street, t/a Tico, 1926 14th Street NW  
License #93610, Retailer CR, ANC 2B  
**Substantial Change (Request a Change of Hours)**

**Show Cause Hearing (Status) 9:30 AM**  
**Case # 15-AUD-00075;** Chateau, Inc., t/a Chateau, 3439 Benning Road NE  
License #10574, Retailer CR, ANC 7D  
**Failed to Meet Food Sales Requirements**

**Show Cause Hearing (Status) 9:30 AM**  
**Case # 15-CMP-00019;** Axumawit, Inc., t/a Axum Restaurant, 1934 9th Street  
NW, License #89823, Retailer CR, ANC 1B  
**Operating after Hours**

**Show Cause Hearing (Status) 9:30 AM**  
**Case # 15-CMP-00208;** Restaurant Enterprises, Inc., t/a Smith Point, 1338  
Wisconsin Ave NW, License #60131, Retailer CT, ANC 2E  
**Operating after Hours, Provided Entertainment Without an Entertainment  
Endorsement**

**Show Cause Hearing (Status) 9:30 AM**  
**Case # 15-CC-00006;** Cities, LLC, t/a Cities, 919 19th Street NW, License  
#86319, Retailer CR, ANC 2B  
**Sale to Minor Violation (four counts), Failed to Take Steps Necessary to  
Ascertain Legal Drinking Age (eight counts)**

Board's Calendar  
September 30, 2015

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-251-00032;** Inner Circle 1413, LLC, t/a Tattoo, 1413 K Street NW  
License #75156, Retailer CN, ANC 2F  
**Failed to Take Steps Necessary to Ascertain Legal Drinking Age, Sale to  
Minor Violation**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00061;** Goodlife 1207, LLC, t/a Irish Whiskey, 1207 19th  
Street NW, License #87685, Retailer CT, ANC 2B  
**Failed to Take Steps Necessary to Ensure Property is Free of Litter**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00013;** Thirteenth Step, LLC, t/a Kitty O' Sheas DC, 4624  
Wisconsin Ave NW, License #90464, Retailer CR, ANC 3E  
**Failed to File Quarterly Statements (3rd Quarter 2014)**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00221;** Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600  
7th Street NW, License #92773, Retailer DT, ANC 6E  
**Substantial Change in Operation Without Board's Approval, Violation of  
Settlement Agreement, Substantial Change in Operation (No Summer  
Garden Endorsement)**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00249;** Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600  
7th Street NW, License #92773, Retailer DT, ANC 6E  
**Substantial Change in Operation Without Board's Approval, Violation of  
Settlement Agreement, Substantial Change in Operation (No Summer  
Garden Endorsement)**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00222;** Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600  
7th Street NW, License #92773, Retailer DT, ANC 6E  
**Substantial Change in Operation Without Board's Approval, Violation of  
Settlement Agreement, Substantial Change in Operation (No Summer  
Garden Endorsement)**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00223;** Daci Enterprises, LLC, t/a Dacha Beer Garden,  
1600 7th Street NW, License #92773, Retailer DT, ANC 6E  
**Substantial Change in Operation Without Board's Approval, Violation of  
Settlement Agreement, Substantial Change in Operation (No Summer  
Garden Endorsement)**

Board's Calendar  
September 30, 2015

**Show Cause Hearing (Status) 9:30 AM**  
**Case # 15-CMP-00250;** Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600 7th Street NW, License #92773, Retailer DT, ANC 6E  
**Substantial Change in Operation Without Board's Approval, Violation of Settlement Agreement, Substantial Change in Operation (No Summer Garden Endorsement)**

**Show Cause Hearing (Status) 9:30 AM**  
**Case # 15-CMP-00251;** Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600 7th Street NW, License #92773, Retailer DT, ANC 6E  
**Substantial Change in Operation Without Board's Approval, Violation of Settlement Agreement, Substantial Change in Operation (No Summer Garden Endorsement)**

**Show Cause Hearing (Status) 9:30 AM**  
**Case # 15-CMP-00339;** Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600 7th Street NW, License #92773, Retailer DT, ANC 6E  
**Substantial Change in Operation Without Board's Approval, Violation of Settlement Agreement, Substantial Change in Operation (No Summer Garden Endorsement)**

**Show Cause Hearing (Status) 9:30 AM**  
**Case # 15-CMP-00338;** Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600 7th Street NW, License #92773, Retailer DT, ANC 6E  
**Substantial Change in Operation Without Board's Approval, Violation of Settlement Agreement, Substantial Change in Operation (No Summer Garden Endorsement)**

**BOARD RECESS AT 12:00 PM**  
**ADMINISTRATIVE AGENDA**  
**1:00 PM**

**Protest Hearing\* 1:30 PM**  
**Case # 15-PRO-00058,** Yohannes A. Woldemichael, t/a Capitol Fine Wine & Spirits, 415 H Street NE, License #82981, Retailer DT, ANC 6C  
**Application to Renew the License**

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

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

**NOTICE OF MEETING  
INVESTIGATIVE AGENDA**

**WEDNESDAY, SEPTEMBER 30, 2015  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**On September 30, 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#15-251-00148 El Camino Real Restaurant II, 5217 GEORGIA AVE NW Retailer C Restaurant, License#:ABRA-074996

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2. Case#15-CC-00087 Georgia Avenue Food Barn, 6205 GEORGIA AVE NW Retailer A Retail - Liquor Store, License#:ABRA-071950

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3. Case#15-CMP-00496 Los Cuates Restaurant, 1564 WISCONSIN AVE NW Retailer C Restaurant, License#:ABRA-079261

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4. Case#15-CMP-00493 Rosebar, 1215 CONNECTICUT AVE NW Retailer C Tavern, License#: ABRA-077883

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5. Case#15-AUD-00082 1905, 1905 9TH ST NW Retailer C Restaurant, License#: ABRA-077350

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6. Case#15-CMP-00492 Marleny's Restaurant & Carryout, 3201 MOUNT PLEASANT ST NW Retailer C Restaurant, License#: ABRA-077454

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7. Case#15-CMP-00504 Madam's Organ, 2461 18TH ST NW Retailer C Tavern, License#: ABRA-025273

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8. Case#15-AUD-00087 El Rincon, 1826 COLUMBIA RD NW Retailer C Restaurant,  
License#: ABRA-060003

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9. Case#15-AUD-00085 Corado's Guatemalan Restaurant, 3217 MT PLEASANT ST NW  
Retailer C Restaurant, License#: ABRA-015941

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10. Case#15-AUD-00084 Johnny Pistolas, 2333 18TH ST NW Retailer C Restaurant, License#:  
ABRA-060401

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11. Case#15-CC-00091 Masa 14, 1825 14TH ST NW Retailer C Restaurant, License#: ABRA-  
081469

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12. Case#15-CC-00076 1101 Convenience Mart, 1101 H ST NE Retailer B Retail - Grocery,  
License#: ABRA-086305

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13. Case#15-AUD-00081 Da Luft Restaurant & Lounge, 1242 H ST NE Retailer C Restaurant,  
License #: ABRA-087780

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14. Case#15-AUD-00086 DRAFTING TABLE, 1529 14TH ST NW 201 Retailer C Restaurant,  
License#: ABRA-089190

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15. Case#15-CMP-00505 Axum Restaurant, 1934 9th ST NW Retailer C Restaurant, License#:  
ABRA-089823

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16. Case#15-AUD-00083 Baby Wale, 1124 9TH ST NW Retailer C Restaurant, License#:  
ABRA-090863

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17. Case#15-251-00154 Kabin, 1337 CONNECTICUT AVE NW Retailer C Tavern, License#:  
ABRA-091276

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18. Case#15-CMP-00494 Po Boy Jim, 709 H ST NE Retailer C Restaurant, License#: ABRA-  
087903

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

**NOTICE OF MEETING  
INVESTIGATIVE SUPPLEMENTAL AGENDA**

**WEDNESDAY, SEPTEMBER 30, 2015  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**The items listed below were previously published in the D.C. Register on the dates listed in the item.**

1. Case#14-CC-00167 Buca Di Beppo, 1825 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-060461 (Previously published in the 9/4/15 DC Register)

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2. Case#15-CC-00030 Lyman's, 3720 14TH ST NW Retailer C Tavern, License#: ABRA-090509 (Previously published in the 9/4/15 DC Register)

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LEGAL AGENDA

WEDNESDAY, SEPTEMBER 30, 2015 AT 1:00 PM  
2000 14<sup>th</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Settlement Agreement between ANC 6E and Shaw's Tavern, dated September, 2015. *Shaw's Tavern*, 520 Florida Avenue, N.W., Retailer CR, License No.: 098037.

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2. Review of Settlement Agreement between ANC 5D and Bodega Market, dated September 1, 2015. *Bodega Market*, 1136 Florida Avenue, N.E., Retailer B, License No.: 094621.

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\* In accordance with D.C. Official Code §2-574(b) Open Meetings Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, SEPTEMBER 30, 2015 AT 1:00 PM  
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request to Extend Safekeeping Status of License for an additional year – First Request. Original Safekeeping Date: Pre-1998. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ANC 2A. SMD 2A04. *1720 Club*, 2600 Virginia Avenue NW, Retailer CN, License No. 015251.

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2. Review Request for Change of Hours. *Current Hours of Operation and Alcoholic Beverage Sales and Consumption*: Sunday-Thursday 12pm to 11pm, Friday and Saturday 12pm to 2am. *Proposed Hours of Operation*: Sunday-Thursday 10am to 12:30am, Friday and Saturday 10am to 2:30am. *Proposed Hours of Alcoholic Beverage Sales and Consumption*: Sunday-Thursday 10am to 12am, Friday and Saturday 10am to 2am. ANC 2F. SMD 2F06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *TC Cigars*, 1118 9<sup>th</sup> Street NW, Retailer CT, License No. 097774.

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3. Review Application for Entertainment Endorsement. Entertainment to Include weekly Latin dancing and live music. ANC 6A. SMD 6A06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Ocopa*, 1324 H Street NE, Retailer CR, License No. 088102.

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**\*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.**

**OFFICE OF THE CHIEF FINANCIAL OFFICER  
Office of Revenue Analysis**

**NOTICE of STATUTORY and SPECIAL  
REAL PROPERTY TAX RATES for TAX YEAR 2016**

**I. Statutory Real Property Tax Rates for Tax Year 2016**

<u>Real Property Tax Class</u>	<u>Statutory Tax Rates Per \$100 of Assessed Value</u>
Class One (residential property)	\$0.85
Class Two (commercial property)	
The first \$3 million in assessed value	\$1.65
The assessed value in excess of \$3 million	\$1.85
Class Three (indefinitely vacant buildings)	\$5.00
Class Four (blighted/condemned buildings)	\$10.00

**II. Special Real Property Tax Rates for Tax Year 2016**

**BOND ACT REQUIREMENT  
Certification of Debt Service Requirement**

In Tax Year 2016, **fifteen and one half percent (15.5%)** of total real property tax collections, by class, shall be dedicated to the repayment of General Obligations Bonds. The recommended special real property tax rates by class for Tax Year 2016 are as follows:

<u>Real Property Tax Class</u>	<u>Special Tax Rates Per \$100 of Assessed Value</u>
Class One (residential property)	\$0.132
Class Two (commercial property)	
The first \$3 million in assessed value	\$0.256
The assessed value in excess of \$3 million	\$0.287
Class Three (indefinitely vacant buildings)	\$0.775
Class Four (blighted/condemned buildings)	\$1.550

**OFFICE OF DISABILITY RIGHTS****DC COMMISSION ON  
PERSONS WITH DISABILITIES (DCCPD)****PUBLIC NOTICE OF MEETING****September 24, 2015, 9:00 AM to 10:30 AM****441 4<sup>th</sup> St. NW, Ste. 729N****Washington, DC 20001****Toll Free: (866) 628-2987****Passcode: 8488992****Meeting Agenda**

1. Welcome and Introductions	All	05 Minutes
2. Review OBC Meeting Guidance	Denise	05 Minutes
3. Emergency Services Subcommittee Update	All	10 Minutes
4. Health Care Subcommittee Update	All	10 Minutes
5. Mayor's Expo	Kali	10 Minutes
6. White Cane Day	Kali	10 Minutes
7. Open Discussion	All	30 Minutes
8. Closing Remarks, November Meeting and Adjourn	All	10 Minutes

**E.L. HAYNES PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Education Legal Services**

E.L. Haynes Public Charter School (“ELH”) is seeking proposals for providing education legal services with an emphasis on special education rules under IDEA and ADA. The school properties are located at 4501 Kansas Avenue, NW and 3600 Georgia Ave, NW. The contract will be assigned to a successful bidder to provide special education and other legal services for the period of one year.

Proposals are due via email to Vicki Koussoglou no later than 5:00 PM on Friday, October 2, 2015. We will notify the final vendor of selection by October 9th and the work will begin October 12th. The RFP with bidding requirements can be obtained by contacting:

Vicki Koussoglou  
E.L. Haynes Public Charter School  
Email: [vkoussoglou@elhaynes.org](mailto:vkoussoglou@elhaynes.org)

**EDUCARE OF WASHINGTON DC****REQUEST FOR PROPSALS****School Food Services**

**Educare DC** in the District of Columbia is seeking a food service management company to furnish and deliver meals (in bulk - unless otherwise requested) to **One (1)** site participating in the Child and Adult Care Food Program, established by the United States Department of Agriculture Code of Federal Regulations (7 CFR 226), which set forth the terms and conditions applicable to the proposed procurement.

The complete RFP packet can be obtained by visiting our school website – [www.educaredc.org](http://www.educaredc.org).

Proposals are due no later than 5:00 PM October 19, 2015. Questions and proposals may be emailed to [dWASHINGTON@educaredc.org](mailto:dWASHINGTON@educaredc.org) or delivered to:

Educare DC  
640 Anacostia Avenue, NE  
Washington, DC 20019  
Attention: Dianna Duckett-Washington

**Requested Services**

The purpose of this solicitation is to award a contract to provide meals to Educare DC who also shall be recognized as the Ordering Agency beginning January 1, 2016. The successful proposing company shall deliver in accordance with the menu requirements for the Child and Adult Care Food Program (CACFP).

Educare DC is a comprehensive early childhood development school servicing 160 students from 6 weeks to 5 years old.

**Assumptions and Agreements**

Proposals will not be returned. Educare DC reserves the right to dismiss a proposal without providing a reason. Educare DC reserves the right to terminate a contract in writing.

**Submission Information**

Bids must include evidence of experience in the field, qualifications and estimated fees. Please send proposals to [dWASHINGTON@educaredc.org](mailto:dWASHINGTON@educaredc.org)

**Basis for Award of Contract**

Educare DC contemplates award of a contract in accordance with the Federal procurement requirements. Educare DC will award a contract after evaluating submitted proposals in accordance with the ranking factors indicated in Section 4: Evaluation of Proposals / Ranking Factors. Educare DC reserves the right to award a contract as it determines to be in the best interest of the school.

**Minority and women-owned businesses are encouraged to apply.**

**PROPOSALS MUST BE RECEIVED BY OCTOBER 19, 2015, 5PM EST. Late proposals will not be accepted.**

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

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

**VACANT: 7C04 & 7C06**

Petition Circulation Period: **Monday, Sept. 28, 2015 thru Monday, October 19, 2015**  
Petition Challenge Period: **Thursday, Oct. 22, 2015 thru Wednesday, Oct. 28, 2015**

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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 - 4<sup>th</sup> Street, NW, Room 250N  
Washington, DC 20001**

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



**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

**Certification of Filling Vacancy  
In Advisory Neighborhood Commissions**

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancies have been filled in the following single-member district by the individual listed below:

Eve D. Zhurbinskiy  
Single-Member District 2A08

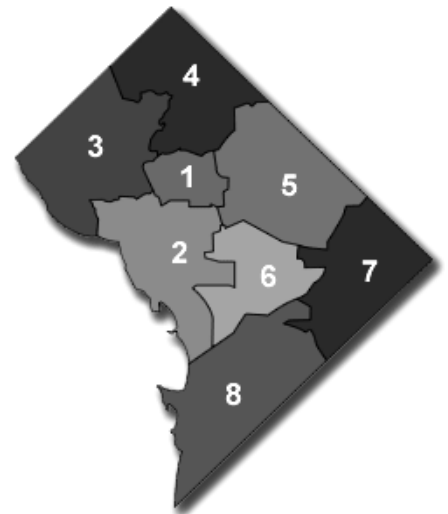
D.C. BOARD OF ELECTIONS  
 MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
 CITYWIDE REGISTRATION SUMMARY  
 As Of AUGUST 31, 2015

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	39,527	2,555	686	130	114	10,448	53,460
2	26,030	5,003	191	158	95	9,321	40,798
3	33,109	6,060	344	122	87	9,930	49,652
4	43,556	2,067	513	73	124	8,250	54,583
5	46,403	2,019	554	90	144	8,141	57,351
6	47,864	6,066	496	169	158	11,930	66,683
7	43,610	1,226	422	29	109	6,279	51,675
8	39,942	1,176	384	24	135	6,592	48,253
<b>Totals</b>	320,041	26,172	3,590	795	966	70,891	422,455
<b>Percentage By Party</b>	<b>75.76%</b>	<b>6.20%</b>	<b>.85%</b>	<b>.19%</b>	<b>.23%</b>	<b>16.78%</b>	<b>100.00%</b>

DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF  
 VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS  
 AS OF THE END OF AUGUST 31, 2015

COVERING CITY WIDE TOTALS BY:  
**WARD, PRECINCT AND PARTY**

ONE JUDICIARY SQUARE  
 441 4<sup>TH</sup> STREET, NW SUITE 250N  
 WASHINGTON, DC 20001  
 (202) 727-2525  
<http://www.dcoee.org>



**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 1 REGISTRATION SUMMARY**  
**As Of AUGUST 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,215	31	6	2	5	194	1,453
22	3,466	325	32	14	10	908	4,755
23	2,414	172	44	14	6	656	3,306
24	2,229	238	33	12	5	701	3,218
25	3,243	362	52	10	4	950	4,621
35	2,956	175	49	13	2	772	3,967
36	3,789	244	67	8	9	993	5,110
37	2,920	126	55	8	8	688	3,805
38	2,572	115	53	11	10	675	3,436
39	3,806	202	81	6	15	931	5,041
40	3,675	192	93	12	12	1,020	5,004
41	3,125	173	65	13	14	980	4,370
42	1,627	68	31	2	8	437	2,173
43	1,575	62	19	3	4	335	1,998
137	915	70	6	2	2	208	1,203
<b>TOTALS</b>	<b>39,527</b>	<b>2,555</b>	<b>686</b>	<b>130</b>	<b>114</b>	<b>10,448</b>	<b>53,460</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 2 REGISTRATION SUMMARY**  
**As Of AUGUST 31, 2015**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>2</b>	731	162	10	10	9	474	<b>1,396</b>
<b>3</b>	1,406	352	15	7	10	630	<b>2,420</b>
<b>4</b>	1,518	428	5	12	3	685	<b>2,651</b>
<b>5</b>	1,844	560	10	11	6	653	<b>3,084</b>
<b>6</b>	2,020	794	21	10	15	1,115	<b>3,975</b>
<b>13</b>	1,120	213	6	3	0	359	<b>1,701</b>
<b>14</b>	2,469	405	18	14	9	818	<b>3,733</b>
<b>15</b>	2,645	308	21	19	10	773	<b>3,776</b>
<b>16</b>	3,166	370	22	14	10	800	<b>4,382</b>
<b>17</b>	3,856	521	29	23	9	1,207	<b>5,645</b>
<b>129</b>	2,012	326	13	13	4	763	<b>3,131</b>
<b>141</b>	1,960	248	12	13	8	564	<b>2,805</b>
<b>143</b>	1,283	316	9	9	2	480	<b>2,099</b>
<b>TOTALS</b>	<b>26,030</b>	<b>5,003</b>	<b>191</b>	<b>158</b>	<b>95</b>	<b>9,321</b>	<b>40,798</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 3 REGISTRATION SUMMARY**  
**As Of AUGUST 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,147	374	17	3	2	531	2,074
8	2,188	582	29	4	6	716	3,525
9	1,038	431	7	11	6	439	1,932
10	1,613	384	17	5	6	595	2,620
11	2,990	870	39	16	9	1,171	5,095
12	401	161	1	0	2	172	737
26	2,478	297	19	8	4	761	3,567
27	2,247	252	21	10	1	552	3,083
28	2,077	473	32	8	5	683	3,278
29	1,202	219	10	5	7	374	1,817
30	1,199	203	14	4	4	274	1,698
31	2,167	293	18	3	7	526	3,014
32	2,414	286	20	3	4	547	3,274
33	2,547	290	30	8	6	602	3,483
34	2,944	354	29	14	4	867	4,212
50	1,875	242	12	5	6	422	2,562
136	683	98	8	3	1	248	1,041
138	1,899	251	21	12	7	450	2,640
<b>TOTALS</b>	<b>33,109</b>	<b>6,060</b>	<b>344</b>	<b>122</b>	<b>87</b>	<b>9,930</b>	<b>49,652</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 4 REGISTRATION SUMMARY**  
**As Of AUGUST 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	1,925	65	31	6	4	361	2,392
46	2,566	81	42	5	10	494	3,198
47	2,754	142	35	4	11	685	3,631
48	2,488	120	29	6	4	513	3,160
49	747	43	14	0	4	178	986
51	2,977	495	25	6	5	597	4,105
52	1,176	164	4	0	2	210	1,556
53	1,128	65	21	1	5	228	1,448
54	2,199	77	26	1	5	443	2,751
55	2,264	73	19	3	9	418	2,786
56	2,755	85	30	7	7	595	3,479
57	2,237	66	40	7	11	419	2,780
58	2,061	52	17	4	4	334	2,472
59	2,385	83	28	7	8	400	2,911
60	1,919	65	20	2	7	560	2,573
61	1,439	47	11	1	3	244	1,745
62	2,932	109	29	2	4	346	3,422
63	3,199	117	57	2	11	610	3,996
64	2,078	55	16	6	5	308	2,468
65	2,327	63	19	3	5	307	2,724
<b>Totals</b>	<b>43,556</b>	<b>2,067</b>	<b>513</b>	<b>73</b>	<b>124</b>	<b>8,250</b>	<b>54,583</b>

**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
WARD 5 REGISTRATION SUMMARY  
As Of AUGUST 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	3,904	171	69	11	8	903	5,066
44	2,542	222	31	7	14	619	3,435
66	4,171	107	39	4	6	504	4,831
67	2,752	95	22	2	7	374	3,252
68	1,705	123	27	8	5	339	2,207
69	1,942	68	11	2	9	249	2,281
70	1,359	72	20	1	4	200	1,656
71	2,244	64	24	2	10	302	2,646
72	3,877	106	29	5	14	653	4,684
73	1,763	80	24	6	2	316	2,191
74	3,945	213	60	8	10	786	5,022
75	3,152	164	55	15	7	721	4,114
76	1,263	59	14	1	5	248	1,590
77	2,464	94	21	5	10	424	3,018
78	2,683	80	37	4	9	439	3,252
79	1,813	78	20	2	9	330	2,252
135	2,797	176	40	6	11	509	3,539
139	2,027	47	11	1	4	225	2,315
<b>TOTALS</b>	<b>46,403</b>	<b>2,019</b>	<b>554</b>	<b>90</b>	<b>144</b>	<b>8,141</b>	<b>57,351</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 6 REGISTRATION SUMMARY**  
**As Of AUGUST 31, 2015**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>1</b>	3,713	428	42	14	9	995	<b>5,201</b>
<b>18</b>	4,305	316	44	16	12	953	<b>5,646</b>
<b>21</b>	1,085	59	15	2	3	258	<b>1,422</b>
<b>81</b>	4,188	354	43	8	17	855	<b>5,465</b>
<b>82</b>	2,343	240	27	10	9	549	<b>3,178</b>
<b>83</b>	3,995	503	36	18	11	1,067	<b>5,630</b>
<b>84</b>	1,831	403	23	6	7	503	<b>2,773</b>
<b>85</b>	2,547	493	20	11	9	699	<b>3,779</b>
<b>86</b>	2,039	246	28	5	9	435	<b>2,762</b>
<b>87</b>	2,577	226	16	3	10	531	<b>3,363</b>
<b>88</b>	2,022	266	16	4	8	485	<b>2,801</b>
<b>89</b>	2,399	605	23	12	5	714	<b>3,758</b>
<b>90</b>	1,509	244	13	6	9	453	<b>2,234</b>
<b>91</b>	3,757	360	36	14	15	902	<b>5,084</b>
<b>127</b>	3,597	269	51	14	9	754	<b>4,694</b>
<b>128</b>	2,178	203	32	7	6	592	<b>3,018</b>
<b>130</b>	719	283	7	3	2	261	<b>1,275</b>
<b>131</b>	1,744	418	11	13	5	557	<b>2,748</b>
<b>142</b>	1,316	150	13	3	3	367	<b>1,852</b>
<b>TOTALS</b>	<b>47,864</b>	<b>6,066</b>	<b>496</b>	<b>169</b>	<b>158</b>	<b>11,930</b>	<b>66,683</b>



**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
WARD 7 REGISTRATION SUMMARY  
As Of AUGUST 31, 2015**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>80</b>	1,386	88	11	2	4	243	<b>1,734</b>
<b>92</b>	1,513	32	11	1	6	237	<b>1,800</b>
<b>93</b>	1,396	47	20	2	5	202	<b>1,672</b>
<b>94</b>	1,879	48	19	0	3	286	<b>2,235</b>
<b>95</b>	1,457	46	15	0	2	244	<b>1,764</b>
<b>96</b>	2,143	63	21	0	7	343	<b>2,577</b>
<b>97</b>	1,343	39	20	1	3	190	<b>1,596</b>
<b>98</b>	1,697	41	22	2	3	241	<b>2,006</b>
<b>99</b>	1,236	42	18	2	3	199	<b>1,500</b>
<b>100</b>	2,029	50	16	1	3	248	<b>2,347</b>
<b>101</b>	1,469	24	16	1	5	164	<b>1,679</b>
<b>102</b>	2,238	54	21	0	9	305	<b>2,627</b>
<b>103</b>	3,195	83	33	3	11	514	<b>3,839</b>
<b>104</b>	2,614	74	27	3	10	379	<b>3,107</b>
<b>105</b>	2,207	65	21	3	4	368	<b>2,668</b>
<b>106</b>	2,644	54	19	0	9	381	<b>3,107</b>
<b>107</b>	1,485	48	15	1	4	216	<b>1,769</b>
<b>108</b>	1,048	28	8	1	0	116	<b>1,201</b>
<b>109</b>	869	33	5	0	1	87	<b>995</b>
<b>110</b>	3,543	92	24	4	4	411	<b>4,078</b>
<b>111</b>	2,425	61	25	0	7	374	<b>2,892</b>
<b>113</b>	1,919	57	20	1	2	232	<b>2,231</b>
<b>132</b>	1,875	57	15	1	4	299	<b>2,251</b>
<b>TOTALS</b>	<b>43,610</b>	<b>1,226</b>	<b>422</b>	<b>29</b>	<b>109</b>	<b>6,279</b>	<b>51,675</b>

**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
WARD 8 REGISTRATION SUMMARY  
As Of AUGUST 31, 2015**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	1,872	53	9	0	6	271	2,211
114	2,870	105	28	1	16	500	3,520
115	2,560	70	23	8	9	586	3,256
116	3,617	96	37	1	10	577	4,338
117	1,819	42	18	0	7	302	2,188
118	2,391	62	26	0	4	390	2,873
119	2,617	108	35	1	12	516	3,289
120	1,746	36	16	2	4	279	2,083
121	2,868	77	25	1	10	425	3,406
122	1,510	40	14	0	9	203	1,776
123	1,902	90	25	3	11	297	2,328
124	2,285	55	14	1	4	319	2,678
125	4,011	100	37	2	9	654	4,813
126	3,194	107	35	2	12	601	3,951
133	1,182	35	11	0	1	158	1,387
134	1,877	44	24	1	3	269	2,218
140	1,621	56	7	1	8	245	1,938
<b>TOTALS</b>	<b>39,942</b>	<b>1,176</b>	<b>384</b>	<b>24</b>	<b>135</b>	<b>6,592</b>	<b>48,253</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**CITYWIDE REGISTRATION ACTIVITY**

*For voter registration activity between 7/31/2015 and 8/31/2015*

<b>NEW REGISTRATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
<b>Beginning Totals</b>	<b>319,454</b>	<b>26,013</b>	<b>3,585</b>	<b>770</b>	<b>967</b>	<b>70,755</b>	<b>421,544</b>
Board of Elections Over the Counter	40	1	0	1	0	15	57
Board of Elections by Mail	39	6	1	0	2	16	64
Board of Elections Online Registration	117	13	1	0	0	27	158
Department of Motor Vehicle	1,110	222	9	23	3	369	1,736
Department of Disability Services	3	0	0	0	0	0	3
Office of Aging	0	0	0	0	0	0	0
Federal Postcard Application	0	0	0	0	0	0	0
Department of Parks and Recreation	0	0	0	0	0	0	0
Nursing Home Program	0	0	0	0	0	0	0
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	0
Department of Corrections	0	0	0	0	0	0	0
Department of Human Services	6	0	0	0	0	1	7
Special / Provisional	0	0	0	0	0	0	0
All Other Sources	14	2	1	1	0	5	23
<b>+Total New Registrations</b>	<b>1,329</b>	<b>244</b>	<b>12</b>	<b>25</b>	<b>5</b>	<b>433</b>	<b>2,048</b>

<b>ACTIVATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
Reinstated from Inactive Status	394	42	4	1	0	88	529
Administrative Corrections	3	0	0	1	18	153	175
<b>+TOTAL ACTIVATIONS</b>	<b>397</b>	<b>42</b>	<b>4</b>	<b>2</b>	<b>18</b>	<b>241</b>	<b>704</b>

<b>DEACTIVATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
Changed to Inactive Status	866	94	10	3	2	249	1,224
Moved Out of District (Deleted)	2	0	0	0	0	0	2
Felon (Deleted)	0	0	0	0	0	0	0
Deceased (Deleted)	25	4	0	0	0	2	31
Administrative Corrections	422	65	1	24	0	72	584
<b>-TOTAL DEACTIVATIONS</b>	<b>1,315</b>	<b>163</b>	<b>11</b>	<b>27</b>	<b>2</b>	<b>323</b>	<b>1,841</b>

<b>AFFILIATION CHANGES</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	
+ Changed To Party	319	76	13	30	5	126	
- Changed From Party	-143	-40	-13	-5	-27	-341	
<b>ENDING TOTALS</b>	<b>320,041</b>	<b>26,172</b>	<b>3,590</b>	<b>795</b>	<b>966</b>	<b>70,891</b>	<b>422,455</b>

**EXCEL ACADEMY PUBLIC CHARTER SCHOOL****NOTICE OF INTENT TO ENTER A SOLE SOURCE ARRANGEMENT****ANet Assessment Materials from Achievement Network, Ltd.**

Excel Academy—a Washington D.C. based nonprofit all-girls public charter school—intends to enter into a sole source arrangement with Achievement Network, Ltd. for its ANet assessment materials.

- Excel Academy’s students have a need for an online student assessment tool for Mathematics and English that align to State Standards and Common Core Standards. The assessment tool need to also report analyses on whole school, class, grade, and student levels, as well as member network comparisons.
- The school expects to spend roughly \$33,000 for a set of licenses as well as related instructional materials and technical assistance services.
- A sole-source arrangement is justified because, like a physical textbook, ANet is unique, and because Achievement Network, Ltd. is the sole supplier of this product.

**Contact:** For further information regarding this Notice contact **John Hansen, 202-373-0097, [jhansen@excelpcs.org](mailto:jhansen@excelpcs.org)** no later than **5:00 pm (eastern standard time) on Friday, September 25, 2015**. Further information about Excel Academy—including our nondiscrimination policy—may be found at [www.excelpcs.org](http://www.excelpcs.org). Responses to this notice will be subject to the school’s General Conditions Statement found on the website.

**DEPARTMENT OF FORENSIC SCIENCES****NOTICE OF PUBLIC MEETING****Science Advisory Board Meeting WebEx**

On October 2, 2015 the Department of Forensic Sciences will be hosting the Science Advisory Board Meeting WebEx at the Consolidated Forensic Laboratory, 401 E Street SW, Washington, DC 20024. The meeting will commence at 9:00 a.m. Any questions should be directed to Herb Thomas, 202.727.8267. Mr. Thomas can also be reached at [Herbert.Thomas@dc.gov](mailto:Herbert.Thomas@dc.gov).

**FRIENDSHIP PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

Friendship Public Charter School is seeking bids from prospective vendors to provide;

Friendship Public Charter School seeks **qualified related services vendors for students requiring clinical services**. The competitive Request for Proposal can be found on FPCS website at <http://www.friendshipschools.org/procurement>. Proposals are due no later than 4:00 P.M., EST, October 14th, 2015. No proposal will be accepted after the deadline. Questions can be addressed to: [ProcurementInquiry@friendshipschools.org](mailto:ProcurementInquiry@friendshipschools.org)

Friendship Public Charter School seeks **qualified vendors to provide temporary staffing**. The competitive Request for Proposal can be found on FPCS website at <http://www.friendshipschools.org/procurement>. Proposals are due no later than 4:00 P.M., EST, October 14th, 2015. No proposal will be accepted after the deadline. Questions can be addressed to: [ProcurementInquiry@friendshipschools.org](mailto:ProcurementInquiry@friendshipschools.org)

## DEPARTMENT OF HEALTH CARE FINANCE

## PUBLIC NOTICE

## SUPPLEMENTAL PAYMENTS FOR OUTPATIENT HOSPITAL SERVICES

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 (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 (2012 Repl. & 2014 Supp.)) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)) hereby gives notice of DHCF's intent to provide supplemental payments to eligible hospitals located within the District of Columbia that participate in the Medicaid program for outpatient hospital services.

DHCF will submit a State Plan Amendment (SPA) to the U.S. Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS) requesting the authority to provide supplemental payments to eligible Medicaid participating District hospitals for outpatient hospital services. If approved, eligible hospitals may receive supplemental payments for visits and services beginning October 1, 2015 and ending on September 30, 2016.

Providing supplemental payments to eligible hospitals will ensure appropriate and needed payments to District hospitals and allow Medicaid beneficiaries access to needed outpatient hospital services. The District estimates that during the period October 1, 2015 through September 30, 2016 supplemental payments to eligible hospitals for outpatient hospital services will reach \$16.8 million.

Comments on the proposed SPA shall be submitted, in writing, to Claudia Schlosberg, 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](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://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 SPA may be obtained by contacting Karla Andrews at (202) 442-8742 or [karla.andrews@dc.gov](mailto:karla.andrews@dc.gov).

**DEPARTMENT OF HEALTH**  
**HEALTH REGULATION AND LICENSING ADMINISTRATION**  
**NOTICE OF MEETING**

**Board of Chiropractic**  
September 25, 2015

On September 25, 2015 at 1:00 pm, the Board of Chiropractic will hold a meeting to consider and discuss a range of matters impacting competency and safety in chiropractic practices.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 1:30 pm until 2:00 pm to plan, discuss, or hear reports concerning licensing issues ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be open to the public from 1:00 pm to 1:30 pm to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session.

The meeting location is John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 527, Washington, DC 20004.

Meeting times and/or locations are subject to change – please visit the Board of Chiropractic website [www.doh.dc.gov/boc](http://www.doh.dc.gov/boc) and select BOC Calendars and Agendas to view the agenda and any changes that may have occurred.

Interim Executive Director for the Board – Robin Jenkins, (202) 442-8336.



**DEPARTMENT OF HEALTH  
HEALTH PROFESSIONAL LICENSING ADMINISTRATION**

**NOTICE OF MEETING**

**Board of Medicine**  
September 30, 2015

On SEPTEMBER 30, 2015 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 8:30 am until 10:30 am to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be open to the public from 10:30 am to 11:30 am to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 2:00 pm.

The meeting location is 899 North Capitol Street NE, 2<sup>nd</sup> Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website [www.doh.dc.gov/bomed](http://www.doh.dc.gov/bomed) and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Interim Executive Director for the Board – Rikin S. Mehta, PharmD, JD, LLM

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****NOTICE OF FUNDING AVAILABILITY****Small Business Technical Assistance**

Polly R. Donaldson, Director, DC Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) which includes funding under the Community Development Block Grant (CDBG) program, and some local funds. This NOFA is being issued pursuant to the FY 2016-20 Consolidated Action Plan prepared for submission to the U.S. Department of Housing and Urban Development (HUD). **Small Business Technical Assistance will be funded under this NOFA.**

The Department will provide grant funding to qualified non-profit organizations for DHCD's Small Business Assistance Program to provide small business support services in targeted commercial areas of the District. The business support services provided through this program are intended to empower start-up and established businesses for the purpose of revitalizing low and moderate income communities. Applicants responding to this NOFA will have the opportunity to present their organizational capacity and experience. Applicants will be asked to provide a dedicated marketing and outreach plan for providing business support services. Applicants should propose high-impact, innovative methods of service delivery, and activities which collaborate with, and enhance, other revitalization efforts in the District.

**The Request for Applications (RFA) associated with this NOFA will be released on September 25, 2015. The RFA package, including all application materials will be available in CD format and can be obtained at DHCD, 1800 Martin Luther King Jr. Avenue, S.E., Washington, D.C. 20020, 1st floor reception desk daily from 8:15 am until 4:45 pm. This material will also be available from the DHCD website, [www.dhcd.dc.gov](http://www.dhcd.dc.gov), no later than September 28, 2015.**

**Completed applications for Small Business Assistance (RCS) must be delivered on or before 4:00 p.m., Eastern Time, October 23, 2015, to DHCD, 1800 Martin Luther King Jr. Avenue, S.E., 1st floor reception desk, Washington, D.C., 20020.**

**No applications will be accepted after the submission deadline**

**Muriel E. Bowser, Mayor  
Government of the District of Columbia**

**Brian T. Kenner, Deputy Mayor for Planning and Economic Development**

**Polly R. Donaldson, Director  
Department of Housing and Community Development**

**IDEAL ACADEMY PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

IDEAL ACADEMY PUBLIC CHARTER SCHOOL hereby solicits proposals to provide:

- LED Lighting
- Assessment and instructional data support and services
- Foreign Language Immersion Programs
- General Maintenance & Repairs
- Professional development and consulting services
- Security services & Systems
- Special education services
- Student transportation services
- Solar Energy & Technology

Please email [zuella.evans@iapcs.com](mailto:zuella.evans@iapcs.com) for more details about requirements.  
Bids are DUE BY Friday, October 16, 2015 at 5pm.

## DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

**Judicial Tenure Commission Begins Reviews Of  
Judges Harold L. Cushenberry, Jr., Frank Q. Nebeker, Inez Smith Reid,  
Truman A. Morrison, III, and Joan Zeldon**

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of **Judge Harold L. Cushenberry, Jr.** of the Superior Court of the District of Columbia, who is retiring and has requested a recommendation for an initial appointment as a Senior Judge. In addition, the Commission is reviewing the qualifications of **Judges Frank Q. Nebeker and Inez Smith Reid** of the District of Columbia Court of Appeals, and **Judges Truman A. Morrison, III, and Joan Zeldon** of the Superior Court of the District of Columbia who have requested recommendations for reappointment as Senior Judges.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on the qualifications of Judges Cushenberry, Nebeker, Reid, Morrison, and Zeldon which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, faxed, or e-mailed by **October 30, 2015**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure  
Building A, Room 246  
515 Fifth Street, N.W.  
Washington, D.C. 20001  
Telephone: (202) 727-1363  
FAX: (202) 727-9718  
E-Mail: dc.cjdt@dc.gov

The members of the Commission are:

Hon. Gladys Kessler, Chairperson  
Jeannine C. Sanford, Esq., Vice Chairperson  
Michael K. Fauntroy, Ph.D.  
Hon. Joan L. Goldfrank  
William P. Lightfoot, Esq.  
David P. Milzman, M.D.  
Anthony T. Pierce, Esq.

BY: /s/ Gladys Kessler  
Chairperson

**MAYA ANGELOU PUBLIC CHARTER SCHOOL****SOLE SOURCE CONTRACTS****Alternative Education Academic Support Services**

Maya Angelou Public Charter School intends to enter into a sole source contract with Azalia Speight for alternative education program support for its two charter school campuses for the remainder of the 2015-16 school year. The cost of this contract will be approximately \$95,000. The decision to sole source is due to the fact that this vendor has unique capabilities and experiences to deliver support to the two programs.

**PERRY STREET PREPARATORY PUBLIC CHARTER SCHOOL**  
**REQUEST FOR PROPOSALS**

**Security Services and Special Education Evaluation Services**

The Perry Street Prep Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for the following services:

- **Security** - seeking security staff that ensures safety of pupils and staff by providing adult supervision inside and outside of the school.
- **Special Education Evaluation Services** – seeking vendors that provide evaluation services which would include both initial and trip annual evaluations in the areas of: Psychological, Educational, Clinical, Comprehensive, Social Histories, Neuropsychological, Speech and Language, Occupational Therapy.

Please go to [www.pspdc.org/bids](http://www.pspdc.org/bids) to view a full RFP offering, with more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 P.M., Friday, October 9 2015.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator  
[kschroth@pspdc.org](mailto:kschroth@pspdc.org)

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. Food Service). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

## NOTICE OF PROPOSED TARIFF

**FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY PRACTICES;**

**and**

**FORMAL CASE NO. 813, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR AN INCREASE IN ITS RETAIL RATES FOR THE SALE OF ELECTRIC ENERGY**

1. The Public Service Commission of the District of Columbia (“Commission”), pursuant to Section 2-505 of the District of Columbia Code and in accordance with Section 34-802 of the District of Columbia Code,<sup>1</sup> hereby gives notice of its intent to act upon the Potomac Electric Power Company’s (“Pepco” or “Company”) Rider “RADS” – Residential Aid Discount Surcharge (“Rider Update”)<sup>2</sup> in not less than 30 days from the date of publication of this Notice of Proposed Tariff (“NOPT”) in the *D.C. Register*.

2. In *Formal Case No. 1053*, the Commission established the Residential Aid Discount (“RAD”) Surcharge, the means by which Pepco recovers costs of the generation subsidy for the RAD Program.<sup>3</sup> In order to ensure that the RAD Program was adequately funded, the Commission adjusted the RAD Surcharge funding level to \$5.75 million resulting in a new per kilowatt-hour surcharge for fiscal year 2011 of \$0.000503.<sup>4</sup> Furthermore, pursuant to the Residential Aid Discount Subsidy Stabilization Amendment Act of 2010 (“the Act of 2010”),<sup>5</sup> the Commission directed Pepco to seek a true-up for the surcharge on an annual basis, commencing January 2011, in the event of an over or under collection of the RAD Surcharge and to address any changes in income eligibility criteria.<sup>6</sup> In Order No. 17376, the Commission

<sup>1</sup> D.C. Code § 2-505 (2015) and D.C. Code § 34-802 (2015).

<sup>2</sup> *Formal Case No. 945, In the Matter of the Investigation into Electric Service Market Competition and Regulatory Practices (“Formal Case No. 945”)* and *Formal Case No. 813, In the Matter of the Application of Potomac Electric Power Company for an Increase in its Retail Rates for the Sale of Electric Energy*, (“*Formal Case No. 813*”), Letter to Ms. Brinda Westbrook-Sedgwick, Commission Secretary, from Peter Meier, Vice President Legal Services, re: *Formal Case Nos. 945 and 813*, filed March 2, 2015 (hereinafter referred to as “Rider Update”). This filing revised and replaced the Pepco rider update filed February 4, 2015.

<sup>3</sup> *Formal Case No. 1053, In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service (“Formal Case No. 1053”)*, Order No. 14712, rel. January 30, 2008.

<sup>4</sup> *Formal Case Nos. 945 and 813*, Order No. 15986, rel. September 20, 2010.

<sup>5</sup> D.C. Code §§ 8-1773-1774 (2015).

<sup>6</sup> *Formal Case Nos. 945 and 813*, Order No. 15986, rel. September 20, 2010.



approved Pepco's requested adjustment of the Rider "RADS" from \$0.000515 to the current surcharge of \$0.000294.<sup>7</sup> On March 2, 2015, Pepco, in compliance with the Act of 2010 and Order No. 15986, filed its annual update to the Rider "RADS". Thus, Pepco proposes to amend the following tariff page:

**ELECTRIC-- P.S.C. of D.C. No. 1  
Fourth Revised Page No. R-46**

The amended tariff page, containing the proposed revisions, will read:

**ELECTRIC-- P.S.C. of D.C. No. 1  
Fifth Revised Page No. R-46**

3. In its Rider Update, Pepco states that the Rider "RADS" surcharge collections in 2013 and 2014 resulted in an over-collection. As a result of the over-collection, the RADS surcharge will decrease from the current surcharge of \$0.000294 to a new surcharge of \$0.000159.<sup>8</sup> The Rider "RADS" true-up calculation for January 2013 through December 2014 is shown in Attachment B of the Rider Update. Additionally, the Company requested that the revised Rider "RADS" become effective with service on and after April 2, 2015.<sup>9</sup> The revised Rider "RADS" tariff pages are provided as Attachment A of the Rider Update.

4. This Rider Update may be reviewed at the Office of the Commission Secretary, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday as well as on the Commission's website at [www.dcpssc.org](http://www.dcpssc.org). Copies of the tariff are available upon request, at a per-page reproduction cost.

5. Comments and reply comments on the Rider Update must be made in writing to Brinda Westbrook-Sedgwick, Commission Secretary, at the above address. All comments and reply comments must be received within thirty (30) and forty-five (45) days, respectively, of the date of publication of this Notice in the *D.C. Register*. Once the comment period has expired, the Commission will take final action on Pepco's Rider Update.

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<sup>7</sup> *Formal Case Nos. 945 and 813*, Order No. 17376, rel. February 7, 2014.

<sup>8</sup> *Formal Case No. 945 and 813*, Rider Update at 1.

<sup>9</sup> *Id.*

**D.C. SENTENCING AND CRIMINAL CODE REVISION COMMISSION****NOTICE OF RESCHEDULING  
OF PUBLIC MEETING**

The D.C. Sentencing and Criminal Code Revision Commission hereby gives notice that the Commission meeting scheduled for October 20, 2015 was rescheduled to **Tuesday, October 27, 2015**.

The final agenda will be posted on the agency's website at <http://sentencing.dc.gov>

Inquiries concerning the meeting may be addressed to Mia Hebb, Staff Assistant, at (202) 727-8822 or [Mia.Hebb@dc.gov](mailto:Mia.Hebb@dc.gov).

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

## BOARD OF DIRECTORS

## NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, October 1, 2015 at 9:30 a.m. The meeting will be held in the Board Room (4<sup>th</sup> floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at [www.dewater.com](http://www.dewater.com).

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or [linda.manley@dewater.com](mailto:linda.manley@dewater.com).

## DRAFT AGENDA

- |    |  |                       |
|----|--|-----------------------|
| 1. | <b>Call to Order</b>                                 | Board Chairman        |
| 2. | <b>Roll Call</b>                                     | Board Secretary       |
| 3. | <b>Approval of September 3, 2015 Meeting Minutes</b> | Board Chairman        |
| 4. | <b>Committee Reports</b>                             | Committee Chairperson |
| 5. | <b>General Manager's Report</b>                      | General Manager       |
| 6. | <b>Action Items</b><br>Joint-Use<br>Non Joint-Use    | Board Chairman        |
| 7. | <b>Other Business</b>                                | Board Chairman        |
| 8. | <b>Adjournment</b>                                   | Board Chairman        |

**WILLIAM E. DOAR JR. PUBLIC CHARTER SCHOOL  
FOR THE PERFORMING ARTS**

**REQUEST FOR PROPOSALS**

**Legal Services**

The William E. Doar Jr. Public Charter School for the Performing Arts, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 (“Act”), hereby solicits expressions of interest from Vendors or Consultants for the following service:

**Legal Services** - W. E. Doar Jr. Public Charter school is soliciting a vendor to provide legal services for the 2015-2016 year.

**Proposal Submission**

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **2:00 p.m. EST on October 2, 2015** unless otherwise stated in associated RFP’s. Proposals should be emailed to [bids@wedjschool.us](mailto:bids@wedjschool.us)

For information regarding the school please see: [www.wedjschool.us](http://www.wedjschool.us)

No phone call submissions or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

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

**Application No. 18506-C of Ontario Residential LLC**, as amended, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception from the roof structure provisions under § 777.1 (§ 411.2) governing roof structure setbacks<sup>1</sup>, a special exception from the requirement that all compact spaces be placed in groups of at least five contiguous spaces with access from the same aisle under § 2115.4, a variance from the off-street parking requirements under § 2101.1, and a variance from the loading berth and delivery space provisions under § 2201.1, to allow a mixed-use residential building with ground retail in the C-2-B District at premises 1700 Columbia, N.W. (Square 2565, Lot 52).

<b>HEARING AND DECISION DATE:</b>	February 26, 2013
<b>BOARD’S ORDER ISSUED:</b>	September 27, 2013
<b>MOTION FOR RECONSIDERATION FILED WITH BOARD:</b>	October 29, 2013
<b>MOTION FOR RECONSIDERATION DENIED BY BOARD:</b>	January 8, 2014
<b>APPEAL FILED WITH DC COURT OF APPEALS:</b>	November 29, 2013
<b>DECISION OF DC COURT OF APPEALS VACATING IN PART AND REMANDING IN PART:</b>	June 5, 2014
<b>REQUEST FOR IMMEDIATE HEARING FILED:</b>	October 1, 2014
<b>REQUEST FOR IMMEDIATE HEARING DENIED:</b>	November 18, 2014

**CORRECTED<sup>2</sup> ORDER DENYING REQUEST FOR IMMEDIATE HEARING**

This matter involves a Decision and Order by the Board of Zoning Adjustment (“Board” or “BZA”) granting zoning relief to allow a residential building with ground floor retail in the C-2-B zone. The Applicant, Ontario Residential LLC (“Applicant” or “Ontario”) sought relief from parking and loading requirements and from the roof structure requirements. Only the roof

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<sup>1</sup> Initially, the Applicant also sought relief from the roof structure provisions governing the number and height of the roof structures on the proposed building. But as will be explained in greater detail, the Applicant withdrew these requests for relief after it revised its roof plan. The caption reflects the revised relief.

<sup>2</sup> This order is issued to correct the year that the request for immediate hearing was denied. The date is November 18, 2014, not November 18, 2015. In all other respects, the order remains the same as Order No. 18506-B.

**BZA APPLICATION NO. 18506-C  
PAGE NO. 2**

structure requirements are relevant to the instant matter. The pertinent roof structure requirements are embodied in §§ 411.2, 411.3 and 411.5 of the Zoning Regulations, governing the setbacks, number, and height, respectively, of the roof structures on the proposed building.

The Board conducted a public hearing in this matter, at which time Adams Morgan for Reasonable Development (“AMFRD”) was granted party status in opposition to the application. The Board approved the application at the close of the hearing and a final Board Order was issued in September, 2013 granting all relief requested. AMFRD moved for reconsideration and the Board denied the motion for reconsideration. (BZA Order No. 18506-A.)

AMFRD filed a petition to review the Board’s order with the District of Columbia Court of Appeals (the “DCCA”). Once before the Court, AMFRD filed a motion for summary disposition claiming that the Board’s Order did not sufficiently support Ontario’s request for roof structure relief. In June, 2014, the Court issued an order that vacated two components of the roof structure relief: the number of structures and the height of the structures under §§ 411.3 and 411.5. The Court remanded those two requests for relief to the Board for further proceedings because the Board’s Order did not explain why the construction of conforming roof structures was “impractical”. The Court only vacated the portion of the order pertaining to these issues, such that the remainder of the Board’s order remained in place.

On July 29, 2014, Ontario notified the Board (with a copy to AMFRD) that it had revised its roof plan to provide for roof structures that were conforming as to number and height. The new roof plan provides for a single roof structure that, on its face, no longer requires relief from requirements governing the number and height of structures. (Exhibit 42.) Ontario states that it amended its building permit application to now include a roof plan with a single structure of conforming height. According to Ontario, DCRA reviewed the revised roof plan, deemed it zoning compliant, and issued a building permit for the residential building without requiring further action from the Board. (Exhibit 42, Att. B).<sup>3</sup>

In the same notification, Ontario withdrew its request for relief from §§ 411.3 and 411.5. Ontario asserts that additional BZA proceedings are no longer necessary, as there is nothing left for the Board to review. AMFRD disagrees with Ontario’s position and requests an “immediate hearing” based upon its interpretation of the Court of Appeals remand, and the Board’s rules governing the modification of plans. (Exhibit 45, AMFRD’s Request for an Immediate Hearing.) Each of these issues is addressed below.

**The Court of Appeals remand has been rendered moot**

The Board’s Rules of Practice prohibit it from considering “moot” questions. (11 DCMR § 3100.7.) As noted by the Court of Appeals, “[a] case is moot when the legal issues presented are

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<sup>3</sup> It is apparent that DCRA was aware of the Court’s remand. Ontario submitted notes written by the “zoning reviewer” at DCRA. These notes reference the “modified plans to address court of appeals remand of rooftop structure issue”. (Exhibit 47, Att. B.)

**BZA APPLICATION NO. 18506-C  
PAGE NO. 3**

no longer ‘live.’” *Cropp v. Williams*, 841 A.2d 328, 330 (D.C. 2004). That standard applies here. The roof structure plans that would have been the subject of the Court’s remand have been replaced and approved by DCRA and the Applicant has withdrawn that portion of the application, which it may do as of right. Subsection 3113.10 of the Board’s Rules of Practice and Procedure provides, in part, that an applicant may withdraw an application at any time. As a result, the plans complained of in AMFRD’s DCCA appeal are no longer “live”. Since the subject matter of the DCCA remand no longer exists, the remand has become moot and no hearing as to it is required,

The Board has found mootness in similar situations; for example, *Appeal No. 17980 of William J. Reaves* (2010) (Challenge to permit authorizing building without side yard rendered moot where revised plans depicted building with conforming side yard); *Appeal No. 16984 of Advisory Neighborhood Commission 2A* (2004) (appeal challenging portion of permit approving expansion rendered moot when renovation approved under revised permit which eliminated expansion); and *Application No. 15163-A of Saint James Washington Limited Partnership I* (2002) (application seeking extensive zoning relief rendered moot where application not prosecuted and property was developed through matter-of-right construction).

The Board agrees with Ontario that AMFRD is essentially requesting a compliance hearing regarding the revised roof structure and the building permit authorizing it. However, whether the revised plans are compliant with zoning is not before the Board in the instant matter. The Board is mindful of the fact that AMFRD filed a separate appeal of the permit authorizing the revised plans, and that case was decided on its merits independent of this Request for an Immediate Hearing.<sup>4</sup>

**The Board lacks authority to conduct a “modification” hearing**

AMFRD also claims that the Board was required to conduct a hearing under § 3129 of its Rules of Practice because the original plans were revised without leave of the Board. AMFRD correctly states that § 3129 pertains to the modification of plans before the Board. However, this modification never came before the Board; and the Board lacks authority to hold a hearing on a modification that has not been expressly requested by an applicant. Section 3129 only applies to modifications that have been requested and, here, no such request has been made.

The language within § 3129 makes it clear that a modification must first be requested in order to be reviewed by the Board. For example, § 3129.2 states, in pertinent part, “The Board shall consider *requests* to approve minor modifications...” (emphasis supplied). Subsection 3129.3 states, “A *request* for minor modification of plans shall be filed with the Board...” (emphasis supplied). Subsection 3129.4 references “[a]ll *requests* for minor modifications of plans...” (emphasis supplied); and so on.

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<sup>4</sup> Appeal No. 18888 was heard on January 13, 2015 and decided orally on February 10, 2015. The Board has not yet issued its final Decision and Order.

**BZA APPLICATION NO. 18506-C**  
**PAGE NO. 4**

Furthermore, the Board cannot compel Ontario to request a modification of its plans any more that it can preclude a withdrawal of the relief that was requested.

Neither the Zoning Act nor the Zoning Regulations authorize the Board to compel an applicant to take such steps. Ontario revised its roof plan, withdrew a portion of its request for zoning relief, and applied to DCRA for a building permit on the basis of its revised plans. Nothing in the Regulations requires additional BZA review as a modification, and the Board lacks authority to further scrutinize the revised roof plan at this time.<sup>5</sup>

Accordingly, the Board hereby **DENIES** AMFRD's Request for an Immediate Hearing regarding the roof structure relief, finding that the issues of concern have been rendered moot, and the Board lacks authority to conduct a modification hearing.

**VOTE:**           **4-0-1**           (Lloyd J. Jordan, Monique Y. Heath, S. Kathryn Allen, and Anthony J. Hood to Deny the request for an immediate hearing; Jeffrey L. Hinkle being necessarily absent.)

**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:** September 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.

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<sup>5</sup> Of course as mentioned above, the Board has the authority to scrutinize the roof plan during an appeal of the building permit, and has in fact done so in BZA Appeal No. 18888.



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

**Order No. 18787-A on the Motions for Reconsideration and Rehearing of the Application of 143 Rear W Street LLC**, pursuant to 11 DCMR § 3103.2, for a use variance from § 2507.2 to allow construction of five one-family row dwellings on alley lots where the alleys are less than 30 feet wide in the R-4 District at premises 143 Rear W Street, N.W. (Square 3121, Lots 73 and 74).

**HEARING DATE:** July 29, 2014  
**LIMITED HEARING DATE:** September 9, 2014  
**DECISION DATE:** October 7, 2014  
**RECONSIDERATION  
DECISION DATE:** June 9, 2015

**ORDER DENYING RECONSIDERATION AND REHEARING**

By order dated April 14, 2015, (“Order”) the Board granted an application submitted by 143 Rear W Street LLC (“Applicant”) for a use variance to construct five one-family row dwellings on alley lots where the alleys are less than 30 feet wide. (Exhibit 81.) The parties to the proceeding were the Applicant, Advisory Neighborhood Commission (“ANC”) 5E, and several individuals – Alicia Hunt, Joe Gersen, Victoria Leonard, Pia Brown, and Jonathan Carron – whose party status requests the Board combined into a single party (the “Party in Opposition”).

On April 24, 2015, the Party in Opposition filed a motion for reconsideration of the Board’s decision and for rehearing of the application.<sup>1</sup> (Exhibit 84.) In the motion, the Party in Opposition alleges the following errors in the Board’s Order: (1) that the Order erroneously places the burden of proof on the Party in Opposition rather than the Applicant, particularly as to the “undue hardship” requirement of the variance test; (2) that the Order fails to give “great weight” to ANC 5E’s vote opposing the application; (3) that the Order erroneously injects a policy determination into the analysis of the variance standard; and (4) that the record does not support Finding of Fact Nos. 19–21, which relate to the financial feasibility of alternative uses for the property. The Party in Opposition also requested that the Board reopen the record to consider additional evidence regarding whether it would be financially feasible for the Applicant to build four units instead of five.

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<sup>1</sup> The Party in Opposition also submitted a request for review by the Zoning Commission. (Exhibit 83.) Subsection 3128.1 of the Zoning Regulations provides that, “[w]ithin the ten (10) day period set forth in § 3125.9, the Zoning Commission may, *sua sponte*, determine to review any final decision or order of the Board.” However, nothing in the Zoning Regulations grants a party the right to request such review. Rather, as § 3128.1 states, such review is *sua sponte*, i.e., “[w]ithout prompting or suggestion; on [the Zoning Commission’s] own motion.” *Black’s Law Dictionary* 1650 (10th ed. 2014). Accordingly, the Board need not address this request.

**BZA APPLICATION NO. 18787-A**  
**PAGE NO. 2**

On April 24, 2015, ANC 5E also submitted a motion for reconsideration. (Exhibit 86.) Prior to the Board's decision, ANC 5E submitted a report indicating that it had voted not to support the Applicant's original proposal to construct four flats. In its motion, the ANC "clarify[ies] that it reviewed [the Applicant's amended] 5 unit plan and voted to oppose that version of the development plan." ANC 5E asks the Board to reconsider its ruling based on this clarification.

The Applicant filed an opposition to the motions for reconsideration dated April 30, 2015, (Exhibit 87), contending the following: that the Board's Order properly places the burden of proof on the Applicant; that, although ANC 5E's report references only the initial four-flat plan for the project, the Order specifically addresses the issues and concerns the ANC raised; that the statement in the Order that the project compliments the character of the surrounding area is a proper consideration under the third prong of the variance test; and that Finding of Fact Nos. 19–21 are all supported by the record.

At a public meeting on June 9, 2015, the Board voted to deny the motions for reconsideration and rehearing.

**CONCLUSIONS OF LAW**

Pursuant to 11 DCMR § 3126.2, any party may file a motion for reconsideration or rehearing of any decision of the Board within ten days after a final written order is issued. A motion for reconsideration must state specifically all respects in which the final decision is claimed erroneous, the grounds of the motion, and the relief sought. (11 DCMR § 3126.4.) The Board shall only consider a request for rehearing when new evidence is submitted that could not reasonably have been presented at the original hearing. (11 DCMR § 3126.6.)

The Board finds that the instant motions do not provide a sufficient basis to reconsider its decision to grant the application in this case or to reopen the record. Contrary to the Party in Opposition's contention, the Board properly placed the burden of proof on the Applicant to demonstrate that the project satisfied the standard for a use variance. (*See* Order at 9 ("Therefore, the Applicant must demonstrate an exceptional situation or condition of the property and that such exceptional condition results in an 'undue hardship' to the Applicant."))

With respect to ANC 5E's report, as the Order states, the Board must give "great weight" to the issues and concerns that the affected ANC raises in its written report, as required by § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)). (Order at 11–12.) Here, the ANC's report makes reference only to the Applicant's original plans for four flats, not the revised proposal for five one-family units. (*Id.* at 12.) Nonetheless, the Order includes a detailed discussion of the concerns and issues the ANC raised in its report, concluding that the ANC's recommendations were unpersuasive. (*Id.* at 12–13.) The ANC's subsequent "clarification" of its report does not alter the Board's conclusion.

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Further, the Order does not improperly inject a policy determination into the variance standard, as the Party in Opposition claims. The Order states that “[t]he proposed development compliments the established character of the area while turning an eyesore into a productive housing use, which is desperately needed in the city.” (*Id.* at 11.) As the Applicant notes, this statement is appropriately included in the Board’s discussion of the third prong of the variance test, which requires the Applicant to demonstrate that the requested relief can be granted without substantial detriment to the public good. *E.g.*, *Oakland Condominium v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748, 752 (D.C. 2011) (quoting *Wash. Canoe Club v. District of Columbia Zoning Comm’n*, 889 A.2d 995, 1000 (D.C. 2005)). The Board need not reconsider its ruling on this issue.

Additionally, the Board is not persuaded that its findings regarding the financial feasibility of alternative uses for the property were unsupported by the record. Sufficient evidence supports the Board’s findings, specifically, the financial analysis prepared by the Applicant’s expert witness. (*See* Exhibit 72.)

Lastly, the Party in Opposition had ample opportunity to present evidence on the issue of alternative uses, and, thus, the Board denies the request to reopen the record for additional evidence.

For all of these reasons, the Board hereby **ORDERS** that the **MOTION for RECONSIDERATION and REHEARING** is **DENIED**.

**VOTE:**           **4-0-1**           (Marnique Y. Heath, Robert E. Miller, Lloyd J. Jordan, and Jeffrey L. Hinkle to DENY; one Board seat vacant.)

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

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

**FINAL DATE OF ORDER:** September 14, 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.

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

**Application No. 18952 of Daniel Fields**, pursuant to 11 DCMR § 3103.2 for a use variance to allow a four-unit apartment house in a former one-family detached dwelling in the R-1-B District at premises 7100 Blair Road, N.W. (Square 3189, Lot 800).

**HEARING DATES:** March 17, 2015 and April 14, 2015  
**DECISION DATE:** April 14, 2015

**DISMISSAL ORDER**

This application was submitted to the Board of Zoning Adjustment (“Board” or “BZA”) on January 6, 2015 by Daniel Fields, (the “Applicant”), the owner of the property that is the subject of the application. The Applicant sought variance relief from the use provisions of § 201 of the Zoning Regulations to allow a multiple dwelling in an R-1-B zone. Following two public hearings during which the Applicant failed to appear, the Board voted to dismiss the application.

**PRELIMINARY MATTERS**

Referral by the Zoning Administrator

The application was referred to the Board by the Zoning Administrator (“ZA”) of the District Department of Consumer and Regulatory Affairs (DCRA). (Exhibit 3.) The relief sought – relief from the use provisions of § 201 – was consistent with the relief recommended by the ZA.

Notice of Public Hearing

Notice. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent by the Office of Zoning to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (“ANC”) 4B, and the District of Columbia Office of Planning (“OP”).

Posting. Pursuant to 11 DCMR §§ 3113.14 through 3113.20, the Applicant is required to post placards at the property regarding the application and the public hearing. There is nothing in the record regarding the posting. However, based upon participation by the neighbors and ANC in this case, the Board is satisfied that the neighbors received actual notice of the application.

ANC 4B

The subject site is located within the jurisdiction of ANC 4B, which is automatically a party to this application. By letter dated February 24, 2015, ANC 4B indicated that at a properly noticed

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meeting on the same date with a quorum present, the ANC voted to adopt a resolution recommending denial of the application. In its resolution, the ANC noted that the proposed apartment house conflicted with the character of the neighboring one-family dwellings; and also noted that there was significant neighborhood opposition to the proposal.

Request for Party Status

The Board received and granted a request for combined party status from four residents of the 7100 block of Piney Branch Road: Sara Green and Richard Holzsager of 7106 Piney Branch Road, and Loretta Neumann and Daniel Smith of 7124 Piney Branch Road. (Exhibit 24.) The Party Opponents claimed that granting the proposal would alter the character of the neighborhood and the Takoma Park Historic District.

Letters in Support/Opposition

No letters in support were received on behalf of the Applicant. However, the Board received eight letters in opposition from neighboring property owners. (Exhibits 21, 25, 27, 29-32, and 35.)

OP Report

By its report dated March 10, 2015, OP recommended denial of the application. (Exhibit 26.) OP explains that the work to convert the structure into four dwelling units had been completed before the application for zoning relief was filed with the Board. While the Applicant claims the conversion to four units was authorized by DCRA, OP points out that building permits issued by DCRA were for exterior work only, and did not authorize interior work creating the four units. OP states further that the Applicant has provided no documentation that would establish its claim of DCRA's authorization. OP also states that the Applicant has not established that the project would result in substantial detriment to the public good, or that the project would not result in substantial harm to the Zoning Regulations.

Department of Transportation ("DDOT")

DDOT made no recommendation regarding the application, but notes that a parking variance may be required for the proposed apartment house use. (Exhibit 34.)

**FINDINGS OF FACT**

1. The public hearing was first scheduled for March 17, 2015. However, the Applicant did not appear on that date, and the matter was rescheduled for April 14, 2015.
2. The Applicant failed to appear again on April 14, 2015.

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3. The Applicant has provided no explanation for his failure to appear on either of the two dates.

**CONCLUSIONS OF LAW**

Pursuant to 11 DCMR § 3100.6, “the Board may dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation.” Because the Applicant failed to appear at two public hearings without any explanation, the Board voted to dismiss the application.

Accordingly, it is **ORDERED** that the application is **DISMISSED**.

**VOTE:**       **4-0-1** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller to Dismiss; 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:** September 16, 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.

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

**Application No. 19062 of 1106 Montello LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the size of parking space requirements under § 2115.1, to allow the construction of a ninth dwelling unit to a proposed four-story, eight-unit apartment building in the C-2-A District at premises 1112 Montello Avenue N.E. (Square 4070, Lots 82-83).

**HEARING DATE:** September 15, 2015

**DECISION DATE:** September 15, 2015

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 28 (corrected).)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. The ANC did not submit a report in this case. The Applicant testified that he met with the ANC SMD representative, who was supportive of the project, but has not been able to present before the full ANC because of an internal conflict among the ANC 5D Commissioners.

The Office of Planning ("OP") submitted a timely report recommending approval of the application. The OP report under Exhibit 26, recommended variance relief from § 2115.2 and § 2115.4, but OP testified at hearing that it supports the Applicant's request to pursue only relief from § 2115.1.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application with two conditions. (Exhibit 27.) The Applicant testified that he accepted both conditions.

One neighbor testified in opposition regarding concerns about parking in the neighborhood. The Board noted that the relief requested would not eliminate parking spaces, but rather, allow for the required spaces to be narrower.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for an area variance from the parking space requirements under § 2115.1, to allow the construction of a ninth dwelling unit to a proposed four-story, eight-unit apartment building in the C-2-A District.

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The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 2115.1, 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 § 3125.5, 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 10 AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall install a minimum of three (3) long-term secure bicycle parking spaces in a secure storage room or an equivalent, as required by District of Columbia Municipal Regulations; and
2. The Applicant should install a minimum of one (1) short-term bicycle parking rack (two (2) parking spaces), the location of which will be determined during the Public Space permitting process.

**VOTE:**           **4-0-1** (Lloyd L. Jordan, Anthony J. Hood, Jeffrey L. Hinkle, and Fredrick L. Hill to APPROVE; Marnique Y. Heath, not present or voting.)

**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:** September 17, 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



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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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING  
AND  
Z.C. ORDER NO. 14-11(1)  
Z.C. Case No. 14-11  
(Text Amendment – 11 DCMR)  
(Technical Correction to Z.C. Order No. 14-11)  
September 10, 2015**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

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