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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-157, Sale of Synthetic Drugs Congressional Review Emergency Amendment Act of 2015
- D.C. Council enacts Act 21-165, Behavioral Health Coordination of Care Amendment Act of 2015
- D.C. Council schedules a public oversight roundtable on D.C. public school modernizations
- Department of Energy and Environment updates the District's standards for managing hazardous waste and used oil
- Department of Health Care Finance announces changes to the Medicaid reimbursement rates for Adult Substance Abuse Rehabilitative Services and Durable Medical Equipment
- Department of Human Resources updates regulations for assessing the suitability of appointees, volunteers, and employees for employment
- Office of Human Rights proposes guidelines for implementing the Youth Bullying Prevention Act of 2012

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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AN ACT

D.C. ACT 21-154

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, An Act To classify the officers and members of the fire department of the District of Columbia, and for other purposes, to authorize the Fire and Emergency Medical Services Department to contract with third parties to provide supplemental pre-hospital medical care and transportation for Basic Life Support calls for service, to require that third-party contracts preclude the District from liability and contain an indemnification provision, to set forth reporting requirements for third-party contractors, the Fire and Emergency Medical Services Department, and the Office of Unified Communications, and to extend the public duty doctrine to claims against the District for actions of a third-party contractor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Emergency Medical Services Contract Authority Emergency Amendment Act of 2015".

Sec. 2. Section 1 of An Act To classify the officers and members of the fire department of the District of Columbia, and for other purposes, approved June 20, 1906 (34 Stat. 314; D.C. Official Code § 5-401), is amended as follows:

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

(1) Designate the existing text as paragraph (1).

(2) New paragraphs (2) and (3) are added to read as follows:

"(2) Notwithstanding paragraph (1) of this subsection, the Department may contract with third parties to provide supplemental pre-hospital medical care and transportation to persons requiring Basic Life Support.

"(3) A contract entered into pursuant to paragraph (2) of this subsection shall include a provision that precludes the District from liability for any claims arising out of the actions of the third-party contractor and also provides full indemnification to ensure that the District shall not be responsible for any amounts owed to others as a result of the third-party contractor's action or inaction under the contract.".

(b) New subsections (d), (e), (f), (g), (h), and (i) are added to read as follows:

"(d) Each third-party contractor that enters into a contract pursuant to subsection (b)(2) of this section shall provide a quarterly report to the Department and to the Council that includes the following information:

"(1) The number of transports performed;

"(2) The location where the third-party contractor meets each patient and the name and location of the health care facility to which the patient is transported;

"(3) The average time between the dispatch of the third-party contractor by the Department and the third-party contractor's arrival to the patient;

"(4) The average time that the third-party contractor remains out of service while waiting to transfer the care of a patient to a healthcare facility;

"(5) The number of third-party contractor ambulances available on a daily basis for Department use;

"(6) The length of the third-party contractor's personnel shifts; and

"(7) The number of employees hired by the third-party contractor, including the number of District residents.

"(e) Within 4 months after the date of a contract award pursuant to subsection (b)(2) of this section, and quarterly thereafter, the Department shall submit a report to the Council that includes the following information:

"(1) Activity by the Department to educate the public on the proper use of emergency requests for service;

"(2) The number of employees hired after the contract award and their residency;

"(3) Evaluation of pre-hospital medical care and transportation fees considering the reasonableness of the fees, the public interest, and the persons required to pay the fee;

"(4) The number of ambulances added to the Department's frontline and reserve fleet after the date of the contract award, including whether added ambulances replace or supplement the current fleet;

"(5) The number of emergency medical services personnel training hours provided; and

"(6) The number of patients who used the Department's transport services twice or more within the reporting period, including the number of times the patient used transport services during the previous 12 months.

"(f) Within 4 months after the date of a contract award pursuant to subsection (b)(2) of this section, and quarterly thereafter, the Office of Unified Communications shall submit a report to the Council that includes the following information:

"(1) The number of calls dispatched and the average dispatch time; and

"(2) The protocol to reroute non-emergency calls.

"(g) Within one year after the date of a contract award pursuant to subsection (b)(2) of this section, the Department shall submit a report to the Council that evaluates performance under the contract and includes the following information:

"(1) The impact on the Department's unit availability;

"(2) The impact on the Department's fleet, including the ability to conduct

preventative maintenance and the number of operational and reserve units available;

"(3) The impact on the Department's training schedule;

"(4) The impact on the Department's response times and quality of patient care;

"(5) An assessment of the number of units, the number of personnel, the amount of training, and associated costs required to provide pre-hospital medical care and transportation without the use of third parties; and

"(6) Recommendations for implementing any additional units, personnel, and training identified in paragraph (5) of this subsection.

"(h) The Council ratifies the interpretation and application of the public duty doctrine by the District of Columbia Court of Appeals up through the decision of September 25, 2014, in *Allen v. District of Columbia*, No. 10-CV-1425, and extends the public duty doctrine to claims against the District for the actions of contractors and their employees providing services under this section to the same extent as it applies to the District and its employees.

"(i) For the purposes of this section, the term "Basic Life Support" means a level of medical care provided by pre-hospital emergency medical services at the basic emergency response technician level and in accordance with the national scope of practice for a basic level provider.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-155

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To approve, on an emergency basis, Contract No. CW22673 with Pearson VUE to provide professional-licensing services, and to authorize payment for the goods and services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. CW22673 Approval and Payment Authorization Emergency Act of 2015".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. CW22673 with Pearson VUE to provide professional-licensing services, and authorizes payment in the amount of $5,619,052 for goods and services received and to be received under that contract for the period from July 2, 2013, through September 30, 2015.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-156

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, due to congressional review, the Legalization of Marijuana for Medical Treatment Initiative of 1999 to allow any applicant that received notification on July 25, 2014, that its medical marijuana cultivation center was eligible for registration to modify its application, to allow a holder of a cultivation center registration that owns or has a valid lease for the real property adjacent to its existing cultivation center to expand its facility into that adjacent real property for purposes of increasing production of marijuana plants, not to exceed the authorized limit, and to increase the number of living plants a cultivation center may possess at any time to 1000.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Marijuana Cultivation Center Expansion Congressional Review Emergency Amendment Act of 2015".

Sec. 2. The Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code§ 7-1671.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 7-1671.01) is amended by adding a new paragraph (lA) to read as follows:

"(1A) "Adjacent" means located within the same physical structure as, and is abutting, adjoining, bordering, touching, contiguous to, or otherwise physically meeting.".

(b) Section 7 (D.C. Official Code § 7-1671.06) is amended as follows:

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

(A) Paragraph (3) is amended by adding a new subparagraph (C) to read as follows:

"(C)(i) Notwithstanding 22 DCMR §§ C5003.2 and C5003.3, any applicant that received notification from the Department on July 25, 2014, that its cultivation center was eligible for registration shall be permitted to modify the location and premises identified on the application within 90 days after the effective date of the Medical Marijuana Cultivation Center Expansion Emergency Amendment Act of 2015, effective July 20, 2015 (D.C. Act 21-104; 62 DCR 9965), without negatively affecting the current status of the application or registration.

"(ii) Any application that is modified pursuant to sub-subparagraph (i) of this subparagraph shall be exempt from 22 DCMR § C5303.6, adopted on an emergency basis by the Department on May 19, 2015 (62 DCR 8351).".

(B) New paragraphs (4) and (5) are added to read as follows:

"(4) The Mayor may approve the holder of a cultivation center registration that also owns, or has a valid lease for, real property adjacent to its existing cultivation center to physically expand the registered cultivation center into that adjacent real property for the purpose of increasing production of marijuana plants, not to exceed the limit permitted under this act.

"(5) For the purposes of this subsection, the non-transferability of ownership provisions set forth in 22 DCMR §§ C5003 and C5501 shall not be construed as prohibiting the restructuring of ownership or changes between officers, directors, or other persons owning or controlling a percentage of the registered cultivation center or the entity named in the cultivation center registration application that was pending as of March 2, 2015, to operate a cultivation center at the same adjacent real property if the application received a score of at least 150 points from the Program's review panel.".

(2) Subsection (e)(2) is amended by striking the number "500" and inserting the number "1000" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-157

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, due to congressional review, section 47-2844 of the District of Columbia Official Code to enable the Mayor to suspend or revoke the business license of any business engaged in the buying or selling of a synthetic drug and to enable the Chief of Police to seal a business licensee's premises for up to 96 hours for the buying or selling of a synthetic drug; and to amend the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 to designate the sale of a synthetic drug as a per se imminent danger to the health or safety of District residents and provide for an administrative hearing after the sealing of a business licensee's premises.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Sale of Synthetic Drugs Congressional Review Emergency Amendment Act of 2015".

Sec. 2. Section 47-2844(a-2) of the District of Columbia Official Code is amended as follows:

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

(1) The lead-in language is amending by striking the phrase "subsection (a-1) of this section" and inserting the phrase "subsection (a-1) of this section and paragraph (1A) of this subsection" in its place.

(2) Subparagraph (A) is amended by striking the phrase "subsection" and inserting the phrase "paragraph" in its place.

(3) Subparagraph (B) is amended by striking the phrase "subsection" and inserting the phrase "paragraph" in its place.

(4) Subparagraph (C) is amended by striking the phrase "subsection" and inserting the phrase "paragraph" in its place.

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

"(1A) In addition to the provisions of subsection (a-1) of this section and paragraph (1) of this subsection, the Mayor or the Chief of Police, notwithstanding § 2-1801.04(a)(1)), may take the following actions against, or impose the following requirements upon, any licensee, or agent or employee of a licensee, that knowingly engages or attempts to engage in the purchase, sale, exchange, or any other form of commercial transaction involving a synthetic drug, including the possession of multiple units of a synthetic drug:

"(A) For the first violation of this paragraph:

"(i) The Mayor shall issue a fine in the amount of $10,000;

"(ii) The Chief of Police, after a determination by the Mayor in accordance with § 2-1801.06(a), may seal the licensee's premises, or a portion of the premises, for up to 96 hours without a prior hearing;

"(iii) The Mayor may issue a notice to revoke all licenses issued to the licensee pursuant to this chapter.

"(iv)(I) Within 14 days after having a licensee's premises sealed for a violation of this paragraph, the Mayor shall require the licensee to submit a remediation plan to the Director of the Department of Consumer and Regulatory Affairs, that contains the licensee's plan to prevent any future recurrence of purchasing, selling, exchanging, or otherwise transacting any synthetic drug and acknowledgement that a subsequent occurrence of engaging in prohibited activities may result in the revocation of all licenses issued to the licensee pursuant to this chapter.

"(II) If the licensee fails to submit a remediation plan in accordance with this sub-subparagraph, or if the Mayor, in consultation with the Chief of Police, rejects the licensee's remediation plan, the Mayor shall provide written notice to the licensee of the defects in any rejected remediation plan and the Mayor's intent to revoke all licenses issued to the licensee pursuant to this chapter.

"(III) If the licensee cures the defects in a rejected remediation plan, the Mayor may suspend any action to revoke any license of the licensee issued pursuant to this chapter.

"(B) For any subsequent violation of this paragraph:

"(i) The Mayor shall issue a fine in the amount of $20,000;

"(ii) The Chief of Police, after a determination by the Mayor in accordance with § 2-1801.06(a), may seal the licensee's premises, or portion of the premises, for up to 30 days without a prior hearing.

"(C) If a licensee's premises, or a portion of the premises, is sealed under subparagraph (A) or (B) of this paragraph, a licensee shall have the right to request a hearing with the Office of Administrative Hearings within 2 business days after service of notice of the sealing of the premises pursuant to subparagraph (D) of this paragraph.

"(D) At the time of the sealing of the premises, or a portion of the premises, under subparagraph (A) or (B) of this paragraph, the Director of the Department of Consumer and Regulatory Affairs shall post at the premises and serve on the licensee a written notice and order stating:

"(i) The specific action or actions being taken;

"(ii) The factual and legal bases for the action or actions;

"(iii) The right, within 2 business days after service of notice of the sealing of the premises, to request a hearing with the Office of Administrative Hearings;

"(iv) The right, within 2 business days of a timely request being received by the Office of Administrative Hearings, to a hearing before an administrative law judge; and

"(v) That it shall be unlawful for any person to enter the sealed premises for any purpose without written permission by the Director of the Department of Consumer and Regulatory Affairs.

"(E) A licensee shall pay a fine issued pursuant to subparagraph (A) or (B) of this paragraph within 20 days after adjudication. If the licensee fails to pay the fine within the specified time period, the Mayor may seal the premises until the fine is paid.

"(F) For the purposes of this paragraph, the term:

"(i) "Business days" means days in which the Office of Administrative Hearings is open for business.

"(ii) "Synthetic drug" means any product possessed, provided, distributed, sold, or marketed with the intent that it be used as a recreational drug, such that its consumption or ingestion is intended to produce effects on the central nervous system or brain function to change perception, mood, consciousness, cognition or behavior in ways that are similar to the effects of marijuana, cocaine, amphetamines or Schedule I narcotics under § 48-902.04. The term "synthetic drug" also includes any chemically synthesized product (including products that contain both a chemically synthesized ingredient and herbal or plant material) possessed, provided, distributed, sold or marketed with the intent that the product produce effects substantially similar to the effects created by compounds banned by District or federal synthetic drug laws or by the U.S. Drug Enforcement Administration pursuant to its authority under the Controlled Substances Act, approved October 27, 1970 (84 Stat. 1247; 21 U.S.C. § 812). The following factors shall be treated as indicia that a product is being marketed with the intent that it be used as a recreational drug:

"(I) The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as "glass cleaner");

"(II) The individual or business providing, distributing, displaying or selling the product does not typically provide, distribute, or sell products that are used for that product's marketed use (such as liquor stores, smoke shops, or gas or convenience stores selling "plant food");

"(III) The product contains a warning label that is not typically present on products that are used for that product's marketed use including, "Not for human consumption", "Not for purchase by minors", "Must be 18 years or older to purchase", "100% legal blend", or similar statements;

"(IV) The product is significantly more expensive than products that are used for that product's marketed use;

"(V) The product resembles an illicit street drug (such as cocaine, methamphetamine, or Schedule I narcotic) or marijuana; or

"(VI) The licensee or any employee of the licensee has been warned by a District government agency or has received a criminal incident report, arrest report, or equivalent from any law enforcement agency that the product or a similarly labeled product contains a synthetic drug.".

Sec. 3. Section 106 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective March 8, 1991 (D.C. Law 8-237; D.C. Official Code § 2-1801.06), is amended as follows:

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

(1) Strike the phrase "premises are primarily used" and insert the phrase "premises are used" in its place.

(2) Add a new sentence at the end to read as follows:

"Purchasing, selling, exchanging, or otherwise transacting any synthetic drug, as defined in D.C. Official Code § 47-2844(a-2)(1A)(F)(ii), shall be a per se imminent danger to the health or safety of the residents of the District.".

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

(1) The existing text is designated as paragraph (1).

(2) The newly designated paragraph (1) is amended by striking the phrase "A licensee" and inserting the phrase "Except as provided in paragraph (2) of this subsection, a licensee" in its place.

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

"(2) A licensee engaged in the purchase, sale, exchange, or any other form of commercial transaction involving a synthetic drug in violation of D.C. Official Code § 47-2844(a-2)(1A) shall have the right to request a hearing within 2 business days after service of notice of the sealing of the premises. The Office of Administrative Hearings shall hold a hearing within 2 business days of receipt of a timely request, and shall issue a decision within 2 business days after the hearing.".

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-158

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, the Education Licensure Commission Act of 1976 to change the name of the Education Licensure Commission to the Higher Education Licensure Commission, to extend authority to the commission to require institutions physically located outside the District of Columbia offering postsecondary degree-granting or non-degree-granting online programs or courses to District of Columbia residents physically in the District to be licensed in the District, to permit members of the commission to serve in a hold-over capacity for no more than 180 days after expiration of their second full consecutive term, to provide the commission with the authority to enter into reciprocity agreements with regards to online courses, and to authorize the commission to impose alternative sanctions for violations of provision of the act or regulations promulgated under the authority of the act; to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to increase the compensation of members of the Higher Education Licensure Commission from $4,000 to $8,000; to amend the State Education Office Establishment Act of 2000 to designate the Office of the State Superintendent of Education the state portal agency for state authorization reciprocity; and to amend the Office of Administrative Hearings Establishment Act of 2001 to make a conforming amendment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Higher Education Licensure Commission Emergency Amendment Act of 2015".

Sec. 2. The Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; D.C. Official Code § 38-1301 *et seq.*), is amended as follows:

(a) Section 201 (D.C. Official Code § 38-1302) is amended as follows:

(1) Paragraph (7) is amended by striking the phrase "by personal attendance or correspondence" and inserting the phrase "by personal attendance, online instruction, or by other means" in its place.

(2) Paragraph (10) is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

(3) New paragraphs (15) and (16) are added to read as follows:

"(15)(A) "Online instruction" means education, whether known as virtual class, correspondence course, distance learning, or other like term, where the learner and instructor are not physically in the same place at the same time, that is delivered through an electronic medium such as the Internet, Web-based form, or real time or recorded video or digital form, and that is offered or provided by an educational institution to District residents who are physically present in the District.

"(B) The education provided pursuant to subparagraph (A) of this paragraph shall be deemed delivered through an online presence in the District.

"(16) "Online presence" means the delivery of online instruction by an educational institution.".

(b) Section 3 (D.C. Official Code § 38-1303) is amended by striking the phrase "Education Licensure Commission" wherever it appears and inserting the phrase "Higher Education Licensure Commission" in its place.

(c) Section 4 (D.C. Official Code § 38-1304) is amended as follows:

(1) The section heading is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

(2) Subsection (b) is amended by striking the phrase "2 consecutive terms" and inserting the phrase "2 consecutive terms; provided, that a member may serve in a hold-over capacity for no more than 180 days after the expiration of the member's second full consecutive term" in its place.

(d) The section heading for section 5 (D.C. Official Code § 38-1305) is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

(e) Section 6 (D.C. Official Code § 38-1306) is amended as follows:

(1) The section heading is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

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

"(b-1) An educational institution licensed by the Commission shall be subject to the laws and regulations that govern degree-granting and non-degree-granting institutions in the District, including those governing the complaint process.".

(3) Subsection (e)(2) is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

(f) Section 7 (D.C. Official Code § 38-1307) is amended as follows:

(1) The section heading is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

(2) Paragraph (3)(C) is amended by striking the word "and".

(3) Paragraph (4) is amended by striking the period and inserting a semicolon in its place.

(4) New paragraphs (5) and (6) are added to read as follows:

"(5) Have the authority to enter into agreements with other jurisdictions as it relates to the licensing of postsecondary educational institutions that provide degree-granting or non-degree-granting instruction to residents of the District; and

"(6) Have the authority to enter into agreements with degree-granting educational institutions operating in the District of Columbia that are otherwise conditionally exempt pursuant to section 10 for the purpose of ensuring consistent consumer protection in interstate distance education delivery of higher education.".

(g) Section 9 (D.C. Official Code § 38-1309) is amended as follows:

(1) Subsection (a)(2) is amended by striking the phrase "§ 29-101.99, or § 29-301.64," and inserting the phrase "§ 29-101.01 *et seq.*," in its place.

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

"(a-1) An educational institution that is providing degree-granting or non-degree-granting online instruction to residents of the District through an online presence shall be deemed to be operating in the District and shall be licensed by the Commission.".

(3) Subsection (c-1)(1) is amended by striking the phrase "Education Licensure Commission ("Commission")" and inserting the phrase "Commission" in its place.

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

(A) Paragraph (1) is amended by striking the phrase "; and" and inserting a period in its place.

(B) Paragraph (2) is repealed.

(5) Subsection (e) is amended by striking the phrase "done by correspondence." and inserting the phrase "done solely through online instruction." in its place.

(h) Section 12 (D.C. Official Code § 38-1312) is amended as follows:

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

"(a-1) The Commission may impose civil fines and penalties as alternative sanctions for violations of the provisions of this act or of rules promulgated under the authority of this act, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Enforcement and adjudication of a violation shall be pursuant to the Civil Infractions Act.".

(2) Subsection (c) is amended by striking the phrase "Corporation Counsel of" and inserting the phrase "Office of the Attorney General for" in its place.

(i) Section 12a (D.C. Official Code § 38-1313) is amended as follows:

(1) The section heading is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission." in its place.

(2) Subsection (a) is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

(3) Subsection (b) is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

Sec. 3. Section 1108(c-2)(2) 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 § 1-611.08(c-2)(2)), is amended as follows:

(a) Strike the phrase "Education Licensure Commission" and insert the phrase "Higher Education Licensure Commission" in its place.

(b) Strike the phrase "$4,000" and insert the phrase "$8,000" in its place.

Sec. 4. The State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601 *et seq.*), is amended as follows:

(a) Section 3(b)(6) (D.C. Official Code § 38-2602(b)(6)) is amended to read to read as follows:

"(6) Oversee the functions and activities of the Higher Education Licensure Commission, established by section 3, including acting as the state portal agency for the purposes of state authorization reciprocity;".

(b) Section 7a (D.C. Official Code § 38-2607) is amended as follows:

(1) The section heading is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

(2) Subsection (a) is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission" in its place.

(3) Subsection (b) is amended by striking the phrase "Education Licensure Commission" and inserting the phrase "Higher Education Licensure Commission ("Commission")" in its place.

(4) Subsection (c) is amended by striking the phrase "Education Licensure".

Sec. 5. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by adding a new subsection (b-9) to read as follows:

"(b-9) In addition to those cases described in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), (b-6), (b-7), and (b-8), this act shall apply to adjudicated cases involving a civil fine or penalty imposed by the Higher Education Licensure Commission under section 12(a-1) of the Education Licensure Commission Act of 1976, effective March 16, 1989 (D.C. Law 7-217; D.C. Official Code § 38-1312).".

Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-159

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, the Sexual Assault Victims' Rights Act of 2014 to extend the date by which the Sexual Assault Victim Rights Task Force shall submit its report to the Council and the Sexual Assault Response Team.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Sexual Assault Victim Rights Task Force Report Extension Emergency Amendment Act of 2015".

Sec. 2. Section 215(c)(1) of the Sexual Assault Victims' Rights Act of 2014, effective November 20, 2014 (D.C. Law 20-139; D.C. Official Code § 4-561.15(c)(1)), is amended by striking the phrase "September 30, 2015" and inserting the phrase "January 31, 2016" in its place.

Sec. 3. Applicability.

This act shall apply as of September 30, 2015.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-160

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, the Rental Housing Act of 1985 to limit the amount of a hardship petition conditional rent increase to 5% of the rent charged, and to require that a rent adjustment be repaid by a housing provider to a tenant within 21 days of a conditional increase being amended.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Rent Control Hardship Petition Limitation Emergency Amendment Act of 2015".

Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3500 *et seq.*), is amended as follows:

(a) Section 206(c) (D.C. Official Code § 42-3502.06(c)) is amended to read as follows:

"(c)(1) At the housing provider's election, instead of any adjustment authorized by subsection (b) of this section, the rent charged for an accommodation may be adjusted through a hardship petition under section 212. The petition shall be clearly identified as an election instead of the general adjustments authorized by subsection (b) of this section. The Rent Administrator shall accord an expedited review process for these petitions and shall issue and publish a final decision within 90 days after the petition has been filed.

"(2) In the case of any petition filed under this subsection as to which a final decision has not been rendered by the Rent Administrator at the end of 90 days from the date of filing of the petition and as to which the housing provider is not in default in complying with any information request made under section 216, the rent charged adjustment requested in the petition may be conditionally implemented by the housing provider at the end of the 90-day period; provided, that the conditional rent increase for an affected unit shall not exceed 5% of the rent charged.

"(3) A conditional rent charged adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, the Rent Administrator shall, by order served upon the parties at least 10 days before the expiration of the 90 days, make a provisional finding as to the rent charged adjustment justified by the order, if any. Except to the extent modified by this section, the adjustment procedures of section 216 shall apply to any adjustment.

"(4) If the Rent Administrator denies the requested rent increase or approves a

ENROLLED ORIGINAL

rent increase that is less than the amount of the conditional rent increase charged by the housing provider, the housing provider shall refund to the tenant within 21 calendar days of the Rent Administrator's order any rent paid in excess of the amount approved by the Rent Administrator, except that the tenant may elect within 14 calendar days of the Rent Administrator's order to apply the amount of the refund as a credit against future rental payments.".

(b) Section 212(c) (D.C. Official Code § 42-3502.12(c)) is amended to read as follows:

"(c)(1) At the housing provider's election, instead of any adjustment authorized by section 206(b), the rent charged for an accommodation may be adjusted through a hardship petition under this section. The petition shall be clearly identified as an election instead of the general adjustments authorized by section 206(b). The Rent Administrator shall accord an expedited review process for these petitions and shall issue and publish a final decision within 90 days after the petition has been filed.

"(2) In the case of any petition filed under this section as to which a final decision has not been rendered by the Rent Administrator at the end of 90 days from the date of filing of the petition and as to which the housing provider is not in default in complying with any information request made under section 216, the rent charged adjustment requested in the petition may be conditionally implemented by the housing provider at the end of the 90-day period; provided, that the conditional rent increase for an affected unit shall not exceed 5% of the rent charged.

"(3) A conditional rent charged adjustment shall be subject to subsequent modification by the final decision of the Rent Administrator on the petition. If a hearing has been held on the petition, the Rent Administrator shall, by order served upon the parties at least 10 days before the expiration of the 90 days, make a provisional finding as to the rent charged adjustment justified by the order, if any. Except to the extent modified by this section, the adjustment procedures of section 216 shall apply to any adjustment.

"(4) If the Rent Administrator denies the requested rent increase or approves a rent increase that is less than the amount of the conditional rent increase charged by the housing provider, the housing provider shall refund to the tenant within 21 calendar days of the Rent Administrator's order any rent paid in excess of the amount approved by the Rent Administrator, except that the tenant may elect within 14 calendar days of the Rent Administrator's order to apply the amount of the refund as a credit against future rental payments.".

Sec. 3. Applicability.

This act shall apply as of October 9, 2015.

Sec. 4. Fiscal impact statement.

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

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Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-161

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, Chapter 48 of Title 47 of the District of Columbia Official Code to establish a qualified ABLE Program, to be known as the ABLE Program Trust, pursuant to the requirements of the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 to exempt from income taxation the earnings on deposits made to an ABLE Program Trust by an eligible individual to assist the individual with certain expenses related to the individual's blindness or disability.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "ABLE Program Trust Establishment Emergency Act of 2015".

Sec. 2. Chapter 48 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section 47-4811.01 to read as follows:

"47-4811.01. ABLE Program Trust.".

(b) Section 47-4801 is amended as follows:

(1) Paragraph (1) is redesignated as paragraph (1C).

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

"(1) "ABLE account" means an account established by an eligible individual, owned by the eligible individual, and maintained under a qualified ABLE program, as defined in the Federal ABLE Act.

"(1A) "ABLE Account Savings Agreement" means the terms, conditions, and provisions considered necessary or appropriate by the Chief Financial Officer, as set forth in regulations issued pursuant to this section, governing the deposits to and withdrawals from an ABLE account.

"(1B) "ABLE Program Trust" or "Trust" means the trust established in § 47-4811.01.".

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

"(1D) "Chief Financial Officer" or "CFO" means the Chief Financial Officer of the District of Columbia, established by § 1-204.24a(a)).".

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

"(2A) "Designated beneficiary" means an eligible individual who has established an ABLE account and is the owner of the account, as defined in the Federal ABLE Act.".

(5) New paragraphs (5A) and (5B) are added to read as follows:

"(5A) "Eligible individual" means an individual who during the taxable year is entitled to benefits based on blindness or disability under Title II of the Social Security Act, approved August 14, 1935 (49 Stat 620; 42 U.S.C. § 401 *et seq.*), or Title XVI of the Social Security Act, approved October 30, 1972 (86 Stat. 1465; 42 U.S.C. § 1381 *et seq.*), and such blindness or disability occurred before the date on which the individual attained 26 years of age, or a disability certification with respect to such individual is filed with the CFO for such taxable year, as defined in subsection (e)(1) of the Federal ABLE Act.

"(5B) " Federal ABLE Act" means the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014, approved December 19, 2014 (128 Stat. 4056; 26 U.S.C. § 529A).".

(6) A new paragraph (7A) is added to read as follows:

"(7A) "Qualified disability expense" means expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including expenses for:

"(A) Education;

"(B) Housing;

"(C) Transportation;

"(D) Employment training and support;

"(E) Assistive technology and personal support services;

"(F) Health, prevention and wellness;

"(G) Financial management and administrative services;

"(H) Legal fees;

"(I) Expenses for oversight and monitoring;

"(J) Funeral and burial expenses; and

"(K) Other expenses that are consistent with the purposes of § 47-4811.01 and the Federal ABLE Act and approved by the CFO.".

(c) A new section 47-4811.01 is added to read as follows:

"§ 47-4811.01. ABLE Program Trust.

"(a)(1) In accordance with the Federal ABLE Act, there is established a qualified ABLE program, to be known as the ABLE Program Trust, that shall be established as a trust, which shall authorize an eligible individual to create an ABLE account to enable the eligible individual to benefit from the tax incentives provided under the Federal ABLE Act.

"(2)(A) The Chief Financial Officer, or the CFO's designee, shall serve as the trustee of the Trust.

"(B) The Trust shall receive and hold all payments and contributions received from any public or private source, and the earnings on those payments and contributions, including:

"(i) Gifts;

"(ii) Bequests;

"(iii) Endowments;

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"(iv) Federal and local grants; and

"(v) Any other funds intended for the Trust.

"(C) All deposits, and earnings on those deposits, held in the Trust shall constitute assets of the Trust and shall not be commingled with or revert to the General Fund of the District of Columbia or any special, emergency, or temporary fund of the District of Columbia at the end of any fiscal year or at any other time.

"(D) The Trust shall continue in existence as long as it holds any payments, contributions, or other funds or has any obligations and until its existence is terminated by law.

"(b) An eligible individual who seeks to save money for the payment of qualified disability expenses of a designated beneficiary may establish an ABLE account and shall enter into an ABLE Account Savings Agreement with the Trust.

"(c) The Chief Financial Officer shall take the action necessary to implement the ABLE Program Trust, promulgate regulations, and enter into ABLE Account Savings Agreements.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code §1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-162

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To adjust, on an emergency basis, due to congressional review, certain allocations requested in the Fiscal Year 2015 Budget Request Act pursuant to the Omnibus Appropriations Act, 2009.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2015 Second Revised Budget Request Congressional Review Emergency Adjustment Act of 2015".

Sec. 2. Pursuant to section 817 of the Omnibus Appropriations Act, 2009, approved March 13, 2009 (123 Stat. 699; D.C. Official Code § 47-369.02), the Fiscal Year 2015 budgets for the following agencies shall be adjusted by the following amounts:

TITLE II—DISTRICT OF COLUMBIA FUNDS—SUMMARY OF EXPENSES

$99,652,000 is removed from local funds (including an increase of $106,000 in dedicated taxes); $215,000 is increased in other funds; and $260,000 is increased in enterprise and other funds; to be allocated as follows:

Government Direction and Support

The appropriation for Governmental Direction and Support is decreased by $7,073,000 in local funds and increased by $162,000 in other funds; to be allocated as follows:

(1) Department of General Services. – ($5,500,000) is removed from local funds;

(2) Office of the Secretary. – ($100,000) is removed from local funds;

(3) Office of Contracting and Procurement. – ($500,000) is removed from local funds;

(4) Office of Risk Management. – ($200,000) is removed from local funds;

(5) Department of Human Resources. – ($84,000) is removed from local funds and $162,000 is added to be available in other funds;

(6) Office of Campaign Finance. – ($233,000) is removed from local funds;

(7) Office of the District of Columbia Auditor. – ($122,000) is removed from local funds;

(8) Office of the Attorney General – ($300,000) is removed from local funds;
(9) Contract Appeals Board – ($24,000) is removed from local funds; and
(10) Public Employee Relations Board – ($11,000) is removed from local funds.

Economic Development and Regulation

The appropriation for Economic Development and Regulation is decreased by $3,015,000 in local funds; to be allocated as follows:

(1) Department of Employment Services. – ($372,000) is removed from local funds;

(2) Office of the Deputy Mayor for Planning and Economic Development. – ($136,737) is removed from local funds;

(3) Office of Motion Picture and Television Development. – ($1,507,000) is removed from local funds; and

(4) Commission on the Arts and Humanities. – ($1,000,000) is removed from local funds.

Public Safety and Justice

The appropriation for Public Safety and Justice is decreased by $1,792,000 in local funds; to be allocated as follows:

(1) Office of Unified Communications. – ($1,401,000) is removed from local funds;

(2) Department of Forensic Sciences. – ($196,000) is removed from local funds; and

(3) Office of Administrative Hearings. – ($194,000) is removed from local funds.

Public Education

The appropriation for Public Education is decreased by $15,542,000 in local funds; to be allocated as follows:

(1) Office of the State Superintendent of Education. – ($6,182,000) is removed from local funds;

(2) Office of the Deputy Mayor for Education. – ($4,000,000) is removed from local funds;

(3) District of Columbia Public Charter Schools. – ($2,500,000) is removed from local funds;

(4) State Board of Education – ($10,000) is removed from local funds; and

(5) Special Education Transportation. – ($2,850,000) is removed from local funds.

Human Support Services

The appropriation for Human Support Services is decreased by $28,119,000 in local funds (including an increase of $106,000 in dedicated taxes) and increased by $53,000 in other funds; to be allocated as follows:

(1) Department of Human Services. – ($600,000) is removed from local funds;

(2) Department of Parks and Recreation. – ($1,750,000) is removed from local funds;

(3) Department of Health Care Finance. – ($25,085,000) is removed from local funds (including an increase of $106,000 in dedicated taxes) and $53,000 is added to be available in other funds;

(4) Department of Youth Rehabilitation Services. – ($463,000) is removed from local funds;

(5) Office on Latino Affairs. – ($10,000) is removed from local funds;

(6) Office on Asian and Pacific Islander Affairs. – ($6,000) is removed from local funds;

(7) Office of Veterans Affairs. – ($5,000) is removed from local funds; and

(8) Office on Aging. – ($200,000) is removed from local funds.

Public Works

The appropriation for Public Works is decreased by $175,000 in local funds; to be allocated as follows:

(1) District Department of Transportation. – $250,000 is added to be available in local funds; and

(2) Department of Motor Vehicles. – ($425,000) is removed from local funds.

Financing and Other

The appropriation for Financing and Other is decreased by $43,936,000 in local funds; to be allocated as follows:

(1) Repayments of Loans and Interest. – ($20,328,000) is removed from local funds;

(2) Certificates of Participation. – ($22,670,000) is removed from local funds;

(3) Non-departmental. – ($6,300,000) is removed from local funds;

(4) Workforce Investments. – ($8,000,000) is removed from local funds;

(5) TIF and PILOT Transfer. – $9,907,000 is added to be available in local funds; and

(6) Emergency and Contingency Reserve Funds. – $3,455,000 is added to be available in local funds.

Enterprise and Other Funds

The appropriation for Enterprise and Other Funds is increased by $260,000 in enterprise and other funds; to be allocated as follows:

(1) University of the District of Columbia. – $260,000 is added to be available in enterprise and other funds.

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Sec. 3. Of the Fiscal Year 2015 local funds within the budget of the Office of the Deputy Mayor for Public Safety and Justice, $700,000 shall be reallocated from the Justice Grants Administration program to the Community-Based Violence Reduction Fund.

Sec. 4. Applicability.

This act shall apply as of September 15, 2015.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-163

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, An Act To amend the Act entitled "An Act to classify the officers and members of the Fire Department of the District of Columbia, and for other purposes", approved June 20, 1906, and for other purposes, to permit members of the Fire and Emergency Medical Services Department that worked overtime hours during the 2013 Presidential Inauguration to be paid for work performed.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fire and Emergency Medical Services Department Presidential Inauguration Pay Rectification Emergency Amendment Act of 2015".

Sec. 2. Section 2(h) of An Act To amend the Act entitled "An Act to classify the officers and members of the Fire Department of the District of Columbia, and for other purposes", approved June 20, 1906, and for other purposes, approved June 19, 1948 (62 Stat. 498; D.C. Official Code § 5-405(h)), is amended by striking the phrase "calendar year 2013" and inserting the phrase "calendar year 2013; provided, that any member of the Fire and Emergency Medical Services Department that worked during pay period 4 of calendar year 2013 shall be paid for work performed during that period notwithstanding the restrictions in this section" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-164

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend, on an emergency basis, the Fiscal Year 2016 Budget Support Act of 2015, the Fiscal Year 2016 Budget Support Emergency Act of 2015, and various other acts to clarify provisions supporting the Fiscal Year 2016 budget.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2016 Budget Support Clarification Emergency Amendment Act of 2015".

Sec. 2. The Fiscal Year 2016 Budget Support Act of 2015, enacted on August 11, 2015 (D.C. Act 21-148; 62 DCR 10905), is amended as follows:

(a) Section 2032(e) is amended to read as follows:

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

""(g)(1) The Department of Employment Services shall collect, and publish on its website, aggregated information on the participants of the summer youth jobs program, including statistics on:

""(A) The demographics of participants;

""(B) Participants' activities in the program; and

""(C) Participants' employment following the end of the program.

""(2) The information required by paragraph (1) of this subsection shall be published by February 1, 2016 and annually thereafter.

""(3) It is the sense of the Council that the Department of Employment Services shall consult with the Council on revising the existing evaluation requirement for the summer youth jobs program to focus on program outcomes and program effectiveness.

""(4) With regard to the summer 2015 program only, the Mayor shall conduct an assessment and evaluation of employment outcomes as of December 31, 2015, for summer employment participants 22 through 24 years of age.

""(5) In Fiscal Year 2016, the District of Columbia Auditor shall conduct an evaluation of multiple years of the summer youth jobs program to assess whether the program has met and is meeting program objectives.".".

(b) Section 6192 is amended by striking the phrase "Under 22 years of age" and inserting the phrase "A resident of the District of Columbia under 22 years of age" in its place.

(c) Section 7024(d) is repealed.

ENROLLED ORIGINAL

(d) Section 7182 is amended by adding a new subsection (d) to read as follows:
"(d) This subtitle shall apply for tax years beginning after December 31, 2015.".
(e) Section 7242(b) is amended to read as follows:
"(b) Section 7154 (D.C. Official Code § 1-325.311) is amended to read as follows:
""Sec. 7154. WMATA Operations Support Fund.
""(a) There is established as a special fund the WMATA Operations Support Fund ("Fund") which shall be administered by the Chief Financial Officer in accordance with subsection (c) of this section.
""(b) Upon approval of the settlement by the District of Columbia Court of Appeals in *District of Columbia v. Expedia, Inc., et al.*, Nos. 14-CV-308, 14-CV-309, the full amount the District obtains from the settlement, minus the amounts designated for other purposes in sections 7152 and 7153 and in the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Emergency Act of 2015, passed on emergency basis on September 22, 2015 (Enrolled version of Bill 21-343), and the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Temporary Act of 2015, passed on 1st reading on September 22, 2015 (Engrossed version of Bill 21-344), shall be deposited in the Fund.
""(c) The monies in the Fund shall be available to fund extraordinary or unanticipated operating or capital needs of the Washington Metropolitan Area Transit Authority ("WMATA") that arise outside of WMATA's regular inter-jurisdictional subsidy allocation formulae.
""(d)(1) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.
""(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.".".

Sec. 3. The Fiscal Year 2016 Budget Support Emergency Act of 2015, effective July 27, 2015 (D.C. Act 21-127; 62 DCR 10201), is amended as follows:
(a) Section 7016(z)(4) is repealed.
(b) Section 7152 is amended by adding a new subsection (d) to read as follows:
"(d) This subtitle shall apply for tax years beginning after December 31, 2015.".

Sec. 4. Section 2(g) of the Youth Employment Act of 1979, effective January 5, 1980 (D.C. Law 3-46; D.C. Official Code § 32-241(g)), is amended as follows:
(a) Paragraph (4) is amended by striking the word "outcomes" and inserting the phrase "outcomes as of December 31, 2015," in its place.
(b) A new paragraph (5) is added to read as follows:
"(5) In Fiscal Year 2016, the District of Columbia Auditor shall conduct an evaluation of multiple years of the summer youth jobs program to assess whether the program has met and is meeting program objectives.".

Sec. 5. Section 2(h) of the School Transit Subsidy Act of 1978, effective March 6, 1979 (D.C. Law 2-152; D.C. Official Code § 35-233(h)), is amended by striking the phrase "Under 22 years of age" and inserting the phrase "A resident of the District of Columbia under 22 years of age" in its place.

Sec. 6. Section 7154 of the IPW Fund, Destination DC Marketing Fund, and WMATA Momentum Support Fund Establishment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-325.311), is amended to read as follows:

"Sec. 7154. WMATA Operations Support Fund.

"(a) There is established as a special fund the WMATA Operations Support Fund ("Fund"), which shall be administered by the Chief Financial Officer in accordance with subsection (c) of this section.

"(b) Upon approval of the settlement by the District of Columbia Court of Appeals in *District of Columbia v. Expedia, Inc., et al.*, Nos. 14-CV-308, 14-CV-309, the full amount the District obtains from the settlement, minus the amounts designated for other purposes in sections 7152 and 7153 and in the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Emergency Act of 2015, passed on emergency basis on September 22, 2015 (Enrolled version of Bill 21-343), and the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Temporary Act of 2015, passed on 1st reading on September 22, 2015 (Engrossed version of Bill 21-344), shall be deposited in the Fund.

"(c) The monies in the Fund shall be available to fund extraordinary or unanticipated operating or capital needs of the Washington Metropolitan Area Transit Authority ("WMATA") that arise outside of WMATA's regular inter-jurisdictional subsidy allocation formulae.

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

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

Sec. 7. Section 502(d) of the Sustainable DC Omnibus Act of 2014, effective December 17, 2014 (D.C. Law 20-142; 62 DCR 1243), is amended to read as follows:

"(d) Title III, Subtitle A, section 302(b) shall apply as of October 1, 2015.".

Sec. 8. Section 6(b) of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C Law 20-191; 62 DCR 3820), is amended to read as follows:

"(b) Section 5 shall apply as of October 1, 2015.".

Sec. 9. Section 401 of the Sustainable Solid Waste Management Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-154; 62 DCR 3600), is repealed.

Sec. 10. Chapter 13A of Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-1341 is amended as follows:

(1) Subsection (a)(1) is amended by striking the phrase ", postage prepaid, bearing a postmark from the United States Postal Service,".

(2) Subsection (b-1)(1) is amended by striking the phrase ", postage prepaid, bearing a postmark from the United States Postal Service,".

(b) Section 47-1353.01(a) is amended by striking the phrase ", postage prepaid, bearing a postmark from the United States Postal Service to the last known address of the owner" and inserting the phrase "to the person who last appears as the owner of the real property on the tax roll, at the last address shown on the tax roll, as updated by the filing of a change of address in accordance with § 42-405" in its place.

Sec. 11. Section 308(d)(1) of the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1160; D.C. Official Code §10-1103.07(d)(1)), is amended by striking the phrase "For periods beginning after June 30, 2015, interest on unpaid vault rent" and inserting the phrase "Beginning September 15, 2015, interest on any unpaid vault rent for any vault year" in its place.

Sec. 12. Section 2 of the Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01), is amended as follows:

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

(1) Subparagraph (E) is amended by striking the word "or";

(2) Subparagraph (F) is amended by striking the period and inserting the phrase "; or" in its place; and

(3) A new subparagraph (G) is added to read as follows:

"(G) A substitute teacher or a substitute aide who is employed by District of Columbia Public Schools for a period of 30 or fewer consecutive work days.".

(b) New paragraphs (9) and (10) are added to read as follows:

"(9) "Substitute aide" means an individual who is employed by District of Columbia Public Schools to provide instructional assistance (general, specialized, or concentrated) to students on a temporary basis when the regular instructional aide is unavailable. A substitute aide does not include an individual employed by District of Columbia Public Schools on a term or full-time assignment.

"(10) "Substitute teacher" means an individual who is employed by District of Columbia Public Schools to work as a classroom teacher on a temporary basis when the regular teacher is unavailable. A substitute teacher does not include an individual employed by District of Columbia Public Schools on a term or full-time assignment.".

Sec. 13. Applicability.

This act shall apply as of October 1, 2015.

ENROLLED ORIGINAL

Sec. 14. Fiscal impact statement.

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

Sec. 15. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-165

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend the District of Columbia Mental Health Information Act of 1978 to permit the sharing of mental health information with other health care providers to facilitate the coordination of services and care.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Behavioral Health Coordination of Care Amendment Act of 2015".

Sec. 2. Section 301 of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1203.01), is amended as follows:

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

"(b) Subject to subsection (c) of this section, a health care provider may disclose mental health information to another health care provider in connection with the diagnosis, evaluation, treatment, case management, or rehabilitation of a health or mental disorder or disease when and to the extent necessary to facilitate the delivery of health or professional services to the client. The authority to disclose mental health information under this subsection does not include the authority to disclose progress notes.".

(b) New subsections (c) and (d) are added to read as follows:

"(c)(1) A health care provider shall notify its clients, in plain language in writing, upon registration:

"(A) Whether the health care provider's privacy practices permit the disclosure of mental health information pursuant to subsection (b) of this section; and

"(B) That a client may request that his or her mental health information not be disclosed pursuant to subsection (b) of this section.

"(2) If a client requests that his or her mental health information not be disclosed, the health care provider shall not disclose the client's mental health information pursuant to subsection (b) of this section; provided, that nothing contained in this subsection shall prohibit a health care provider from disclosing mental health information pursuant to another provision of this act or pursuant to the Data-Sharing and Information Coordination Amendment Act of 2010, effective December 4, 2010 (D.C. Law 18-273; D.C. Official Code § 7-241 *et seq.*).

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

"(1) "Health care provider" means:

"(A) A person who is licensed, certified, or otherwise authorized under 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.*), to provide health care in the ordinary course of business or practice of a health occupation or in an approved education or training program;

"(B) A person licensed or permitted to practice a health occupation under the laws of another state; or

"(C) A facility where health or mental health services are provided to patients or recipients, including a hospital, clinic, office, nursing home, infirmary, health maintenance organization, medical laboratory, provider, as defined by section 102(27) of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.02(27)), or similar entity licensed, certified, or otherwise authorized by the District of Columbia.

"(2) "Progress notes" means notes recorded, in any medium, by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. The term "progress notes" excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

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provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-166

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To require the Department of Employment Services to submit to the Mayor and the Council a report on profiles of the District's unemployed and under-employed residents to aid the District in improving job training for future jobs.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Unemployment Profile Act of 2015".

Sec. 2. Unemployment profile report.

(a) Within one year of this act's applicability date, and by June 1 every year thereafter, the Department of Employment Services ("DOES") shall submit to the Mayor and the Council a report that profiles all the unemployed and under-employed residents, employers, and occupational needs in the District.

(b) DOES shall confer with other entities, such as the:

(1) Office of the Deputy Mayor for Planning and Economic Development;

(2) Department of Small and Local Business Development;

(3) Workforce Investment Council;

(4) Department of Human Services;

(5) Career Pathways Task Force; and

(6) Federal Bureau of Labor Statistics.

(c) The report shall include, at a minimum:

(1) The profiles of unemployed and under-employed residents 16 years of age and over, including information on the resident's:

(A) Age group;

(B) Ward of residence;

(C) Completed educational levels, including vocational and technical training;

(D) Work experience, work-place readiness, and training potential; and

(E) Any other information DOES considers necessary to meet the objectives of this act;

(2) Existing and future public and private workforce needs for jobs being created in the District; and

(3) Recommendations on how to improve job-training programs and employment outcomes in the District, taking into account the District-wide strategic plan and recommendations of the Career Pathways Task Force.

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Sec. 3. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-167

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to require that participants in the Public Workers' Compensation Program receive an increase in compensation whenever District workers receive an across-the-board increase in compensation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Injured Worker Fair Pay Amendment Act of 2015".

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

(a) The table of contents is amended by striking the phrase "Sec. 2341. Cost-of-living Adjustment of Compensation" and inserting the phrase "Sec. 2341. Adjustments in compensation for disability or death" in its place.

(b) Section 2341 (D.C. Official Code § 1-623.41) is amended to read as follows:

"Sec. 2341. Adjustments in compensation for disability or death.

"(a) The Mayor shall award an across-the-board increase in compensation for disability or death whenever an across-the-board increase is awarded pursuant to sections 1105 and 1106. The percentage amount and effective date of those increases shall be the same as for any increase granted under these sections.

"(b) For the purposes of this section, the term "across-the-board increase" means a general pay and salary increase of general applicability that applies to a claimant's service or specific pay schedule.

"(c) This section shall not apply to any collective bargaining agreements that are to the contrary.".

Sec. 3. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

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(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-168

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To amend the Grandparent Caregivers Pilot Program Establishment Act of 2005 to allow the Grandparent Caregivers Program subsidy to be transferred to a relative caregiver when a grandparent is no longer able to care for the child.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Grandparent Caregivers Program Subsidy Transfer Amendment Act of 2015".

Sec. 2. The Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 4-251.01) is amended as follows:

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

"(1A) "Godparent" means an individual identified in a sworn affidavit by a relative of the child by blood, marriage, domestic partnership, or adoption to have close personal or emotional ties with the child or the child's family that pre-dated the child's placement with the individual.".

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

"(3A) "Relative caregiver" means an individual who is the primary caretaker of the child and is related to the child by blood, marriage, domestic partnership, or adoption or is a godparent of the child.".

(b) A new section 103a is added to read as follows:

"Sec. 103a. Transfer of subsidy.

"(a) The Mayor may transfer subsidy payments to a relative caregiver upon the death or mental or physical incapacity of a grandparent if:

"(1) The relative caregiver files an application for a subsidy within 30 days of becoming the child's primary caregiver;

"(2) The relative caregiver has a strong commitment to caring for the child;

"(3) The child's parent does not reside in the relative caregiver's home; provided, that a parent may reside in the home without disqualifying the relative caregiver from receiving a subsidy if:

"(A) The parent has designated the relative caregiver to be the child's standby guardian pursuant to Chapter 48 of Title 16;

"(B) The parent is a minor enrolled in school; or

"(C) The parent is a minor with a medically verifiable disability under criteria prescribed by the Mayor pursuant to section 106;

"(4) The relative caregiver and all adults residing in the relative caregiver's home have submitted to criminal background checks;

"(5) The relative caregiver is a resident of the District as defined by section 503 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.03);

"(6) The relative caregiver has applied for Temporary Assistance for Needy Families benefits for the child;

"(7) The relative caregiver has entered into a subsidy agreement that includes a provision that no payments received under the agreement shall inure to the benefit of the child's parent but shall be solely for the benefit of the child;

"(8) The relative caregiver is not currently receiving a guardianship or adoption subsidy for the child;

"(9) The relative caregiver has provided a signed statement, sworn under penalty of perjury, that the information provided to establish eligibility pursuant to this section or rules issued pursuant to section 106 is true and accurate to the best belief of the relative caregiver; and

"(10) The relative caregiver has met any additional requirements of rules issued pursuant to section 106.

"(b)(1) The Mayor shall recertify the eligibility of each relative caregiver receiving a subsidy on at least an annual basis.

"(2) For the purposes of the recertification, a relative caregiver may be required to provide a signed statement, sworn under penalty of perjury, that the information provided to establish continued eligibility pursuant to this section or any rules issued pursuant to section 106 remains true and accurate to the best belief of the relative caregiver.

"(c)(1) The Mayor shall terminate subsidy payments to a relative caregiver at any time if:

"(A) The Mayor determines the relative caregiver no longer meets the eligibility requirements established by this section or by rules issued pursuant to section 106; or

"(B) There is a substantiated finding of child abuse or neglect against the relative caregiver resulting in the removal of the child from the relative caregiver's home.

"(2) A relative caregiver whose subsidy payments are terminated as a result of the removal of the child from the relative caregiver's home may reapply if the child has been returned to the relative caregiver's home.

"(d) Eligibility for subsidy payments under this section may continue until the child reaches 18 years of age.

"(e) The determination of whether to transfer a subsidy is solely within the discretion of the Mayor.

"(f) A relative caregiver whose application for a subsidy transfer has been denied shall not be entitled to a hearing under Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

"(g) A relative caregiver whose subsidy has been terminated shall be entitled to a fair hearing under the applicable provisions of Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*); provided, that a relative caregiver shall not be entitled to a hearing if the termination of a subsidy is based upon the unavailability of appropriated funds.

"(h) Any statement under this section made with knowledge that the information set forth in the statement is false shall be subject to prosecution as a false statement under section 404(a) of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405(a)).".

(c) Section 104 (D.C. Official Code § 4-251.04) is amended as follows:

(1) Subsection (b) is amended by striking the word "grandparent" and inserting the phrase "grandparent or relative caregiver" in its place.

(2) Subsection (c) is amended by striking the word "grandparent" wherever it appears and inserting the phrase "grandparent or relative caregiver" in its place.

(d) Section 105 (D.C. Official Code § 4-251.05) is amended by adding a new paragraph (5A) to read as follows:

"(5A) The number of subsidies transferred to a relative caregiver pursuant to section 103a;".

(e) Section 107(a) (D.C. Official Code § 4-251.07(a)) is amended by striking the word "grandparent" and inserting the phrase "grandparent or relative caregiver" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-169

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To authorize the disposition by lease of District-owned real property located at 1351 Nicholson Street, N.W., commonly known as the Old Brightwood School and designated for tax and assessment purposes as Lot 0846 in Square 2794.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "1351 Nicholson Street, N.W., Old Brightwood School Lease Amendment Act of 2015".

Sec. 2. Notwithstanding An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code §10-801 *et seq.*), and the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1800.01 *et seq.*), the Council authorizes the Mayor:

(1) To amend the existing lease agreement between the District of Columbia and Community Academy Public Charter School, Inc. (the "Lease"), dated March 1, 2001, for the real property located at 1351 Nicholson Street, N.W., commonly known as the Old Brightwood School and designated for tax and assessment purposes as Lot 0846 in Square 2794 (the "Property"), to:

(A) Adopt Friendship Public Charter School, Inc. as assignee of the lease;

(B) Extend the term of the Lease for a period of greater than 20 years; and

(C) Provide such other terms related to the extension of the Lease and transfer of the Property as are consistent with the letter of intent approved by both parties to the Lease; and

(2) To execute any associated transactional documents.

Sec. 3. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-170

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 2015

To authorize the disposition by lease of District-owned real property located at 4095 Minnesota Avenue, N.E., commonly known as the Woodson School and designated for tax and assessment purposes as Lot 0813 in Square 5078.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "4095 Minnesota Avenue, N.E., Woodson School Lease Amendment Act of 2015".

Sec. 2. Notwithstanding An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code §10-801 *et seq.*), and the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1800.01 *et seq.*), the Council authorizes the Mayor:

(1) To amend the existing lease agreement between the District of Columbia and Friendship Public Charter School, Inc. (the "Lease"), dated May 1, 2008, for the real property located at 4095 Minnesota Avenue, N.E., commonly known as the Woodson School and designated for tax and assessment purposes as Lot 0813 in Square 5078 (the "Property"), to:

(A) Extend the term of the Lease for a period of greater than 20 years; and

(B) Provide such other terms related to the extension of the Lease and transfer of the Property as are consistent with the letter of intent approved by both parties to the Lease; and

(2) To execute any associated transactional documents.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

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provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 16, 2015

ENROLLED ORIGINAL

A RESOLUTION

21-227

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To confirm the appointment of Mr. Victor Reinoso to the Board of Library Trustees.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Board of Library Trustees Victor Reinoso Confirmation Resolution of 2015".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. Victor Reinoso
616 Aspen Street, N.W.
Washington, D.C. 20012
(Ward 4)

as a member of the Board of Library Trustees, established by section 4 of An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896 (29 Stat. 244; D.C. Official Code § 39-104), succeeding Myrna Peralta, for a term to end January 5, 2019.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-228

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To confirm the appointment of Ms. Ricarda Ganjam to the Public Charter School Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Public Charter School Board Ricarda Ganjam Confirmation Resolution of 2015".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Ms. Ricarda Ganjam
436 Fourth Street, N.E.
Washington, D.C. 20002
(Ward 6)

as a member of the Public Charter School Board, established by section 2214 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.14), succeeding John H. McKoy, for a term to end February 24, 2019.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-229

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To approve multiyear Contract No. SO-15-016-0001071 with Hi-Tech Solutions, Inc. to provide Microsoft software licenses and software assurances for the Washington Convention and Sports Authority.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Hi-Tech Solutions, Inc. Contract Approval Resolution of 2015".

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code §1-204.51(c)(3)), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves multiyear Contract No. SO-15-016-0001071 between the Washington Convention and Sports Authority and Hi-Tech Solutions, Inc. to provide 2 Microsoft SQL Server 2014 Standard core based licenses and one Microsoft Visual Studio Professional license in an amount not to exceed $35,647 for a term beginning October 1, 2015 and ending September 30, 2018.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-230

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCPL-2015-C-0034 with Gilbane Building Company to provide a 685-calendar-day period for the performance of design-build services for the interim and new Cleveland Park library.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCPL-2015-C-0034 Approval and Payment Authorization Emergency Declaration Resolution of 2015".

Sec. 2. (a) There exists an immediate need to approve multiyear Contract DCPL-2015-C-0034 with Gilbane Building Company for design-build services for a new Cleveland Park library and test fits for the interim Cleveland Park library. The period of performance is 685 calendar days.

(b) On December 8, 2014, the District of Columbia Public Library ("DCPL") issued a request for proposals for a contractor to provide Phase 1 of the design-build services for the interim and new Cleveland Park library as part of a 2-step selection process.

(c) On March 17, 2015, the Technical Evaluation Panel compiled the Step 2 report recommending issuing the award to Gilbane Building Company and transmitted the results of the report to the DCPL Chief Procurement Officer. The Chief Procurement Officer, after performing her own independent assessment of each offeror, recommended that the contract be awarded to Gilbane Building Company, the highest-scored offeror in Step 2 selection process.

(d) The not-to-exceed total expenditure under this multiyear contract with Gilbane Building Company is in the amount of $2,674,032 for phases 1 and 2 of the contract.

(e) Council approval is necessary to allow the performance and payment for these vital services by Gilbane Building Company through an award of this multiyear contract.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCPL-2015-C-0034 Approval and Payment Authorization Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-231

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to amend the Day Care Policy Act of 1979 to establish a pilot, community-based Quality Improvement Network that will allow children and families to benefit from early, continuous, intensive, and comprehensive child development and family-support engagement services, including educational, health, nutritional, behavioral, and family-support services.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Early Learning Quality Improvement Network Emergency Declaration Resolution of 2015".

Sec. 2. (a) The District of Columbia leads the nation in providing high-quality pre-K to 3- and 4-year olds. In order to ensure that the District's youngest children are prepared when they enter our pre-K programs, a need exists to increase the quality child care and services that our 0-3 year old population receives.

(b) Currently, 3,542 children ages 0-3 years receive child care subsidy in the District of Columbia, and of those children, 38% come from families with no income, 63% come from families whose incomes are under 100% of the federal poverty level ("FPL"), and 75% come from families whose incomes are under 130% of the FPL. These are generally the District's most vulnerable residents who need comprehensive services and a continuity of care to ensure that they are poised to succeed when they enter pre-K and kindergarten.

(c) In order to address the needs of the population discussed in subsection (b) of this section and their families, the Office of the State Superintendent of Education ("OSSE") is creating a pilot Early Learning Quality Improvement Network ("QIN") composed of child development facilities that will serve as hubs to provide quality improvement technical assistance and comprehensive services to licensed child development centers and licensed child development homes. The child development centers and child development homes will provide low-income infants and toddlers high-quality, full-day, full-year comprehensive early learning and development services, including health, mental health, nutrition, and family engagement support, and a continuum of care.

(d) The pilot QIN will allow the District to demonstrate the effectiveness of an evidence-based model of infant and toddler child care to support children's learning and development outcomes. Federal studies of use of the Early Head Start standards have shown improved cognitive skills and social development by the age of 3 years. Thus, better preparation of the

District's youngest children will allow them to be more successful later in school, as well as lead to long-term positive social and educational outcomes.

(e) Under current District law, children receiving child care subsidy are not guaranteed continuity of care, as their subsidy status is linked to their guardian's employment status. Thus, if a parent loses his or her job, his or her child will lose subsidy and thus child care. This disruption is particularly detrimental to these children, as they are often the population with the greatest need for consistency and continuity. Thus, a need exists to allow the children in the pilot QIN to continue to receive child care subsidy, and therefore child care, in spite of the employment status of their guardian.

(f) In August 2014, OSSE applied for a federal Department of Health and Human Services ("HHS") grant to support the QIN. This federal grant requires recipients to provide continuity of care for children participating in the QIN. To date, OSSE has heard from the HHS that we are in the fundable range and thus anticipate receiving the federal grant, thereby further elevating the need for this legislation.

(g) Additionally, the federal HHS grant requires recipients to provide children enrolled in the QIN free child care and comprehensive services. Under current District law, this is not possible. While a child's family may receive subsidy to cover his or her child care, the law still requires the parent to pay for a portion of the child care based on a sliding scale adjusted for the guardian's income level. Therefore, in order to fulfill the requirement of the federal grant, as well as to ensure that the District's most vulnerable population has access to complete and comprehensive health, mental health, nutrition, and family engagement services, a need exists for the children included in the pilot QIN to be exempt from the payment requirement sections of the Day Care Policy Act of 1979.

(h) The permanent version of legislation to implement the QIN, the Early Learning Quality Improvement Network Amendment Act of 2015, as introduced on June 22, 2015 (Bill 21-271) was referred to the Committee on Education. The Committee on Education held a public hearing on the bill on October 1, 2015, and is expected to move the bill soon.

(i) This emergency legislation is necessary to prevent a gap in the law as the Early Learning Quality Improvement Network Temporary Amendment Act of 2014, effective March 13, 2015 (D.C. Law 20-238; 62 DCR 1326), expires on October 24, 2015. There will be 400 children enrolled in QIN by the end of October and it is important that this program continues for those children.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Early Learning Quality Improvement Network Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-232

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to order the closing of a portion of the public alley system in Square 369, bounded by M Street, N.W., 9th Street, N.W., L Street, N.W., and 10th Street, N.W., in Ward 2.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Closing of a Public Alley in Square 369, S.O. 13-07989, Emergency Declaration Resolution of 2015."

Sec. 2. (a) There exists an immediate need to approve emergency legislation to close a portion of the public alley system in Square 369, S.O. 13-07989.

(b) The alley closing will facilitate the development of a new mixed-use development project that includes the adaptive reuse of 8 historic buildings and their incorporation into a new 12-story mixed-use development, consisting of 2 Marriott hotels with ground-floor retail service uses (Phase I) and a residential building (Phase II). The alley-closing legislation requires the recordation of a covenant establishing new portions of the alley system by easement, accessing L Street, N.W., and 9th Street, N.W., and the applicant agrees to maintain such new portions of the alley system established by easement.

(c) The alley closing has received letters of no objection from all reviewing District agencies and utilities and is supported by Advisory Neighborhood Commission 2F.

(d) On September 22, 2015, the Council voted unanimously on first reading to enact the Closing of a Public Alley in Square 369, S.O. 13-07989, Act of 2015, passed on 2nd reading on October 6, 2015 (Enrolled version of Bill 21-217), permanent legislation to close the alley. Given the decision to go forward with the closing, there is no benefit to further delay. Securing the alley-closing approval is essential for the applicant to move forward in a timely manner with the development. Making the closing effective sooner will enable the project to proceed without the risk of delay.

Sec. 3 The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Closing of a Public Alley in Square 369, 13-07989, Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-233

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to order the closing of a portion of the public alley system in Square 197, bounded by L Street, N.W., 15th Street, N.W., M Street, N.W., and 16th Street, N.W., in Ward 2.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Closing of a Public Alley in Square 197, S.O. 15-23895, Emergency Declaration Resolution of 2015".

Sec. 2. (a) There exists an immediate need to approve emergency legislation to close a portion of the public alley system in Square 197, S.O. 15-23895.

(b) The alley closing will facilitate the development of a new office building that will serve as the headquarters building for Fannie Mae and will include ground-floor retail use. The alley-closing legislation requires the recordation of a covenant establishing an easement of between 5 feet and 8 feet in width to widen the existing north-south alley at the ground level to provide a continuous 20-foot wide passageway at grade to the public. In addition, the development will have a positive fiscal impact on the District of Columbia through the generation of substantial new property tax revenues as well as substantial sales and business tax revenues.

(c) The alley closing has received letters of no objection from all reviewing District agencies and utilities and is supported by Advisory Neighborhood Commission 2B.

(d) On September 22, 2015, the Council voted unanimously on first reading to enact the Closing of a Public Alley in Square 197, S.O. 15-23895, Act of 2015, passed on 2nd reading on October 6, 2015 (enrolled version of Bill 21-240), permanent legislation to close the alley. Given the decision to go forward with the closing, there is no benefit to further delay. Securing the alley-closing approval is essential for the applicant to move forward in a timely manner with the development. Making the closing effective sooner will enable the project to proceed without the risk of delay.

Sec. 3 The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Closing of a Public Alley in Square 197, S.O. 15-23895, Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-234

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to amend An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes to clarify that, for purposes of determining whether the referral of a minor student 14 years of age through 17 years of age to the Court Social Services Division of the Superior Court of the District of Columbia and to the Office of the Attorney General Juvenile Section for the accrual of 15 unexcused absences during School Year 2015-2016 is required, the term unexcused absence may mean an unexcused full school day absence.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Truancy Referral Emergency Declaration Resolution of 2015".

Sec. 2. (a) Over the past 5 years, the Council of the District of Columbia has passed 3 laws: the Safe Children and Safe Neighborhoods Educational Neglect Mandatory Reporting Amendment Act of 2010, effective October 26, 2010 (D.C. Law 18-242; 57 DCR 7555); the South Capitol Street Memorial Amendment Act of 2012, effective June 7, 2012 (D.C. Law 19-141; 59 DCR 3083); and the Attendance Accountability Amendment Act of 2013, effective September 19, 2013 (D.C. Law 20-17; 60 DCR 14501); with the goal of reducing chronic truancy.

(b) In particular, the Attendance Accountability Amendment Act of 2013 requires educational institutions to refer minor students 14 through 17 years of age to the Court Social Services ("CSS") Division of the Superior Court of the District of Columbia and to the Office of the Attorney General ("OAG") Juvenile Section after the student has accrued 15 unexcused absences within a school year. The goal of this mandate was to facilitate interagency coordination and to ensure that students who continuously miss full days of school receive the services and interventions that they need.

(c) However, students who miss more than 20% of the school day, and thus are not "present," as defined by section 2199 of Title 5-A of the District of Columbia Municipal Regulations, are being counted as absent. Because many of the District's high schools operate on a block schedule, this results in a student being considered absent if he or she misses one period of the school day even though he or she may be present the rest of the school day. If this occurs on 15 or more days, the student is referred to CSS and OAG, as the statute requires a referral after 15 unexcused absences. Thus, a student may be referred to CSS or OAG even

though he or she has not been chronically truant but instead has been chronically tardy. This has resulted in over-referrals to CSS, thereby saturating the system and diverting limited resources away from those students and families that are truly in need of CSS or OAG intervention.

(d) Chronic truancy is inherently different from chronic tardiness. Chronic truancy involves continual and complete absence from school, often signaling other issues, whether they be social, emotional, mental, familial, or academic, in a child's life, and thus necessitates a myriad of interventions from various District agencies. Chronic tardiness, on the other hand, may signal that a student needs aid in getting to school but does not necessitate serious intervention, such as referral to CSS and OAG.

(e) Without this immediate change, chronic truancy and chronic tardiness will continue to be conflated, thereby resulting in students who are not truly truant being identified as such and leading to their involvement with the juvenile justice system. While schools should work with youth who display a pattern of chronic tardiness, such behavior does not rise to the level of requiring a referral to the courts or to OAG. Thus, an emergency exists to clarify that for the purposes of CSS and OAG referral, an educational institution may ignore the "80/20" rule and consider an unexcused absence to be an unexcused full school day absence.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-235

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to clarify and improve the laws prohibiting wage theft and the enforcement of those laws.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Wage Theft Prevention Correction and Clarification Emergency Declaration Resolution of 2015".

Sec. 2. (a) There exists a need to amend the amendments made by the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157) ("Wage Theft Act"), to clarify when certain provisions shall take effect, clarify who may bring an action on behalf of an employee, amend criminal penalties, clarify when amounts in the Wage Theft Prevention Fund may be spent, authorize the Mayor to issue rules, and clarify how the Mayor shall make certain information available to manufacturers.

(b) These changes will enhance the ability of the District to enforce laws prohibiting wage theft, thus protecting victims of employers who fail to perform the basic obligation of paying employees for work completed.

(c) As a result of the need to make these necessary technical corrections to the Wage Theft Act, the Council previously enacted the Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2014, enacted on December 29, 2014 (D.C. Act 20-544; 62 DCR 243)("emergency legislation"), and the Wage Theft Prevention Correction and Clarification Temporary Amendment Act of 2014, effective March 13, 2015 (D.C. Law 20-240; 62 DCR 4511) ("temporary legislation").

(d) The temporary legislation is set to effective October 24, 2015. This emergency legislation is necessary to make sure there is no gap in the law until a permanent bill can be adopted by the Council.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-236

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to approve an extension of time to dispose of District-owned real property located at 5131 Nannie Helen Burroughs Avenue, N.E., known as the Strand Theater.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Extension of Time to Dispose of the Strand Theater Emergency Declaration Resolution of 2015".

Sec. 2. (a) On June 16, 2008, the Deputy Mayor for Planning and Economic Development awarded Washington Metropolitan Community Development Corporation ("Developer"), exclusive rights to negotiate to redevelop the District-owned real property located at 5131 Nannie Helen Burroughs Avenue, N.E., known for tax and assessment purposes as Lot 801 in Square 5196 ("Strand Theater"), along with an adjacent developer-owned property, as part of a commercial-use project that will include vibrant, street-front retail, a community and office space, and off-street parking.

(b) The Mayor has recently allocated an additional $1 million to improve the physical structure of Strand Theater to make it more attractive to potential tenants. An affordable housing project has been approved across the street, which will also increase the site's marketability. The closing on the property will not occur by October 6, 2015, the date upon which the Mayor's authority to dispose of the property expires under the Extension of Time to Dispose of the Strand Theater Temporary Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-162; 62 DCR 3608).

(c) The proposed legislation will extend the Mayor's authority to dispose of the property until October 6, 2016, to allow the parties to meet the closing and pre-development deadlines.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Extension of Time to Dispose of the Strand Theater Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-237

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

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

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Grocery Store Restrictive Covenant Prohibition Emergency Declaration Resolution of 2015".

Sec. 2. (a) In late 2014, it was reported that the Safeway at 4865 MacArthur Boulevard was offered for sale. In previous store and property sales, Safeway required that a purchaser of its property agree to a covenant prohibiting reuse of the property for a similar or analogous use; that is, that the property may not be used as a grocery store or retail food establishment of any kind. This type of restriction is harmful to residents. And, in the Macarthur Boulevard instance, it is harmful to the residents of the neighborhood as the next closest grocer is approximately 2.5 miles away.

(b) Restrictive covenants and other use restriction policies related to grocery stores are harmful and limit a community's access to fresh food.

(c) Maintaining a grocery store within an urban neighborhood is vital, particularly since many residents rely heavily on walking as a means of access to fresh food.

(d) Seniors and low-income residents especially rely on food retailers in close proximity to their homes as they often face mobility challenges or have limited access to vehicles.

(e) A lack of stores offering healthy food options leads to unhealthy food choices and related health problems.

(f) These restrictive covenants are contrary to the American standard of a free market and open competition.

(g) As development in the District continues and the city sees continued population increases, it is vital that every neighborhood has access to essential grocery-store services. Restrictive covenants undermine food-services competition and the advent of revitalized communities with large and small retailers, including independent butchers and bakeries.

(h) The circumstances described in this section underscore the need for the Council to act to prohibit such restrictive covenants and prevent the creation of food deserts in the District.

(i) Further, this emergency legislation is necessary as the Grocery Store Restrictive Covenant Prohibition Temporary Act of 2014, which is currently in effect, will expire on

ENROLLED ORIGINAL

October 18, 2015, and the permanent version of this emergency legislation has not yet been enacted by the Council.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Grocery Store Restrictive Covenant Prohibition Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-238

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to institute a moratorium on the issuance of permits for the construction or operation of automobile paint spray booths in Ward 5; provided, that the moratorium shall not apply to permits for automobile paint spray booths that meet certain conditions.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Ward 5 Paint Spray Booth Conditional Moratorium Emergency Declaration Resolution of 2015".

Sec. 2. (a) It is necessary to place a moratorium on the issuance of permits to construct and the issuance and renewal of permits to operate automobile paint spray booths within Ward 5 that do not meet certain standards.

(b) This emergency legislation addresses the immediate and longstanding concerns of residents who are adversely affected by the noxious and possibly injurious fumes emanating from already existing automobile paint spray booth operators. Not all operators are in compliance with current law and even those that are, due to the low threshold of certain regulations, persistently pollute the air with such fumes.

(c) There are several pending automobile paint spray booth permit applications in Ward 5 under consideration before the District Department of the Environment. The possible granting of these permits will exacerbate the problem by adding new operators within a ward with an already high concentration of such operators.

(d) The effects of the noxious and possibly injurious fumes emanating from automobile paint spray booths have a negative impact on property values within the ward, as well as the quality of life of its residents.

(e) The Council previously enacted the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135; 61 DCR 9968). One of the purposes of this law is to combat toxic odors. Despite that enactment, however, the complaints from residents due to such odors caused by automobile paint spray booths remain frequent and steady.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Ward 5 Paint Spray Booth Moratorium Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-239

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to amend section 47-1086 of the District of Columbia Official Code to clarify the exemption from the tenant opportunity to purchase requirements of the property owned by N Street Village, Inc., located at 1301 14th Street, N.W.; and to amend the N Street Village, Inc. Tax and TOPA Exemption Act of 2014 to make a conforming amendment.

RESOLVED, BY COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "N Street Village, Inc. Tax and TOPA Exemption Clarification Emergency Declaration Resolution of 2015".

Sec. 2. (a) In October 2014, the Council enacted the N Street Village, Inc. Tax and TOPA Exemption Amendment Act of 2014, effective March 11, 2015 (D.C. Law 20-229; 62 DCR 4500) ("Act").

(b) The applicability clause in the Act inadvertently included the entire bill, but the TOPA exemption need not be subject to funding.

(c) The renovation project has been approved by the Housing Finance Agency and the Department of Housing and Community Development for tax credits with a pending closing of late October. Part of the transaction includes a long -erm lease to a tax credit entity that without this emergency measure would trigger the tenants opportunity to purchase obligations pursuant to the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3404.01 *et seq.*).

(d) Emergency legislation is necessary to clarify that the applicability clause applies only to the provisions with a fiscal effect that have not been funded in a budget and financial plan.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the N Street Village, Inc. Tax and TOPA Exemption Clarification Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-240

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to amend the Retail Services Station Act of 1976 to provide that certain prohibitions on discontinuing or converting to another use a full service retail service station shall not apply to a retail service station for which an application was on file with the Zoning Commission between May 2, 2015 and August 1, 2015.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Gas Station Advisory Board Emergency Declaration Resolution of 2015".

Sec. 2. (a) In October 2014, the Council enacted the New Columbia Statehood Initiative and Omnibus Boards and Commissions Reform Amendment Act of 2014, effective May 2, 2015 (D.C. Law 20-271; 62 DCR 1884) ("Act").

(b) Part 2 of Title II of the Act increased the prohibitions against conversion of a full-service retail service stations by adding the prohibition that such a station cannot be discontinued or be converted into any other use without a waiver.

(c) It is important to protect the integrity of doing business in and with the District by protecting those businesses that were in the process of converting their property or business into a non-service station enterprise before the Act becoming law.

(d) Emergency legislation is necessary to provide that retail service stations that submitted an application with the Zoning Commission will not be impacted by the added prohibitions of the Act.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Gas Station Advisory Board Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-241

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to amend An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes to extend the time in which the Mayor may dispose of certain District-owned real property located at the northeast corner of Sixth and E Streets, S.W., known for tax and assessment purposes as Lot 0036 in Square 0494, and to make conforming amendments to the Fourth/Sixth and E Streets, S.W., Property Disposition Resolution of 2009.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Extension of Time to Dispose of Property Located at Sixth and E Streets, S.W. Emergency Declaration Resolution of 2015".

Sec. 2. (a) The District owns real property located at the northeast corner of Sixth and E Streets, S.W., known for tax and assessment purposes as Lot 0036 in Square 0494 ("Property") for the construction of a mixed-use development, which was approved by the Council pursuant to the Fourth/Sixth and E Streets, S.W., Property Disposition Approval Resolution of 2009, effective November 3, 2009 (Res. 18-290; 56 DCR 8799).

(b) E Street Development Group, LLC, a joint venture led by Potomac Investment Properties and CityPartners ("Developer") was selected in 2009, through a competitive RFP process, to redevelop property located at 4th and E Streets, S.W., and 6th and E Streets, S.W.

(c) The redevelopment was planned to include the construction of a new fire station (the "Fire Station") for Engine Company 13 within a mixed-use building and a new mixed-use commercial project on the site of the existing fire station.

(d) Phase 1 of the project is under construction and slated to deliver by early 2016. However, due to permit and weather delays, the Fire Station will not achieve final completion (Phase 2) under the current timeline by November 3, 2015.

(e) Due to Council recess and the congressional review period, there will not be enough time to obtain passage of permanent legislation authorizing the disposition of the Property.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Extension of Time to Dispose of Property Located at Sixth and E Streets, S.W., Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-242

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DHCF-2013-C-0137 with Magellan Medicaid Administration to provide pharmacy benefit management services on behalf of the District of Columbia for eligible Medicaid beneficiaries.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DHCF-2013-C-0137 Approval and Payment Authorization Emergency Declaration Resolution of 2015".

Sec. 2. (a) There exists an immediate need to approve a multiyear contract with Magellan Medicaid Administration to provide pharmacy benefit management services to eligible Medicaid beneficiaries on behalf of the District of Columbia.

(b) This multiyear contract with Magellan Medicaid Administration is in the not- to-exceed amount of $11,576,181.22, for a base period of 3 years from the date of award, with 2 additional option years.

(c) Approval is necessary to allow the District to receive the benefit of these vital services in a timely manner from Magellan Medicaid Administration. Without this approval, Magellan Medicaid Administration cannot be paid for services provided in excess of $1 million during the proposed period of performance.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DHCF-2013-C-0137 Approval and Payment Authorization Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-243

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. CW34843 with Covanta Fairfax, Inc. to provide solid waste disposal services to be performed at a licensed and permitted Waste-to-Energy facility and to authorize payment for services to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CW34843 Approval and Payment Authorization Emergency Declaration Resolution of 2015".

Sec. 2. (a) There exists a need to approve multiyear Contract No. CW34843 with Covanta Fairfax, Inc. to provide solid waste disposal services to be performed at a licensed and permitted Waste-to-Energy facility.

(b) The District proposes to enter into multiyear Contract No. CW34843 with Covanta Fairfax, Inc. for a base period of 5 years, with 2 3-year options. The estimated value of the base period is $35,661,880.

(c) Council approval is necessary pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code §1-204.51), to allow provision of these services. Without this approval, the District will not have a place to dispose of collected municipal solid waste.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CW34843 Approval and Payment Authorization Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-244

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to approve Modification No. 11 and proposed Modification No. 12 to Contract No. DDOE-2010- SEU-0001 with Vermont Energy Investment Corporation to continue to provide sustainable energy utility services and to authorize payment for the services to be received.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Contract No. DDOE-2010-SEU-0001 Approval and Payment Authorization Emergency Declaration Resolution of 2015".

Sec. 2. (a) There exists a need to approve Modification No. 11 and proposed Modification No. 12 to Contract No. DDOE-2010-SEU-0001 with Vermont Energy Investment Corporation to provide sustainable energy services to the District and to authorize payment for the services received and to be received under that contract.

(b) On September 25, 2015, by Modification No. 11, the Office of the Deputy Mayor for Planning and Economic Development, on behalf of the Department of Energy and Environment, exercised a partial option of option year 5 of Contract No. DDOE-2010-SEU-0001 to provide sustainable energy services for the period from October 1 through October 31, 2015, in a not-to-exceed amount of $990,000.

(c) Modification No. 12 is now necessary to exercise the remainder of option year 5 in the not-to exceed amount of $19,010,000 for the period from November 1, 2015, through September 30, 2016, resulting in a total not-to-exceed amount of $20 million for the period from October 1, 2015, through September 30, 2016.

(d) Council approval is necessary since these modifications increase the contract by more than $1 million during a 12-month period.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, Vermont Energy Investment Corporation cannot be paid for services provided in excess of $1 million for the contract period October 1, 2015, through September 30, 2016.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. DDOE-2010-SEU-0001 Approval and Payment Authorization Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-245

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to approve Modification Nos. M0005 and M0006 to Task Order No. CW30657 against GSA Federal Supply Schedule Contract No. GS-35F-0688R with On Point Technology, Inc. to supply, maintain, support, and modify the District On-Line Compensation System and to authorize payment for the goods and services received and to be received under the task order.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Modification Nos. M0005 and M0006 to Task Order No. CW30657 against GSA Federal Supply Schedule Contract No. GS-35-F-0688R Approval and Payment Authorization Emergency Declaration Resolution of 2015".

Sec. 2. (a) There exists an immediate need to approve Modification Nos. M0005 and M0006 to Task Order No. CW30657 (the "Task Order") issued by the District of Columbia (the "District") Office of Contracting and Procurement ("OCP"), on behalf of the District Department of Employment Services ("DOES"), against GSA Federal Supply Schedule Contract No. GS-35F-0688R and to authorize payment for the goods and services received, and to be received, under these modifications to the Task Order.

(b) On August 8, 2014, OCP awarded the Task Order to On Point Technology, Inc. ("On Point") to maintain, support and modify DOES's automated unemployment compensation benefits system, known as the District On-Line Compensation System. OCP issued the Task Order against On Point's GSA Federal Supply Contract No. GS-35F-0688R. The period of performance under the Task Order was 30 days, from August 11, 2014 through September 11, 2014, and the Task Order was in the not-to-exceed contract amount of $355,391.00.

(c) By Modification No. M0001, dated September 10, 2014, OCP extended the term of the Task Order, which was then in the form of a Letter Contract, from September 11, 2014 through October 31, 2014 and increased the not-to-exceed amount of the Task Order to $939,595.57.

(d) By Modification No. M0003, dated October 21, 2014, OCP extended the term of the Task Order from October 31, 2014 through November 6, 2014 and increased the not-to-exceed amount of the Task Order to $998,016.02.

(e) On November 4, 2014, after receiving Council approval, OCP definitized the Task Order and partially awarded the base year for the 10-month period from August 11, 2014 through June 23, 2015 because On Point's Federal Supply Contract No. GS-35F-0688R was set to expire

on June 23, 2015. The not-to-exceed amount for the entire base year of the Task Order was $4,264,690.00.

(f) On June 16, 2015, by Modification No. PO-0007, GSA exercised option period 2 of On Point's Federal Supply Contract No. GS-35F-0688R for the 5-year period of performance from June 24, 2015 through June 23, 2020.

(g) By Modification No. M0004, dated June 15, 2015, OCP modified the period of performance for the base year of the Task Order to be August 11, 2014 through August 10, 2015, in the not-to-exceed amount of $4,323,110.52.

(h) By Modification No. M0005, dated August 5, 2015, OCP partially exercised option year one of the Task Order and extended the term of the Task Order for the period from August 11, 2015 through October 10, 2015, in the not-to-exceed amount of $619,985.10.

(i) By proposed Modification No. M0006, OCP intends to exercise the remainder of option year one of the Task Order to extend the term of the Task Order for the period from October 11, 2015 through August 10, 2016, in the not-to-exceed amount of $4,435,278.00.

(j) Council approval of Modification Nos. M0005 and M0006 to the Task Order is necessary pursuant to section 451(b)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)(1)), because the expenditures under the modifications to the Task Order are in an amount in excess of $1,000,000 during a 12-month period.

(k) Approval of Modification Nos. M0005 and M0006 to the Task Order is necessary to allow the continuation of these vital services. Without this approval, On Point cannot be paid for goods and services provided in excess of $1,000,000.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification Nos. M0005 and M0006 to Task Order No. CW30657 against GSA Federal Supply Schedule Contract No. GS-35-F-0688R Approval and Payment Authorization Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-246

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2015

To declare the existence of an emergency with respect to the need to authorize the Fire and Emergency Medical Services Department to contract with third parties to provide supplemental pre-hospital medical care and transportation for Basic Life Support calls for service.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Emergency Medical Services Contract Authority Emergency Declaration Resolution of 2015".

Sec. 2. (a) Under existing law, the Fire and Emergency Medical Services Department ("FEMS") is required to provide pre-hospital medical care and transportation in the District.

(b) The District's current emergency medical services call volume is at a historic high and increases every month.

(c) The high call volume for emergency medical services provided by FEMS is having an impact on FEMS's availability to respond to all emergencies.

(d) Often patient transports are used for lower priority services provided by FEMS, with many requiring only a Basic Life Support ("BLS") level of care.

(e) Emergency response units are required to remain out-of-service while transporting and transferring low-acuity patients to a hospital's care. The average time at the hospital ranges from 45 to 56 minutes and impedes FEMS personnel's ability to fully prepare for the next emergency call.

(f) As a result, there are times when there are no ambulances available to respond to emergencies.

(g) Council approval of emergency legislation allowing FEMS to contract with third parties to provide BLS transport services will allow FEMS to respond to all calls, including critical and time-sensitive calls for service.

(h) Additionally, each third-party contractor is required to provide a quarterly report to the Council so that the Council may evaluate the effectiveness of the services rendered.

(i) FEMS will provide, within 4 months after the date of a contract award, a report to the Council that includes its efforts to educate the public on requesting emergency services and a synopsis of statistics related to personnel training, patient fees, and ambulance services.

ENROLLED ORIGINAL

(j) The Office of Unified Communications will provide, within 4 months after the date of a contract award, a report on average dispatch times and how the office re-routes non-emergency calls.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Emergency Medical Services Contract Authority Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

BILLS

B21-442 Political Action Committee Contribution Regulation Amendment Act of 2015

Intro. 10-20-15 by Councilmembers Grosso, Allen, Cheh, and Bonds and referred to the Committee on Judiciary

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B21-443 Condominium Owner Bill of Rights Amendment Act of 2015

Intro. 10-20-15 by Councilmembers Bonds, Cheh, and Todd and referred to the Committee on Housing and Community Development

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B21-444 Death Certificate Gender Identity Recognition Amendment Act of 2015

Intro. 10-20-15 by Councilmember Cheh and referred to the Committee on Judiciary with comments from the Committee on Health and Human Services

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PROPOSED RESOLUTIONS

PR21-381 District of Columbia Health Benefit Exchange Authority Executive Board Tamara L. Watkins Confirmation Resolution of 2015

Intro. 10-16-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

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PR21-382 Sense of the Council Supporting a "Build First" Model of Reinvestment in Greenleaf Public Housing Resolution of 2015

Intro. 10-20-15 by Councilmember Allen and Retained by the Council

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT
NOTICE OF OVERSIGHT ROUNDTABLE

1350 Pennsylvania Avenue, NW, Washington, DC 20004

COMMITTEE ON EDUCATION and
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

ANNOUNCES AN OVERSIGHT ROUNDTABLE

on

DCPS School Modernizations

on

Monday, November 2, 2015
11:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso, chairperson of the Committee on Education, and Councilmember Mary Cheh, chairperson of the Committee on Transportation and the Environment announces the scheduling of a joint public oversight roundtable on DC Public Schools (DCPS) school modernizations. The hearing will be held at 11:00 a.m. on Monday, November 2, 2015 in Hearing Room 412 of the John A. Wilson Building.

The purpose of this roundtable is to receive an update on the new practices and procedures being used by DCPS and the Department of General Services (DGS) with regard to school modernizations. Further, this will be an opportunity for DCPS and DGS to update the Council and the public on capital projects from summer 2015, ongoing projects, and projects slated for 2016.

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, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Thursday, October 29. 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 November 16, 2015.

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 21-361, Interagency Council on Homelessness Christina M. Repress Confirmation Resolution of 2015;

PR 21-362, Interagency Council on Homelessness Elizabeth Schroeder Stribling Confirmation Resolution of 2015;

PR 21-363, Interagency Council on Homelessness Michael L. Ferrell Confirmation Resolution of 2015;

PR 21-364, Interagency Council on Homelessness Deborah Shore Confirmation Resolution of 2015;

PR 21-365, Interagency Council on Homelessness Adam Rocap Confirmation Resolution of 2015;

PR 21-366, Interagency Council on Homelessness Nechama Masliansky Confirmation Resolution of 2015;

PR 21-367, Interagency Council on Homelessness Eric J. Sheptock Confirmation Resolution of 2015;

PR 21-368, Interagency Council on Homelessness Donald L. Brooks Confirmation Resolution of 2015;

PR 21-369, Interagency Council on Homelessness Albert Townsend Confirmation Resolution of 2015;

PR 21-370, Interagency Council on Homelessness Margaret A. Hacskaylo Confirmation Resolution of 2015;

PR 21-371, Interagency Council on Homelessness Margaret Riden Confirmation Resolution of 2015;

PR 21-372, Interagency Council on Homelessness Jill Carmichael Confirmation Resolution of 2015

on

Wednesday, November 4, 2015
11:30 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public roundtable of the Committee of the Whole on PR 21-361 through PR 21-372, confirmation resolutions for mayoral appointments to the Interagency Council on Homelessness ("ICH") for: Christina Repress; Elizabeth Schroeder Stribling; Michael L. Ferrell; Deborah Shore; Adam Rocap; Nechama Masliansky; Eric J.

Sheptock; Donald L. Brooks; Albert Townsend; Margaret A. Hacskaylo; Margaret Riden; and Jill Carmichael. The hearing will be held at 11:30 a.m. on Wednesday, November 4, 2015 in Hearing Room 412 of the John A. Wilson Building.

The purpose of this roundtable is to provide the public an opportunity to comment on the Mayor's nominees for appointment to the ICH. The ICH facilitates interagency, cabinet-level leadership in planning, policymaking, program development, provider monitoring, and budgeting for what is known as the continuum of care of homeless services.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or to email Alana Intrieri, Special Counsel to the Chairman, at aintrieri@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, October 30, 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 30, 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. Copies of PR 21-361 through PR 21-372 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 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 Wednesday, November 18, 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

Reprog. 21-114: Request to reprogram $26,000,000 of Fiscal Year 2015 Local funds budget authority from the Department of General Services (DGS), the Department of Employment Services (DOES), the Unemployment Compensation Fund (UCF), the Department of Health Care Finance (DHCF), the District Department of Transportation (DDOT), the Workforce Investments Fund (WIF), and the District of Columbia Housing Authority (DCHA) Subsidy, to the Pay-As-You-Go (Paygo) Capital Fund to support various capital projects. In addition this request to reprogram $21,000,000 of Capital funds budget authority from DGS to various capital projects was filed in the Office of the Secretary on October 15, 2015.

RECEIVED: 14 day review begins October 16, 2015

Reprog. 21-115: Request to reprogram $1,439,572 of Fiscal Year 2015 Local 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 October 19, 2015. This reprogramming is needed to advance the redesign of the intersection of Martin Luther King Jr. Avenue, SE and Malcolm X Avenue, SE in Ward 8.

RECEIVED: 14 day review begins October 20, 2015

Reprog. 21-116: Request to reprogram $1,424,922 of Fiscal Year 2015 Local 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 October 19, 2015. This reprogramming is needed to advance the Metropolitan Branch Trail project from Brookland to the northern boundary of the District, creating a connected trail from Union Station to Silver Spring, Maryland.

RECEIVED: 14 day review begins October 20, 2015

Reprog. 21-117: Request to reprogram $2,255,469 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 Secretary on October 19, 2015. This reprogramming ensures that DDOT is able to procure awarded, capital-eligible community projects in performance parking zones.

RECEIVED: 14 day review begins October 20, 2015

Reprog. 21-118: Request to reprogram $1,100,000 of Fiscal Year 2015 Special Purpose Revenue funds budget authority from the Department of Motor Vehicles (DMV) to the Department of Public Works (DPW) was filed in the Office of the Secretary on October 19, 2015. This reprogramming ensures that DPW will be able to relieve a spending pressure in the personal services and to replenish road salt supplies for the D.C. Snow Program.

RECEIVED: 14 day review begins October 20, 2015

Reprog. 21-119: Request to reprogram $1,602,791 of Fiscal Year 2015 Local funds budget authority from the Department of General Services (DGS) was filed in the Office of the Secretary on October 19, 2015. This reprogramming ensures that there is adequate funding for projected increases primarily in overtime costs due to increased maintenance issues within the facility Operations division.

RECEIVED: 14 day review begins October 20, 2015

Reprog. 21-120: Request to reprogram $570,000 of Fiscal Year 2015 Local funds budget authority within the Office of the Chief Financial Officer (OCFO) was filed in the Office of the Secretary on October 19, 2015. This reprogramming covers higher-than anticipated salaries in certain program areas.

RECEIVED: 14 day review begins October 20, 2015

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	October 23, 2015
Petition Date:	December 7, 2015
Roll Call Hearing Date:	December 21, 2015
Protest Hearing Date:	February 17, 2016
License No.:	ABRA-100515
Licensee:	Stephen Lawrence
Trade Name:	600 T
License Class:	Retailer's Class "C" Tavern
Address:	600 T Street, N.W.
Contact:	Jean Claude Garrat: (202)262-4740

WARD 6 ANC 6E SMD 6E02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for February 17, 2016 at 4:30pm.

NATURE OF OPERATION

Light snacks, chips and nuts will be offered. No entertainment, no nude performances, no dancing. Number of seats is 25. Total number of seats is 31.

HOUR OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday 12pm – 2am, Monday through Thursday 5pm – 2am, Friday 5pm – 3am and Saturday 12pm – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: October 23, 2015
Petition Date: December 7, 2015
Hearing Date: December 21, 2015

License No.: ABRA-093449
Licensee: District Falafel I, LLC
Trade Name: Amsterdam Falafelshop
License Class: Retailer's Class "D" Restaurant
Address: 1830 14th Street, N.W.
Contact: Dane Cherry: (202) 232-6200

WARD 2 ANC 2B SMD 2B09

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 has requested a Class Change from Retailer's "D" Restaurant to Retailer's "D" Tavern.

HOURS OF OPERATION
Sunday & Monday 10 am - 12 am, Tuesday & Wednesday 10 am - 2:30 am, Thursday 10 am - 3 am, Friday & Saturday 10 am - 4 am.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday & Monday 10 am - 12 am, Tuesday through Thursday 10 am – 1 am, Friday & Saturday 10 am – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Posting Date: **October 23, 2015
Petition Date: **December 7, 2015
Hearing Date: **December 21, 2015

License No.: ABRA-093308
Licensee: Ultimo, LLC
Trade Name: Divino Grill
License Class: Retailer's Class "C" Restaurant
Address: 1633 17th Street, N.W.
Contact: Felix Nelson Ayala: (202) 232-0437

WARD 2 ANC 2B SMD 2B04

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 is seeking to request an Entertainment Endorsement. Entertainment to include a live drag show with DJ.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11:30 am - 11 pm, Friday & Saturday 11:30 am – 2 am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11:30 am - 11 pm, Friday & Saturday 11:30 am – 12 am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday and Wednesday 9:00 pm - 11 pm, Friday & Saturday 9:00 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

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

License No.: ABRA-093308
Licensee: Ultimo, LLC
Trade Name: Divino Grill
License Class: Retailer's Class "C" Restaurant
Address: 1633 17th Street, N.W.
Contact: Felix Nelson Ayala: (202) 232-0437

WARD 2 ANC 2B SMD 2B04

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 is seeking to request an Entertainment Endorsement. Entertainment to include a live drag show with DJ.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11:30 am - 11 pm, Friday & Saturday 11:30 am – 2 am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11:30 am - 11 pm, Friday & Saturday 11:30 am – 12 am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday and Wednesday 9:00 pm - 11 pm, Friday & Saturday 9:00 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: October 23, 2015
Petition Date: December 7, 2015
Hearing Date: December 21, 2015
Protest Hearing: February 17, 2016

License No.: ABRA-098384
Licensee: Dolci Gelati Café LLC
Trade Name: Dolci Gelati Café
License Class: Retail Class "D" Tavern
Address: 1420 8th Street, N.W.
Contact: Sierra Georgia: 202-603-4845

WARD 6 ANC 6E SMD 6E01

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. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on February 17, 2016 at 4:30 pm.

NATURE OF OPERATION
New tavern. Café is an Italian Gelateria, specializing in homemade, all-natural artisan gelato and sorbet. Serving a variety of fresh pastries, panini, and espresso. Total Occupancy Load is 35.

HOURS OF OPERATON
Sunday through and Saturday 10 am – 10 pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 12 pm – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: October 16, 2015
Petition Date: November 30, 2015
Hearing Date: December 14, 2015

License No.: ABRA-091607
Licensee: Dunya, LLC
Trade Name: Dunya Restaurant & Lounge
License Class: Retailer's Class "C" Tavern
Address: 801 Florida Avenue, N.W.
Contact: Siyamak Sadeghi: 240-602-6667

WARD 1 ANC 1B SMD 1B02

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

NATURE OF SUBSTANTIAL CHANGE
Request to add Entertainment Endorsement that will include occasional DJ or Live Band.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR PREMISES AND SUMMER GARDEN
Sunday through Thursday 8:00am to 2:00am, Friday and Saturday 8:00am to 3:00am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday 6:00pm to 2:00am, Friday through Saturday 6:00pm to 3:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	October 23, 2015
Petition Date:	December 7, 2015
Hearing Date:	December 21, 2015
Protest Hearing:	February 17, 2016

License No.:	ABRA-100252
Licensee:	Glen's Shaw, LLC
Trade Name:	Glen's Garden Market Shaw
License Class:	Retailer's Class "B"
Address:	1924 8th Street, N.W., Suite 155
Contact:	Andrew Kline: 202-686-7600

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, 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 on February 17, 2016 at 1:30 pm.

NATURE OF OPERATION

New full service market specializing in locally grown and raised produce, meat, poultry and dairy products. Café will be communal eating space. Market and café will sell locally made beer and wine for on and off premise consumption.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR PREMISES AND SIDEWALK CAFE

Sunday through and Saturday 8 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: October 23, 2015
Petition Date: December 7, 2015
Hearing Date: December 21, 2015
Protest Hearing: February 17, 2016

License No.: ABRA-100251
Licensee: Glen's Shaw, LLC
Trade Name: Glen's Garden Market Shaw
License Class: Retailer's Class "D" Restaurant
Address: 1924 8th Street, N.W., Suite 155
Contact: Andrew Kline: 202-686-7600

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, 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 on February 17, 2016 at 1:30 pm.

NATURE OF OPERATION
New cafe will be a communal eating space. Market and café will sell locally made beer and wine for on and off premise consumption. Total Occupancy Load is 86. Sidewalk Café with 51 seats.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR PREMISES AND SIDEWALK CAFE
Sunday through and Saturday 8 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: October 23, 2015
Petition Date: December 7, 2015
Hearing Date: December 21, 2015
Protest Hearing: February 17, 2016

License No.: ABRA-100511
Licensee: Heurich House Foundation
Trade Name: Heurich House Museum
License Class: Retail Class "C" Multi-Purpose Facility
Address: 1307 New Hampshire Avenue, N.W.
Contact: Kimberly Bender 617-308-3598

WARD 2 ANC 2B SMD 2B06

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. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on February 17, 2016 at 1:30 pm.

NATURE OF OPERATION

New Multi-Purpose. Public programming includes guided tours and a wide variety of events (classical music performances, lectures, cultural celebrations, exhibitions). One of the museum's programmatic themes is a focus on local craft brewing, beer is an important part of the business operation; the museum regularly hosts educational beer-focused public programs. All of our ticketed events include food from snacks (soft German pretzels, cookies, cheese platters) to full meals (sausage sandwich with pretzels and sauerkraut).
Occupancy load is 350.

HOURS OF OPERATION

Sunday None
Monday through Tuesday 9 am – 6 pm, Wednesday through Saturday 9 am – 11 pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday None
Monday through Tuesday 12 pm – 6 pm, Wednesday through Saturday 12 pm – 11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: October 23, 2015
Petition Date: December 7, 2015
Hearing Date: December 21, 2015

License No.: ABRA-094776
Licensee: Texas Convenience Store, LLC
Trade Name: Texas Grocery Store
License Class: Class "B" Grocery
Address: 4350 Texas Avenue, S.E.
Contact: Nahom Habtemicael: 301-807-8094

WARD 7 ANC 7F SMD 7F02

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

NATURE OF SUBSTANTIAL CHANGE
Request a Class Change from a Retailer's "B" Grocery to a Retailer's "A" Liquor Store.

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES
Sunday through Saturday 7:30am to 9:30pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: October 23, 2015
Petition Date: December 7, 2015
Hearing Date: December 21, 2015

License No.: ABRA-099536
Licensee: 1327 Connecticut, LLC
Trade Name: The Manor
License Class: Retailer's Class "C" Restaurant
Address: 1327 Connecticut Avenue, N.W.
Contact: O'Neal J. Grey: 202-674-5520

WARD 2 ANC 2B SMD 2B07

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

NATURE OF SUBSTANTIAL CHANGE
Request a Class Change from a Retailer's "C" Restaurant to a Retailer's "C" Tavern.

CURRENT HOURS OF OPERATION
Sunday through Thursday 8:00am to 2:00am, Friday through Saturday 8:00am to 3:00am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday 10:00am to 2:00am, Monday through Thursday 8:00am to 2:00am, Friday through Saturday 8:00am to 3:00am

CURRENT HOURS OF LIVE ENTERTAINMENT
Sunday 10:00am to 2:00am, Monday through Thursday 6:00pm to 2:00am, Friday through Saturday 6:00pm to 3:00am

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, DECEMBER 22, 2015
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD SIX

19138 ANC-6E — **Application of James Suh**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to allow the construction of a flat in the R-4 District at premises 441 Rhode Island Avenue N.W. (Square 508N, Lots 16 and 1235).

WARD EIGHT

19142 ANC-8B — **Application of First FSK Limited Partnership**, pursuant to 11 DCMR § 3104.1, for a special exception from the rear yard requirements under § 774.2, to permit a child development center for 120 children and six staff in the C-3-A District at premises 2503 Good Hope Road S.E. (PAR 214, Lot 138).

WARD SIX

19145 ANC-6A — **Application of Linden Court Partners, LLC**, pursuant to 11 DCMR § 3103.2, for variances from the FAR requirements under § 771, the lot occupancy requirements under § 772, the rear yard requirements under § 774, the nonconforming structure requirements under § 2003, and the height requirements under § 2507.4, to allow the construction of five one-family dwellings and a neighborhood-servicing retail establishment in the C-2-A District at premises 1313-1323 Linden Court N.E. (Square 1027, Lots 57, 58, 59, 60, 61, and 112).

WARD ONE

19148 ANC-1A — **Application of Park View Condominium Ventures LLC**, pursuant to 11 DCMR § 3104.1, for a special exception under § 337 for the expansion of an existing residential building into a 12-unit apartment building not meeting the requirements of § 330.7 in the R-4 District at premises 525 Park Road N.W. (Square 3037, Lot 55).

WARD SEVEN

19149 ANC-7D **Application of Romi Satoh**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to allow an existing church to use a separate lot for 13 parking spaces in the R-2 District at premises 4619 Quarles Street N.E. (Square 5165, Lot 47).

WARD THREE

19150 ANC-3C **Application of Sue Ellen Clifford and Paul M Rodgers**, pursuant to 11 DCMR § 3104.1, for a special exception from the side yard requirements under § 406.1, and the non-conforming structure requirements under § 2001.3, to construct a two-story rear addition to an existing one-family dwelling in the NO/R-1-B District at premises 3530 Edmunds Street N.W. (Square 1937, Lot 29).

WARD SIX

19161 ANC-6E **Application of 1537 6th Street NW, LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to construct three flats in the R-4 District at premises 1537-1541 6th Street N.W. (Square 478, Lots 56, 57, and 58).

WARD FOUR

18400A ANC-4A **Application of Jewish Primary Day School**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot occupancy requirements under § 403, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, and a special exception from the private school requirements under § 206, to increase the enrollment cap to 350 students and 72 staff and construct an addition to the existing school building in the R-1-B and R-5-A Districts at premises 6045 16th Street N.W. (Square 2726, Lots 825 and 831).

PLEASE NOTE:

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

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning.

Pursuant to Subsection 3117.4, of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

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

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

MARNIQUE Y. HEATH, CHAIRMAN, FREDERICK L. HILL, VICE CHAIRPERSON, JEFFREY L. HINKLE, AND A MEMBER OF THE ZONING COMMISSION, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JANUARY 12, 2016
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD SEVEN

19151 ANC-7F — **Application of Saratoga Housing Inc**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to construct a three-story, one-family dwelling in the R-2 District at premises 402 Burbank Street S.E. (Square 5398E, Lot 30).

WARD SIX

19153 ANC-6B — **Application of Independence Avenue Investments LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to commit parking spaces to a car-sharing service in the R-4 District at premises (rear) 1524 Independence Avenue S.E. (Square 1072, Lots 2025-2032).

WARD ONE

19154 ANC-1C — **Application of District Design & Development Argonne, LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the minimum parking dimension requirements under § 2115.1, to convert an existing flat into a four-unit apartment house in the R-5-B District at premises 1636 Argonne Place, N.W. (Square 2589, Lot 460).

WARD THREE

19155 ANC-3C — **Appeal of ANC 3C, et al.**, pursuant to 11 DCMR §§ 3100 and 3101, from an August 13, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1511364, to permit a 10-space parking area in the R-2 District at premises 2926 Porter Street N.W. (Square 2068, Lot 95).

WARD FOUR

19157 ANC-4D **Application of DC Department of General Services**, pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under § 411.11, to allow roof structures not meeting the setback requirements under § 400.7, to permit the installation of new roof-mounted mechanical equipment to an existing public high school in the R-3 District at premises 5200 2nd Street N.W. (Square 3327, Lot 800).

WARD TWO

19158 ANC-2E **Application of Talal (P2) Ventures LLC**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the distance from a residence district requirements under § 734.2, and a special exception from the food delivery service use requirements under § 734, to establish a food delivery service use in the C-2-A District at premises 1815 Wisconsin Avenue N.W. (Square 1299, Lot 327).

WARD SIX

19159 ANC-6C **Application of Edward and Jessica Long**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, the open court requirements under § 406, and the non-conforming structure requirements under § 2001.3, and a special exception from the height requirements under § 400.23, to construct a third-floor addition with roof deck to an existing one-family dwelling in the R-4 District at premises 650 F Street N.E. (Square 860, Lot 7).

PLEASE NOTE:

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

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than**

14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form. This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

MARNIQUE Y. HEATH, CHAIRMAN, FREDERICK L. HILL, VICE CHAIRPERSON, JEFFREY L. HINKLE, AND A MEMBER OF THE ZONING COMMISSION, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, December 7, 2015, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 14-24 (1900 11th Street NW, LLC — Map Amendment @ Square 2848, Lots 39, 40, 72 and 838 and Variance Relief from the Required Size of Parking Spaces @ Lots 39 and 40)

THIS CASE IS OF INTEREST TO ANC 1A

On December 23, 2014, the Office of Zoning received an application from 1900 11th Street, NW, LLC (the "Applicant"). The Applicant requested approval of an amendment to the Zoning Map to rezone property located on Lots 39, 40, 72, and 838 in Square 2848 from the R-4 Zone District to the R-5-B Zone District in order to construct a five story apartment building with eight apartments on Lots 39 and 40[1].

The R-5-B Zone District permits matter-of-right moderate development of general residential uses, including one-family dwellings, flats, and apartment buildings.

The R-4 Zone District permits matter-of-right development of one-family residential uses (including detached, semi-detached, row dwellings, and flats), churches and public schools. It does not permit new multi-family residential development as a matter-of-right.

The Office of Planning provided its report on January 30, 2015, and the case was set down for hearing on February 9, 2015. On July 13, 2015 the Applicant requested to amend the application to include variance relief from the required size of parking spaces required under 11 DCMR § 2115.1. The Zoning Commission considered the request at its July 27, 2015 public meeting and voted to grant permission to amend the application to include the variance relief. The Applicant provided its prehearing statement on October 1, 2015.

The property that is the subject of this application consists of approximately 19,768 square feet of land area currently configured as four separate lots and is located at 1368 Kenyon Street, N.W. (Lot 39 – currently vacant property), 1370 Kenyon Street, N.W. (Lot 40 – currently vacant property), 1372 Kenyon Street, N.W. (Lot 838) and 1361 Irving Street, N.W. (Lot 72).

[1] Although this is the Applicant's intended use for the property, the grant of this application would permit the property to be used for any use permitted in an R-5-B Zone District.

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

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

How to participate as a witness.

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

How to participate as a party.

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

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

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

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

Z.C. NOTICE OF PUBLIC HEARING
Z.C. CASE NO. 14-24
PAGE 3

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

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

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

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

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

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

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in Section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1203; D.C. Official Code § 2-559 (2012 Repl.)), hereby gives notice of a correction to the Notice of Final Rulemaking issued by the Commissioner of the Department of Insurance, Securities and Banking (Department), and published in the *D.C. Register* on October 2, 2015 at 62 DCR 13004.

The final rulemaking amended Chapter 16 (Insurance Holding Company System Regulations), of Title 26 (Insurance, Securities, and Banking), Subtitle A (Insurance), of the District of Columbia Municipal Regulations (DCMR). The rulemaking mistakenly included the following line, indicating Section 1606 was being amended rather than Section 1605:

Section 1606, ADDITIONAL INFORMATION AND EXHIBITS, is amended by striking "Form A, Form B or Form D" in the first and last sentences and inserting "Form A, Form B, Form D, Form E or Form F".

The Department intended to amend Section 1605 with the October 2, 2015 rulemaking instead of Section 1606. The correct text is:

Section 1605, ADDITIONAL INFORMATION AND EXHIBITS, is amended by striking "Form A, Form B or Form D" in the first and last sentences and inserting "Form A, Form B, Form D, Form E or Form F".

This Errata Notice's correction to the Notice of Final Rulemaking clarifies the October 2, 2015 final rulemaking as the correct version of 26 A DCMR § 1605, and does not alter the intent, application, or purpose of the proposed rules. The rules are effective upon the original publication date of October 2, 2015.

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

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Standards for the Management of Hazardous Waste and Used Oil

The Director of the Department of Energy and Environment (Department), pursuant to the authority set forth in Section 6 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1305 (2008 Repl.)); Mayor's Order 2005-70, dated April 19, 2005 (52 DCR 5495); Section 107 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2013 Repl. & 2015 Supp.)); Mayor's Order 2006-61, dated June 14, 2006; and Mayor's Order 2015-191, dated July 23, 2015, hereby gives notice of its intent to adopt amendments to Chapter 42 (Hazardous Waste Management- Standards for the Management of Hazardous Waste and Used Oil) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

The District's Hazardous Waste Management Rules (District rules) are patterned after federal regulations promulgated pursuant to the Resource Recovery and Conservation Act (RCRA), approved October 21, 1976, 90 Stat. 2796, Pub. L 94-580, 42 U.S.C. § 6901 *et seq*., published at Title 40 of the Code of Federal Regulations (CFR), Parts 124, 260 through 266, 268, 270, 273 and 279, so that any District-specific regulation is easily discernible to the regulated community.

For example, 40 CFR Part 260 is incorporated by reference in 20 DCMR 4260. The existing District rules largely mirror the RCRA regulations, and the final rules would continue the incorporation, by reference, of the most current corresponding federal rules published in the CFR. However, the District rules contain a number of provisions that are more stringent, broader in scope, or otherwise different than the RCRA regulations. Many of these existing provisions are no longer necessary. For example, although there are District-specific provisions regarding landfills, the District has not had any landfills for a number of years and has no need for local regulations that are more stringent than those found in the CFR. In an effort to reduce excess regulation, the Department seeks to repeal the extraneous regulations in this final rulemaking so that District-specific regulations are clearer. The final rules will allow the Department to more effectively regulate hazardous waste in a manner consistent with federal law.

Notwithstanding the amendments made by the final rules, the District's rules continue to establish criteria to be used in determining the materials that constitute hazardous waste; standards for generators, transporters, and owners and operators of hazardous waste facilities; standards for universal waste management; standards for used oil management; inspection and enforcement procedures; and fees for hazardous waste activities. Moreover, the final rules will continue the prohibitions in the District of Columbia on the burning, land treatment and disposal, and underground injection of hazardous waste, and the burning of used oil. The final rules will also continue the requirement that owners and operators of hazardous waste transfer facilities obtain permits for their facilities.

Finally, these regulations lower the annual permit fee for small quantity generators that have

fewer than eight (8) employees. The Department selected eight employees as the threshold because it is a number that benefits small businesses, particularly family-owned operations and will reduce their administrative burden.

The proposed rules were published in the *D.C. Register* on December 7, 2012 (59 DCR 14168), for a period of thirty (30) days, and then a notice of extended comment period was published on January 18, 2013 (60 DCR 000379), extending the comment period an additional thirty (30) days. The Department received two (2) comments and made one (1) change.

The first commenter was an anonymous member of the community, who expressed concern with how the Department selected eight (8) employees as the threshold, and expressed concern over repealing the satellite waste provisions in 20 DCMR 4262.4. In the previous paragraph, the Department provided more clarity into the rationale for selecting eight (8) employees as the threshold. The Department also considered the satellite area comments, but declined to remove them from the rulemaking. The Department declined to make this revision because it intends to adopt the federal standard for hazardous waste in satellite areas, and the potential for abuse suggested by the comment is unlikely. For example, in order to abuse the satellite provisions in the manner suggested by the commenter, a manufacturer (of which the District has few) would have to significantly recalibrate its chemical processes every few months to abuse the provision. Consequently, the Department did not view the potential for abuse of the satellite waste provision as a credible threat. The second commenter was Pepco, who commented on the public utility provisions that were proposed for repeal (20 DCMR 4263). After meeting with Pepco, the Department decided that the section repealing those provisions should be removed from this rulemaking, and thus remain in place.

The Notice of Final Rulemaking was introduced in the Council on May 28, 2014, and was deemed approved on October 9, 2014. Therefore, the Department is finalizing this rulemaking with the one (1) change of retaining the section pertaining to public utilities. These final rules will be effective immediately upon publication of this notice in the *D.C. Register*.

Chapter 42, HAZARDOUS WASTE MANAGEMENT - STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL, of Title 20 DCMR, ENVIRONMENT, is amended as follows:

Subsection: 4206.2 of Section 4206, RECORD-RETENTION AND REPORTING REQUIREMENTS, is amended to read as follows:

4206.2 Whenever the RCRA regulations in 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279 require that a document be sent to EPA, DOT, or another federal agency, the person required to send the document to EPA, DOT, or other federal agency shall, at the same time, send a copy to the Department's Hazardous Waste Division.

Subsection 4260.4 of Section 4260, HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL PROVISIONS, is amended as follows:

Paragraphs (h), (i), and (j) are REPEALED of Subsection 4260.4.

Section 4260.4 is amended to read as follows:

4260.4 Except as provided in this subsection, the substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to the definitions in 40 CFR § 260.10. The following definitions either clarify or modify the corresponding federal definitions, or provide the meaning for terms not defined in the RCRA regulations:

(a) Active life - in the federal definition of the term "active life," the term "Director" shall supplant the term "Regional Administrator";

(b) Boiler - in the federal definition of the term "boiler," the term "Director" shall supplant the term "Regional Administrator";

(c) Department means the District of Columbia Department of Energy and Environment or a successor agency;

(d) Director means the Director of the Department of Energy and Environment or his or her designee;

(e) District-only wastes means wastes that are regulated as hazardous waste under the Hazardous Waste Management Regulations, 20 DCMR Chapters 42 and 43, but that are not considered hazardous wastes under 40 CFR Part 261, Subparts C or D;

(f) Existing tank system or existing component means for HSWA tanks, the terms "existing tank system" or "existing component" have the meaning, given those terms in 40 CFR § 260.10. For non-HSWA tanks, an "existing tank system" or "existing component" is one that is in operation, or for which installation has commenced, on or before March 1, 1996;

(g) HSWA means the Hazardous and Solid Waste Amendments of 1984, approved November 8, 1984 (98 Stat. 3321; 42 USC §§ 6901-6991i): (1) RCRA regulations promulgated by EPA under HSWA authorities take effect in all states at the same time, regardless of a state's authorization status; and (2) RCRA regulations promulgated by EPA under non-HSWA authorities do not take effect in EPA-authorized states until the state adopts the non-HSWA regulation;

(h) Resource Conservation and Recovery Act (RCRA) regulations means the regulations contained in 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279; and

(i) Wastewater treatment unit means a device that:

(1) Is part of a wastewater treatment facility that is subject to regulation under either §§ 307(b) or 402 of the Clean Water Act, 33 U.S.C. §§ 1317(b) or 1342; § 7 of the District of Columbia Water Pollution Control Act of 1984, effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code § 8-103.06 (2001)); or the District of Columbia Wastewater System Regulation Act, effective March 12, 1986, as amended (D.C. Law 6-95; D.C. Official Code §§ 8-105.01 to 8-105.15);

(2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 40 CFR § 261.3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 40 CFR § 261.3; and

(3) Meets the definition of tank or tank system in 40 CFR § 260.10.

Subsections 4261.9 – 4261.10 of Section 4261, IDENTIFICATION AND LISTING OF HAZARDOUS WASTE, are REPEALED.

Subsection 4262.4 of Section 4262, STANDARDS APPLICABLE TO GENERATORS OF HAZRDOUS WASTE, is amended as follows:

Paragraphs (a) and (b) are REPEALED of Subsection 4262.4.

Section 4262 is amended to read as follows:

4262.1 The provisions of 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste) and the Appendix to Part 262 are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

4262.2 With respect to the federal compliance requirements and penalties referenced in 40 CFR § 262.10(g), the following District of Columbia enforcement authorities are also applicable: sections 10, 11, and 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1309 to 8-1311).

4262.3 In 40 CFR § 262.11 (hazardous waste determination), the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

4262.4 In 40 CFR § 262.43 (additional reporting), the cross-references to §§ 2002(a) and 3002(6) of RCRA shall refer instead to § 6 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1305(a)).

4262.5 In addition to the requirements in 40 CFR § 262.44, beginning on March 1, 2006, and on or before March 1 of each year thereafter, each generator of greater than one hundred kilograms (100 kg) but less than one thousand kilograms (1000 kg) of hazardous waste in a calendar month shall complete and submit to the Director, on forms provided by the Department, an annual self-certification of compliance with the requirements of 40 CFR Part 262, as modified by this section (20 DCMR § 4262) during the preceding twelve (12) months, and, where necessary, a return-to-compliance plan. The generator shall also address:

(a) Any measures taken during the previous year to reduce the volume and toxicity of hazardous waste generated; and

(b) To the extent such information is available, any changes in the volume and toxicity actually achieved during the year in comparison to previous years.

4262.6 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR Part 262, Subparts E and H (exports of hazardous waste and transfrontier shipments of hazardous waste for recovery within the member countries of the Organization for Economic Cooperation and Development).

**Subsections 4264.2–4264.12 of Section 4264, STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT,
STORAGE, AND DISPOSAL FACILITIES, are REPEALED.**

Section 4264 is amended to read as follows:

4264 The provisions of 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities) and Appendices I, IV, V, and IX to Part 264, are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206.

Subsections 4265.2-4265.11 of Section 4265, INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES, are REPEALED.

Section 4265 is amended to read as follows:

4265 The provisions of 40 CFR Part 265 (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities) and Appendices I and III through VI to Part 265 are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206.

Subsection 4266.2 of Section 4266, STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES, is amended as follows:

Paragraph (a) is REPEALED of Subsection 4266.2.

Subsection 4266.2 is amended to read as follows:

4266.2 The provisions of 40 CFR Part 266, Subpart M (military munitions) are adopted with the modification that with respect to 40 CFR § 266.202(d), the Director may require corrective action or seek injunctive or other appropriate remedies under §§ 4, 8, 10, 11, or 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1303(b), 8-1307(c) and (d), 8-1309, 8-1310, or 8-1311(a)), if a used or fired military munitions lands off-range and is not promptly rendered safe or retrieved.

Subsections 4268.2 - 4268.3 of Section 4268, LAND DISPOSAL RESTRICTIONS, are REPEALED.

Section 4268 is amended to read as follows:

4268 The provisions of 40 CFR Part 268 (Land Disposal Restrictions) and Appendices III, IV, VI through IX, and XI to Part 268 are incorporated by reference subject to the general modifications in 20 DCMR §§ 4200 through 4206.

Subsections 4270.2 - 4270.7, 4270.13, and 4270.14(e), of Section 4270, DEPARTMENT ADMINISTERED HAZARDOUS WASTE PERMIT PROGRAM), are REPEALED.

Section 4270 is amended to read as follows:

4270.1 The provisions of 40 CFR Part 270 (EPA-administered hazardous waste permit program) are incorporated by reference as the regulations applicable to the Department-administered hazardous waste (RCRA) permit program, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

4270.2 With respect to 40 CFR § 270.12 (confidentiality of information), the following provisions shall govern the confidentiality of any information submitted to the Department pursuant to these regulations:

(a) Any information provided to the Department under the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1301 through 8-1314, and the Hazardous Waste Management Regulations, 20 DCMR Chapters 42 and 43, shall be made available to the public to the extent and in the manner authorized by the District of Columbia Freedom of Information Act (FOIA), effective March 29, 1977, as amended (D.C. Law 1-96; D.C. Official Code §§ 2-531 to 2-540 (Supp. 2004), and the rules implementing FOIA, chapter 4 in Title 1 DCMR;

(b) Any person submitting information to the Department pursuant to the Hazardous Waste Management Act or the Hazardous Waste Management Regulations may assert a claim of confidentiality covering part or all of the information by demonstrating to the Director that the information claimed to be confidential is exempt from public disclosure under FOIA, D.C. Official Code § 2-534(a);

(c) Any claim of confidentiality shall be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice;

(d) The Director will determine, in accordance with the FOIA criteria in D.C. Official Code § 2-534(a), whether and to what extent the information claimed to be confidential will be withheld from disclosure; and

(e) Claims of confidentiality shall not apply to the names and addresses of any permit applicants or permittees.

4270.3 With respect to the introductory text in 40 CFR § 270.41 (modification or revocation and reissuance of permit), the provisions of 40 CFR § 124.5, incorporated by reference, are subject to modification in 20 DCMR § 4271.2.

4270.4 In 40 CFR § 270.42(f), pertaining to public notice and appeals of permit modification decisions, the cross-references to 40 CFR § 124.19 shall refer instead to 20 DCMR § 4271.6.

4270.5 In addition to the causes identified in 40 CFR § 270.43 for the termination of a permit, the Director may suspend, refuse to reissue, or revoke a permit as provided in §§ 4 and 10 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1303(b) and 8-1309.

4270.6 The provisions of 40 CFR § 270.51(a) through (c) (continuation of expiring EPA-issued RCRA permits) are adopted as the procedures the Department will follow with respect to the continuation of expiring Department-issued permits.

4270.7 The provisions of 40 CFR Part 270, Subpart H (Remedial Action Plans (RAPs)) are adopted with the following modifications:

(a) With respect to 40 CFR § 270.115, the confidentiality of information submitted to the Department shall be governed by 20 DCMR § 4270.2;

(b) In addition to the public notice procedures in 40 CFR § 270.145, the

Director shall provide notice by publication in the *D.C. Register*, in accordance with § 13 of the Advisory Neighborhood Commission Act of 1975, D.C. Official Code § 1-309.10;

(c) The provisions of 40 CFR § 270.155, pertaining to administrative appeals, are adopted with the following modifications:

(1) An appeal under this paragraph shall be made to the District of Columbia Office of Administrative Hearings pursuant to 1 DCMR chapter 29; and

(2) In 40 CFR § 270.155(a), the cross-references to 40 CFR § 124.19 shall refer instead to 20 DCMR § 4271.6;

(d) In 40 CFR §§ 270.190 and 270.215, all references to the "Environmental Appeals Board" shall refer instead to the "District of Columbia Office of Administrative Hearings"; and

(e) With respect to 40 CFR § 270.230(d)(2), pertaining to remediation waste management activities at locations removed from where the remediation wastes originated, the provisions of 40 CFR §§ 124.31, 124.32, and 124.33, incorporated by reference, are subject to modification in 20 DCMR § 4271.8.

Subsection 4271.2 of Section 4271, DECISION-MAKING PROCEDURES FOR DEPARTMENT-ADMINISTERED HAZARDOUS WASTE PERMIT PROGRAM, is REPEALED.

Section 4271 is amended to read as follows:

4271.1 This section incorporates by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section, the provisions of 40 CFR Part 124 applicable to RCRA permits as the decision-making procedures the Department will follow when issuing, modifying, suspending and reissuing, and revoking hazardous waste permits issued pursuant to this chapter (20 DCMR chapter 42).

4271.2 The provisions of 40 CFR § 124.5 (modification, revocation and reissuance, or termination of permits) are adopted with the following modifications:

(a) Only paragraphs (a), (c), and (d)(1) in 40 CFR § 124.5 are incorporated by reference. The cross-references in the federal regulation to 40 CFR §§ 270.41 and 270.43 shall refer instead to 20 DCMR §§ 4270.3 and 4270.5 respectively;

(b) If the Director determines that a request for the modification, revocation

and reissuance, or termination of a permit is not justified, he or she shall send the requestor a brief written response giving the reasons for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearing. Denials may be appealed administratively to the District of Columbia Office of Administrative Hearings (OAH), pursuant to procedures established in 20 DCMR § 4271.6. This appeal is a prerequisite to seeking judicial review of the Director's determination to deny a request for modification, revocation and reissuance, or termination; and

(c) Where there has been a history of repeated violations or a permit has been previously revoked and reissued, or where there is an initial violation and the violation presents an imminent and substantial endangerment to the public health, public welfare, or the environment, the Director may proceed under § 10 of the District of Columbia Hazardous Waste Management Act, D.C. Official Code § 8-1309(c) and (d), and 20 DCMR Chapter 43 to terminate the permit in lieu of proceeding under this subsection.

4271.3 The provisions of 40 CFR § 124.10 (public notice of permit actions and public comment period) are adopted with the following modifications:

(a) With respect to 40 CFR § 124.10(a)(1)(iv), the Director shall give public notice whenever a request for a hearing under 20 DCMR § 4271.6 to review a permit decision is received; and

(b) In addition to the methods specified in 40 CFR § 124.10(e), the Director shall give notice by publication in the D.C. Register, and by providing notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, D.C. Official Code § 1-309.10.

4271.4 In addition to the notice required under 40 CFR § 124.15(a) for a final permit decision or a decision to deny a permit for the active life of a hazardous waste management facility or unit, the Director shall provide notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, D.C. Official Code § 1-309.10.

4271.5 In 40 CFR § 124.16(a)(2)(ii), pertaining to requests for reviews of permit conditions, the term “District of Columbia Office of Administrative Hearings” shall supplant the term “EAB.”

4271.6 The provisions of 40 CFR § 124.19, pertaining to appeals of permits, are excluded from the incorporation by reference. Instead, the following procedures shall govern appeals:

(a) Within fifteen (15) days of the date of a hazardous waste permit decision

or a decision under 40 CFR § 270.29 to deny a permit for the active life of a hazardous waste management facility or unit under 40 CFR § 124.15, any person adversely affected by the decision may appeal the decision pursuant to § 9 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1308), by requesting the District of Columbia Office of Administrative Hearings (OAH) to conduct a hearing to review the decision, pursuant to 1 DCMR § 2805;

(b) The fifteen-day (15-day) period within which a person may request a hearing under this section begins on the date of the service of the notice of the Director's action, unless a later date is specified in the notice (the rules governing the computation of time are found in 1 DCMR § 2811);

(c) A request for a hearing under this section shall include a statement of the reasons supporting the request, including a demonstration that the person requesting the hearing is adversely affected by the Director's decision; that any issues being raised were raised during the public comment period (including any public hearings) to the extent required by these regulations; and, when appropriate, a showing that the condition in question is based upon a finding of fact or conclusion of law that is clearly erroneous;

(d) Pursuant to § 9 of the District of Columbia Hazardous Waste Management Act, D.C. Official Code § 8-1308, a hearing on an appeal under this subsection, 20 DCMR § 4271.6, shall be held in accordance with the contested case procedures of § 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1204; D.C. Official Code § 2-509);

(e) The Director shall give public notice of an appeal under this subsection as provided in 20 DCMR § 4271.3;

(f) At any time prior to the rendering of a decision by OAH on the merits of the appeal, the Director may, upon notification to OAH and any parties to the proceeding, withdraw the permit and prepare a new draft permit under 40 CFR § 124.6, addressing the portions withdrawn: (1) The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this section; and (2) Any portions of the permit that are not withdrawn and that are not stayed under 40 CFR § 124.16 continue to apply;

(g) An appeal to OAH pursuant to this section shall be a prerequisite to the seeking of judicial review of the final administrative decision;

(h) For purposes of judicial review, final administrative action occurs when a

hazardous waste permit is issued, or when a decision under 40 CFR § 270.29 to deny a permit for the active life of a hazardous waste management facility or unit has been issued, and the administrative review procedures under this section are exhausted;

(i) The Director shall issue a final permit decision, and administrative review procedures shall be exhausted:

(1) When OAH issues a final decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(2) If the proceedings are remanded, upon the completion of remand proceedings, unless OAH's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies;

(j) The Director shall give public notice of the final decision in accordance with the procedures in 20 DCMR § 4271.4; and

(k) A motion for reconsideration shall not stay the effective date of a final permit decision issued by the Director pursuant to paragraph (i) of this subsection, unless so ordered by OAH.

4271.7 The provisions of 40 CFR § 124.20 (computation of time) are excluded from the incorporation by reference. Instead, the provisions of 20 DCMR § 4316 shall govern time computation.

4271.8 With respect to 40 CFR Part 124, Subpart B (Specific Procedures Applicable to RCRA Permits):

(a) The provisions of 40 CFR §§ 124.31, 124.32, and 124.33 shall also apply to applications submitted to the Department; and

(b) In addition to the requirements of 40 CFR § 124.32(b) for public notice at the application stage, the Director shall give notice by publication in the D.C. Register, and by providing notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975, as amended (D.C. Law 1-21; D.C. Official Code § 1-309.10).

Subsection 4273.3 of Section 4273, STANDARDS FOR UNIVERSAL WASTE MANAGEMENT, is REPEALED.

Section 4273 is amended to read as follows:

4273.1 The provisions of 40 CFR Part 273 (Standards for Universal Waste Management)

are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

4273.2 With respect to 40 CFR §§ 273.12 and 273.32(a)(1), each small quantity handler and each large quantity handler of universal waste shall notify the Director of the handler's universal waste management activities by submitting a completed EPA Form 8700-12 to the Director, and shall have received an EPA identification number, before generating universal waste or receiving universal waste from other universal waste handlers.

4273.3 Notwithstanding the time periods specified in 40 CFR § 273.53, a transporter storing universal waste for any length of time at a universal waste transfer facility shall become a universal waste handler and shall comply with the applicable requirements of Subparts B or C of Part 273 while storing the universal waste.

4273.4 In 40 CFR § 273.80, the cross-reference to 40 CFR § 260.20 shall refer instead to 20 DCMR §§ 4260.5 and 4260.6.

4390 FEE SCHEDULE

4390.1 Except as provided in § 4390.5, each conditionally exempt small quantity generator shall pay an annual permit fee of two hundred fifty dollars ($250) for each generating site on or before March 1 of each year; provided however, that generators covered by this category who have less than eight (8) employees, shall pay an annual permit fee of one hundred dollars ($100).

D.C. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the D.C. Department of Human Resources (DCHR), pursuant to Mayor's Order 2008-92, dated June 26, 2008, and with the concurrence of the City Administrator; Mayor's Order 2007-95, dated April 18, 2007; Mayor's Order 2012-84, dated June 18, 2012; and in accordance with the provisions of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §§ 4-1501.01 *et seq*. (2012 Repl.)); and Sections 422 (2), (3), and (11) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790; D.C. Official Code §§ 1-204.22(2), (3), (11) (2012 Repl.)), hereby gives notice of the adoption of final rulemaking to amend Chapter 4 (Organization for Personnel Management), of Title 6, Subtitle B (Government Personnel) of the District of Columbia Municipal Regulations (DCMR).

The main purpose of these rules is to amend Chapter 4, "Organization for Personnel Management," of Subtitle B of Title 6 of the District of Columbia Municipal Regulations to implement the DCHR's new suitability program.

A Notice of Second Proposed Rulemaking was published on July 17, 2015 at 62 DCR 009817. No comments were received. Final rulemaking action was taken on October 5, 2015. The rules will become effective upon publication in the *D.C. Register*.

Chapter 39, TESTING FOR THE PRESENCE OF CONTROLLED SUBSTANCES AND ALCOHOL, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is repealed.

Chapter 4, ORGANIZATION FOR PERSONNEL MANAGEMENT, is repealed and replaced as follows:

The title of Chapter 4 of the D.C. Personnel Regulations is renamed to "Suitability", and is further amended as follows:

400 EMPLOYEE SUITABILITY POLICY

400.1 The District government maintains a highly qualified and diverse workforce comprised of suitable individuals of moral character and dedication who carry out government business in a manner that honors the public trust. These employees are committed to promoting the safety and security of District personnel, residents, visitors, and government property.

400.2 It is the policy of the District government to assess the suitability of each applicant, appointee, volunteer, and employee through uniform background checks and drug and alcohol testing, as deemed necessary, which meet the District's need for flexible personnel administration, government accountability, individual privacy, and other constitutionally protected rights.

400.3 General background checks, criminal background checks, and mandatory drug and alcohol testing shall be utilized to ensure that each applicant, appointee, volunteer, and employee possesses the character and background necessary to enhance the integrity and efficiency of the District government.

400.4 Unless otherwise specified in this chapter, an employee deemed unsuitable pursuant to this chapter, may be reassigned to a non-covered position, for which he or she is qualified and otherwise suitable. If reassignment cannot reasonably be accomplished, is inconsistent with another provision of these regulations, or is determined to not be in the best interests of the agency or the District, the employee shall be subject to immediate removal.

401 APPLICABILITY

401.1 Unless otherwise specified, the provisions of this chapter shall apply to all applicants, appointees, volunteers, and employees for positions within the District government agencies under the personnel authority of the Mayor, except for candidates for uniformed positions in the Fire and Emergency Medical Services Department, and candidates and employees in uniformed positions in the Metropolitan Police Department, who shall be covered by suitability provisions in Chapter 8 of these regulations.

401.2 Applicants, appointees, volunteers, and employees for positions within the District government under the personnel authority of independent agencies are subject to the provisions of this chapter, unless otherwise specified by law, rules, or regulations.

401.3 Negotiated labor agreements shall be read to give effect to this chapter to the fullest extent possible. However, in the case of an irreconcilable conflict, a labor agreement shall control with respect to the specific conflict.

402 GENERAL SUITABILITY SCREENING

402.1 After the issuance of an offer of employment, and to the extent practicable before actual employment commences, all individuals shall undergo a general suitability screening. The personnel authority shall conduct a general suitability screening that includes verification of the following:

(a) Past employment, including dates, compensation, titles held, duties, performance, and reason for separation;

(b) Educational background, including all relevant diplomas and degrees;

(c) Licenses, certifications, and training, required for the position; and

(d) At least three (3) reference checks to ascertain character, reputation, relevant traits, and other relevant qualities, and whether the individual providing the reference would recommend the applicant for the position for which he or she is being considered. The reference checks shall be made with the individual's former employer; except, that personal references may be utilized instead of, or in addition to, checks with former employers, as deemed necessary by the personnel authority.

402.2 Unless otherwise provided by law, regulation, or Sections 406 through 438, in filling a position subject to a general suitability screening, a screening need not be conducted if the appointee is already employed with the District government in a position subject to a general suitability screening, and the nature of the personnel action for the new appointment is one (1) of the following:

(a) Promotion;

(b) Demotion;

(c) Reassignment; or

(d) An appointment or conversion of an employee who has been serving continuously with a District government agency for at least one (1) year in a position(s) under an appointment subject to a general background check.

403 CONDUCTING GENERAL SUITABILITY SCREENING

403.1 The personnel authority for each agency shall verify the following information, and shall record the date, time, means, and results of such verification:

(a) Past employment;

(b) Residency (if a preference is claimed);

(c) Military service (if a preference is claimed);

(d) Education, if required by the position or if used to substitute for experience in qualifying the individual for the position;

(e) License, certification, or training, if required by the position or if used in qualifying the individual for the position; and

(f) References.

403.2 Upon completing a general suitability screening in accordance with Subsection 403.1, the personnel authority shall inform the agency of the results, and may

make a determination that an appointee is not suitable for employment, and may thereby:

(a) Deny him or her examination for, or appointment to, the position for which the individual had been considered; or

(b) Require the employing agency to terminate the appointee from District government service.

403.3 A subordinate agency that has been delegated personnel authority to conduct general suitability screenings shall promptly make an appropriate determination under Subsection 403.2 upon completing the general suitability screening, and immediately inform the program administrator of that determination in writing.

403.4 If any discrepancies, consistent with Section 408, are identified, a subordinate agency that has been delegated personnel authority to conduct general suitability screenings shall investigate to the fullest extent of their ability until the discrepancies are resolved. Individuals under consideration for the positions shall fully cooperate in any such investigation as a prerequisite to employment.

403.5 When a discrepancy cannot be resolved, the discrepancy shall be presented in writing to the personnel authority, who will determine within ten (10) days of receipt of the request, whether the individual is disqualified.

403.6 A general suitability screening shall be deemed valid for a period of one (1) year and need not be repeated by a program administrator for subsequent applications by the same individual for that period of time.

404 [RESERVED]

405 [RESERVED]

406 ENHANCED SUITABILITY SCREENING – GENERAL PROVISIONS

406.1 In addition to a general suitability screening, appointees, volunteers, and employees shall be subject to one (1) or more of the following enhanced suitability screenings, as dictated by the applicable position:

(a) Pre-employment criminal background check;

(b) Biennial criminal background check;

(c) Traffic record check;

(d) Consumer credit check;

(e) Pre-employment drug and alcohol test;

(f) Reasonable suspicion drug and alcohol test;

(g) Random drug and alcohol test;

(h) Post-accident or post-incident drug and alcohol test; or

(i) Return-to-duty and follow-up drug and alcohol test.

406.2 Agencies under the personnel authority of the Mayor shall conform to the standards and procedures established in this chapter for screenings.

406.3 No individual may work in a safety sensitive position until the completion of a negative drug test.

406.4 Each current employee in a covered position shall be subject to an enhanced suitability screening beginning within forty-five (45) days of the publication in the *D.C. Register* of the Notice of Final Rulemaking implementing the criminal background check requirements of this chapter. The personnel authority shall notify each current employee in a covered position that he or she shall be subject to enhanced suitability screening under the chapter prior to conducting any such screening. Employees who occupy safety sensitive positions at the time these rules become final shall be subject to a reasonable suspicion drug and alcohol test, a random drug and alcohol test, post-accident or post-incident drug and alcohol tests, and return-to-duty and follow-up drug and alcohol tests. Employees who occupy protection sensitive positions at the time these rules become final shall not be subject to an initial drug or alcohol test, but shall be subject to a reasonable suspicion drug and alcohol test, a random drug and alcohol test, post-accident or post-incident drug and alcohol tests, and return-to-duty and follow-up drug and alcohol tests. Employees who occupy security sensitive positions at the time these rules become final shall not be subject to an initial consumer credit check.

406.5 The Director of the DCHR (or his or her designee) shall publish in the Electronic-District Personnel Manual (or any other electronic procedural manual or manuals developed) positions in subordinate agencies subject to enhanced suitability screening pursuant to this chapter.

406.6 The position description for each position designated for an enhanced suitability screening shall include a statement of such designation and a statement indicating that incumbents of the position shall be subject to enhanced suitability screening.

406.7 Agencies subordinate to the Mayor and independent agencies that are subject to these regulations shall cover the full administrative costs of the enhanced suitability screenings listed in Subsection 406.1 of this chapter.

406.8 Employees shall not be responsible for the cost of any enhanced suitability screening requirements. Employees shall only be required to participate in suitability assessment activities while on-duty and in a pay status.

406.9 Unless otherwise provided pursuant to law or regulation, when an appointee is disqualified under the provisions of this chapter, the program administrator, at its discretion, may continue to rely on that determination with regard to subsequent applications for substantially similar positions with the same enhanced suitability requirements, for a period of not more than one (1) year from the date of the disqualification determination, after which a new suitability screening shall be required.

406.10 Upon expiration of the one (1) year period under Subsection 406.9, a new suitability screening shall be conducted and a re-determination made before the individual may be appointed.

406.11 Employees separated under Subsection 428.1 and appointees denied continued employment under Subsection 428.2 shall not be eligible for employment in a substantially similar safety sensitive or protection sensitive position for a period of one (1) year from the date of his or her removal or disqualification.

407 ENHANCED SUITABILITY SCREENING – RECRUITMENT REQUIREMENTS

407.1 In the case of competitive recruitment for a position requiring an enhanced suitability screening, the vacancy announcement and subsequent offer letter to the appointee shall state that:

(a) The position for which he or she is applying has been identified and designated as requiring enhanced suitability screening;

(b) If tentatively selected for the position, a criminal background check, traffic record check, consumer credit check, and mandatory drug and alcohol testing, as appropriate, will be conducted; and

(c) The appointee to the position may be offered employment contingent upon receipt of a satisfactory enhanced suitability screening.

407.2 In the case of non-competitive recruitment for a position requiring enhanced suitability screening, the offer letter to the individual being considered for employment shall be provided and contain the information outlined in Subsection 407.1.

407.3 Subject to the approval of the program administrator, an appointee to a covered position may be offered employment contingent upon receipt of a satisfactory enhanced suitability screening. No appointees shall work in an unsupervised

setting, prior to receiving the results of the screening, and prior to the employing agency making a determination that the appointee meets the requirements of the chapter.

408 ASSESSING GENERAL SUITABILITY SCREENINGS

408.1 The appropriate authority shall evaluate any derogatory information received during a general suitability screening and determine whether an individual is suitable for the specific position for which he or she has applied. If an individual is found unsuitable, he or she shall be disqualified from appointment to that position.

408.2 The reasons that may be used in making a determination of disqualification of an appointee may include, but shall not be limited to the following:

(a) Delinquency or misconduct in prior employment;

(b) Dishonest or other conduct of a nature that could undermine the public's confidence in the District government's integrity;

(c) Any false statement, or the engagement in deception or fraud in connection with the examination or appointment process;

(d) Evidence of ongoing abuse of a drug or alcohol; or

(e) Any lawful and articulable reason that is neither arbitrary nor capricious.

408.3 Prior to disqualifying an appointee based on derogatory information, the personnel authority shall determine whether disqualification is warranted. The personnel authority shall make this determination by considering the conduct or event(s) related to the derogatory information in the context of:

(a) The specific duties and responsibilities of the position;

(b) The bearing, if any, the derogatory information has on those duties and responsibilities;

(c) The length of time that has passed since the conduct or event(s);

(d) The frequency and seriousness of the conduct or event(s);

(e) Any mitigating information provided by an individual in response to the derogatory information; and

(f) Whether, based on the totality of information available, the appointee possesses the necessary moral character and dedication to successfully serve the public.

409 POSITIONS SUBJECT TO ENHANCED SUITABILITY SCREENING

409.1 Each agency head (or his or her designee), with the concurrence of the program administrator, shall identify and determine which positions in the agency shall be subject to an enhanced suitability screening. In identifying the covered positions, the program administrator shall ensure that the duties and responsibilities of each position fall into one of the categories described in Subsection 409.2 of this section. The identification of these positions shall be consistent with the spirit of Subsection 400.2 of this chapter.

409.2 The types of positions that are subject to enhanced suitability screenings for appointees, volunteers, and employees are positions with duties and responsibilities that shall be categorized as follows:

(a) Safety sensitive, which are positions with duties or responsibilities if performed while under the influence of drugs or alcohol could lead to a lapse of attention that could cause actual, immediate and permanent physical injury or loss of life to self or others;

(b) Protection sensitive, which are positions with duties or responsibilities caring for or ensuring the well-being of children or youth, patients, the elderly, or other vulnerable persons; and

(c) Security sensitive, which are positions of special trust that may reasonably be expected to affect the access to or control of activities, systems, or resources that are subject to misappropriation, malicious mischief, damage, or loss or impairment of communications or control.

409.3 An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall affirmatively agree to an enhanced suitability screening to the position upon the effective date of the personnel action, and to biennial criminal background and traffic record checks, as appropriate, while detailed, temporarily promoted, or temporarily reassigned to the covered position**.**

410 SAFETY SENSITIVE POSITIONS – GENERAL PROVISIONS

410.1 In addition to the general suitability screening, individuals applying for or occupying safety sensitive positions are subject to the following checks and tests:

(a) Criminal background check;

(b) Traffic record check (as applicable);

(c) Pre-employment drug and alcohol test;

(d) Reasonable suspicion drug and alcohol test;

(e) Post-accident or incident drug and alcohol test;

(f) Random drug and alcohol test; and

(g) Return-to-duty or follow-up drug and alcohol test.

410.2 Examples of safety sensitive duties and responsibilities include, but are not limited to:

(a) Operating large trucks, heavy or power machinery, or mass transit vehicles;

(b) Handling hazardous quantities of chemical, biological or nuclear materials;

(c) Maintaining the safety of patrons in and around a pool or aquatic area;

(d) Engaging in duties directly related to the public safety, including, but not limited to, responding or coordinating responses to emergency events; or

(e) Carrying a firearm.

411 PROTECTION SENSITIVE POSITIONS – GENERAL PROVISIONS

411.1 In addition to the general suitability screening, individuals applying for or occupying protection sensitive positions are subject to the following checks and tests:

(a) Criminal background check;

(b) Traffic record check (as applicable);

(c) Pre-employment drug and alcohol test;

(d) Reasonable suspicion drug and alcohol test;

(e) Post-accident or incident drug and alcohol test; and

(f) Return-to-duty and follow-up drug and alcohol test.

411.2 Examples of protection sensitive duties and responsibilities include, but are not limited to, positions that:

(a) Coordinate, develop, or support recreational activities;

(b) Manage, plan, direct, or coordinate educational activities;

(c) Perform tasks involving individual or group counseling; or

(d) Assess, monitor, or support childcare activities.

412 SECURITY SENSITIVE POSITIONS – GENERAL PROVISIONS

412.1 In addition to the general suitability screening, individuals applying for or occupying positions deemed security sensitive are subject to the following checks and tests:

(a) Criminal background check;

(b) Traffic record check (as applicable);

(c) Consumer credit check (as applicable);

(d) Reasonable suspicion drug and alcohol test; and

(e) Post-accident or incident drug and alcohol test.

412.2 Examples of security sensitive duties and responsibilities include, but are not limited to, positions that:

(a) Handle currency;

(b) Have the ability to create, delete, or alter the financial, personnel, payroll, or related transactions of another person;

(c) Have routine access to the personal identifying information of others;

(d) Have routine access to master building keys or controls;

(e) Have the ability to create, delete, or alter any form of credentials, including, but not limited to, computer network credentials and any form of government identification;

(f) Have involvement in or access to homeland security and emergency management plans, after action reports, analytical products, hazard analyses, and/or risk assessments that relate to preparedness, response,

mitigation, protection of critical infrastructure and key assets, or the protection of data related to persons and/or property before, during, and after an act of terrorism, manmade or natural disaster, or emergency event;

(g) Have access to networks, files, or drives that include classified, law enforcement sensitive, or for official use only information related to federal or District government terrorism investigations or other man-made disasters in either electronic or hard copy;

(h) Are in the Executive Service; and

(i) Are in the Excepted Service.

412.3 Positions located in secure facilities may be deemed security sensitive at the discretion of the personnel authority.

413 [RESERVED]

414 VOLUNTEERS

414.1 Individuals providing voluntary services to the District government shall be subject to general and enhanced suitability screening, specified in Sections 402 and 406, as applicable.

414.2 Individuals providing voluntary services performing duties and responsibilities in a covered position shall be subject to enhanced suitability screening.

414.3 Before a volunteer signs an agreement to perform in a covered position, he or she shall be notified in writing of the enhanced suitability screening before beginning volunteer activities and shall be subject to ongoing enhanced suitability screening while performing the duties and responsibilities of the covered position.

414.4 As a condition of an agreement for voluntary service, each individual subject to an enhanced suitability screening shall execute an acknowledgement and consent to the screening required by this chapter.

415 CRIMINAL BACKGROUND CHECKS – GENERAL PROVISIONS

415.1 The program administrator shall conduct any required criminal background checks.

415.2 Appointees, employees, or volunteers subject to criminal background checks shall submit to a criminal background check by means including, but not limited to, fingerprint and a National Criminal Information Center check.

415.3 Initial criminal background checks shall be conducted for appointees to covered positions pursuant to Subsection 406.1. For employees and volunteers in covered positions, a criminal background check shall be conducted on a biennial basis or whenever there is reasonable suspicion that the employee or volunteer has been arrested or charged with a criminal offense listed in Subsection 416.2(c).

415.4 Criminal background checks shall be conducted in accordance with the Metropolitan Police Department (MPD) and Federal Bureau of Investigations (FBI) policies and procedures and in an FBI-approved environment.

415.5 An individual with proof of an active federal security clearance shall not be subject to a criminal background check.

416 CRIMINAL BACKGROUND CHECK – AUTHORIZATION PROCESS

416.1 As a condition of employment, each individual subject to a criminal background check shall execute an acknowledgement and consent to the criminal background checks required by this chapter.

416.2 Prior to each criminal background check, the program administrator shall inform each individual subject to the check of the location of the office where the check will be conducted, when to report for the check, and provide each individual with all forms necessary to:

(a) Authorize the MPD or another entity, as appropriate, to conduct the criminal background check and confirm that the appointee, employee, or unsupervised volunteer has been informed that the employing agency is authorized to conduct a criminal background check;

(b) Complete a signed affirmation stating whether the individual:

(1) For the offenses listed in subparagraphs (c)(1) through (c)(9), has been convicted, pleaded *nolo contendere*, placed on probation before judgment, or placed on a stet docket; or

(2) Has been found not guilty by reason of insanity for any sexual offenses or intra-family offenses.

(c) Disclose any court actions for an individual for whom a criminal background check is required, excluding acquittals or dismissals resulting from inadequate evidence, involving, but not limited to, the following criminal conduct:

(1) Murder, attempted murder, manslaughter, or arson;

(2) Assault, assault with a dangerous weapon, mayhem, malicious disfigurement, threats to do bodily harm, including domestic violence;

(3) Burglary;

(4) Robbery;

(5) Kidnapping;

(6) Illegal use or possession of a firearm;

(7) Sex offenses, including, but not limited to, indecent exposure, promoting, procuring, compelling, soliciting, or engaging in prostitution, corrupting minors (sexual relations with children), molesting, voyeurism, committing sexual acts in public, incest, rape, sexual assault, sexual battery, or sexual abuse, but excluding sodomy between consenting adults;

(8) Child abuse or cruelty to children;

(9) Unlawful distribution or possession of or with intent to distribute an illegal drug;

(10) Fraud;

(11) Identity theft;

(12) Embezzlement; or

(13) Computer/cybercrime.

(d) Acknowledge, in writing, that the individual has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;

(e) Acknowledge that the individual may be denied employment, or terminated, based on the outcome of the criminal background check;

(f) Provide any additional identification that is required, such as name, social security number, date of birth, and gender; and

(g) Inform the individual that a false statement on the form(s) may subject him or her to criminal penalties.

416.3 Upon receiving and completing the form(s) specified in this section, an individual shall report to the designated location to be fingerprinted.

416.4 Volunteers or employees in a covered position shall notify their supervisor and the personnel authority whenever they are arrested or charged with any criminal offense. Such notification shall occur within no more than seven (7) days of the arrest or service of a criminal complaint, or its equivalent, on the volunteer or employee. Failure to comply with this subsection shall constitute cause for disciplinary action under Chapter 16 of these regulations.

417 ASSESSING CRIMINAL HISTORIES

417.1 The program administrator shall evaluate any derogatory information obtained from a criminal background check and determine whether the individual is suitable for the position he or she occupies or for which he or she has applied.

417.2 Upon receipt, the program administrator shall review the criminal history of the individual.

417.3 All criminal convictions shall be considered when assessing suitability based on a criminal history.

417.4 The program administrator must evaluate an individual's criminal history to determine whether he or she is suitable for District service. To make this determination, the program administrator shall consider each criminal offense in the context of:

(a) The specific duties and responsibilities of the position;

(b) The bearing, if any, the derogatory information has to those duties and responsibilities;

(c) The length of time that has passed since the criminal offense(s);

(d) The age of the individual at the time of the criminal offense(s);

(e) The frequency and seriousness of the criminal offense(s);

(f) Any mitigating information provided by the individual in response to the derogatory information;

(g) The contributing social or environmental conditions; and

(h) The District's policy favoring re-entry of ex-offenders into its work force.

417.5 Notwithstanding any other provision of this chapter, no individual may occupy a safety or protection sensitive position if he or she has been charged with any felony sexual offense(s) or any sexual offense(s) involving minors, and for such offense(s):

(a) Was convicted, pleaded guilty, pleaded *nolo contendere*, placed on probation before judgment, or otherwise placed on a stet docket;

(b) Was found not guilty by reason of insanity; or

(c) Is currently listed on a sexual offender registry.

418 [RESERVED]

419 TRAFFIC RECORD CHECKS – GENERAL PROVISIONS

419.1 As a condition of employment, each individual subject to a traffic record check shall execute an acknowledgement and consent to the checks required by this chapter.

419.2 The program administrator shall be responsible for conducting traffic record checks pursuant to the provisions in this chapter, and for developing internal operating procedures for conducting the checks.

419.3 For the purposes of this chapter, traffic record checks shall be obtained from the traffic records maintained by the individual's local motor vehicle administration.

420 TRAFFIC RECORD CHECKS – ASSESSING HISTORIES

420.1 The program administrator shall evaluate any derogatory information obtained from a traffic record check and determine whether the individual is suitable for the position he or she occupies or for which he or she has applied.

420.2 The assessment of traffic records shall be conducted substantially consistent with Subsection 417.4.

420.3 The review of the traffic records shall include, but is not limited to:

(a) Checking the validity of an individual's driver's license;

(b) Checking for a pattern(s) of disregard for existing traffic regulations; and

(c) Checking whether there have been any conviction(s) for driving under the influence or while impaired.

421 [RESERVED]

422 CONSUMER CREDIT CHECKS – GENERAL PROVISIONS

422.1 Consumer credit checks shall be conducted for appointees to finance related security sensitive positions.

422.2 Prior to conducting a consumer credit check, and as a condition of employment, an appointee subject to the check shall execute an authorization to obtain a consumer credit report which shall set forth the appointee's or employee's rights under the Fair Credit Reporting Act.

422.3 If any discrepancies are identified, the personnel authority shall fully investigate until the discrepancies are resolved. An appointee shall fully cooperate in any such investigation as a prerequisite to employment.

423 CONSUMER CREDIT CHECKS − ASSESSING HISTORIES

423.1 The program administrator shall evaluate any derogatory information obtained from a credit report and determine whether the individual is suitable for the position he or she occupies or for which he or she has applied.

423.2 When warranted, an appointee may be disqualified based on one (1) or more of the following:

(a) Debts owed to the District government;

(b) Active liens;

(c) Current or repeated exhaustion of credit;

(d) Bankruptcies and foreclosures; or

(e) A pattern of late fees or financial activity establishing significant financial stress.

423.3 Prior to disqualifying an appointee based on derogatory credit information, the program administrator shall determine whether disqualification is warranted. To the extent practicable, the program administrator shall make this determination by considering the financial history in the context of:

(a) The specific duties and responsibilities related to the position;

(b) The bearing, if any, the derogatory information has to those duties and responsibilities;

(c) The length of time that has passed since the reporting of the derogatory information;

(d) The frequency and seriousness of the derogatory information;

(e) Any mitigating information provided by the individual in response to the derogatory information; and

(f) Whether, based on the totality of information available, the individual can reasonably be entrusted with the safety and security of government property and operations and possesses the necessary moral character and dedication to successfully serve the public.

424 CLARIFYING DEROGATORY INFORMATION

424.1 Whenever a general and enhanced suitability screening reveals derogatory information the program administrator shall:

(a) Notify the individual as to the source, nature, and potential impact of the derogatory information; and

(b) Allow the individual no less than ten (10) business days and no more than twenty-one (21) calendar days to provide a written response to the derogatory information. The personnel authority may authorize a shorter time period under extraordinary circumstances.

425 MANDATORY DRUG AND ALCOHOL TESTING – GENERAL PROVISIONS

425.1 Each program administrator with safety or protection sensitive positions shall contract with a professional testing vendor(s) to conduct required drug and alcohol testing. The vendor(s) shall ensure quality control, chain-of-custody for samples, reliable collection and testing procedures, and any other safeguards needed to guarantee accurate and fair testing, in accordance with the procedures in 49 Code of Federal Regulations (C.F.R.) Part 40, and District government procedures, as applicable.

425.2 The vendor(s) selected to conduct the testing shall ensure that any laboratory used is certified by the United States Department of Health and Human Services (HHS) to perform job-related drug and alcohol forensic testing.

425.3 The Director of the DCHR shall develop operating policies and procedures for implementing the drug and alcohol program (Program) under this chapter for agencies subordinate to the Mayor that have safety, protection, or security sensitive positions.

426 MANDATORY DRUG AND ALCOHOL TESTING – NOTIFICATION REQUIREMENTS

426.1 Each appointee or employee in a covered position shall be provided a copy of the District's drug and alcohol policy, and any additional requirements imposed by his or her respective agency. The policy shall state at a minimum the following:

(a) The circumstances under which an appointee or employee will be tested;

(b) The basic methodology to be used for testing; and

(c) The consequences of a positive test result.

426.2 Each appointee or employee in a covered position shall sign an acknowledgement that he or she received the written policy as specified in Subsection 426.1 of this section. A legal guardian's signature is needed if the appointee or employee is under eighteen (18) years of age.

426.3 As a condition of employment, each appointee or employee in a safety sensitive position subject to random drug and alcohol testing shall execute consent to the testing required by this chapter, or face immediate separation from the District government.

426.4 Whenever an employee occupies a position that becomes designated as safety sensitive he or she may self-report any existing drug or alcohol usage to his or her agency within thirty (30) days of the change in designation. The employee shall:

(a) Be permitted to engage in any needed counseling or rehabilitation program(s), without being subject to adverse or other administrative actions;

(b) Be detailed to a position that is not safety or protection sensitive while undergoing the treatment; and

(c) Be returned to a safety or protection sensitive position upon successful completion of treatment, and a negative test result.

427 MANDATORY DRUG AND ALCOHOL TESTING ─ TESTING METHODOLOGY

427.1 The vendor(s) selected to conduct the testing shall conduct the alcohol and drug testing at a location designated by the program administrator for such purposes.

427.2 In general, testing for drugs shall be conducted by urine sample from the individual being tested.

427.3 Testing for alcohol use shall be conducted utilizing an evidentiary breath-testing device or EBT, commonly referred to as a "breathalyzer."

427.4 In the case of drug testing, the vendor(s) shall split each sample and ensure that the laboratory performs enzyme-multiplied-immunoassay technique (EMIT) test on one (1) sample and store the split of that sample. A positive EMIT test shall be confirmed by the vendor(s) using the gas chromatography/mass spectrometry (GCMS) methodology.

427.5 The personnel authority shall notify, in writing, any appointee or employee found to have a confirmed positive drug test result. The appointee or employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing methodology.

427.6 All drug and alcohol testing shall follow the same procedures set forth in this section. In the case of a reasonable suspicion referral or a post-accident and incident test, the agency shall escort the employee to the designated test site for specimen collection as needed.

427.7 In the event that an individual requires medical care following an accident or incident, medical care shall not be delayed for the purpose of testing. In such cases, drug and alcohol testing may be conducted by a blood test.

427.8 A blood, breath, or urine test conducted in accordance with this section shall be deemed positive if the test yields a result that the appointee's or employee's alcohol content was either .04 grams or more per 210 liters of breath, .04 grams or more per 100 milliliters of blood, or .05 grams or more per 100 milliliters of urine.

427.9 The personnel authority may not require blood tests to be performed to carry out random drug or alcohol tests.

428 MANDATORY DRUG AND ALCOHOL TESTING – POSITIVE DRUG OR ALCOHOL TESTS RESULTS

428.1 An employee shall be deemed unsuitable and immediately subject to separation from a covered position as described in Subsections 439.3 and 439.4 for:

(a) A positive drug or alcohol test result;

(b) A refusal to submit to a drug or alcohol test; or

(c) In the case of an employee who acknowledged a drug or alcohol problem as specified in Subsection 426.4, failure to complete a counseling or rehabilitation program(s), or a positive return-to-duty test.

428.2 The program administrator shall rescind a conditional offer or decline to make a final offer of employment to an appointee subject to pre-employment testing if he or she:

(a) Fails or otherwise refuses to submit to a required drug or alcohol test;

(b) Fails or otherwise refuses to follow instructions given during a required drug or alcohol test; or

(b) Has a positive drug or alcohol test result.

429 MANDATORY DRUG AND ALCOHOL TESTING – PRE-EMPLOYMENT

429.1 As a condition of employment, appointees to safety and protection sensitive positions shall be required to pass a pre-employment drug test in accordance with this section. In addition, the program administrator may require a pre-employment alcohol test.

429.2 For safety and protection sensitive positions, pre-employment drug and alcohol testing shall be conducted after a conditional offer of employment is made, but before the appointee's effective date of appointment.

429.3 Pre-employment drug and alcohol testing shall be carried out pursuant to Sections 425 through 428.

430 MANDATORY DRUG AND ALCOHOL TESTING – RANDOM

430.1 Employees in safety sensitive positions shall be subject to random drug and alcohol testing. Such employees shall be placed in a random drug and alcohol testing pool.

430.2 Each year, the program administrator shall conduct a number of random drug tests that shall be at least equal to fifty percent (50%) of the total drug testing pool.

430.3 Similarly, each year, the program administrator shall conduct a number of alcohol tests that shall be at least equal to ten percent (10%) of the total alcohol testing pool.

430.4 Employees in the drug and alcohol pools shall be randomly selected in a manner consistent with accepted industry practice.

430.5 Random drug and alcohol testing shall be conducted in accordance with Sections 425 through 428.

431 MANDATORY DRUG AND ALCOHOL TESTING – REASONABLE SUSPICION

431.1 All District employees, including employees in independent agencies, are subject to, and shall be referred by a trained supervisor or manager for, drug and alcohol testing when there is a reasonable suspicion that the employee, while on duty, is impaired or otherwise under the influence of a drug or alcohol.

431.2 Prior to contacting the appropriate personnel authority to make a referral under this section, the trained supervisor or manager shall:

(a) Have reasonable suspicion that the employee is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired; and

(b) Gather all information and facts to support this reasonable suspicion.

431.3 A reasonable suspicion referral shall be confirmed through a second opinion rendered by another trained supervisor or manager, if available.

431.4 A reasonable suspicion referral may be based on direct observation of drug use or possession, physical symptoms of being under the influence of drugs, symptoms suggesting alcohol intoxication, a pattern of erratic behavior, or any other reliable indicators. There may be reasonable suspicion under the following conditions:

431.5 Reasonable suspicion may be established if:

(a) The employee is witnessed using a drug or alcohol while on duty;

(b) The employee displays physical symptoms consistent with drug or alcohol usage;

(c) The employee engages in erratic or atypical behavior of a type that is consistent with drug or alcohol usage; or

(d) There are other articulable circumstances which would lead a reasonable person to believe that the employee is under the influence of a drug or alcohol.

431.6 Only a trained supervisor or manager shall refer an employee for drug or alcohol testing.

431.7 Prior to making a referral, the trained supervisor or manager shall gather all information and facts that support the reasonable suspicion determination.

431.8 Reasonable suspicion referral testing shall be conducted in accordance with Sections 425 and 427 of this chapter.

431.9 Testing resulting from a reasonable suspicion referral shall be conducted as specified in Sections 427 and 428 of this chapter.

432 MANDATORY DRUG AND ALCOHOL TESTING – POST-ACCIDENT OR INCIDENT

432.1 All District employees shall be subject to post-accident or incident testing when they are involved in accidents or incidents under the following conditions:

(a) The employee is involved in an on-the-job accident or incident that result in injury or loss of human life;

(b) One (1) or more motor vehicle(s) (either District government or private) incurs disabling damage, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle;

(c) Anyone receives bodily injury which requires immediate medical attention away from the scene;

(d) The employee operating a government vehicle or equipment receives a citation under District of Columbia or another law for a moving traffic violation arising from the incident;

(e) There are reasonable grounds to believe the employee has been operating or in physical control of a motor vehicle within the District of Columbia while that employee's breath contains .04 percent or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or combination thereof;

(f) The actions of the employee cannot reasonably be discounted as a contributing factor, using the best information available at the time of the decision; or

(g) The employee is involved in an on-the-job accident or incident that seriously damages machinery, equipment, or other property.

432.2 A post-accident or incident drug or alcohol test shall be conducted as set forth in Sections 425 and 427.

433 MANDATORY DRUG AND ALCOHOL TESTING – RETURNED-TO-DUTY AND FOLLOW-UP

433.1 Employees in a safety or protective sensitive position who acknowledge a drug or alcohol problem and complete a counseling and rehabilitation program, as provided in Subsection 426.4, shall be subject to a returned-to-duty and follow-up test.

433.2 The returned-to-duty and follow-up test shall be conducted as set forth in Sections 425 and 427.

434 MANDATORY DRUG AND ALCOHOL TESTING ─ REQUIRED TRAINING

434.1 Agencies with positions subject to mandatory drug and alcohol testing shall be responsible for providing training in drug abuse detection and recognition, documentation, intervention, and any other appropriate topics, for supervisors and managers in agencies with covered employees.

435 SUITABILITY DETERMINATIONS

435.1 The information contained in this section shall only apply to enhanced suitability screenings.

435.2 The program administrator shall establish and maintain written suitability assessment determinations for enhanced suitability screenings.

435.3 The program administrator shall make a suitability determination within fifteen (15) days after receiving all enhanced suitability screening information necessary to make the determination.

435.4 The final suitability determination shall establish whether:

(a) For appointees, if a conditional offer of employment should be withdrawn;

(b) For volunteers, if the individual is suitable to provide voluntary services; and

(c) For employees, if the individual may be retained in their position of record.

435.5 For appointees to and employees in safety sensitive positions in a covered child or youth service agency, as defined by D.C. Official Code § 4-1501.02(3) (2012 Repl.), the final suitability determination shall establish whether the appointee or employee presents a present danger to children or youth.

435.6 In accordance with Section 428, a positive drug or alcohol test shall render an individual unsuitable for District employment and constitute cause for purposes of Chapter 16 of these regulations.

435.7 The program administrator shall notify the employing agency of the final suitability determination.

435.8 If an appointee is deemed unsuitable based on an enhanced suitability screening, any conditional employment offer shall be withdrawn and he or she shall be notified of the final suitability determination.

435.9 If an employee is deemed unsuitable, the employing agency shall move the employee to a non-covered position, or if none are available, terminate his or her employment by immediately initiating the appropriate adverse action procedure as specified in this subtitle or any applicable collective bargaining agreement. Notwithstanding any other provision of this subtitle, whenever an employee is deemed unsuitable under this chapter, the facts supporting that determination shall be cause for adverse action under Chapter 16 of these regulations.

435.10 If a volunteer is deemed unsuitable for voluntary service, the voluntary service process shall be terminated and he or she shall be notified of the suitability determination.

435.11 Post-accident and incident drug or alcohol testing results shall be provided to the Chief Risk Officer, Office of Risk Management, for purposes of the Public Sector's Workers Compensation Program, upon request.

436 APPOINTEE, VOLUNTEER, AND EMPLOYEE RIGHTS

436.1 In the interest of transparency, applicants, appointees, volunteers, and employees have a right to understand and challenge the sources of derogatory information that results in employment disqualification. The purpose of this section is to outline the means by which applicants, volunteers, and employees may review, and in some cases appeal, unfavorable suitability determinations based on such information.

436.2 Individuals subject to the provisions of this chapter have the right to the following information:

(a) Each appointee, volunteer, or employee in a covered position has a right to receive the following information:

(1) Copies of public criminal records received from any law enforcement agency pursuant to Section 415 of this chapter;

(2) Any traffic records obtained from the individual's local motor vehicle administration pursuant to Section 420 of this chapter; and

(3) A consumer credit report obtained pursuant to Section 423 of this chapter.

(b) The information outlined in Subsection 436.2(a), shall be provided as follows:

(1) An applicant, volunteer, or employee must file a written request with the DCHR;

(2) The written request must be submitted no more than fifteen (15) days after receipt of a notification that the applicant, volunteer, or employee has been disqualified; and

(3) The DCHR shall provide the requested records no more than fifteen (15) days after receipt of the request.

(c) Employees subject to the provisions of this chapter have a right to review records according to the procedures established in Chapters 4 and 31A of the District Personnel Manual.

436.3 Appointees, volunteers, and employees subject to enhanced suitability screening as outlined in Section 406, may file an appeal based on the provisions of this chapter as follows:

(a) If an appointee or volunteer is found unsuitable because he or she presents a present danger to children or youth, he or she may appeal that determination to the Commission on Human Rights (Commission). Any such appeal must be submitted to the Commission no more than thirty (30) days following the date of the suitability determination; or

(b) If an employee is deemed unsuitable and separated from employment, he or she may appeal that determination with the Office of Employee Appeals (OEA) or, if applicable, initiate a grievance pursuant to a collective bargaining agreement or Chapter 16 of these regulations. An appeal to the OEA must be filed with that office no more than thirty (30) days following the date of a final agency decision terminating employment. Employees may not appeal to the Commission.

436.4 An appointee or volunteer that is deemed unsuitable and cannot appeal to the Commission may, if applicable, file a grievance with the personnel authority regarding his or her application for employment pursuant to Chapter 16 of these regulations.

437 [RESERVED]

438 APPEALS BEFORE THE COMMISSION ON HUMAN RIGHTS

438.1 The purpose of this section is to promulgate rules and procedures for the efficient and uniform administration of suitability determination appeals before the Commission.

438.2 If an applicant or volunteer applying for a protection sensitive position is found to pose a present danger to a child or youth, as provided by D.C. Official Code § 4-1501.05a (2012 Repl.), and deemed unsuitable for a District government position, he or she may seek review of that determination with the Commission in accordance with this section.

438.3 For purposes of this section:

(a) The term "applicant" means an applicant or appointee, as those terms are defined in Section 499;

(b) The term "petitioner" means the applicant or volunteer seeking review of a suitability determination made under this chapter, but excludes District government employees;

(c) The term "agency" means the agency to which the applicant applied; and

(d) The term "parties" means the petitioner and agency, collectively.

438.4 Any document filed with the Commission pursuant to this section shall be served on the opposing party and accompanied by a signed certificate of service showing compliance with this subsection.

438.5 Documents served on the agency shall be delivered by hand or certified mail to the General Counsel for the DCHR or to the General Counsel of the independent personnel authority.

438.6 To initiate the review process, the petitioner shall file a Notice of Appeal, along with a copy of the suitability determination being appealed, with the District of Columbia Office of Human Rights within thirty (30) days of the issuance of the agency decision being appealed.

438.7 Each Notice of Appeal shall contain, at a minimum, the following information:

(a) The petitioner's name, address, and phone number;

(b) The name of the agency, address, and phone number;

(c) The specific objection(s) to the suitability determination;

(d) The argument(s) in support of the petitioner's appeal; and

(e) The relief being sought.

438.8 The following procedures shall be followed after a Notice of Appeal is filed:

(a) No more than thirty (30) days from the filing of the Notice of Appeal, the agency shall file an answer along with a certified copy of the record, which includes all documents relating to the applicable suitability determination;

(b) The agency record shall be indexed, with each page being sequentially numbered;

(c) The Commission shall review the respective arguments of the parties along with the agency record;

(d) No more than thirty (30) days following the filing of the agency's answer and record, the Commission shall issue a decision affirming or reversing the suitability determination;

(e) The Commission shall base its decision exclusively on the Notice of Appeal, and the agency's answer and record, and shall not set aside the suitability determination if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law;

(f) When the Commission disagrees with a suitability determination it may make recommendations to the personnel authority. Upon review of the Commission's decision, the personnel authority shall consider the recommendations and issue a final decision without further appeal to the Commission or any court. This final decision by the DCHR or the independent personnel authority shall be in writing, and a copy of this final decision shall be served on petitioner; and

(g) The Commission may not assess fees against the District of Columbia in conjunction with an appeal under this section.

438.9 At the discretion of the Commission, the time limits set forth in this section may be reduced or expanded.

438.10 A decision issued by the Commission shall be final and cannot be appealed to any administrative body or court.

438.11 To the extent practicable, the parties may rely on the District of Columbia Superior Court Rules of Civil Procedure for additional procedural guidance.

439 PROGRAM MANAGEMENT

439.1 This section shall apply to the enhanced suitability screening provisions contained in Sections 406 through 438 of this chapter.

439.2 The Mayor's authority to make suitability determinations under this chapter is delegated to the Director of the DCHR who shall also serve as the program administrator for agencies under the personnel authority of the Mayor.

439.3 If the program administrator determines that an existing employee is unsuitable to continue serving in a covered position, and that he or she should be separated from employment, the removal action shall be carried out by the employing agency in accordance with the employee's type of appointment (*i.e.*, probationary, term or permanent, etc.) and service (*i.e.*, Career, Legal, Excepted, Management Supervisory Service, etc.), and the applicable legal and regulatory provisions governing adverse actions, including but not limited to Chapter 16 of the District Personnel Manual and applicable collective bargaining agreement provisions.

439.4 If an employing agency fails or refuses to remove an employee based on a finding that its employee is unsuitable to continue his or her employment, the program administrator may carry out the adverse action in accordance with the procedures applicable to the employee.

440 REPORTING

440.1 Each program administrator for agencies covered by this chapter shall prepare and submit compliance reports to the Mayor every six (6) months following the effective date of this chapter.

440.2 Each report shall be submitted to the Mayor and include statistical information showing:

(a) Total number of positions within the agency;

(b) Total number of new hires;

(c) Total number of positions identified agency-wide as safety, protection and security sensitive;

(d) Any changes in the numbers reported in Subsection 440.2(c) since the last report;

(e) Total number of general suitability screening checks conducted and compliance with Section 403 of this chapter;

(f) Total number of consumer credit checks conducted, including the number of derogatory results received, and types of actions taken, (if any);

(g) Total number of criminal background checks conducted, the number of derogatory results, and types of actions taken, (if any);

(h) Total number and type of drug tests conducted, types of drugs detected, and types of actions taken, (if any);

(i) Total number and type of alcohol tests conducted, positive results, and types of actions taken, (if any); and

(j) Total number of traffic record checks conducted, types of derogatory results, and types of actions taken, (if any).

441 CONFIDENTIALITY

441.1 Unless publicly available, all records received pursuant to this chapter shall be confidential and are for the exclusive use of making a suitability determination. The records shall not be released or otherwise disclosed to any person except when:

(a) Required to carry out the application process, including any appeals to the Commission;

(b) Requested by the Mayor, or his or her designee, for the purpose of an official inspection or investigation, including investigations related to litigation initiated against the District of Columbia;

(c) Ordered by a court;

(d) Authorized by the written consent of the individual being investigated; or

(e) Utilized for a corrective, adverse, or administrative action in a personnel proceeding including but not limited to, disciplinary actions under Chapter 16 of these regulations.

441.2 Any individual who discloses confidential records that were received in accordance with the Child and Youth, Health and Safety Omnibus Amendment Act of 2004, is subject to criminal penalties including a fine of no more than one thousand dollars ($1,000), imprisonment for not more than one hundred and eighty (180) days, or both.

442 SUITABILITY RECORDS

442.1 Records created and maintained pursuant to this chapter shall be subject to the following:

(a) Information related to suitability screening and suitability determinations shall be kept in strict confidence in accordance with this section and with Chapter 31 of these regulations;

(b) Sources of information shall not be disclosed except as specifically authorized in this chapter and in Chapter 31 of these regulations;

(c) Reports of screenings conducted by a program administrator shall not be disclosed to the individual screened, nor may the information be discussed with him or her in a manner that would reveal or permit him or her to deduce the source of the information.

(d) The restrictions contained in Subsection 442.1(c) shall not apply to the following:

(1) Information of public record;

(2) Information from District government personnel records which could be obtained on request by the subject employee under the provisions of Chapter 31 of these regulations; and

(3) Other sources of information in reports of investigation may be disclosed to the subject of the investigation only if the personnel authority obtains the information independently, such as by interviewing the subject, or by obtaining permission, in writing, from the sources named to use the information and to identify the source.

442.2 A subordinate agency head (or his or her designee) who has delegated personnel authority pursuant to Sections 403 or 406, shall provide the Director of the DCHR information to document the results of each suitability investigation conducted by the subordinate agency. Unless otherwise specified, the information shall be provided prior to the effective date of appointment of an individual.

443 DRIVERS OF COMMERCIAL MOTOR VEHICLES

443.1 Pursuant to Section 2011 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-620.11 (2014 Repl.)), the federal regulations issued pursuant to 49 U.S.C. § 31306 (currently, 49 C.F.R. Parts 382-385) shall apply to individuals who are employed, or who are candidates for employment, as drivers of commercial motor vehicles.

443.2 The provisions of Subsection 443.1, and the regulations incorporated by reference therein, shall apply to agencies under the personnel authority of the Mayor and other personnel authorities, and to individuals who are employed by or who are

candidates for employment in those agencies and personnel authorities as drivers of commercial motor vehicles.

499 DEFINITIONS

499.1 When used in this chapter, the following meanings apply:

Administrative action – official reprimands, suspensions, reductions in grade, or removals under the corrective and adverse action provisions for the Career Service contained in Chapter 16 of Subtitle B, Title 6 of these regulations; and other similar penalties, up to and including removal, for employees in services other than the Career Service.

Agency – any unit of the District of Columbia government, excluding the courts, required by law, by the Mayor of the District of Columbia, or by the Council of the District of Columbia to administer any law, rule, or regulation adopted under authority of law. The term agency shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

Alcohol – for the purposes of Sections 425 through 434, the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols in methyl and isopropyl alcohol, regardless of its packaging form, storage, or utilization.

Applicant – an individual who has filed a résumé or electronic (web-based) application for employment in the District government.

Appointee – a person who has been made a conditional job offer to a position, compensated or voluntary, subject to the satisfactory completion of a general or enhanced suitability screening.

Child – an individual twelve (12) years of age and under.

Covered position – for the purposes of Sections 406 through 440, a position, compensated or voluntary, that is designated as safety, protection, or security sensitive position.

Days – calendar days, unless otherwise indicated.

Derogatory information - any information that detracts from the character or standing of the individual for the position which he or she occupies or for which he or she has applied.

Drug – for the purposes of Sections 425 through 434, an illegal drug for which tests are required under 49 C.F.R. part 40, such as marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates; but not authorized prescription medications.

Elderly – age 65 years or older.

Employee – an individual who performs a service for the District government and receives compensation for the performance of such service.

Finance related – involving access to or control of financial instruments, processes or systems;

Follow-up test – a series of unannounced drug and/or alcohol tests conducted periodically after an employee returns to the workplace upon satisfactorily completing treatment requirements. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

Independent agency – any board or commission of the District of Columbia government not subject to the administrative control of the Mayor.

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program as provided in Title IV of the Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-604.01, *et seq*.).

Post-accident or post-incident test – for the purposes of Sections 425 through 434, an examination that is administered to a District government employee who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury, property damage, or both, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, from the use of a drug or alcohol on part of the employee.

Program administrator – the Director of the D.C. Department of Human Resources for agencies subordinate to the Mayor, or his or her designee; or the agency head for independent agencies, or his or her designee (if applicable).

Protection sensitive position – a position with duties or responsibilities caring for or ensuring the well-being of children or youth, patients, elders, or other vulnerable persons, including but not limited to the positions listed in Subsection 411.2 of this chapter.

Random drug or alcohol test – for the purposes of Sections 425 through 434, an examination that is administered to a District government employee in a safety sensitive position, at an unspecified time, for the purpose of determining whether the employee has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties.

Reasonable suspicion test – for the purposes of Sections 425 through 434, an examination that is administered to a District government employee based on the reasonable belief by a supervisor that an employee is under the influence of a drug or alcohol to the extent that the employee's ability to perform his or her job is impaired.

Reasonable suspicion referral – for the purposes of Sections 425 through 434, referral of an employee for testing by the District government to determine drug or alcohol usage.

Returned to duty test – a one-time, announced drug and/or alcohol test required as a condition of an employee's return to the workplace upon satisfactorily completing required treatment for substance abuse.

Safety sensitive position – a position with duties or responsibilities which if performed while under the influence of drugs or alcohol, could lead to a lapse of attention that could cause actual, immediate and permanent physical injury or loss of life to self or others, including but not limited to the positions listed in Subsection 410.3 of this chapter.

Security sensitive position – a position of special trust that may be reasonably expected to affect the access to or control of activities, systems, or resources that are subject to misappropriation, malicious mischief, damage, loss or impairment of control of communication, including but not limited to the positions listed in Subsection 412.3 of this chapter.

Subordinate agency – any agency under the direct administrative control of the Mayor, including but not limited to, the agencies listed in Section 301(q) of the CMPA (D.C. Official Code § 1-603.01(17)).

Substantial evidence – the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion of an administrative board or agency, even though other reasonable persons might disagree. Under the substantial evidence rule, the reviewing tribunal will defer to an agency determination so long as, upon an examination of the whole record, there is substantial evidence upon which the agency could reasonably base its decision.

Suitability – the quality or state of being acceptable for District government employment with respect to the character, reputation, and fitness of the person under consideration.

Volunteer – an individual who works with the District government without monetary or other financial compensation.

Vulnerable adult – an individual eighteen (18) years of age or older who has a physical or mental condition which impairs his or her ability to provide for their own care or protection.

Youth – an individual between thirteen (13) and seventeen (17) years of age.

OFFICE OF THE CHIEF MEDICAL EXAMINER

NOTICE OF PROPOSED RULEMAKING

The Chief Medical Examiner, pursuant to the authority set forth in Sections 2902 and 2918 of the Establishment of the Office of the Chief Medical Examiner Act of 2000 (Act), effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code §§ 5-1402 (2014 Supp.) and 5-1417 (2014 Repl.)); and Mayor's Order 2015-200, dated August 17, 2015, hereby gives notice of the intent to take proposed rulemaking action by adopting the following amendment to Chapter 50 (Medical Examiner) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR), in not less than forty-five (45 days) from the date of publication of this notice in the *D.C. Register*.

The purpose of this rulemaking is to expand the definition of "legal custody".

Pursuant to Section 2918 of the Act (D.C. Official Code § 5-1417 (2014 Repl.)), these rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until the expiration of the forty-five (45) day period of Council review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the forty-five (45) day review period, the proposed rules shall be deemed approved.

Chapter 50, MEDICAL EXAMINER, of Title 28 DCMR, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, is amended as follows:

Section 5007, DEFINITIONS, is amended as follows:

Subsection 5007.1(d) is amended to read as follows:

5007.1

(d) "Legal custody" –

(1) Under the physical control or restraint of a law enforcement officer, a correctional officer (including a private correctional officer), or an authorized employee or agent of a District juvenile secure facility (as the term "secure facility" is defined in Section 102 of the Department of Mental Health Establishment Amendment Act of 2006, effective March 2, 2007 (D.C. Law 14-56; D.C. Official Code § 7-1131.02(29A)), or youth residential facility, including being:

(A) Under arrest;

(B) In the process of being arrested;

(C) Detained; or

(D) In the process of being detained:

(2) Incarcerated in, committed to, or on work release (as the term "work release" is defined in 28 DCMR § 533.4) from a District jail or correctional facility (including contract facility) or a District psychiatric hospital; or

(3) Committed to a District juvenile secure facility (as the term "secure facility" is defined in Section 102 of the Department of Mental Health Establishment Amendment Act of 2006, effective March 2, 2007 (D.C. Law 14-56; D.C. Official Code § 7-1131.02(29A)), or youth residential facility."

Comments on these rules should be submitted in writing to the Chief Medical Examiner, Office of the Chief Medical Examiner, Government of the District of Columbia, 401 E Street, SW, 6th Floor, Washington DC 20024, via telephone at (202) 698-9000, via email at ocme@dc.gov, or online at www.dcregs.dc.gov, within forty-five (45) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Fees for Stormwater Management, and Soil Erosion and Sediment Control

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

These amendments update the fee for the District Stormwater Management Guidebook and existing fees that the Department adjusts annually for inflation using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics, as required by 21 DCMR § 501.1. All fees are rounded to the nearest cent. Adjustments in future years will be applied to the adjusted value of the prior year rather than the rounded value.

The Department gives notice of the intent to take final rulemaking action to adopt these amendments in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

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

Section 501, FEES, is amended as follows:

Subsection 501.3 is amended to read as follows:

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

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

Payment Type	Payment Requirement	Fees by Land Disturbance Type		
		Residential	All Other	
		≥ 50 ft² and < 500 ft²	≥ 50ft² and < 5,000 ft²	≥ 5,000 ft²
Initial	Due upon filing for building permit	$51.10	$444.56	$1,093.53
Final • Clearing and grading > 5,000 ft² • Excavation base fee • Excavation > 66 yd³ • Filling > 66 yd³	Due before building permit is issued	N/A		$0.15 per 100 ft²
		N/A	$444.56	
		$0.10 per yd³		
		$0.10 per yd³		
Supplemental	Due before building permit is issued	$102.20	$102.20	$1,021.99

Subsection 501.04 is amended to read as follows:

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

Table 2. Fees for Stormwater Management Plan Review

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≥ 5,000 ft² and ≤ 10,000 ft²	> 10,000 ft²
Initial	Due upon filing for building permit	$3,372.56	$6,234.12
Final	Due before building permit is issued	$1,532.98	$2,452.77
Supplemental	Due before building permit is issued	$1,021.99	$2,043.97

Subsection 501.6 is amended to read as follows:

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

Table 3. Additional Fees

Review or Inspection Type	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
	≤ 10,000 ft^2	> 10,000 ft^2
Soil characteristics inquiry	$153.30	
Geotechnical report review	$71.54 per hour	
Pre-development review meeting	No charge for first hour $71.54 per additional hour	
After-hours inspection fee	$51.10 per hour	
Stormwater pollution plan review	$1,124.19	
Dewatering pollution reduction plan review	$1,124.19	$2,146.17
Application for relief from extraordinarily difficult site conditions	$510.99	$1,021.99

Subsection 501.7 is amended to read as follows:

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

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

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

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

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$587.64	$868.69
Final	Due before building permit is issued	$127.75	$204.40
Supplemental	Due before building permit is issued	$510.99	

Subsection 501.10 is amended to read as follows:

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

Table 5. Fees for Review of Green Area Ratio Plan

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$587.64	$868.69
Final	Due before building permit is issued	$127.75	$204.40
Supplemental	For reviews after first resubmission	$510.99	

Subsection 501.11 is amended to read as follows:

501.11 The in lieu fee shall be three dollars and fifty-eight cents ($3.58) per year for each gallon of Off-Site Retention Volume (Offv).

Subsection 501.13 is amended to read as follows:

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

Table 6. Fees for Resources

Paper Copies of Documents	Cost
District Standards and Specifications for Soil Erosion and Sediment Control	$51.10
District Stormwater Management Guidebook	$89.93
District Erosion and Sediment Control Standard Notes and Details (24 in x 36 in)	$25.55

All persons desiring to comment on the proposed rulemaking should file comments in writing not later than thirty (30) days after publication of this notice in the *D.C. Register*. Comments should be clearly marked "Stormwater Fee Inflation Adjustment" and filed with DOEE, Stormwater Management Division, 1200 First Street, N.E., 6th Floor, Washington, DC 20002, Attention: Evan Branosky, or e-mailed to SWreviewfees.doee@dc.gov. Copies of the above documents may be obtained from DOEE at the same address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND 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 (2012 Repl. & 2014 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of a new Section 965 (Optometry Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The District of Columbia Medicaid program is required to cover certain mandatory benefits, and can choose to provide other optional benefits under federal law. One of these optional benefits is optometry services. Federal law also requires that all Medicaid programs provide services "…sufficient in amount, duration and scope to reasonably achieve their purpose." 42 C.F.R. § 440.230. These rules clarify the coverage and limitations for Medicaid reimbursement of optometry services consistent with the District of Columbia State Plan for Medical Assistance.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 6, 2015 at 62 DCR 001707. Substantive changes have been made based on comments from advocates and the Office of the Health Care Ombudsman to Subsections 965.5 and 965.9 regarding the circumstances under which Medicaid reimbursement may be authorized for repairs or replacements of eyeglasses for these second proposed rules.

The Director adopted these rules on October 14, 2015. The Director also gives notice of intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new Section 965 of Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is adopted as follows:

965 OPTOMETRY SERVICES

965.1 Optometry services related to vision and vision disorders that are obtained for the purpose of diagnosis and treatment, including lenses, frames, other aids to vision, and therapeutic drugs, provided consistent with the requirements set forth in 42 C.F.R. Sections 440.60(a), 440.120(d), and 441.30, shall be eligible for Medicaid reimbursement.

965.2 Medicaid reimbursement of optometry services shall be limited to specific services set forth in this section and any additional optometry services, identified at www.dc-medicaid.com, which have received prior authorization by the Department of Health Care Finance (DHCF) or its agent.

965.3 Medicaid reimbursement of eye exams for Medicaid beneficiaries over twenty-one (21) years of age shall be limited in the following manner:

(a) The services shall be medically necessary and required to monitor a chronic condition that could harm a beneficiary's vision; or

(b) The beneficiary has an acute condition that, if left untreated, may cause permanent or chronic damage to the eye.

965.4 Medicaid reimbursement of eye exams for Medicaid beneficiaries from birth through twenty-one (21) years of age shall be based on Early Periodic Screening, Diagnosis, and Treatment program requirements, as set forth in 42 C.F.R. Section 440.40(b).

965.5 Medicaid reimbursement for eyeglasses for Medicaid beneficiaries shall be limited to one (1) complete pair of eyeglasses in a twenty-four (24) month period unless:

(a) The beneficiary is under twenty-one (21) years of age;

(b) The new prescription represents a change of at least +/- 0.50 diopters from the prior prescription;

(c) A prescription represents a change from the prior prescription of at least + 0.75 sphere or – 0.50 sphere, 0.50 cylinder, 1/2 prism diopter vertical, or 3 prism diopter lateral;

(d) There has been a major change in visual acuity documented by an optometrist licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended; and the new lenses cannot be accommodated by a beneficiary's existing eyeglasses; or

(e) The frames or lenses have been lost, broken beyond repair or scratched to the extent that visual acuity is compromised, as determined by the dispensing provider.

965.6 Medicaid reimbursement for Medicaid beneficiaries under twenty-one (21) years of age shall be limited to one (1) complete pair of eyeglasses in a twelve (12) month period.

965.7 The limitations described at Subsections 965.5 through 965.6 shall apply to new, duplications, and changes in a prescription.

965.8 Medicaid reimbursement for repairs or replacements of eyeglasses, contact lenses, glass lenses, ultraviolet lenses, prosthetic eyes, lenses made of polycarbonate or equal material, tinted lenses, and photochromatic lenses shall require prior authorization from DHCF.

965.9 After receiving written documentation that the repair or replacement is medically necessary, DHCF may provide prior authorization for reimbursement.

965.10 Repairs or replacements of eyeglasses, under Subsection 965.8, shall only be reimbursed if ordered in writing by an optometrist licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended.

965.11 Reimbursement of optometry services shall be limited to those services provided by optometrists who are screened and enrolled as a District Medicaid program provider pursuant to Chapter 94 of Title 29 of the District of Columbia Municipal Regulations and who adhere to dispensing procedures in the Vision Billing Manual, published on the Department of Health Care Finance's Provider website at www.dc-medicaid.com.

965.99 DEFINITIONS

For the purposes of this section, the following terms shall have the meanings ascribed:

Eyeglasses: Lenses, including frames, contact lenses, and other aids to vision that are prescribed by a physician skilled in diseases of the eye or by an optometrist.

Comments on the proposed rule 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, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.

D.C. OFFICE OF HUMAN RIGHTS

SECOND NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights (OHR), pursuant to Section 10 of the Youth Bullying Prevention Act of 2012, effective September 14, 2012 (D. C. Law 19-167; D.C. Official Code § 2-1535.01 *et seq.*) (the "Act"), Mayor's Order 2013-062, dated April 5, 2013, and Mayor's Order-2014-135, dated June 6, 2014, hereby gives notice of the intent to amend Title 4 (Human Rights and Relations) of the District of Columbia Municipal Regulations (DCMR) by adding a new Chapter 15 (Youth Bullying Prevention).

The purpose of these regulations is to provide guidelines for implementation of the Act. Specifically, the regulations provide additional or clarifying information with respect to: covered entities, bullying prevention policies, codes of conduct, bullying investigations and appeals, the role of the OHR, the role of the Youth Bullying Prevention Task Force, and the OHR complaint procedures as they relate to both this Act and, at times, overlapping protections found through the D.C. Human Rights Act, effective March 14, 2007 (D.C. Law 16-273; D.C. Official Code § 2-1401.01 *et seq.*) (DCHRA).

As outlined below, the work to enforce the Act is guided and monitored by the Bullying Prevention Program Director (BPP Director).

The first Notice of Proposed Rulemaking for the Act was published in the *D.C. Register* on September 19, 2014, at 61 DCR 009643. Comments were received from five (5) organizations and considered by OHR. Revisions based on OHR's consideration of those comments are included in this revised rulemaking. The revisions include, but are not limited to, the following: (1) specifying covered entities under the term "educational institution"; (2) amending date for covered entities to finalize bullying prevention policy; (3) clarifying anti-retaliation protection for victims, witnesses, as well as those who report bullying; (4) outlining procedures for investigating reported incidents of bullying and information required in investigation reports; (5) clarifying bullying incidents covered by the Act; (6) amending training requirements; and (7) outlining the steps for filing a complaint with OHR and alternative dispute resolution.

The Director of OHR 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*.

Title 4, HUMAN RIGHTS AND RELATIONS, of the DCMR is amended by adding a new Chapter 15, YOUTH BULLYING PREVENTION, to read as follows:

CHAPTER 15 YOUTH BULLYING PREVENTION

Section

1500 PURPOSE

1500.1 The purpose of this Chapter is to provide guidance, procedures and standards for the implementation of the Youth Bullying Prevention Act of 2012, effective September 14, 2012 (D. C. Law 19-167; D.C. Official Code § 2-1535.01 *et seq.*).

1501 COVERED ENTITIES

1501.1 The requirements of this Chapter apply in whole or in part to the following entities, which are referred to collectively in this Chapter as "covered entities:"

(a) Covered agencies, as defined in § 1501.2(a);

(b) Educational institutions, as described in § 1501.2(b); and

(c) Grantees of covered agencies and local educational agencies ("covered grantees"), as described in § 1501.2(c).

1501.2 For the purposes of this Chapter, the terms "covered agency," "educational institution," and "covered grantee" are defined as follows:

(a) A "covered agency" means a District government agency that provides services, activities, or privileges directly or indirectly to youth, and includes the following:

(1) Child and Family Services Agency;

(2) Department of Behavioral Health;

(3) Department of Employment Services, including, but not limited to, the following activities and programs:

(A) In-School Program;

(B) Mayor's Youth Leadership Institute;

(C) One City High School Internship Program;

(D) Out-of-School Internship Program;

(E) Out-of-School Program;

(F) Pathways for Young Adults;

(G) Summer Youth Employment Program; and

(H) Youth Connection Center;

(4) Department of Health, including, but not limited to, the following activities and programs:

(A) School-based health centers;

(B) Violence prevention programs in public schools and public charter schools; and

(C) College Student Internship Program;

(5) Department of Parks and Recreation;

(6) Department of Youth Rehabilitation Services;

(7) District of Columbia Public Library;

(8) Metropolitan Police Department, including, but not limited to the following activities and programs:

(A) Summer with the Metropolitan Police Department;

(B) Youth Advisory Council;

(C) Junior Police Academy; and

(D) Fun and Safe Kids;

(9) Office of the State Superintendent of Education; and

(10) University of the District of Columbia;

(b) An "educational institution" means:

(1) The District of Columbia Public Schools (DCPS); and

(2) Each local education agency, as defined in Section 101 of the Testing Integrity Act of 2013, effective October 17, 2013 (D.C. Law 20-27; D.C. Code § 38-771.01 *et. seq.*), that receives funds from the District, including charter schools and non-public schools that provide education for students with disabilities with District funds; and

(c) A "covered grantee" means an entity or contractor of an entity that provides services, activities, or privileges to youth on behalf of the District government or through District funding.

1501.3 Each covered entity and educational institution shall ensure that when hiring or contracting with a contractor or vendor to provide services, activities, or privileges to youth that the contractor or vendor will comply with the requirements of this chapter and the Act.

1501.4 Each covered entity and educational institution shall ensure that when it issues a grant to a grantee to provide services, activities, or privileges to youth on behalf of the District or through District funding that the grantee will comply with the requirements of this Chapter and the Act.

1502 ADOPTION OF A BULLYING PREVENTION POLICY

1502.1 Bullying means any severe, pervasive, or persistent act or conduct, whether physical, electronic, written or verbal that:

(a) May be based on a youth's actual or perceived race, color, ethnicity, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, intellectual ability, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense, place of residence or business, or any other distinguishing characteristic, or on a youth's association with a person or group with any person, with one or more of the actual or perceived foregoing characteristics; and

(b) Can reasonably be predicted to:

(1) Place the youth in reasonable fear of physical harm to his or her person or property;

(2) Cause a substantial detrimental effect on the youth's physical or mental health;

(3) Substantially interfere with the youth's academic performance or attendance; or

(4) Substantially interfere with the youth's ability to participate in or benefit from the services, activities, or privileges provided by a covered entity.

1502.2 Each covered entity shall annually update its bullying prevention policy by August 15 of each year, and provide to OHR an updated Point of Contact and any significant revisions to its policy. Newly authorized charter schools or newly established youth organizations that receive funding from the District must adopt a bullying prevention policy (including a Point of Contact) within three months of their opening and provide the policy to the BPP Director.

1502.3 A covered entity's bullying prevention policy shall at a minimum include the following elements:

(a) The legal definition of bullying set forth above;

(b) A statement prohibiting bullying, including cyberbullying;

(c) A statement prohibiting retaliation against a victim or witness of bullying, or a person who reports bullying;

(d) A statement that the policy applies at all of the locations listed in §1501;

(e) A code of conduct;

(f) A list of consequences that can result from an identified incident of bullying that are designed to:

(1) Appropriately correct the behavior deemed to be bullying;

(2) Prevent future occurrences of bullying or retaliation;

(3) Ensure the safety and well-being of the person who has reportedly experienced or is reportedly at risk for future acts of bullying or retaliation; and

(4) Be flexible in application, appropriate to the individual incident, and varied in method and severity based on the:

(A) Nature of the incident;

(B) Developmental age of the person exhibiting bullying behaviors; and

(C) Any history of problem behavior of all students involved in the incident(s) and where available, history of behavioral concerns documented in an Individualized Education Program (IEP) or 504 plan as a result of a disability under the Individuals with Disabilities Education Act (IDEA), approved Dec. 3, 2004 (118 Stat. 2647; 20 U.S.C. § 1400 *et seq*.) or Section 504 of the 1973 Rehabilitation Act, approved Sept. 26, 1973 (87 Stat. 394; 29 U.S.C. § 794).

(g) A mechanism and procedures for staff, students, parents/guardians, and others to report bullying, retaliation for reporting bullying, or other violations of the bullying prevention policy that permits anonymous reporting, provided however, that no formal response shall be taken solely on the basis of anonymous reporting;

(h) A procedure for prompt investigation of reports of bullying, retaliation, or other violations of the bullying prevention policy that identifies the name and contact information for the person(s) responsible for investigating bullying and retaliation;

(i) A secondary investigation appeal process, consistent with § 1506, for a person accused of bullying or a person who is the target of bullying or retaliation who is not satisfied with the outcome of an initial investigation under § 1505; and

(j) A statement that retaliation against any person for reporting an incident of bullying is prohibited and a description of the possible consequences for a person who engages in retaliatory behavior.

1502.4 Each covered entity's bullying prevention policy shall apply at the following locations:

(a) On the covered entity's property, including buildings, fields, parking lots, and walkways;

(b) At events sponsored by the covered entity, including sponsored events held off the property of the covered entity;

(c) On any vehicle used for transportation by or on behalf of the covered entity, including transportation for sponsored events of youth; and

(d) At any transit stop at which youth wait to be transported to the covered entity or an event sponsored by the covered entity.

1502.5 Each covered entity's bullying prevention policy shall apply to cyberbullying sent from or to someone at a location listed in §1502.4, whether or not the communications device is owned or leased by the covered entity. Cyberbullying is defined as any bullying done through electronic means which meets the definition in §1502.1, including, but not limited to, social media, electronic mail (email), texting or tweeting.

1502.6 Bullying which occurs on-site, but involves off-cite activities, is prohibited if it creates a hostile environment at the covered entity for the target or witnesses of bullying, or impedes or interferes with a youth's ability to participate at the covered entity.

1503 CODE OF CONDUCT

1503.1 The code of conduct required in the bullying prevention policy (referenced in §1502.3(e)) should provide that:

(a) The covered entity expects youth to behave in a way that supports the covered entity's objective to provide a safe and welcoming environment for other youth; and

(b) The covered entity expects youth who are part of the covered entity community to:

(1) Treat all other youth at the covered entity with respect;

(2) Respect the property of other youth at the covered entity; and

(3) Respond appropriately to instructions from covered entity staff regarding behavior toward other youth.

1504 REPORTING REQUIREMENTS FOR BULLYING OR RETALIATION

1504.1 Each covered entity shall encourage youth, parents, guardians, employees, volunteers and community members to report any incidents of bullying or retaliation that they are witness to, or of which they are aware.

1504.2 Reports of bullying, retaliation, and other violations of the bullying prevention policy should be made to the Point of Contact at the covered entity, either by mail, telephone, facsimile, electronically, or through an anonymous drop box at the covered entity's site.

1504.3 If an individual is unable to report the complaint to the Point of Contact, the complaint may also be made to a member of the covered entity's management or leadership team, and those individuals shall refer the complaint to the Point of Contact for investigation. If there is some reason why the Point of Contact should not be the investigator on a particular matter, for example if there are any known or raised conflict of interests, the covered entity's management may assign another investigator.

1504.4 Employees and volunteers of covered entities shall promptly report incidents of bullying or retaliation to the entity's named Point of Contact identified in the policy when they witness incidents of bullying or retaliation, or for incidents about which they have reliable information.

1504.5 Information about reporting bullying and retaliation shall be communicated to all youth associated with the covered entity in an age-appropriate manner.

1504.6 Each covered entity shall ensure that there are reporting materials available in a wide variety of languages as required by the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Code § 2-1931 *et seq.*) and 4 DCMR §1205.4.

1504.7 The person designated by a covered entity to investigate bullying, retaliation, and other violations of the bullying prevention policy (the covered entity's Point of Contact) shall create a written description of each incident of bullying, retaliation, or other violation of the bullying prevention policy that was reported to him or her and where applicable, shall include the description in the annual report that is required by §1511.

1505 INVESTIGATIONS

1505.1 Each covered entity shall promptly initiate an investigation into each report of bullying, retaliation, or other violation of the bullying prevention policy within two (2) business days of receiving the complaint and complete the investigation within thirty (30) days of receiving the complaint, as outlined below. If the bullying, retaliation, or other acts in violation of the bullying prevention policy involve multiple covered entities, the entities shall coordinate their investigation and response activities.

1505.2 Within two (2) business days of receiving a report of bullying, retaliation, or other violation of the bullying prevention policy, the Point of Contact shall:

(a) Draft a written record of the complaint, which must be included in the final report outlined in §1505.5;

(b) Take appropriate action to protect, to the extent possible, the safety of the alleged target referenced in the report, which may include contacting

relevant parties, intercepting the target or alleged perpetrator if information is received regarding a pending act of bullying or retaliation, and ascertaining the presence of teachers or other employees at a location that has been identified as the site of a pending act of bullying or retaliation;

(c) Inform the target of the alleged incident and of the initiation of the investigation;

(d) Unless the Point of Contact decides that there is further risk of harm, he or she will inform the parents and guardians of the target of the alleged incident about any planned investigation, if the target is less than eighteen (18) years of age. If informing the parents or guardians would endanger the health or well-being of the student, the Point of Contract shall document facts giving rise to such endangerment, and document the decision not to inform in writing;

(e) Notify each alleged perpetrator, and, if applicable, witnesses to the alleged incident of bullying or retaliation, of the planned investigation

(f) Unless the Point of Contact decides that there is further risk of harm, he or she will inform the parents and guardians of the alleged perpetrator of the alleged incident about any planned investigation, if the alleged perpetrator is less than eighteen (18) years of age. If informing the parent or guardian would endanger the health or well-being of the student, the Point of Contract shall document facts giving rise to such endangerment, and document the decision not to inform in writing; and

(g) Take into account whether the individuals involved have disabilities and whether the behavior is a manifestation of the disability. Where available, consider whether the individuals have legally mandated protections including an Individualized Education Programs (IEP). The United States Department of Education through its Office for Civil Rights (OCR) has provided helpful information that covered entities are to follow concerning students with disabilities and bullying. One such resource is available through OCR's 2014 Dear Colleague Letter at http://www.ed.gov/ocr/docs/disabharassltr.html.

1505.3 The covered entity shall provide confidentiality if possible to individuals interviewed as part of the investigation, including the victim, and inform them that retaliation for reporting acts of bullying is prohibited. However, if the Point of Contact learns during the course of the investigation that the reported incident involves criminal activity, the Point of Contact shall communicate such information to the Principal or the equivalent. If the reported incident or statements during the investigation indicate credible and imminent threat of harm or criminal activity, the Point of Contact shall immediately report such

information to the appropriate law enforcement authorities and to the Principal or the equivalent.

1505.4 The investigation shall be completed within thirty (30) days after receipt of a report of bullying, retaliation, or other violation of the bullying prevention policy.

1505.5 The investigator or a designee of the covered entity shall issue a written report setting forth his or her findings and recommendations within thirty (30) days after receiving a report of bullying, retaliation, or other violation of the bullying prevention policy which includes the following:

(a) A description of the incident(s) including the names of individuals involved and behaviors alleged, location of occurrence(s) and whether or not bullying occurred under the definitions set forth in the Act as outlined in §1502.1;

(b) Whether the incident was based on a trait that is covered in the Human Rights Act (as listed in the definition of bullying in §1502.1(a)); and

(c) The actions that were taken as a result of the findings.

1505.6 The written report shall be provided to the:

(a) Target, if the target is eighteen (18) years of age or older, and the parents or guardians of the target if the target is less than eighteen (18) years of age, unless the Point of Contact decides that there is further risk of harm or that it would endanger the health or well-being of the student, in which case the report need not be provided to the parent or guardian but the reasons for this decision must be documented in writing; and

(b) Alleged Perpetrator, if the individual is eighteen (18) years of age or older, and the parents and guardians of the alleged perpetrator if the alleged perpetrator is less than eighteen (18) years of age, unless the Point of Contact decides that contacting the parent or guardian of the perpetrator would cause greater harm or would endanger the health or well-being of the student, in which case the report need not be provided to the parent but the reasons for this decision must be documented in writing.

1506 SECONDARY INVESTIGATION APPEALS

1506.1 Each covered entity shall have an appeals process in place for conducting a secondary investigation where a written request for a secondary investigation is submitted within thirty (30) days after the conclusion of the initial investigation.

1506.2 The secondary investigation shall be conducted by an employee who has a higher level of authority at the covered entity than the one who conducted the investigation and who was not involved in the initial investigation.

1506.3 The secondary investigation shall be completed within thirty (30) days after receipt of the request for a secondary investigation unless the higher-level authority requires additional time to complete a thorough investigation and the higher-level authority sets forth those circumstances in writing. Under those circumstances, the deadline may be extended past the thirty (30) day period by fifteen (15) days.

1506.4 After completing the secondary investigation, the higher-level authority shall notify the party in writing of the results of the investigation and of the party's ability to seek additional redress under the DCHRA under D.C. Official Code § 2-1402.41. Such notification must include:

(a) The name of the BPP Director;

(b) The address and telephone number of the OHR;

(c) The text contained in § 1513 of these regulations outlining the parties' options for appeal through OHR; and

(d) Notification that complaints of violations under DCHRA and the Act must be filed within one (1) year of the incident.

1507 DISSEMINATION OF BULLYING PREVENTION POLICY

1507.1 Each covered entity shall develop and implement a plan to publicize its Bullying Prevention Policy that shall include actions to:

(a) Discuss its bullying prevention policy with youth;

(b) Publicize the fact that the policy also applies to functions sponsored by the covered entity; and

(c) Publish the written Bullying Prevention Policy and make copies of the Bullying Prevention Policy available to all youth, families and staff by including it in the entity's handbook and on its website.

1508 ANNUAL REVIEW AND UPDATING OF BULLYING PREVENTION POLICY

1508.1 Each covered entity shall submit an update confirming the identity of its Point of Contact and any substantial revisions in its bullying prevention policy, to the BPP Director by August 15 of each year.

1508.2 The BPP Director will review any new policies or policies with substantial edits within thirty (30) days and provide feedback to ensure full compliance including any recommendations for improvement of the policy.

1509 BULLYING PREVENTION PROGRAMS

1509.1 Each covered entity is encouraged to:

(a) Establish an ongoing bullying prevention program for youth such that the program is aligned with established health-education standards;

(b) Inform youth about their right to be free from discrimination in public accommodations and education and of the redress available for a violation of their rights under the Human Rights Act; and

(c) Provide training on bullying prevention to all volunteers who have significant contact with youth.

1510 TRAINING REQUIREMENTS

1510.1 Each covered entity shall provide bullying prevention training to all of its employees on an annual basis using the following:

(a) OHR training material for a three (3) hour session provided by the BPP Director; or

(b) Alternative training that is comparable in scope and content.

1510.2 Each covered entity shall incorporate information on its bullying prevention policy into new employee training.

1510.3 Each covered entity shall provide written documentation of the training provided, to the BPP Director, including the date, time and summary of the content of annual training, along with the names and biographical information of the trainer by August 15 of each year.

1511 REPORTING REQUIREMENTS OF EDUCATIONAL INSTITUTIONS

1511.1 Each educational institution shall report to OHR by August 15 of each year the following information:

(a) The aggregate number of incidents of bullying, retaliation, and other violations of the bullying prevention policy at the educational institution during the prior school year (including the prior summer term);

(b) A brief description of each such incident (as required by § 1505.5); and

(c) The results of the investigation of the incident.

1511.2 The annual report of each educational institution shall also include any other information that OHR deems necessary or appropriate and requests from the educational institution.

1512 OFFICE OF HUMAN RIGHTS ROLES AND RESPONSIBILITIES

1512.1 The BPP Director shall assist covered entities with developing bullying prevention policies and programs.

1512.2 The BPP Director shall compile and make available to each covered entity a list of free or low-cost methods for establishing the bullying prevention programs.

1512.3 The BPP Director shall conduct training for covered entities on bullying and techniques for investigating allegations of bullying on a periodic basis when requested.

1512.4 When contacted by parents or guardians of youth in covered entities, the BPP Director will contact the school, agency, or grantee to ensure that the bullying prevention policy is compliant and has been fully implemented with regard to reporting, investigating, and addressing alleged incidents. This approach will provide an immediate response to parents and guardians as well as provide support and guidance for all parties (families and school or agencies) to ensure that appropriates steps are taken to address the situation.

1513 COMPLAINT PROCEDURES AT THE OFFICE OF HUMAN RIGHTS UNDER THE YOUTH BULLYING PREVENTION ACT AND THE D.C. HUMAN RIGHTS ACT

1513.1 There are both formal and informal ways to initiate actions with OHR and individuals are encouraged to first use the informal option of working with the BPP Director as outlined in § 1513.2 (a) before bringing formal complaints as outlined in § 1513.2 and § 1513.10. OHR will make efforts to investigate related matters jointly as to avoid duplication of efforts for the parties and the agency.

1513.2 Complaints under the Act may be pursued as follows:

(a) Youth or other individuals may call or contact the BPP Director with informal complaints under the Act, which may result in incident specific or broader program changes at covered entities; and .

(b) An individual, who is eighteen (18) years or older, or who is younger but acting through a parent or advocate, may file a formal complaint with OHR alleging a violation of the Act within one (1) year after the alleged violation occurred.

1513.3 A complaint to OHR under the Act may include, but is not limited to, allegations regarding:

(a) The adequacy of an investigation of bullying, retaliation, or another violation of a bullying prevention policy;

(b) The failure to initiate an investigation or an unreasonable delay in the processing of a report of bullying, retaliation, or another violation of a bullying prevention policy; or

(c) Any other failures by the covered entity to follow the requirements of the Act such as an entity maintaining a policy that is not in compliance with this Act.

1513.4 The complaint shall state the name and address of the covered entity (called the Respondent), the name and title (if known) of the person alleged to have committed the violation, a detailed description of the incident(s) or substance of the complaint and alleged violation, and such other information as may be required by OHR.

1513.5 OHR shall conduct an investigation of the complaint to determine if there was a violation of the Act with a target completion date for the Determination within ninety (90) days after a complaint is filed with OHR.

1513.6 OHR shall report the results of its investigation to the complainant and covered entity and if necessary, provide recommendations to the covered entities.

1513.7 Within sixty (60) days of the issuance date of the Determination, the Respondent must meet with the BPP Director and where appropriate, OHR General Counsel, to discuss the findings and corrective actions, if needed.

1513.8 A full set of corrective actions must be agreed upon by all parties within ninety (90) days of the Determination.

1513.9 If Respondent fails to comply with these timelines or corrective actions within the agreed upon timeframe, OHR shall inform the Deputy Mayor for Education or an appropriate official in the Mayor's Office in writing by submitting a copy of the Determination and a summary of Respondent's failure to resolve the matter.

1513.10 Complaints filed under the DCHRA, D.C. Official Code § 2-1401.01 *et seq*., may be filed as follows:

(a) If the facts include allegations of discrimination at an educational institution or public accommodation as covered by the DCHRA, an

individual, who is eighteen (18) years or older, or the parent or advocate of youth, may file a complaint with OHR within one (1) year of the alleged discriminatory acts; and

(b) A complaint under the DCHRA could result in a probable cause finding, conciliation efforts and a Commission hearing.

(c) Pursuant to D.C. Official Code § 2-1403.16, an individual may also file DCHRA claims in D.C. Superior Court instead of at the OHR.

1599 DEFINITIONS

1599.1 As used in this chapter, the follow words and phrase shall have the following meanings:

Employee – an individual who receives compensation for performing a function for a covered entity;

Point of Contact – the designated individual at each entity responsible for receiving reports of bullying incidents, investigating complaints of bullying, and attempting to resolve matters. Each entity must list a Point of Contact in the Bullying Prevention Policy and update the contact information annually with the BPP Director;

Retaliation – to coerce a person, or attempt to coerce a person, to not report an act of bullying; to threaten to harm a person or otherwise subject the person to an adverse action because the person has reported or may report bullying; or to interfere with a person's right or obligation to report an act of bullying under the Act;

Youth – (a) an individual of twenty-one (21) years of age or less who is enrolled in an educational institution or who uses the services or programs provided by an agency or grantee, or an individual of twenty-two (22) years of age or less who is receiving special education services from an educational institution; or (b) individuals as described in paragraph (a) of this definition considered as a group.

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

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.774; D.C. Official Code §1-307.02 (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 on an emergency basis of the intent to repeal Chapter 7 (Medicaid Day Treatment Programs) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Medicaid day treatment programs are nonresidential programs operated for the purposes of providing medically supervised day treatments for the following individuals: (1) adults who are elderly; (2) adults who have a developmental disability; (3) adults who have mental disorders; and (4) infants and children who are aged three (3) or younger.

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) has required the termination of all existing fee-for-service day treatment programs. In January 2013, pursuant to this directive, DHCF ceased enrollment of new admissions into existing day treatment programs.

Accordingly, this emergency action is necessary for the immediate preservation of the health, safety and welfare of District Medicaid beneficiaries. Based upon the District's need to continue delivering day treatment type services in the wake of eliminating services, on an emergency basis, DHCF and other District agencies have since developed and transitioned many day treatment users to existing alternative services. On April 24, 2015, DHCF published rules governing Adult Day Health Services, a new service designed to encourage older adults to live in the community by offering non-residential medical supports; provide supervised therapeutic activities in an integrated community setting that foster opportunities for community inclusion; and deter more costly facility-based care.

The emergency and proposed rules were adopted on October 14, 2015 and will become effective on December 31, 2015. The emergency rules will remain in effect for one hundred and twenty (120) days or until February 11, 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 these emergency and proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 7, MEDICAID DAY TREATMENT PROGRAMS, of Title 29 DCMR, PUBLIC WELFARE, is repealed in its entirety, effective December 31, 2015.

Comments on the proposed rule 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, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 1920, entitled "Day Habilitation Services," of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of day habilitation one-to-one services and day habilitation small group 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.

Day habilitation services are aimed at developing activities and skills acquisition to support or further integrate community opportunities outside of a person's home and assist the person in developing a full life within the community. Day habilitation one-to-one services are provided to persons with intense medical behavioral supports who require a behavioral support plan or require intensive staffing and supports. The Notice of Final Rulemaking for 29 DCMR § 1920 (Day Habilitation Services) was published in the *D.C. Register* on November 8, 2013, at 60 DCR 015530. These rules amend the previously published final rules by: (1) clarifying the purpose of day habilitation services; (2) adding a nursing component to the service definition for the purpose of medication administration, and staff training and monitoring of waiver participants' Health Care Management Plans; (3) modifying the rate to reflect the approved methodology in accordance with the ID/DD Waiver; (4) adding small group day habilitation for people with higher intensity needs and describing the conditions in which services may be delivered; (5) specifying that the required staff to person ratio for small group day habilitation is 1:3; (6) introducing a small group day habilitation rate for the staffing ratio of 1:3; (7) adding the provision of one nutritionally adequate meal per day for people who live independently or with their families and who select to receive a meal; (8) adding to the list of activities that day habilitation shall consist of, including requiring activities to support community integration and

inclusion; (9) requiring the development of a Positive Personal Profile, Job Search and Community Participation Plan; (10) requiring an individualized daily schedule; (11) requiring that, if day habilitation is provided in a facility, it must provide opportunities for community engagement, inclusion and integration; (12) requiring that all day habilitation providers comply with Section 1938 of Chapter 19 of Title 29 of the DCMR; (13) requiring that quarterly reports include a description of the person's activities in the community that support community integration and inclusion; and (14) bar the payment of stipends by the day habilitation provider to a waiver beneficiary.

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 clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on October 14, 2015 and became effective for services rendered on or after October 14, 2015. CSM has approved the corresponding amendments to the ID/DD Waiver with an effective date of September 24, 2015. The emergency rules shall remain in effect for one hundred and twenty (120) days from the adoption date or until February 11, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date of these emergency rules 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 on 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 DCMR, PUBLIC WELFARE, is amended as follows:

Section 1920, DAY HABILITATION SERVICES, is amended to read as follows:

1920 DAY HABILITATION SERVICES

1920.1 The purpose of this section is to establish standards governing Medicaid eligibility for day habilitation for persons enrolled in the Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver), and to establish conditions of participation for providers of day habilitation services.

1920.2 Day habilitation services are aimed at developing meaningful adult activities and skills acquisition to: support or further community integration, inclusion, and exploration, improve communication skills; improve or maintain physical, occupational and/or speech and language functional skills; foster independence, self-determination and self-advocacy and autonomy; support people to build and maintain relationships; facilitate the exploration of employment and/or integrated retirement opportunities; help a person achieve valued social roles; and to foster

and encourage people on their pathway to community integration, employment and the development of a full life in the person's community.

1920.3 Day habilitation services are intended to be different and separate from residential services. These services are delivered in group settings or can be provided as day habilitation one-to-one services.

1920.4 Day habilitation services may also be delivered in small group settings at a ratio of one-to-three for people with higher intensity support needs. Small group day habilitation settings must include integrated skills building in the community and support access to the greater community. It cannot be:

(a) Provided in the same building as a large day habilitation facility setting; or

(b) Delivered in groups larger than fifteen (15) people.

1920.5 To be eligible for day habilitation services:

(a) The service shall be requested by the person and recommended by the person's Support Team and included in the Individualized Support Plan (ISP) and Plan of Care; and

(b) A person shall have a demonstrated personal and/or social adjustment need that can be addressed through participation in an individualized habilitation program.

1920.6 Day habilitation one-to-one services shall consist of:

(a) Intense behavioral supports that require a behavioral support plan; or

(b) Services for a person who has medical needs that require intensive staffing and supports.

1920.7 To be eligible for day habilitation one-to-one services, a person shall meet at least one of the following requirements:

(a) Exhibit elopement which places the health, safety, or well-being of the person at risk;

(b) Exhibit behavior that poses serious bodily harm to self or others;

(c) Exhibit destructive behavior that poses serious property damage, including fire-setting;

(d) Have any other intense behavioral problem that has been deemed to require one-to-one supervision;

(e) Exhibit sexually predatory behavior; or

(f) Have a medical history of, or high risk for, falls with injury, be physically fragile or have physical needs that do not require professional nursing but require intensive staffing, and have a physician's order for one-to-one staffing support.

1920.8 Day habilitation one-to-one services shall be authorized and approved in accordance with DDS/DDA policies and procedures available at http://dds.dc.gov/page/policies-and-procedures-dda.

1920.9 Day habilitation services shall be provided pursuant to the following service delivery criteria:

(a) The service may be provided in a group setting. However, persons within the group must also receive services on an individualized basis;

(b) The services provided in a community-based venue shall offer skill-building activities to enhance the person's habilitation needs; and

(c) The service shall be provided in the most integrated setting appropriate to the needs of the person.

1920.10 Day habilitation services shall consist of the following activities that are based on what is important to and for the person as documented in his or her Individualized Support Plan and reflected in his or her Person-Centered Thinking and Discovery tools:

(a) Training and skills development that increase participation in community activities, enhance community inclusion, and foster greater independence, self-determination and self-advocacy;

(b) A diversity of activities that allow the person the opportunity to choose and identify his or her own areas of interest and preferences;

(c) Activities that provide opportunities for socialization and leisure activities in the community, community explorations, and activities that support the person to build and maintain relationships;

(d) Training in the safe and effective use of one or more modes of accessible public transportation;

(e) Coordination of transportation to enable the person to participate in community activities;

(f) Activities to support community integration and inclusion. These must occur in the community in groups not to exceed four (4) participants and must be based on people's interests and preferences as reflected in their Individualized Support Plan and Person-Centered Thinking and Discovery tools; and

(g) Individualized or group services that enable the person to attain his/her maximum functional level based on the ISP and Plan of Care.

1920.11 Day habilitation services shall include a nursing component for the purposes of:

(a) Medication administration;

(b) Staff training in components of the Health Care Management Plan (regardless of the author of the plan); and

(c) Oversight of Health Care Management Plans (regardless of the author of the plan).

1920.12 Day habilitation services shall include a nutritionally adequate meal for participants who live independently or in the family home and who select to receive a meal. The meal shall be provided during lunch hours, meet one-third of a person's daily Recommended Dietary Allowance, be based on the person's preferences, and not be medically contraindicated.

1920.13 Each day habilitation provider shall develop a day habilitation plan for each person that corresponds with the person's ISP and Plan of Care that supports the interests, choices, goals and prioritized needs of the person. In order to develop this plan, the provider must first develop a Positive Personal Profile (PPP) and Job Search and Community Participation Plan; the initial PPP and Job Search and Community Participation Plan shall be developed within thirty (30) days of the initiation of services and shall be updated at least annually. Activities set forth in the day habilitation plan shall be functional, chosen by the person, correspond with habilitation needs and provide a pattern of life experiences common to other persons of similar age and the community-at-large. To develop the plan, the provider shall:

(a) Use observation, conversation, and other interactions, including assessments such as a vocational assessment, as necessary, to develop a functional analysis of the person's capabilities within the first month of participation and annually thereafter;

(b) Use the functional analysis, the ISP and Plan of Care, Person-Centered Thinking and Discovery tools, and other information available to identify what is important to and for the person and to develop a plan with measurable outcomes that develops to the extent possible the skills

necessary to allow the person to reside and work in the community while maintaining the person's health and safety; and

(c) Focus on enabling each person to attain his or her maximum functional level by coordinating Waiver services with other services provided by any licensed professionals listed in the person's ISP and Plan of Care.

1920.14 Each provider of Medicaid reimbursable day habilitation services shall develop, with the person, an individualized schedule of daily activities based upon the person's goals and activities as identified in his or her ISP, and consistent with what is in his or her Person-Centered Thinking and Discovery tools, of meaningful adult activities that support the person on his or her pathway to employment and community integration and inclusion.

1920.15 Day habilitation providers may not pay a stipend to a person for attendance or participation in activities at the day habilitation program.

1920.16 Each day habilitation provider shall meet the following provider qualification and enrollment requirements:

(a) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR; and

(b) Maintain the required staff-to-person ratio, indicated on the person's ISP and Plan of Care, to a maximum staffing ratio of 1:4.

1920.17 In addition to the requirements at Section 1920.16, providers of small group day habilitation shall provide documentation that the program manager of the HCBS Waiver provider agency has at least three (3) years of experience working with people with intellectual and developmental disabilities who have complex medical and/or behavioral needs.

1920.18 Each direct support professional (DSP) providing day habilitation services for a provider shall comply with Section 1906 (Requirements of Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1920.19 To receive Medicaid reimbursement, day habilitation services shall be provided in the community or in a facility-based setting that provides opportunities for community engagement, inclusion and integration.

1920.20 Each provider of Medicaid reimbursable day habilitation services shall comply with the requirements under Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 of the DCMR.

1920.21 All day habilitation services shall be authorized in accordance with the following requirements:

(a) The Department on Disability Services (DDS) shall provide a written service authorization before the commencement of services;

(b) The day habilitation DSP providing one-to-one services shall be trained in physical management techniques, positive behavioral support practices and other training required to implement the person's health care management plan and behavioral support plan, as applicable;

(c) The service name and provider entity delivering services shall be identified in the ISP and Plan of Care;

(d) The ISP, Plan of Care and Summary of Supports and Services shall document the amount and frequency of services to be received;

(e) Completion of the person's day habilitation plan;

(f) Approval of the behavioral support plan or the physician's order for one-to-one staffing support for persons receiving day habilitation one-to-one services; and

(g) When required by a person's BSP, accurate completion by the DSP of the behavioral data sheets for persons receiving day habilitation one-to-one services.

1920.22 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR. Additionally, quarterly reports shall include a description of the person's activities in the community that support community integration and inclusion.

1920.23 Each provider shall comply with the requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1920.24 The reimbursement rate for day habilitation services shall be twenty-one dollars and seventy-two cents ($21.72) per hour. Services shall be provided for a maximum of eight (8) hours per day. The billable unit of service for day habilitation 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 be able to bill a unit of service. The reimbursement rate for day habilitation services shall be five dollars and forty-three cents ($5.43) per billable unit.

1920.25 The reimbursement rate for day habilitation one-to-one services shall be forty-one dollars and twelve cents ($41.12). The billable unit of service for day habilitation one-to-one 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 be able to bill a unit of service. The reimbursement rate for day habilitation one-to-one services shall be ten dollars and twenty-eight cents ($10.28) per billable unit.

1920.26 The reimbursement rate for small group day habilitation services shall be thirty-two dollars and eighty cents ($32.80). The billable unit of service for small group day habilitation 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 be able to bill a unit of service. The reimbursement rate for small group day habilitation services shall be eight and twenty cents ($8.20) per billable unit.

1920.27 For people who live independently or with family and select to receive a meal, the rate is increased by $7.30 per day that the person receives a meal, and an additional $5.00 per day that the person receives a meal, if that meal is delivered by a third-party vendor.

1920.28 Day habilitation services, small group day habilitation, and day habilitation one-to-one services shall be provided for a maximum of eight (8) hours a day, not to exceed forty (40) hours per week and two thousand and eighty hours (2080) hours annually.

1920.29 Day habilitation services shall not be provided concurrently with Supported Employment or Employment Readiness services.

1920.30 No payment shall be made for care and supervision normally provided by the family or natural caregivers, residential provider, or employer.

1920.31 Provisions shall be made by the day habilitation provider for persons who arrive early and depart late.

1920.32 Time spent in transportation to and from the program shall not be included in the total amount of services provided per day.

Section 1999, DEFINITIONS, is amended by adding the following:

Behavioral Support Plan (BSP) - A plan that is a component of the ISP that outlines positive supports and strategies to help a person ameliorate and/or eliminate the negative impact of one or more challenging behaviors that have a negative impact on a person's ability to achieve his or her goals.

Day Habilitation Plan - A person-centered plan developed by the day habilitation provider, based on a person-centered planning process that takes into account the results of a functional analysis, ISP, Plan of Care and other available information which lists services and outlines preferences, interests, and measurable outcomes to enable the person to reside, work and participate in the community, and maintain the person's health.

Direct Support Professional (DSP) - A person who works directly with people with developmental disabilities with the aim of assisting the individual to become integrated into his or her community or the least restrictive environment.

Family - Any person who is related to the person by blood, marriage, or adoption.

Functional Analysis - The process of identifying a person's specific strengths, preferences, developmental needs, and need for services by identifying the person's present developmental level, health status, expressed needs and desires of the person and his or her family, and environmental or other conditions that would facilitate or impede the person's growth and development.

Small Group Day Habilitation – Day habilitation services delivered in small group settings at a ratio of one-to-three for people with higher intensity support needs in a setting not to exceed fifteen (15) people.

Staffing Plan - A written document that includes the numbers and titles of staff assigned to the particular person, for a specified time period and scheduled for a given site and/or shift to successfully provide oversight and to ensure the maintenance of the health, safety and well-being of the person receiving services.

Stipend – Nominal fee paid to a person for attendance and/ or participation in activities designed to achieve his or her goals, as identified in the person's ISP.

Summary of Supports and Services - A written document that lists the various supports and services to be received by a person and a component of the person's ISP.

Support Team - A group of people providing support to a person with an intellectual/developmental disability, who have the responsibility of performing a comprehensive person-centered evaluation to support the development, implementation and monitoring of the person's person-centered ISP and Plan of Care.

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, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed 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. 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 a new Chapter 97, entitled "Adult Day Health Program (ADHP)", of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules establish standards for adult day program services that govern eligibility criteria for beneficiaries, conditions of participation for providers, and provider reimbursement. The adult day health program is a new service under the Medicaid State Plan Home and Community-Based Services benefit. These services are designed to encourage older adults to live in the community by offering non-residential medical supports; provide supervised therapeutic activities in an integrated community setting that foster opportunities for community inclusion; and deter more costly facility-based care.

An initial Notice of Emergency and Proposed Rulemaking was published in the D.C. Register on April 24th, 2015 at 62 DCR 005212. Comments were received and taken into account in the publication of this Notice of Second Emergency and Proposed Rulemaking. These rules amend the previously published standards by: (1) establishing that a program director employed at an ADHP site shall have a bachelor's degree in a human services field from an accredited college or university and at least four (4) years of experience working with older adults in a social services or health care program, instead of two (2) years; (2) clarifying that transportation for non-emergency medical services including therapeutic activities not included in the participant's Adult Day Health Plan plan of care, but outlined under the participant's person-centered service plan shall be provided under the DHCF non-emergency medical transportation contract; (3) establishing that each provider shall coordinate the participant's care by sharing information with all other health care and service providers rendering services under the person-centered service plan, as necessary to ensure that the participant's care is organized and to achieve safer and more effective health outcomes; (4) supplementing the list of participant rights by adding that the participant at the ADHP shall have the right to participate in activities and receive services in a fully integrated setting to the same extent as people not receiving Medicaid Home and Community- Based Services (HCBS); (5) clarifying that participants shall have the right to be notified about complaint and appeal procedures including contact information about agencies or programs that can respond to complaints such as the Ombudsman's office, or the District's Protection and Advocacy Program for Individuals with Disabilities; (6) requiring that the notification to DHCF of a provider's intent to withdraw from the Medicaid program be supplemented with a transition plan to prevent service gaps at least sixty (60) days in advance of the initial notification; (7) establishing that the plan of care shall also include efforts to

coordinate services with other health care providers to prevent a gap of service delivery in the event of unscheduled absences from the ADHP program; (8) adding that for participants receiving a combination of ADHP and Personal Care Aide services, any service change requests must be submitted to DHCF on the first (1st) and fifteenth (15th) day of every month in order for the prior authorization to be issued and changes to be in effect on the first day of the following month except in the case of emergencies; and (9) clarifying existing language to simplify interpretation.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who are in need of ADHP services. The ADHP will provide older beneficiaries with a safe and nurturing environment during the daytime with access to an array of therapeutic activities and non-residential medical services. These services will be essential in ensuring that older beneficiaries who live in the community are deterred from the need for costly facility-based care. DHCF previously provided adult day treatment services through a model that did not qualify for Medicaid reimbursement. These rules will allow DHCF to implement the § 1915(i) State Plan Option, which qualifies for Medicaid reimbursement. Therefore, to ensure that the ADHP participants' health, safety and welfare are not threatened by the lapse in access to therapeutic and non-residential medical services provided by qualified providers, it is necessary that these rules be published on an emergency basis.

DHCF is also amending the District of Columbia State Plan for Medical Assistance (State Plan) to reflect these changes. The corresponding amendment to the State Plan Amendment was deemed approved by the Council of the District of Columbia (Council) on August 14th, 2014 (PR 20-0944), and was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) on February 10th, 2015.

The emergency rulemaking was adopted on October 14, 2015, and became effective on that date, The emergency rules shall remain in effect for one hundred and twenty (120) days, until February 11, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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

A new Chapter 97, ADULT DAY HEALTH PROGRAM SERVICES, is added to Title 29 DCMR, PUBLIC WELFARE, to read as follows:

9700 GENERAL PROVISIONS

9700.1 The purpose of this chapter is to establish the Department of Health Care Finance (DHCF) standards governing Medicaid eligibility for individuals receiving Adult Day Health Program (ADHP) services, to establish conditions of participation for providers of ADHP services, and to set provider reimbursement for ADHP services.

9700.2 ADHP services are designed to:

(a) Encourage older adults to live in the community by offering non-residential medical supports and supervised, therapeutic activities in an integrated community setting;

(b) Foster opportunities for community inclusion; and

(c) Deter more costly facility-based care.

9701 ELIGIBILITY REQUIREMENTS

9701.1 To qualify for ADHP services under these rules, the Medicaid beneficiary shall meet the following criteria:

(a) Be age fifty-five (55) and older;

(b) Be an adult with a chronic medical condition diagnosed by a physician;

(c) Have income up to 150% of the federal poverty level (FPL); and

(d) Be in receipt of an assessment determination authorizing, and specifying the level of need for ADHP services in accordance with Section 9709 of this chapter.

9702 PROVIDER QUALIFICATIONS

9702.1 To be eligible to receive reimbursement for ADHP services, a Provider shall:

(a) Submit a Medicaid Provider Enrollment Application to DHCF, and comply with all requirements set forth under Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR;

(b) Comply with all programmatic, staffing and reporting requirements as set forth in this chapter; and

(c) Have a valid Certificate of Need (CON) determined in accordance with the District of Columbia Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code §§ 44-401 *et seq.*), and implementing regulations.

9702.2 In addition to the requirements described under Subsection 9702.1, DHCF shall verify that a Provider has developed the following programmatic requirements as part of its Provider Readiness Review:

(a) A service delivery plan to render the services described under Section 9705;

(b) Policies and procedures as described in Section 9703.4;

(c) A staffing and personnel training plan that meets the requirements described under Section 9704; and

(d) A plan which demonstrates compliance with all State Plan Home and Community-Based Setting requirements pursuant to 42 C.F.R. § 441.710 (a)(1)(2).

9702.3 DHCF shall conduct an on-site Provider Readiness Review to ensure that all Providers meet the requirements described under Section 9702.

9702.4 DHCF shall also conduct subsequent visits at least annually to ensure providers continue to maintain the requirements described under this chapter.

9702.5 For out-of-state ADHP providers who are serving District of Columbia residents on the effective date of these rules, DHCF may accept the licensure and/or certification for adult day programs issued by another state if the provider also meets the Provider Readiness Review requirements described under Section 9702.

9703 PROGRAM ADMINISTRATION

9703.1 Each Provider shall have a current organizational chart that clearly identifies the organizational structure, lines of authority, staffing levels, and the use of contracted staff.

9703.2 Each Provider shall have a governing body with oversight responsibility for administrative and programmatic policy development, monitoring and implementation.

9703.3 A Provider shall be prohibited from waiving liability for the delivery of services when they assign contract authority to any other entity for services provided under a participant's ADHP plan of care.

9703.4 Each Provider shall develop and implement written policies and procedures to comport to the following program requirements:

(a) A description of the program's mission statement and goals;

(b) The roles and responsibilities of its governing body;

(c) A fee schedule including a description of the services to be provided and that are included in the Medicaid per diem rates established in accordance with Section 9723;

(d) Participant admission and discharge procedures;

(e) A description of the ADHP's approach for implementing the participant's person-centered plan of care;

(f) Nutritional standards including guidelines for meal preparation, menu planning and meeting the individualized nutritional needs of each participant;

(g) Participant rights and responsibilities procedures consistent with the requirements set forth in Section 9712, and contact information about agencies or programs which can respond to complaints;

(h) Hours and days of operation;

(i) Personnel standards for hiring, requirements for professional licensure and certification, performance assessments, grievances, and staff training for all staff who deliver services;

(j) ADHP site environmental standards;

(k) Health and wellness standards;

(l) Safety and emergency preparedness procedures;

(m) Medication administration, storage, and record keeping requirements to conform with requirements described under Section 9707;

(n) Quality assurance procedures identifying performance measures to evaluate the ADHP program's effectiveness, and weaknesses, including performance measures to ensure service coordination with services provided by other service providers;

(o) Processes for reporting, investigating and addressing ADHP participants' incidents, and complaints;

(p) Financial, administrative and participant record keeping requirements;

(q) A compliance plan in accordance with guidance from Department of Health and Human Services, Office of Civil Rights, available at: http://www.hhs.gov/ocr/privacy/hipaa/administrative/combined/hipaa-simplification-201303.pdf to incorporate appropriate administrative,

physical, and technical safeguards to protect the privacy of ADHP participants and ensure compliance with the Health Insurance, Portability, and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191, 110 Stat. 1936)(HIPAA); and

(r) A community outreach and education plan which demonstrates how the ADHP will: (1) develop and maintain linkages with other community-based organizations that serve adults with chronic medical conditions; and (2) provide annual outreach for hard to reach populations.

9703.5 Each ADHP shall notify the DHCF within twenty-four (24) hours in writing, in the following situations:

(a) Fire, serious accident, serious injury, neglect, abuse or other incidents that impact the health or safety of a participant;

(b) Evidence of serious communicable disease contracted by staff or participants;

(c) The death of a participant at, en route to, or en route from, the program site; and

(d) Changes in professional staff or a reduction of work force that may result in a disruption of service delivery.

9703.6 If a provider intends to relocate to a new program site, each ADHP provider shall obtain DHCF's approval of the new site by undergoing a new Provider Readiness review and notifying the DHCF at least sixty (60) days in advance of the actual move.

9703.7 If a provider intends to withdraw from the Medicaid program, each ADHP provider shall notify DHCF at least ninety (90) days in advance of the provider's intention to withdraw, and supplement the notification with a transition plan, to prevent service gaps for the participants at least sixty (60) days in advance of the provider's intention to withdraw.

9703.8 Each ADHP shall maintain minimum insurance coverage as follows:

(a) Blanket malpractice insurance for all employees in the amount of at least one million dollars ($1,000,000) per incident;

(b) General liability insurance covering personal property damages, bodily injury, libel and slander of at least one million dollars ($1,000,000) per occurrence; and

(c) Product liability insurance, where applicable.

9704 STAFFING REQUIREMENTS: GENERAL

9704.1 Each ADHP shall develop and maintain a staffing and personnel training plan that ensures adequate personnel in number and skill to meet minimum required staffing levels in accordance with this Section and to deliver required services to each participant in accordance with the ADHP plan of care.

9704.2 Each ADHP program shall maintain the following staffing requirements:

(a) For acuity level 1 (minimum acuity level), each ADHP program shall maintain a minimum staff to participant ratio of at least one (1) Direct Support Professional staff member for every ten (10) participants (1:10 ratio);

(b) For acuity level 2 (maximum acuity level), each ADHP program shall maintain a minimum staff to participant ratio of at least one (1) Direct Support Professional staff member for every four (4) participants (1:4 ratio);

(c) Only Direct Support Professional staff shall be included in calculating the staffing ratios; and

(d) Volunteers shall not be used to fulfill the required staffing ratios nor be counted in calculating the staffing ratios.

9704.3 Each ADHP program shall conduct staff orientation for new employees and in-service training sessions consisting of continuing education at least quarterly and as needed, in accordance with its staffing and personnel training plan. The training and orientation shall include, at a minimum, the following topics:

(a) Infection control;

(b) Developing an ADHP plan of care to implement a participant's person-centered service plan;

(c) Procedures to identify, and report abuse, neglect, and exploitation;

(d) Body Mechanics (including physically assisting in escorting, lifting and transferring participants);

(e) Emergency procedures for evacuation of the building in the case of fire and/or other disaster or emergency; and

(f) Specialized needs of older adults, including Alzheimer's or dementia.

9704.4 Each Provider of ADHP services shall employ a full time professional staff member as the Program Director who shall be responsible for the overall management, administration and fiscal operations of the ADHP program including, but not limited to:

(a) Supervising and directing the general administration of the program;

(b) Developing and implementing appropriate programmatic policies pursuant to the requirements under Subsection 9703.4;

(c) Preparing budgets and required financial reports, ensuring sound fiscal administration including billing and payment;

(d) Ensuring that an ADHP plan of care is developed for each participant;

(e) Developing and implementing a community outreach plan to publicize the ADHP's goals, mission, and target population served;

(f) Developing and implementing effective strategies to recruit, employ, supervise, and retain qualified staff, including staff orientation and on-going in-service training;

(g) Developing and implementing an effective quality assurance program;

(h) Overseeing regulatory and reporting requirements in accordance with this chapter; and

(i) Appointing one (1) professional staff member to ensure that there is an Acting Program Director in the absence of the Program Director.

9704.5 An ADHP program director employed pursuant to Subsection 9704.4 shall meet the following qualifications:

(a) Have a bachelor's degree in a human services field from an accredited college or university and at least four (4) years of experience working with older adults in a social services or health care program; or

(b) Have a master's degree in a human services field and a minimum of one (1) year of experience working with older adults in a social service or health care program; or

(c) Is a licensed registered nurse with at least two (2) years working with older adults in a social service or health care program.

9704.6 Each Provider of ADHP services shall employ a full time registered nurse who shall be responsible for, but not limited to:

(a) Coordinating the implementation and on-going review of each participant's ADHP plan of care, including making any updates to the plan, and coordinating the sharing of information with the participants' other health care providers to ensure care is organized;

(b) Monitoring the health care needs of each participant and providing or supervising nursing services, including medication administration, for each participant in accordance with the orders of the participant's physician and the participant's ADHP plan of care;

(c) Supervising other nursing personnel;

(d) Providing teaching and instruction about a participant's ADHP plan of care;

(e) Providing guidance and counseling that focus on improving the health, safety and psycho-social needs of each participant;

(f) Assisting, as necessary, in the delivery of other required program services;

(g) Updating each participant's record with progress notes at least monthly or more often if indicated (this activity may be delegated to other nursing personnel); and

(h) Notifying the beneficiary's physician of any significant change in the beneficiary's condition.

9704.8 A registered nurse employed pursuant to Subsection 9704.6 shall meet the following qualifications:

(a) 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.* (2007 Repl. & 2011 Supp.)); and

(b) Have at least two (2) years of experience working with older adults in a social services or health care program.

9704.9 Each Provider of ADHP services shall employ a full time activities coordinator who shall be responsible for developing and implementing a program of therapeutic activities including, but not limited to:

(a) Developing and scheduling educational, recreational and community integration activities and events;

(b) Supervising activity program assistants;

(c) Assisting personnel who are responsible for providing direct care support to the program participants;

(d) Participating in reviews of each participant's ADHP plan of care;

(e) Ensuring that a comfortable, safe and therapeutic environment for daily program implementation is maintained;

(f) Fostering a participant's freedom of choice, decision making and active participation in daily activities; and

(g) Developing monthly progress notes regarding status updates relative to the participant's engagement and participation in therapeutic activities.

9704. 10 An activities coordinator employed pursuant to Subsection 9704.9 shall have a minimum of one (1) year of experience working at a social service, health care, or therapeutic recreational program that serves older adults.

9704.11 Each ADHP shall employ a full time social service professional who shall be responsible for, but not be limited to the following:

(a) Assisting in developing activities designed to improve a participant's self-awareness, level of functioning and psycho-social needs;

(b) Incorporating the interest and therapeutic needs of participants in the development of the activity programs;

(c) Coordinating and conducting individual, group and family counseling services;

(d) Entering monthly notes in each participant's record;

(e) Referring the participant and the participant's family to appropriate community services and resources, as needed;

(f) Assisting staff with ongoing program services;

(g) Offering guidance through counseling and teaching to the participant and the participant's family on matters related to a participant's health, safety and general welfare;

(h) Assisting in the coordination of non-ADHP services, including but not limited to case management services, medical, personal care assistance services, skilled therapies, waiver services, transportation services, home-delivered meals; and

(i) Assisting participants to access and maintain public benefits.

9704.12 A social service professional(s) employed in accordance with Subsection 9704.11 shall:

(a) Have a master's degree in social work, psychology, counseling, gerontology, sociology, therapeutic recreation or a related field and at least one (1) year of experience working with older adults in social service, health care or therapeutic recreational settings; or

(b) Have a four (4) year degree from an accredited university or college in social work, counseling, psychology, gerontology or therapeutic recreation or a related field and at least two (2) years of experience working with older adults and/or adults with disabilities in a social, health or recreational setting/; and

(c) Obtain the requisite licensure under the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01), if required.

9704.13 Each ADHP shall have a medical director who shall be responsible for:

(a) Providing guidance, leadership, oversight and quality assurance for the development and implementation of policies and practices to promote the appropriate medical management and care of participants, including in emergency situations;

(b) Consulting with the participant's physician, when necessary;

(c) Taking professional responsibility for each participant's medical care in emergency situations or when the participant's personal physician is unavailable when the medical director is on-site at the facility;

(d) Overseeing the delivery of all required medical services to ensure that needed services are provided in a timely manner by the appropriate personnel, consistent with each participant's ADHP plan of care; and

(e) Participating in support team conferences, care planning and case reviews.

9704.14 A medical director employed by or under contract to an ADHP shall be licensed as a physician in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2011 Supp.));

9704.15 Each ADHP shall have a dietician or nutritionist who shall be responsible for, including but not limited to, the following:

(a) Developing and designing menus for meals and snacks to accommodate daily nutrient requirements of each ADHP participant.

(b) Collaborating with the participant's support team members as described in Subsection 9711.4, to ensure that a participant's nutritional needs are addressed;

(c) Providing nutritional education, training and counseling to each participant, the participant's family and ADHP staff;

(d) Conducting and recording periodic inspections of the food service program and the food service area; and

(e) Ensuring that special or modified diets are developed and offered in accordance with the participant's ADHP plan of care.

9704.16 A dietician or nutritionist employed or under contract to an ADHP shall be licensed in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2011 Supp.)).

9704.17 If required, other health and social service professionals employed or under contract to an ADHP shall be licensed in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2007 Repl. & 2011 Supp.)).

9704.18 Each ADHP shall employ a direct support professional who shall be responsible for, but not be limited to, the following:

(a) Assisting participants with personal care tasks and other activities of daily living;

(b) Providing guidance to participants during group activities;

(c) Supporting and encouraging a participant's participation in scheduled activities;

(d) Monitoring and reporting any change in a participant's health status as appropriate;

(e) Assisting in the implementation of each participant's ADHP plan of care as a member of the participant's support team;

(f) Documenting daily attendance and participation for each participant; and

(g) Assisting participants with maintaining their optimal physical and mental health.

9704.19 A direct support professional employed by an ADHP shall:

(a) Be at least eighteen (18) years of age;

(b) Be a citizen of the United States or a non-citizen who is lawfully authorized to work in the United States;

(c) Be mentally, physically and emotionally competent to provide services;

(d) Be free of tuberculosis and other communicable diseases as certified in writing by a physician on an annual basis;

(e) Be able to read and write the English language at least at the fifth (5^{th}) grade level and carry out instructions and directions in English;

(f) Be certified in cardiopulmonary resuscitation (CPR), and first aid certification and maintain current certifications;

(g) Complete three (3) hours of continuing education at quarterly intervals, in addition to annual CPR re-certification;

(h) Be trained on the participant's ADHP plan of care prior to assisting any participant;

(i) Be able to recognize an emergency and be knowledgeable about emergency procedures;

(j) Pass a reference check and criminal background check pursuant to the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1988, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code, §§ 44-441 *et seq*. (2005 Repl. & 2012 Supp.)); and

(k) Have at least a high school diploma or General Educational Development certificate.

9705 PROGRAM REQUIREMENTS

9705.1 An Adult Day Health Program shall provide, at minimum, all of the following services:

(a) Nursing services, as described under Subsection 9704.6, including monitoring the participants' health care-needs, providing health counseling, and the coordinating and implementing the ADHP plans of care for each participant;

(b) Individual and group therapeutic activities, including social, recreational and education activities, that:

(1) Are based upon each participant's assessed needs and personal preferences,

(2) Are consistent with the participant's person-centered service plan, and

(3) Are designed to improve each participant's self-awareness, cognitive and physical functional abilities and personal safety;

(c) Individual and group counseling for participants and their families;

(d) Personal care assistance services, including training and assistance in activities of daily living, accident prevention, and the use of special aides provided under the overall supervision of a registered nurse;

(e) Medication administration, assistance and counseling, including education and counseling of participants and family members regarding medication safety, efficacy and adherence, that are provided in accordance with the requirements set forth in Section 9707;

(f) Nutrition services that are provided in accordance with the requirements set forth in Section 9706; and

(g) Coordination of transportation services for therapeutic activities that are scheduled off-site.

9705.2 Transportation for non-emergency medical services including therapeutic activities not included in the participant's ADHP plan of care, but outlined under the participant's person-centered service plan, shall be provided under the DHCF non-emergency medical transportation contract. Each transportation provider shall comply with all applicable business licensing and certification requirements set forth under the District of Columbia Non-Emergency Medical Transportation contract.

9705.3 Each ADHP provider shall develop a safety and emergency preparedness plan which includes procedures for evacuation in the event of an emergency and ensuring staff is trained in CPR and First Aid.

9705.4 An ADHP program may provide or arrange for additional services including but not limited to non-emergency medical transportation services to and from the program site, and other activities not outlined under the participant's ADHP plan of care, but included under the participant's person-centered service plan, including psychiatric services and occupational, physical and speech therapies. These services are not included in the reimbursement rates set forth in Section 9723.

9705.5 Each provider shall coordinate the participant's care by sharing information with all other health care and service providers rendering services under the person-centered service plan, as necessary to ensure that the participant's care is organized and to achieve safer and more effective health outcomes.

9706 NUTRITION SERVICES

9706.1 Nutrition services shall be provided in accordance with the requirements set forth in this Section.

9706.2 All meals and snacks shall be prepared under the direction of a dietician or nutritionist and shall be provided in accordance with the requirements set forth in Subsection 9706.7.

9706.3 All meals shall include hot foods and shall be equivalent to at least one-fourth (1/4) of the recommended daily dietary allowanced established by the Food and Nutrition Board of the National Research Council.

9706.4 The ADHP shall furnish special diets, if required by the participant and prescribed by his or her physician.

9706.5 The ADHP shall ensure that all participants are properly hydrated and that drinking water is provided in a safe and hygienic manner and is accessible to the participants at all times.

9706.6 Program staff members, under the supervision of the dietician, nutritionist, or registered nurse, shall provide nutrition counseling and consumer shopping advice to participants and, if necessary, to their families or guardians.

9706.7 The ADHP shall adhere to the following requirements to determine the number of meals and snacks to be provided to each participant:

(a) Participants who are in attendance for less than three (3) hours shall be provided with a minimum of one (1) meal or one (1) snack which shall constitute one-fourth (1/4) of the participant's daily nutritional allowance;

(b) Participants who are in attendance for a total of three (3) to four (4) hours per day shall be provided with a minimum of one (1) meal and one (1)

snack which shall constitute one-third (1/3) of the participant's daily nutritional allowance; and

(c) Participants who are in attendance for a total of five (5) to eight (8) hours per day shall be provided with a minimum of two (2) meals and two (2) snacks, or one (1) meal and two (2) snacks, which shall constitute one-half (1/2) of the participant's daily nutritional allowance.

9706.8 Each ADHP shall ensure that all meals are prepared and served in accordance with the food safety requirements set forth in Title 25 DCMR.

9707 MEDICATION ADMINISTRATION, ASSISTANCE AND COUNSELING

9707.1 The ADHP shall provide medication administration, assistance and counseling in accordance with the requirements of this Section.

9707.2 Medication administration and counseling services shall be supervised by a registered nurse.

9707.3 Medications, including over the counter medications, shall not be administered without a written order signed by a physician or an advance practice registered nurse, acting within the scope of his or her license.

9707.4 Medications, including injectable medications, shall only be administered as ordered by the physician or advance practice registered nurse and may only be administered by a physician, registered nurse, or licensed practical nurse.

9707.5 An individual authorized under Subsection 9707.4 to administer medications to a participant under these rules shall personally prepare the dosage, observe the act of swallowing oral medicines, and record each dosage given in each participant's medication administration record (MAR). The MAR shall clearly identify each individual who administers each dose.

9707.6 A registered nurse or a direct support professional working directly with the participant and employed by the ADHP shall provide assistance to participants who are able to self-administer medications.

9707.7 The ADHP shall provide counseling to participants and their families regarding medication safety, efficacy, and adherence, and shall assist participants to order medications or obtain a prescription or prescription refill.

9707.8 All medications, including those for participants who are able to self-administer, shall be stored in a safe, secure, locked storage area.

9707.9 The ADHP shall develop and implement internal quality controls to ensure that medications are stored properly and administered in accordance with the physician's orders.

9707.10 No controlled substances shall be administered or stored on the premises in violation of the Controlled Substances Act, approved October 27, 1970 (Pub. L. No. 113-234, 84 Stat. 1242; 21 U.S.C. §§ 801 *et seq*.), and its implementing federal regulations.

9707.11 The ADHP shall adhere to any applicable Federal or District of Columbia law, rules and/or regulations related to medication administration.

9708 SAFETY AND ENVIRONMENTAL REQUIREMENTS

9708.1 Each provider rendering ADHP services shall ensure that the physical site where services are rendered is in compliance with safety and accessibility standards for disabled persons in accordance with the Americans with Disabilities Act of 1990 (ADA), approved July 26, 1990 (Pub. L. No. 101-336, 104 Stat. 327), as amended and supplemented by the American Disabilities Amendments Act of 2008, approved September 25, 2008 (Pub.L. No. 110-325, 122 Stat. 3554; 42 U.S.C. §§ 12101 *et seq*.), and its implementing federal regulations, ADA standards for accessible design, 28 C.F.R. Ch. I, parts 35 and 36.

9708.2 Each provider rendering ADHP services shall maintain a Certificate of Occupancy from the Department of Consumer and Regulatory Affairs (DCRA) to ensure that the site is in compliance with the applicable zoning regulations and construction codes including electrical, plumbing, mechanical, and fire prevention requirements in accordance with the Construction Codes Supplement of 2013 under Title 12 DCMR.

9708.3 Each ADHP program site shall have:

(a) At least one (1) large room where all participants can gather for activities, socialization and meals;

(b) Separate areas for small group activities including a quiet area that permits participants to rest; and

(c) A room with a bed or medical examination table with adequate provision for privacy for medical examination, treatment in the event of illness or accident, or individualized programming or instruction.

9708.4 Each ADHP program site shall have sufficient toilet facilities at each site to accommodate participants with physical disabilities that comply with ADA standards for accessible design, 28 C.F.R. Ch. I, parts 35 and 36, also available at www.ada.gov.

9708.5 Each ADHP provider shall ensure adequate heating and cooling systems to ensure that room temperatures are maintained at comfortable levels.

9708.6 Each provider shall ensure that there are operating fire extinguishers and smoke and carbon monoxide detectors available on each building level.

9708.7 Each provider shall properly maintain walkways, ramps, steps and outdoor landscaping, and display clearly identifiable evacuation routes for safe means of exit in the event of an emergency.

9708.8 Each provider shall ensure that the program site is free of rodents, pests and insects.

9708.9 Each provider shall ensure that there is a first aid kit on site.

9708.10 Each provider shall have procedures for emergency care, infection control and reporting of accidents and incidents.

9708.11 Each provider shall ensure that participants have access to the private use of a telephone, on-site and at no charge, and that is easily and readily accessible.

9708.12 The minimum space requirements for each ADHP program site, exclusive of office space, bathrooms, storage space, examination rooms, food preparation areas and dining areas (unless also used for activities) shall be as follows:

(a) One hundred (100) square feet for each of the first five (5) participants;

(b) Eighty (80) square feet for each of the next ten (10) participants; and

(c) Thereafter, sixty (60) square feet for each ten (10) participants.

9709 SERVICE AUTHORIZATION REQUEST REQUIREMENTS

9709.1 **A**DHP services shall not be initiated or provided on a continuing basis by a provider without an approved assessment determination and an authorization for the receipt of ADHP services from DHCF or DHCF's designated agent to authorize the receipt of ADHP services.

9709.2 A Medicaid beneficiary who is seeking ADHP services for the first time shall submit his or her request for an assessment and a certification from the beneficiary's physician or advance practice registered nurse that he or she has a chronic medical condition in accordance with Subsection 9710.2 to DHCF or its designated agent in writing.

9709.3 DHCF or its designated agent shall be responsible for conducting a face-to-face assessment of each beneficiary using a standardized needs-based assessment tool to determine each beneficiary's need for ADHP services. The assessment shall:

(a) Confirm and document the beneficiary's functional limitations, behavioral and medical support needs and personal goals with respect to long-term care services and supports;

(b) Be conducted in consultation with the beneficiary and/or the beneficiary's representative and/or support team;

(c) Document the beneficiary's unmet need for services taking into account the contribution of informal supports and other resources in meeting the beneficiary's needs for assistance; and

(d) Document the amount, frequency, duration, and scope of long-term care services and support services needed.

9709.4 DHCF or its designated agent shall conduct the initial face-to-face assessment following the receipt of a request for an assessment and shall conduct a reassessment at least every twelve (12) months or upon significant change in the participant's condition. A request for a reassessment or a change in acuity level may be made by a Medicaid beneficiary, the beneficiary's representative, or a provider.

9709.5 Based upon the results of the face-to-face assessment conducted in accordance with Subsection 9709.3, DHCF or its authorized agent shall issue an assessment determination that specifies the beneficiary's acuity level.

9709.6 If the beneficiary meets the acuity level for ADHP services and chooses to participate in an ADHP program, DHCF or its authorized agent shall refer the beneficiary to the Aging and Disability Resource Center (ADRC) which shall be responsible for developing the person-centered service plan in accordance with federal regulations under 42 C.F.R. § 441.725.

9709.7 Consistent with 42 C.F.R. § 441.725(c), the person-centered service plan must be reviewed, and revised upon reassessment of functional need as required in § 441.720, at least every twelve (12) months, and/or when the beneficiary's circumstances or needs change significantly in accordance with Subsection 9709.4.

9709.8 The ADRC shall assist the beneficiary to select an ADHP provider, and shall refer the beneficiary to other available services of his or her choice.

9709.9 If, based upon the assessment or reassessment conducted pursuant to this section, a beneficiary is found to be ineligible for ADHP services, DHCF or its agent shall issue a letter informing the beneficiary of his or her ineligibility, or change in acuity for ADHP services, including information about his or her right to appeal

the denial, reduction or termination of services in accordance with federal and District of Columbia law and regulations consistent with D.C. Official Code § 4-205.55. The notice shall also contain information regarding the beneficiary's right to request DHCF to reconsider its decision and the timeframes for making a request for reconsideration.

9710 ADMISSION REQUIREMENTS

9710.1 With respect to each new admission, an ADHP provider shall:

(a) Obtain the ADHP assessment determination that authorizes the need for ADHP services, as described in Section 9709, establishing that the participant meets the level of care for admission to an ADHP;

(b) Obtain a medical release form, signed by the participant's physician or advanced practice registered nurse, that addresses the participant's general medical condition, restrictions on activity, diet modifications, any instructions relative to health care, absence of infectious diseases, a list of current medications and treatment documenting the participant's medical history;

(c) Conduct a pre-admission interview with the participant and his or her family, and support team, to gather information on the participant's health characteristics, psycho-social condition, nutritional habits, and other relevant data pertaining to the participant's home or community support system;

(d) Develop and execute an agreement between the ADHP provider and the participant which shall include, but not be limited to, the following information:

(1) The program's operating business hours and schedule of holidays;

(2) The announcement procedures for unexpected closing of the program due to disaster or inclement weather;

(3) Participant rights and responsibilities;

(4) The Provider's HIPAA compliance policy;

(5) The Provider's safety and emergency preparedness policy and plan which outlines who the provider should contact in case of an emergency;

(6) The financial obligations of the participant, if any; and

(7) Other pertinent information; and

(e) Implement the participant's ADHP plan of care in accordance with Section 9711.

9710.2 The signed medical release form referenced in Subsection 9710.1(b) shall be accompanied by a report from the beneficiary's physician or advance practice nurse indicating that the physician or advance practice nurse has physically examined the applicant and certified that the beneficiary has a chronic medical condition within the past ninety (90) days and the results of that physical examination;

9711 ADHP PLAN OF CARE

9711.1 An ADHP plan of care shall:

(a) Be completed within fourteen (14) business days of the participant's admission to the ADHP;

(b) Be developed in consultation with the participant, or the participant's representative and the participant's Support Team;

(c) Incorporate the participant's person-centered service plan and take into account the assessment conducted in accordance with Subsection 9709.3, as well as any other information relevant to a comprehensive understanding of the participant's clinical and support needs;

(d) Specify how the ADHP will provide the services and supports that will assist the participant to achieve his or her identified goals as identified in the person-centered service plan;

(e) Reflect the participant's preferences as to the types and scheduling of ADHP services to be provided as identified in the participant's person-centered service plan ;

(f) Indicate any other supportive services that the participant is receiving away from the ADHP such as homemaker services, other therapies and services; and

(g) Include efforts to coordinate services with other health care providers, to prevent a gap of service delivery in the event of unscheduled absences from the ADHP program.

9711.2 The ADHP plan of care shall be reviewed by the support team and the participant or the participant's representative at least once every ninety (90) days, and whenever there has been a significant change in the participant's conditions, and shall be updated or modified as needed.

9711.3 The initial ADHP plan of care, as well as any updates or changes made, shall be approved and signed by the participant and/or the participant's representative, the registered nurse in charge of the participant's care and all support team members who participate in its development.

9711.4 For participants receiving a combination of ADHP and personal care aid services, any change requests to a participant's approved schedule or services must be communicated and coordinated between the ADHP and Home Care Agency providers. The change requests must be submitted to DHCF on the first (1st) and fifteenth (15th) day of every month in order for the prior authorization to be issued and changes to be in effect on the first (1st) day of the following month. Exceptions will be considerered for emergencies consisting of a sudden or unexpected change in a person's health care needs that necessitates a change.

9711.5 A support team includes the clinical and non-clinical staff who shall be responsible for providing or arranging for services and supports for the participant. At minimum, for purposes of developing an ADHP plan of care for each participant, the Support Team shall include:

(a) The Registered Nurse;

(b) The Social Worker;

(c) The Dietician/Nutritionist;

(d) The Activities Coordinator;

(e) The direct support professional(s) who worked directly with the participant; and

(f) Any other person chosen by the participant.

9712 PARTICIPANT RIGHTS AND RESPONSIBILITIES

9712.1 Each ADHP provider shall develop a written statement of the participant's rights and responsibilities consistent with the requirements of this section, which shall be given to each participant in advance of receiving services.

9712.2 The written statement of the participant's rights and responsibilities shall be prominently displayed at the provider's business location and available at no cost upon request by the general public.

9712.3 Each participant shall have the following rights:

(a) To be treated with courtesy, dignity and respect;

(b) To participate in the planning of his or her care and treatment;

(c) To receive treatment, care, and services consistent with the person-centered service plan and to have the ADHP plan of care modified for achievement of outcomes;

(d) To receive services by competent provider personnel who can communicate with the participant in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.*);

(e) To refuse all or part of any treatment, care, or service and be informed of the consequences;

(f) To be free from mental and physical abuse, neglect and exploitation from persons providing services;

(g) To be assured of the privacy of protected health and financial information in accordance with all the provisions of applicable District and federal laws;

(h) To voice a complaint or grievance about treatment, care, or lack of respect for personal property by persons providing services without fear of reprisal;

(i) To have access to his or her records;

(j) The right to participate in activities and receive services in a fully integrated setting to the same extent as people not receiving Medicaid Health Care Benefit Services;

(k) To be informed orally and in writing of the following:

(1) Services to be provided, including any limits;

(2) Amount charged for each service, the amount of payment required from the participant and the billing procedures, if applicable;

(3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party sources;

(4) Acceptance, denial, reduction or termination of services with notices to be issued at least fifteen (15) days before the effective date of reduction or termination;

(5) Complaint and appeal procedures including contact information about agencies or programs that can respond to complaints such as the Ombudsman's office, or the District's Protection and Advocacy Program for Individuals with Disabilites;

(6) Name, address and telephone number of the Provider;

(7) Telephone number of the District of Columbia Medicaid fraud hotline;

(8) Participant's freedom from being forced to sign for services that were not provided or were unnecessary; and

(9) A statement, provided by DHCF, defining health care fraud and ways to report suspected fraud.

9712.4 Each participant shall be responsible for the following:

(a) Treating all ADHP personnel with respect and dignity;

(b) Providing accurate information when requested;

(c) Informing provider personnel when instructions are not understood or cannot be followed;

(d) Cooperating in making a safe environment for care within the ADHP site; and

(e) Reporting suspected fraud, waste and abuse.

9712.5 Each provider shall take appropriate steps to ensure that each participant, including participants who cannot read or those who have a language or a communication barrier, has received the information required pursuant to this section.

9712.6 Each Provider shall document in the participant's records, described under Section 9713, the steps taken to ensure that each participant has received the information.

9713 RECORDKEEPING

9713.1 Each ADHP provider shall maintain complete and accurate participant records (paper or electronic) for each participant that documents the specific ADHP services provided to each participant for a period of ten (10) years or until all audits are completed, whichever is longer.

9713.2 Each participant’s record shall include, but not be limited to, the following information:

(a) General information including the participant's name, Medicaid identification number, address, telephone number, age, sex, name and telephone of emergency contact person, authorized representative (if applicable), and primary care physician's or advanced practice registered nurse’s name, address, and telephone number;

(b) The approved ADHP assessment determination, certification of chronic medical condition, and the Medical Release Form;

(c) Notes from the participant’s pre-admission interview;

(d) An emergency care form to include the name and contact information for at least three people to be notified in case of emergency;

(e) ADHP HIPAA Privacy Act Statement and signed acknowledgement in accordance with the HIPAA Privacy Act of 1996, approved August 21, 1996 (Pub. L. 104-191, 110 Stat. 1936);

(f) The participant’s person-centered service plan, the ADHP plan of care, and all monthly updates;

(g) The results of the participant’s initial and any revised needs-based assessment;

(h) A copy of the written agreement between the ADHP provider and the participant;

(i) All physician orders including all orders for medications;

(j) Other assessments and consultations;

(k) Documentation of services received, how often and by whom;

(l) Progress notes and quarterly updates;

(m) Incident and accident reports;

(n) Copies of any written notices given to the participant; and

(o) Discharge summary, if applicable.

9713.3 Each provider shall maintain the following fiscal records:

(a) Daily attendance roster;

(b) The program inspection reports (health, fire, safety, food), if applicable;

(c) An annual ADHP program evaluation report including program enrollment and discharge data;

(d) Current copies of all fully executed contracts pertaining to the delivery of ADHP services;

(e) Current and projected budgets, including specific cost allocations;

(f) General ledger and books of original entry showing receipts and expenditures with supporting documentation;

(g) The fee schedule and fee charges;

(h) The daily schedule of activities;

(i) The daily menus for meals and snacks for each thirty (30) day period;

(j) Any audits by Centers for Medicare and Medicaid Services (CMS) and/or DHCF;

(f) The discharge planning form/report;

(k) The number of individuals waiting for admission to the program, if any;

(l) The community outreach materials that shall include:

(1) A program brochure;

(2) Letters to physicians, health facilities, senior centers, and social service agencies informing them of the services provided by the program;

(3) Strategies for participation and involvement with community service agencies and community leaders to develop referral mechanisms;

(4) Notices posted in community facilities; and

(5) Schedule of events held for the general public and various community groups.

9713.4 Individual personnel records shall be maintained on all program staff and consultants.

9713.5 Individual personnel records shall include the following:

(a) Name, address, telephone number, age and sex;

(b) Educational background;

(c) Employment history and notes on references;

(d) Evaluation of performance and attendance;

(e) Certification that the staff member is free of tuberculosis and other communicable diseases;

(f) CPR certification(s);

(g) Results of reference and criminal background checks including 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 assist licensed health professionals in providing direct patient care or common nursing tasks, but are not licensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code;

(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 have direct contact with participants.

(h) Evidence of participation in continuing education; and

(i) Copies of all professional licenses held by employees or any contractor utilized by the Provider for the delivery of ADHP services.

9713.6 All ADHP participant, personnel and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for

inspection and review by DHCF, CMS, and other authorized government officials or their agents, as requested.

9714 TERMINATION AND ALTERNATIVE SANCTIONS FOR ADHP NONCOMPLIANCE

9714.1 In order to qualify for Medicaid reimbursement, ADHP providers shall comply with programmatic requirements as part of its Provider Readiness Review. The programmatic requirements include adherence to acceptable standards in the following areas:

(a) Service delivery;

(b) Program administration as governed under mandated policies and procedures;

(c) Staffing and training; and

(d) Home and Community Based Services (HCBS) setting requirements.

9714.2 An ADHP that fails to maintain compliance with the programmatic requirements and any requirements set forth in this chapter may be subject to alternative sanctions and/or termination of its participation in the Medicaid program.

9714.3 If DHCF initiates an action to terminate, DHCF shall follow the procedures set forth in Chapter 13 of Title 29 DCMR governing termination of the Medicaid provider agreement.

9714.4 If DHCF initiates an action to impose an alternative sanction, a written notice shall be issued to each ADHP provider notifying the provider of the imposition of an alternative sanction.

9714.5 The written notice shall inform the provider that DHCF intends to impose an alternative sanction.

9714.6 The written notice shall also include the following:

(a) The basis for the proposed action;

(b) The specific alternative sanction that DHCF intends to take;

(c) The provider's right to dispute the allegations and to submit evidence to support his or her position; and

(d) Specific reference to the particular sections of the statutes, rules, provider's manual, and/or provider's agreement involved.

9714.7 Within thirty (30) days of the date of the notice, an ADHP provider may submit documentary evidence to DHCF's Long Term Care Administration, 441 4th St., NW, Ste. 1000, Washington, DC 20001 to refute DHCF's argument for imposition of the alternative sanction.

9714.8 On a case-by-case basis, DHCF may extend the thirty (30) day period prescribed in Subsection 9714.7.

9714.9 If DHCF determines to impose an alternative sanction against the ADHP provider after the provider has issued a response under Subsection 9714.7, DHCF will send a written notice at least fifteen (15) days before the imposition of the alternative sanction. The notice shall include the following:

(a) The reason for the decision;

(b) The effective date of the sanction; and

(c) The provider's right to request a hearing by filing a notice of appeals with the District of Columbia Office of Administrative Hearings.

9714.10 If the ADHP provider files a notice of appeal within fifteen (15) days of the date of the notice of the alternative sanction under Subsection 9714.9, then the effective date of the proposed sanction shall be stayed until the District of Columbia Office of Administrative Hearings has rendered a final decision.

9714.11 The Director of DHCF shall consider modifying the alternative sanction upon the occurrence of one of the following:

(a) Circumstances have changes and resulted in alterations of the programmatic requirement violation(s) in such a manner as to immediately jeopardize a participant's health, and safety; or

(b) The ADHP makes significant progress in achieving compliance with the programmatic requirements through good faith efforts.

9714.12 When a participant's health or safety is in immediate jeopardy, the provider must implement the safety and emergency preparedness plan. One the participant is safe and is no longer in immediate jeopardy, the ADHP shall submit a corrective action plan to DHCF within one (1) business day with specific timelines for implementation.

9714.13 The Director of DHCF may also modify the denial of payment sanction in accordance with Section 9716.

9715 ALTERNATIVE SANCTIONS FOR ADHPs

9715.1 DHCF may impose alternative sanctions against an ADHP when that provider fails to meet the programmatic requirements or any requirements set forth in this Chapter, but the violation does not place an ADHP participant's health or safety in immediate jeopardy.

9715.2 In lieu of terminating the Medicaid provider agreement, DHCF may impose one (1) or more alternative sanctions against ADHPs as set forth below:

(a) Denial of payments related to new admissions, as described in § 9716;

(b) Directed Plan of Correction (DPoC), as described in § 9717;

(c) Directed In-Service Training (DIST), as described in § 9718; or

(d) State Monitoring, as described in § 9719.

9715.3 DHCF shall make a determination to terminate a provider from the Medicaid program, or to impose an alternative sanction 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 ADHP participants;

(d) Potential for serious harm to ADHP participants;

(e) Any history of prior violation(s) and/or sanction(s);

(f) Mitigating circumstances; and

(g) Other relevant factors, including failing to achieve satisfactory scores during the annual Provider Readiness Review process.

9715.4 DHCF shall issue a written notice to each ADHP notifying the provider of the imposition of an alternative sanction. The written notice shall comply with the requirements outlined in Section 9714.

9715.5 All costs associated with the imposition of an alternative sanction against an ADHP pursuant to these rules shall be borne by the provider.

9716 DENIAL OF PAYMENT RELATING TO NEW ADMISSIONS

9716.1 In lieu of termination in situations where participants are not in immediate jeopardy, DHCF may initiate a one-time denial of payment for claims associated

with new admissions at the ADHP site that fail to comply with one (1) or more of the programmatic requirements for Medicaid enrollment.

9716.2 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.

9716.3 DHCF shall notify the ADHP that it is subject to denial of payment in accordance with the notice requirements described under Section 9714.

9716.4 DHCF shall monitor the provider's progress in improving cited violation(s) throughout the eleven (11) month period.

9716.5 The Director of DHCF shall consider modifying or rescinding the denial of payment, for reasons stated under Subsection 9715.1, or if the ADHP achieves full compliance with the programmatic requirements in fewer than eleven (11) months.

9716.6 DHCF shall terminate the Medicaid provider agreement of an ADHP that has been unable to achieve compliance with the programmatic requirements during the full eleven (11) month period of denial of payment.

9716.7 An ADHP Medicaid 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.

9716.8 ADHP Medicaid provider agreements that are subject to denial of payment may only be renewed when the denial period expires or is rescinded.

9717 DIRECTED PLAN OF CORRECTION (DPoC)

9717.1 In lieu of termination in situations where the ADHP is not in compliance with the programmatic requirements, and ADHP participants are not in immediate jeopardy, DHCF may require an ADHP to take prompt, or immediate action specified by DHCF to achieve and maintain compliance with programmatic requirements and other District of Columbia Medicaid requirements. These actions specified by DHCF shall constitute a Directed Plan of Correction (DPoC).

9717.2 The DPoC shall be developed by DHCF's Long Term Care Administration in coordination with the quality team of DHCF's Health Care Delivery Management Administration (HCDMA) and approved by, DHCF, incorporating findings from the provider's annual Providers Readiness Review.

9717.3 The DPoC shall specify:

(a) How corrective action shall be accomplished for participants found to have been affected by the deficient practice and include remedies that shall be implemented;

(b) How the provider shall identify other participants who may have been affected by the same deficient practice but not previously identified, and how the provider shall act to remedy the effect of the deficient practices for these participants;

(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 DPoC;

(e) How compliance shall be determined; and

(f) How the DPoC relates to other alternative sanctions.

9717.4 A monitor from DHCF's HCDMA shall oversee implementation of the DPoC and evaluate compliance with the plan.

9717.5 DHCF may terminate the Medicaid provider agreement of an ADHP that is unable to meet the timeline for completion of all corrective actions in the DPoC.

9718 DIRECTED IN-SERVICE TRAINING (DIST)

9718.1 In lieu of termination in situations where the ADHP is not in compliance with programmatic requirements, but participants are not in immediate jeopardy, DHCF may require an ADHP 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 employees of the ADHP to attend in-service trainings and demonstrate competency in the knowledge and skills presented during the trainings.

9718.2 DHCF shall develop the areas for ADHP staff and employee training by incorporating the findings from the annual Provider Readiness Review.

9718.3 Providers shall use training programs developed by well-established organizations with prior experience and expertise in training adult day providers, services. All programs and personnel used to deliver the training shall be approved by DHCF prior to their use.

9718.4 The ADHP shall bear the expense of the DIST.

9718.5 A monitor from DHCF's HCDMA shall oversee implementation of DIST, and shall ensure compliance with the requirements.

9718.6 DHCF may terminate the provider agreement of an ADHP that is unable to meet the timeline for full and successful completion of the DIST.

9719 PROGRAM COMPLIANCE MONITORING

9719.1 Program compliance monitoring shall be the District of Columbia's oversight of efforts made by the ADHP to correct cited deficiencies. State monitoring shall be a safeguard against the ADHP provider's further noncompliance.

9719.2 The following entities may serve as the District of Columbia's Monitor:

(a) DHCF; or

(b) A District of Columbia contractor that meets the following requirements:

(1) Is not a designee or current contractor of the monitored provider;

(2) Does not have an immediate family member who is a participant of the provider;

(3) Is not a person who has been terminated for cause by the provider; and

(4) Is not a former contractor who has had a contract canceled, for cause, by the provider.

9719.3 Program compliance monitoring shall be discontinued under the following circumstances:

(a) The provider's Medicaid provider agreement is terminated;

(b) The provider has demonstrated to the satisfaction of the District of Columbia that it substantially complies with the DPoC as described in § 9717; or

(c) The provider has demonstrated to the satisfaction of the District of Columbia that it has substantially implemented the DIST as described in § 9718.

9720 DISCHARGE AND REFERRAL

9720.1 A participant shall be discharged from the ADHP program under one (1) of the following conditions:

(a) If the participant is found upon reassessment that his/her acuity is below the level of need described under Section 9709;

(b) If the participant requires long term placement in an institutional setting; or

(c) If the participant wishes to discontinue participation in the program.

9720.2 Upon discharge, the ADHP shall develop and maintain a participant discharge plan that shall include the following:

(a) The reasons for discharge;

(b) The post-discharge goals for the participant; and

(c) The list of community resources including service agencies to promote continuity of care; and if follow-up services are desired.

9720.3 The provider shall submit the discharge plan to DHCF within one (1) week of the person's discharge from the ADHP program.

9720.4 If the discharge is related to a failure to meet the level of need, a beneficiary denial or change of services letter will be issued, consistent with Federal and District of Columbia law.

9721 SERVICE LIMITATIONS

9721.1 A person shall not receive ADHP services if they reside in an institutional setting or any setting that is not in compliance with the HCBS setting requirements consistent with 42 C.F.R. § 441.301 and 42 C.F.R. § 441.710.

9721.2 A provider shall not be reimbursed for ADHP services under these rules if the participant is concurrently receiving the following services:

(a) Day Habilitation and Individualized Day Supports under the Section 1915 (c) Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD);

(b) Intensive day treatment or day treatment mental health rehabilitative services (MHRS);

(c) Personal Care Aide (PCA) services (State Plan and 1915 (c) waivers); or

(d) Adult day care or day services funded by the Older Americans Act of 1965, approved July 14, 1965 (Pub. L. No. 89-73, 79 Stat. 218), as

amended by the Older Americans Act Amendments of 2000, approved November 13, 2000 (Pub. L. No. 106-501, 114 Stat. 2226), as amended by the Older Americans Act Amendments of 2006, approved October 17, 2006 (Pub. L. No. 109-365, 120 Stat. 2522).

9721.3 DHCF shall not reimburse ADHP services if the participant is also receiving or being billed for the services listed under sub-section 9721.2 at the same time the participant is in attendance at the ADHP site.

9721.4 A provider shall not be reimbursed for ADHP services if the participant is receiving intensive day treatment mental health rehabilitation services during a twenty-four (24) period that immediately precedes or follows the receipt of ADHP services, to ensure that the participant is receiving services in the setting most appropriate to his/her clinical needs.

9721.5 If a person is also receiving Personal Care Aide (PCA) services under the State Plan for Medical Assistance on the same day that ADHP services are delivered, the combination of both PCA and ADHP services shall not exceed a total of twelve (12) hours per day.

9721.6 ADHP services shall not be provided for more than five (5) days per week and for more than eight (8) hours per day.

9722 COST REPORTING

9722.1 Each ADHP site shall report direct services, treatment, and plant and capital costs on an annual basis to DHCF no later than ninety (90) business 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 in writing.

9722.2 All costs reports shall cover a twelve (12) month cost reporting period unless the provider obtains advance written permission from DHCF to allow an alternative reporting period, for good cause.

9722.3 The costs described in Subsection 9722.1 shall be reported on a cost report template designed by DHCF.

9722.4 The cost report instructions shall include, but not be limited to, guidelines and standards for determining and reporting allowable costs.

9722.5 DHCF shall issue a delinquency notice to any provider who fails to submit a cost report within the required ninety (90) business day timeframe or who submits an incomplete cost report.

9722.6 The delinquency notice shall be issued within thirty (30) business days of the last day of the required timeframe, and shall urge the provider to submit, or amend the submitted cost report or face the risk of a withholding of provider payments.

9722.7 Issuance of a delinquency notice shall result in the withholding of an amount equal to seventy-five percent (75%) of the provider'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.

9722.8 The amounts withheld pursuant to Subsection 9722.7 shall be refunded upon submission of complete cost reports that address all delinquencies.

9722.9 All cost reports are subject to audit and adjustment.

9722.10 All providers shall retain all accounting records for a period of not less than ten (10) years after the filing of a cost report.

9723 REIMBURSEMENT POLICY

9723.1 Reimbursement rates shall be based on a uniform per diem rate that is differentiated based on the participant's acuity level as established by the standardized need- based assessment tool and process described under Section 9709, as follows:

(a) Acuity Level One (1) represents the health and support needs of a beneficiary whose needs based assessment reflects a minimum score of four (4) or five (5); and

(b) Acuity Level Two (2) represents the health and support needs of a beneficiary whose needs based assessment reflects a score of six (6) or higher.

9723.2 Beginning on the effective date of these rules, the reimbursement rate for ADHP services shall be as follows:

(a) Acuity Level One (1): The daily rate for a program serving participants with minimum acuity levels with at least one staff member during all hours shall be ninety eight dollars and seventy cents ($98.70) per day; and

(b) Acuity Level Two (2): The daily rate for a program serving participants with a maximum acuity level with at least one staff member shall be one hundred and twenty five dollars and seventy eight cents ($125.78) per day.

9723.3 Effective October 1, 2015 (fiscal year 2016) and thereafter, the uniform per-diem rates, shall be inflated by the corresponding CMS Market Basket Index for Nursing Facilities for that period.

9799 DEFINITIONS

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

Acuity level - A participant's level of health and support needs determined by the assessment tool.

ADHP plan of care - A written plan developed by the provider to implement ADHP services in accordance with the individual's person-centered service plan.

Aging and Disability Resource Center (ADRC) - The D.C. ADRC is housed at the D.C. Office on Aging, and provides a single, coordinated system of information and access for individuals seeking long-term services and supports. This is accomplished through the provision of unbiased, reliable information, counseling, and service access to older adults (60 years and older), individuals with disabilities (18 to 59 years old), and their caregivers. The ADRC facilitates the acquisition of services individualized to the unique needs and desires expressed by each person.

Body Mechanics - The field of physiology that studies muscular actions and the function of muscles in maintaining body posture.

Chronic Medical Condition - A medical condition that lasts a year or more and requires ongoing medical attention and/or limit activities of daily living.

Full-Time staff- Staff that are on-site and available to assist ADHP participants with any of the responsibilities outlined under this Chapter during all hours when ADHP participants are present at the ADHP site.

Person-centered Service Plan – A plan of care developed by the Aging and Disability Resource Center (ADRC) that meets the requirements of 42 C.F.R. § 441.725.

Provider - the individual, organization, or corporation, public or private, that provides adult day health program services and seeks reimbursement for providing those services under the Medicaid program.

Support Team - A group of people providing support to a person receiving ADHP services, who have the responsibility of performing a

comprehensive person-centered evaluation to support the development, implementation and monitoring of the person's person-centered plan of care.

Site - The location of the adult day health program. If an adult day health provider operates a program in two (2) or more separate locations, each location is considered to be a separate site.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington, DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

OFFICE OF ADMINISTRATIVE HEARINGS

DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF ADMINISTRATIVE LAW JUDGES

NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF ADMINISTRATIVE LAW JUDGE

The Commission on Selection and Tenure of Administrative Law Judges ("Commission") seeks comments regarding the potential reappointment of Administrative Law Judge Caryn L. Hines.

This is to notify members of the District of Columbia Bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations ("DCMR"), that the Commission has begun reviewing Administrative Law Judge Hines's qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Hines has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of her six-year term on April 28, 2016.

Section 3705.21 of Title 6 of the DCMR provides:

> In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of her or her office and is likely to continue to do so.

In addition to the specific qualifications contained in Section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges),* applicable to all Administrative Law Judges, Section 3703.5 of Title 6 of the DCMR states: "An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge."

The Commission hereby requests that members of the Bar and other attorneys, litigants, interested organizations, and members of the public submit any information bearing on Administrative Law Judge Hines's qualifications, which they believe will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications must be received by the Commission on or before October 25, 2015. All communications must be mailed or delivered in a sealed envelope marked "Confidential – ALJ Reappointments," addressed to:

Commission on Selection and Tenure of Administrative Law Judges
Office of Administrative Hearings
District of Columbia Government
441 4th Street, N.W.
Suite 450N
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams
Chief Administrative Law Judge Eugene A. Adams
James W. Cooper, Esq.
Nadine C. Wilburn, Esq.
Joseph N. Onek, Esq.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, OCTOBER 28, 2015
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

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

Fact Finding Hearing* **9:30 AM**
Seven Seas, Inc., t/a Seven Seas Restaurant; 5915 Georgia Ave NW, License #654, Retailer CR, ANC 4B
Request to Extend Safekeeping

Show Cause Hearing* **10:00 AM**
Case # 14-CMP-00597; Cava Mezze Grill Tenleytown, LLC, t/a Cava Mezze Grill, 4237 Wisconsin Ave NW, License #90698, Retailer CR, ANC 3E
No ABC Manager on Duty

Show Cause Hearing* **11:00 AM**
Case # 15-CMP-00056; Yonas, Inc., t/a Corner Market, 1447 Howard Road SE License #86200, Retailer A, ANC 8A
Failed to Take Steps Necessary to Ensure Property is Free of Litter

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Show Cause Hearing* **1:30 PM**
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)

Board's Calendar
October 28, 2015

Show Cause Hearing*	**2:30 PM**
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)**	
Protest Hearing*	**3:30 PM**
Case # 15-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)**	
***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Offical Code §2-574(b)(13).**	

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, OCTOBER 28, 2015
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On October 28, 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#15-251-00161 Capitale, 1301 K ST NW Retailer C Nightclub, License#: ABRA-072225

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2. Case#15-CMP-00513 Ritz Carlton Georgetown, 3100 SOUTH ST ST NW Retailer C Hotel, License#: ABRA-060660

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3. Case#15-CC-00107 Capitol Lounge (The), 229 PENNSYLVANIA AVE SE Retailer C Tavern, License#: ABRA-023601

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4. Case#15-CC-00101 We, The Pizza, 305 PENNSYLVANIA AVE SE Retailer C Restaurant, License#: ABRA-082062

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5. Case#15-CMP-00514 The Brixton, 901 U ST NW Retailer C Tavern, License#: ABRA-082871

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6. Case#15-CMP-00533 Smith Commons, 1245 H ST NE Retailer C Restaurant, License#: ABRA-084598

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7. Case#15-CC-00096 Cafe Deluxe, 3226 - 3230 WISCONSIN AVE NW Retailer C Restaurant, License#: ABRA-085876

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8. Case#15-CMP-00495 The Westin Washington, D.C. City Center, 1400 M ST NW Retailer C Hotel, License#: ABRA-090337

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9. Case#15-CC-00104 Fiola Mare, 3050 K ST NW Retailer C Restaurant, License#: ABRA-091251

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10. Case#15-CMP-00520 Dunya Restaurant & Lounge, 801 FLORIDA AVE NW Retailer C Tavern, License#: ABRA-091607

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11. Case#15-CMP-00540 Osteria Morini/Nicoletta, 301 WATER ST SE Retailer C Restaurant, License#: ABRA-092083

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12. Case#15-CMP-00534 Sol Mexican Grill, 1251 H ST NE Retailer C Tavern, License#: ABRA-092192

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13. Case#15-AUD-00096 Chupacabra, 822 H ST NE Retailer C Restaurant, License#: ABRA-092662

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14. Case#15-CC-00099 S & G Wine & Liquors, 5421 GEORGIA AVE NW Retailer A Retail - Liquor Store, License#: ABRA-093800

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15. Case#15-CC-00100 Good Hope Deli & Market, 1736 Good Hope RD SE Retailer B Retail - Grocery, License#: ABRA-093974

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16. Case#15-CC-00098 Fair Liquors, 5008 1ST ST NW Retailer A Retail - Liquor Store, License#: ABRA-096106

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17. Case #15-CC-00093 Washington Wine & Liquors, 1200 E ST NW Retailer A Retail- Liquor Store, License #: ABRA-015724

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, OCTOBER 28, 2015 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Appeal of Denial of Petition to Terminate a Voluntary Agreement, dated October 8, 2015, submitted by Rendezvous Lounge. ***Rendezvous Lounge***, 2226 18th Street, N.W., Retailer CT, License No.: 014272.

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2. Review of Request for Off-Site Storage, dated October 14, 2015, submitted by Menomale LLC. ***Menomale, LLC***, 2711 12th Street, N.E., Retailer CR, License No.: 088564.

*** 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, OCTOBER 28, 2015 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request for Change of Hours. ***Approved Hours of Operation:*** Saturday-Sunday 10am to 5am, Monday-Friday 11am to 5am. ***Approved Hours of Alcoholic Beverage Sales and Consumption:*** Sunday 10am to 1:30am, Monday-Thursday 11am to 1:30am, Friday 11am to 2:30am, Saturday 10am to 2:30am. ***Approved Hours of Live Entertainment:*** Tuesday-Thursday 8pm to 1:30am, Friday-Saturday 8pm to 2:30am. ***Proposed Hours of Alcoholic Beverage Sales and Consumption:*** Sunday 10am to 2:00am, Monday-Thursday 11am to 2am, Friday 11am to 3am, Saturday 10am to 3am. ***Proposed Hours of Live Entertainment:*** Sunday 10am to 2am, Monday-Thursday 11am to 2am, Friday 11am to 3am, Saturday 10am to 3am. ANC 2B. SMD 2B06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***1831***, 1831 M Street NW, Retailer CT, License No. 099805.

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2. Review Request to add a second Vessel, "Freedom," to existing Class CX Common Carrier License. ANC 6D. SMD 6D04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Patriot II/National Ferry***, 1300 Maine Avenue SW, Retailer CX Common Carrier, License No. 098137-2.

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3. Review Application for Manager's License. ***Scott M.B. Hall***-ABRA 100699.

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4. Review Application for Manager's License. ***Brett H. Oye***-ABRA 100713.

***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.**

DC INTERNATIONAL SCHOOL

REQUEST FOR PROPOSALS

Project Management Consulting Services

RFP for Project Management Consulting Services: DC International PCS is seeking project management consulting services for the design and construction of their new facility in a renovated and expanded Delano Hall on the Walter Reed campus. For a copy of the full RFP, e-mail rfp@bhope.org. Bids are due on October 29th, 2015.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PUBLIC MEETING

Healthy Youth and Schools Commission Meeting Agenda

October 28, 2015

3:00 – 5:00 PM

810 First Street NE, 3rd Floor, Washington, DC 20002

3:00-3:15 **Welcome/Introductions**

3:15-3:30 **OSSE Update**

3:30 – 4:30 **Subcommittee Updates**

- Communications
- Nutrition
- Environment
- Physical Education & Activity
- Health and Wellness

4:30-4:55 **HYSC Report Due to City Council on November 30, 2015**

4:55-5:00 **Closing Announcements and Adjourn**

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling a Vacancy
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections "Board" from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

John Kupcinski
Single-Member District 2B07

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6583-R1 to Cellco Partnership (DBA Verizon Wireless) to operate a 50 kW emergency generator set with an 88.3 HP natural gas fired engine at 601 F Street NW, Washington, DC 20005. The contact person for the facility is Bryan Scallon, Director of Operations, at 800-488-7900.

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

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

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

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

No written comments or hearing requests postmarked after November 23, 2015 will be accepted.

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

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6584-R1 to Cellco Partnership (DBA Verizon Wireless) to operate a 50 kW emergency generator set with an 88.3 HP natural gas-fired engine at 1800 Martin Luther King Jr. Avenue SE, Washington, DC. The contact person for the facility is Bryan Scallon, Director of Operations, at 800-488-7900.

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

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DEPARTMENT OF ENERGY AND ENVIRONMENT

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

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DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

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

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DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6614-R1 to Cellco Partnership (DBA Verizon Wireless) to operate a 50 kWe emergency generator set with an 88.3 HP natural gas fired engine at 875 N Street NW Washington, DC. The contact person for the facility is Bryan Scallon, Director of Operations, at 800-488-7900.

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

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DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #7046 to Jones Lang LaSalle to operate one (1) 505 kWe emergency generator set with a 757 bhp diesel fired engine at Potomac Center North, 500 12th Street SW, Washington DC 20024. The contact person for the facility is Victor Morales, Chief Engineer, at (202) 367-8563.

The proposed emission limits are as follows:

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

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

The estimated emissions from the emergency generator set, assuming 500 hours of operation per year, are as follows:

Pollutant	**Maximum Annual Emissions (tons/yr)**
Carbon Monoxide (CO)	0.18
Oxides of Nitrogen (NO_x)	2.61
Total Particulate Matter (PM Total)	0.10
Sulfur Dioxide (SO_x)	0.08
Volatile Organic Compounds (VOCs)	0.16

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DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #7047 to Jones Lang LaSalle to operate one (1) 450 kWe emergency generator set with a 685 hp diesel fired engine at Potomac Center South, 550 12th Street SW, Washington DC 20024. The contact person for the facility is Victor Morales, Chief Engineer, at (202) 367-8563.

The proposed emission limits are as follows:

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

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

The estimated emissions from the emergency generator set, assuming 500 hours of operation per year, are as follows:

Pollutant	**Maximum Annual Emissions (tons/yr)**
Carbon Monoxide (CO)	0.38
Oxides of Nitrogen (NO_x)	3.58
Total Particulate Matter (PM Total)	0.06
Sulfur Dioxide (SO_x)	0.22
Volatile Organic Compounds (VOCs)	0.08

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

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No written comments or hearing requests postmarked after November 23, 2015 will be accepted.

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

DEPARTMENT OF HEALTH CARE FINANCE

PUBLIC NOTICE

MEDICAID FEE SCHEDULE UPDATES FOR ADULT SUBSTANCE ABUSE REHABILITATIVE SERVICES

The Department of Health Care Finance (DHCF), pursuant to the requirements set forth in Section 988 of Chapter 9 Title 29 of the District of Columbia Municipal Regulations (DCMR), published on October 2, 2015 (62 DCR 13060), announces changes to the Medicaid reimbursement rates of Medicaid-reimbursable Adult Substance Abuse Rehabilitative Services (ASARS) billed by substance use disorder (SUD) treatment providers. DHCF is updating the Medicaid fee schedule for ASARS services to reflect treatment standards set forth by DBH in Chapter 63 of Title 22-A of the DCMR. The changes set forth below will become effective on December 1, 2015. The updates to ASARS services are as follows:

Service	Code	Rate per unit	Unit
Urinalysis (Laboratory)	H0003	15.00	Per service
Breathalyzer Collection	H0048	8.80	Per service
Urinalysis Collection	H0048 LR	8.80	Per service
Clinical Care Coordination	T1017HF	26.42	15 min.
Counseling, Group	H0005	8.00	15 min.
Counseling, Group, Psycho-educational	H2027HQ	6.65	15 min.
Counseling, Group , Psycho-educational (HIV)	H2027HQV9	6.65	15 min.
Counseling, Individual, On-site, Behavioral Health Therapy	H0004HF	26.42	15 min.
Counseling, Individual, Off-site	H0004HFTN	27.45	15 min.
Counseling, Family with Client	H0004HFHR	26.42	15 min.
Counseling, Family without Client	H0004HFHS	26.42	15 min.
Crisis Intervention	H0007HF	36.93	15 min.
Short-term Medically Managed Intensive Withdrawal Management	H0010	605.00	Per diem
Behavioral Health Assessment, on-going, Risk Rating	H0002TG	140.00	Per service
Diagnostic Assessment, Comprehensive, Adult	H0001	256.02	Per service
Diagnostic Assessment, Brief, Modify Tx Plan	H0001TS	85.34	Per service
Medication Assisted Treatment, Methadone, Clinic or Take Home	H0020	8.58	Dose
Medication Assisted Therapy, Administration	H0020HF	8.58	Dose
Medication Management, Adult	H0016	44.65	15 min.

ASARS services provided to beneficiaries who are deaf or hard-of-hearing by a provider certified to provide services to beneficiaries who are deaf or hard-of-hearing shall be as follows:

Service	Code	Rate per unit	Unit
Urinalysis (Laboratory)	H0003HK	15.00	Per service
Breathalyzer Collection	H0048HK	11.88	Per service
Urinalysis Collection	H0048LRHK	11.88	Per service
Clinical Care Coordination	T1017HFHK	35.67	15 min.
Counseling, Group	H0005HK	10.80	15 min.
Counseling, Group, Psycho-educational	H2027HQHK	8.97	15 min.
Counseling, Group , Psycho-educational (HIV)	H2027HQV9 K	8.97	15 min.
Counseling, Individual, On-site, Behavioral Health Therapy	H0004HFHK	35.68	15 min.
Counseling, Individual, Off-site	H0004HFTNHK	37.06	15 min.
Counseling, Family with Client	H0004HFHRHK	35.68	15 min.
Counseling, Family without Client	H0004HFHSHK	35.68	15 min.
Crisis Intervention	H0007HFHK	49.85	15 min.
Short-term Medically Managed Intensive Withdrawal Management	H0010HK	816.75	Per diem
Behavioral Health Screening, Initial, Determine eligibility	H0002HFHK	115.21	Per service
Behavioral Health Assessment, on-going, Risk Rating	H0002TGHK	189.00	Per service
Diagnostic Assessment, Comprehensive, Adult	H0001HK	345.63	Per service
Diagnostic Assessment, Brief, Modify Tx Plan	H0001TSHK	115.21	Per service
Medication Assisted Treatment, Methadone, Clinic or Take Home	H0020HK	8.58	Dose
Medication Assisted Therapy, Administration	H0020HFHK	11.58	Dose
Medication Management, Adult	H0016HK	60.28	15 min.

For further information or questions regarding this fee schedule update, please contact Amy Xing, Reimbursement Analyst, Department of Health Care Finance, at amy.xing2@dc.gov, or via telephone at (202) 481-3375.

DEPARTMENT OF HEALTH CARE FINANCE

PUBLIC NOTICE

MEDICAID FEE SCHEDULE UPDATES FOR DURABLE MEDICAL EQUIPMENT

The Department of Health Care Finance (DHCF), pursuant to the requirements set forth in Section 988 of Chapter 9 Title 29 of the District of Columbia Municipal Regulations, published on October 2, 2015 (62 DCR 13060), announces changes to the Medicaid reimbursement rates governing Durable Medical Equipment (DME) services billed by professional providers. Professional providers are health care providers who submit claims for reimbursement to DC Medicaid on a CMS-1500 claim form. The changes set forth below will become effective on December 1, 2015.

Under the District of Columbia's State Plan for Medical Assistance, DME services are reimbursed at eighty percent (80%) of the Medicare rate as established by the federal Centers for Medicare and Medicaid Services. As a result, DHCF is updating the DME fee schedule as follows:

Description of Changes	**Count of Fee Schedule Records Impacted by Change**
Pricing update	1,525
Change coverage to purchase only, no rental	169
Change coverage to rental only, no purchase	3
Change prior authorization requirement from No to Yes	80
Change prior authorization requirement from Yes to No	60
Update maximum units that are allowable	475
Limit procedure by place-of-service code	643
Add utilization review edits that limit quantities by month or year	20
Discontinue certain procedure code and modifier combinations	148
Total Number of Unique Fee Schedule Records to be Changed	1,996
Note:	
Count of changes does not sum because some fee schedule records have multiple changes	

Detailed changes to the fee schedule can be found online at: https://www.dc-medicaid.com/dcwebportal/providerSpecificInformation/providerInformation. For further information or questions regarding this fee schedule update, please contact Amy Xing, Reimbursement Analyst, Department of Health Care Finance, at amy.xing2@dc.gov, or via telephone at (202) 481-3375.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

DISTRICT OF COLUMBIA HOMELAND SECURITY COMMISSION

NOTICE OF CLOSED MEETING

Pursuant to DC Code § 2-575(b)(8), § 7-2271.04(a)(2), and § 7-2271.05, the Homeland Security Commission hereby provides notice that it will hold a **CLOSED MEETING** on the date, time and place noted below for the purposes of discussing its Annual Report to the Mayor.

October 28, 2015
2121 Eye Street, N.W.
Suite 701
Washington, DC 20052
3:00 pm to 5:00 pm

For more information, please contact: Nicole Chapple, Assistant Director, External Affairs and Policy, District of Columbia Homeland Security and Emergency Management Agency, 2720 Martin Luther King Jr. Avenue, SE, Washington, DC. Telephone: (202) 481-3049. Email: Nicole.Chapple@dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

GAS TARIFF 2014-03, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S APPLICATION TO AMEND RATE SCHEDULE NOS. 3, AND 3A

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to section 34-802 of the District of Columbia Official Code ("D.C. Code") and in accordance with section 2-505 of the D.C. Code,[1] of its final tariff action to approve the Application of Washington Gas Light Company's ("WGL" or "Company")[2] to enhance the terms and conditions of WGL's Interruptible Sales and Delivery Service in the District of Columbia. The Commission issued a Notice of Proposed Tariff ("NOPT"), which was published in the D.C. Register on July 24, 2015,[3] giving notice of the Commission's intent to act on WGL's proposed tariff amendments. No comments were filed in response to the NOPT.

2. WGL proposes to amend the following tariff pages:

NATURAL GAS TARIFF, P.S.C. of D.C. No. 3
Fourth Revised Page No. 17
Superseding Third Revised Page No. 17

P.S.C. of D.C. No. 3
Second Revised Page No. 18A
Superseding First Page No. 18A

P.S.C. of D.C. No. 3
Original Page No. 18B

P.S.C. of D.C. No. 3
First Revised Page No. 22A
Superseding Original Page No. 22A

Second Revised Page No. 22B
Superseding First Page No. 22B

P.S.C. of D.C. No. 3
Second Revised Page No. 22D

[1] D.C. Code § 34-802 (2001); D.C. Code § 2-505 (2001).

[2] *Gas Tariff 2014-03, In the Matter of Washington Gas Light Company's Application to Amend Rate Schedule Nos. 3, and 3A* ("Gas Tariff 2014-03"), Letter from Cathy Thurston-Seignious, Supervisor, Administrative and Associate General Counsel, Washington Gas Light Company to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed May 26, 2015 ("WGL's Revised Tariff Application").

[3] 62 *D.C. Reg.* 010129-010131 (2015).

Superseding First Page No. 22D

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P.S.C. of D.C. No. 3
Appendix A

3. On September 9, 2014, WGL filed an Application, pursuant to 15 DCMR § 3500 *et seq.*, for authority to amend its Rate Schedule Nos. 3, 3A and 5 "to implement enhanced terms and conditions for Interruptible Sales Service, Interruptible Delivery Service, and Firm Delivery Service."[4] The provision under which WGL filed its Application governs expedited review. On October 20, 2014, the Retail Energy Supply Association, NOVEC Energy Solutions, Inc., and Stand Energy Corporation (together, the "Joint Suppliers")[5] and the Apartment and Office Building Association of Metropolitan Washington ("AOBA") filed their Comments and Objections to WGL's Request for Expedited Review of its Application.[6]

4. After reviewing the objections, the Commission determined that expedited review was unwarranted.[7] At the suggestion of the Joint Suppliers, AOBA and WGL, the Commission established a Working Group comprised of WGL, the Joint Suppliers, AOBA, and any other interested parties to discuss the problematic issues raised in this matter and to explore possible solutions.[8]

5. On May 26, 2015, the Working group filed its Final Report along with agreed-upon revisions to WGL Rate Schedule Nos. 3 and 3A.[9] The Working Group states that "After considerable deliberations, the Customer Working Group reached agreement on the tariff revisions to Rate Schedule Nos. 3 and 3A…."[10] The Working Group submits that "[t]hese tariff amendments represent a reasonable and just accommodation and balancing of the interests of all

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4 *Gas Tariff 2014-03, In the Matter of Washington Gas Light Company's Application to Amend Rate Schedule Nos. 3, 3A and 5* ("*Gas Tariff 2014-03*"), Letter from Cathy Thurston-Seignious, Supervisor, Administrative and Associate General Counsel, Washington Gas Light Company Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed September 9, 2014. WGL corrected its Application on September 10, 2014.

5 *Gas Tariff 2014-03*, Comments and Objection to Expedited Handling of the Retail Energy Supply Association, NOVEC Energy Solutions, Inc., and Stand Energy Corporation, filed October 20, 2014.

6 *Gas Tariff 2014-03*, Comments, Request for Hearing and Objection to Expedited Review of WG's Application of the Apartment and Office Building Association of Metropolitan Washington, filed October 20, 2014.

7 *Gas Tariff 2014-03*, Order No. 17698, rel. November 7, 2014 at 9.

8 *Gas Tariff 2014-03*, Order No. 17698, rel. November 7, 2014 at 9.

9 *Gas Tariff 2014-03*, Final Report of the Interruptible Service Customer Working Group, filed May 26, 2015 ("Final Report").

10 *Gas Tariff 2014-03*, Final Report at 2.

affected parties…"[11] On July 24, 2015,[12] the Commission issued a NOPT which was published in the D.C. Register giving notice of the Commission's intent to act on WGL's proposed tariff amendments. No comments were filed in response to the NOPT.

6. The Commission at its regularly scheduled open meeting held on October 15, 2015, took final action approving WGL's proposed tariff amendments enhancing the terms and conditions of WGL's Interruptible Sales and Delivery Service in the District of Columbia. This amendment will become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

[11] *Gas Tariff 2014-03*, Final Report at 2.

[12] 62 *D.C. Reg.* 010129-010131 (2015).

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

FORMAL CASE NO. 1085, IN THE MATTER OF THE INVESTIGATION OF A PURCHASE OF RECEIVABLES PROGRAM IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Sections 34-802 and 2-505 of the District of Columbia Official Code,[1] and pursuant to Order No. 17052 directing the Potomac Electric Power Company (Pepco or the Company) to implement a Purchase of Receivables (POR) program in the District of Columbia,[2] of our intent to act upon Pepco's amended POR tariff filing.[3] The amended tariff filing clarifies that Pepco's POR program tracks negative discount rates and amounts by customer class for use in offsetting positive discount rates in the future for the applicable customer classes. The Commission shall act upon Pepco's Amended Application 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 Pepco's initial tariff filing, the Company sought to modify its Electric Supplier Coordination Tariff, updating the language of the Supplier Tariff Schedule 3, and describing in detail the components and derivation of the POR Supplier Discount Rates, including the proposed Discount Factors.[4] An NOPT was issued inviting comment on the original tariff filing.[5] No comments were filed.

3. The sole change in Pepco's amended tariff filing is reflected in First Revised Page No. 42, paragraph 6, which states: "Pepco tracks negative discount rates and amounts by customer class for use in offsetting positive discount rates in the future for the applicable customer classes."

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1 D.C. Official Code §§ 34-802 (2001) and 2-505 (2001).

2 *Formal Case No. 1085, In the Matter of the Investigation of a Purchase of Receivables Program in the District of Columbia* (*Formal Case. No. 1085*), Order No. 17052, issued January 18, 2013.

3 *Formal Case No. 1085,* Amended POR Supplier Discount Rate Tariff Application, filed September 11, 2015 ("Amended Application").

4 *See Formal Case No. 1085,* POR Supplier Discount Rate Tariff Application, filed March 11, 2015, revising: Electricity Supplier Coordination Tariff, P.S.C. of D.C. No.1, modifying Third Revised Page No. I, Third Revised Page No. ii, Third Revised Page No. iii, Third Revised Page No. iv, Original Page No. 41, and Original Page No. 42.

5 62 *D.C. Reg.* 5572-5574 (2015).

4. The amended tariff filing is on file with the Commission. It 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.dcpsc.org. Copies of the tariff pages are available, upon request, at a per page reproduction fee.

5. Comments and reply comments on the Amended Application 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) days and forty-five (45) days, respectively, from the date of publication of this NOPT in the *D.C. Register*. Once the comment period has expired, the Commission will take final rulemaking action on Pepco's Application.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 18275-A of Maral LLC Motion for Modification and Amended Application, pursuant to § 3129 of the Zoning Regulations for the modification of the first floor use. The amended application is pursuant to 11 DCMR § 3103.2, for a variance from the use requirements under § 350.1, to allow the use of the basement as an office in an existing two-story building in the R-5-B District at premises 1200 Potomac Avenue S.E. (Square 1021, Lot 34).[1]

HEARING DATES (Original application): November 15, 2011, December 20, 2011, February 14, 2012, March 20, 2012

DECISION DATE (Original application): March 20, 2012

FINAL ORDER ISSUANCE DATE (Original application): January 17, 2013

HEARING DATE (Modification/amended application): September 29, 2015

DECISION DATE (Modification/amended application): September 29, 2015

SUMMARY ORDER ON REQUEST FOR MODIFICATION AND AMENDED APPLICATION

SELF CERTIFIED

The original application was referred to the Board of Zoning Adjustment ("Board" or "BZA") by the Zoning Administrator ("ZA"). A self-certification form was filed with the request for modification. (Exhibit 4.)

Background

On November 15, 2011, the Board approved Application No. 18275 of Potomac Avenue, LLC for a variance from the use provisions of § 350.1 to allow a coffee shop on the first floor of an

[1] The Applicant originally requested modification "of an approved variance from the use requirements under § 350.1, to allow the use of the basement and first floors as an office in an existing two-story building in the R-5-B District." (Exhibit 1.) During the public hearing, the Board noted that only the first floor was the subject of the original application for use variance relief. Therefore, the Board determined that the modification request would apply to the first floor only and that the change in use for the basement would require use variance relief. The Applicant amended its request at the hearing, and the caption has been revised accordingly.

existing two-story building in the R-5-B District at premises 1200 Potomac Avenue, S.E. (Square 1021, Lot 34).[2] (Exhibit 6.) The contract purchaser of the property, Maral LLC ("the Applicant"), proposes instead to use the first floor and basement of the property as an office and showroom for Dila Development and Construction Company. (Exhibit 3.) Accordingly, the Applicant filed this request for modification with the Board. The application requested modification "of an approved variance from the use requirements under § 350.1, to allow the use of the basement and first floors as an office in an existing two-story building in the R-5-B District." (Exhibit 1.)

During the public hearing on September 29, 2015, the Board noted that the originally approved use variance relief applies only to the first floor of the building, and thus, the Applicant can only request a modification under § 3129 with regard to the first floor. The Board determined that a use variance is required to establish the proposed office use in the basement of the building. Accordingly, the Applicant revised its request during the hearing to seek a modification for the change in use on the first floor and to seek a variance from the use requirements of § 350.1 with regard to the basement use.

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this modification by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 6B, and to all owners of property within 200 feet of the property that is the subject of this application.[3] The subject property is located within the jurisdiction of ANC 6B, which is automatically a party to this application.

ANC 6B submitted a report, dated September 10, 2015, in support of the proposed modification. The ANC noted that at a duly noticed and regularly scheduled public meeting on September 8, 2015, with a quorum present, the ANC voted 8-0-1 to support the Applicant's request. The ANC specifically noted that there was "positive neighborhood support and no opposition to" the Applicant's proposed change of use. (Exhibit 26.)

The Office of Planning ("OP") submitted a report dated September 22, 2015, in support of the modification, as requested by the Applicant. (Exhibit 29.) OP also testified at the public hearing in support of the Applicant's amended request for use variance relief to establish an office use in the basement of the property. The District Department of Transportation ("DDOT") submitted a memorandum dated August 31, 2015, indicating that it has "no objection" to the approval of the requested relief.

[2] The original application from Potomac Avenue LLC also requested use variance relief to establish a pet supply store on the second floor of the existing building, but that request was denied by the Board. (Exhibit 6.)

[3] This case was originally processed as Application No. 19073, but was administratively renumbered to 18275-A to reflect the request for modification. All referrals and notices sent by the Office of Zoning properly list the case number as 18275-A.

Modification Request

As directed by 11 DCMR § 3129.7, the Board considered the request for modification at a public hearing on September 29, 2015. Pursuant to § 3129.8, the scope of the hearing, with regard to the change in use on the first floor, was "limited to impact of the modification on the subject of the original application."

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board granted the Applicant's request for modification to allow an office and showroom on the first floor of the Subject Property.

Use Variance

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the use requirements under § 350.1, to allow the use of the basement as an office. After amending its request to include use variance relief, the Applicant and Applicant's agent provided testimony addressing how the proposal meets the requirements of the variance test. Specifically, the Applicant indicated that the approval of a non-residential use on the first floor and the lack of outside entry to the basement would create an undue hardship if the Applicant were required to establish a residential use in the basement. The Board closed the record at the conclusion of the hearing. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 from the use requirements under § 350.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements 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 27.**

VOTE: **5-0-0** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Michael G. Turnbull to APPROVE.)

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 8, 2015

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18886 of Niloufar Hoorazor, pursuant to 11 DCMR § 3104.1 for a special exception under § 223 to allow a two-story addition to an existing one-family detached dwelling, not meeting requirements for lot occupancy under § 403.2, side yard under § 405.8, and enlargement of a nonconforming structure under § 2001.3, in the R-1-B District at premises 2709 36th Street, N.W. (Square 1938, Lot 811).

HEARING DATES: March 31, 2015
DECISION DATE: May 5, 2015

DECISION AND ORDER

This self-certified application was submitted on September 23, 2014 by Niloufar Hoorazor (the "Applicant"), the owner of the property that is the subject of the application. The application requested a special exception to allow a two-story addition to a one-family detached dwelling, not meeting requirements for lot occupancy, rear yard, or enlargement of a nonconforming structure in the R-1-B zone at 2709 36th Street, N.W. (Square 1938, Lot 811). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 29, 2014, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 3; Advisory Neighborhood Commission ("ANC") 3C, the ANC in which the subject property is located; and Single Member District/ANC 3C08. Pursuant to 11 DCMR § 3112.14, on October 3, 2014 the Office of Zoning mailed letters providing notice to the Applicant, ANC 3C, and the owners of all property within 200 feet of the subject property, of the Applicant's request for expedited review of the application, which was scheduled for the public meeting on November 18, 2014. The Applicant subsequently requested removal of the application from the expedited review calendar and, as announced at the Board's public meeting on November 18, 2014, the application was scheduled for public hearing on January 27, 2015.[1] At the Applicant's request, the public hearing was later rescheduled to March 31, 2015.

Party Status. The Applicant and ANC 3C were automatically parties in this proceeding. The Board denied a request for party status from the Massachusetts Avenue Heights Citizens Association but granted party status in opposition to the application to a group of residents living near the subject property, represented by Paul Cunningham.

[1] The affected single member district, ANC 3C08, also requested a public hearing on the application. (Exhibit 28.)

Applicant's Case. The Applicant provided evidence and testimony describing the enlargement of the dwelling at the subject property. According to the Applicant, the addition would be relatively small compared to the size of a dwelling that would be permitted on the lot as a matter of right, it required only *de minimis* zoning relief, and satisfied the requirements for special exception approval under § 223.

OP Report. By memorandum dated March 24, 2015, the Office of Planning recommended approval of the requested zoning relief, noting that the planned addition would not meet requirements for lot occupancy, side yard, or the enlargement of a nonconforming structure.

DDOT. By memorandum dated December 10, 2014, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 37.)

ANC Report. At a public meeting on December 15, 2014, with a quorum present, ANC 3C voted 5-0 (with one abstention) to adopt a resolution recommending denial of the application. Citing photographs submitted by neighbors and an absence of graphical representations or other illustrations from the Applicant to represent the relationship of the Applicant's addition to adjacent buildings and views from public ways, the ANC concluded that the addition would have a substantially adverse effect on the use and enjoyment of abutting and adjacent properties.[2] (Exhibit 38.)

Party in opposition. The party in opposition disputed the timing of when the Applicant learned that the northern side yard did not comply with zoning requirements and asserted that the Applicant sought to minimize light and air impacts of the addition because it was already built. According to the party in opposition, the Applicant's addition would adversely affect the light and intrude on the privacy of nearby dwellings, and was not in conformity with other dwellings in the neighborhood.

Persons in opposition. The Board received letters and heard testimony from persons in opposition to the application, who generally cited the increased lot occupancy at the subject property, the Applicant's alleged failure to comply with Zoning Regulations, and privacy impacts of the new addition, especially considering the number and size of its windows.

FINDINGS OF FACT

1. The subject property is an interior lot located on the east side of 36th Street, N.W. approximately midway between Edmunds and Fulton Streets (Square 1938, Lot 811).

2. The subject property is a rectangular parcel approximately 60 feet wide and 107.5 feet deep, with a lot area of 6,450 square feet.

[2] The ANC's resolution also challenged the Applicant's actions with respect to a retaining wall on the subject property and a tree in the public space. These matters are outside the scope of the Board's deliberations on the self-certified application for special exception relief under § 223 for the new addition.

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3. The subject property is improved with a one-family detached dwelling built around 1917, before the Zoning Regulations became effective. A driveway, accessible from 36th Street, is located along the southern property line.

4. The side yard on the north side of the dwelling is nonconforming at 4.92 feet wide. The minimum setback requirement generally is eight feet, although an addition may be made to a dwelling with a side yard less than eight feet wide so long as the dwelling was in existence on or before May 12, 1958, the existing side yard is at least five feet wide, and the addition would not decrease the width of the existing side yard. (See 11 DCMR §§ 405.8, 405.9.)

5. Because the northern side yard is less than five feet in width, that area (approximately 277 square feet) must be included as building area in the calculation of lot occupancy. (See the definition of "building area." 11 DCMR § 199.1.)

6. The southern side yard is approximately 19 feet wide.

7. The existing rear yard is approximately 35 feet, where a minimum depth of 25 feet is required by the Zoning Regulations. (11 DCMR § 404.1.) A public alley 15 feet wide abuts the subject property along its rear lot line, thereby increasing the distance between the Applicant's dwelling and the rear yards of properties to the east of the alley.

8. Properties in the vicinity of the subject property are also improved with one-family detached dwellings, two or three stories in height. Nearby houses were constructed in a variety of styles. Most appear generally similar in size, although several are considerably larger than the Applicant's dwelling.

9. The property abutting the subject property to the north is improved with a detached one-family dwelling. Its southern side yard, adjoining the subject property, is nonconforming at approximately 4.8 feet wide. An accessory garage, located at the rear of the abutting lot, is situated along the common property line and has two windows facing the rear yard of the subject property.

10. The property abutting to the south contains a retaining wall built six inches from the property line in common with the Applicant's property, extending at a height of more than 13 feet along the edge of the Applicant's rear yard. The retaining wall, and landscaping installed near it, diminish the views into the abutting property from the Applicant's property.

11. The Applicant proposes to construct a two-story addition on the east (rear) and south sides of the dwelling.

12. A property survey dated September 9, 2013 indicated that the northern side yard was at least five feet in width and therefore compliant with current zoning requirements. The Applicant

obtained a building permit on September 11, 2013 and began construction of the addition, which is now substantially completed.[3] A wall test conducted by the Office of the Surveyor, recorded January 8, 2014, indicated that the existing side yard on the northern edge of the subject property was less than five feet in width, and thus, that the addition could not be built as a matter of right.

13. Including the new addition, the Applicant's dwelling has a building footprint of approximately 2,541 square feet, covering 40% of the lot. Because the area of the northern side yard must be included in the calculation, the addition will increase lot occupancy at the subject property to 44%.

14. The addition will be approximately rectangular and will enlarge the dwelling at the rear and on the south. The outer wall of the new addition will be set back eight feet, two inches on the northern portion of the lot, where the existing house has a side yard of slightly less than five feet. The southern portion will be set back at least eight feet from the southern property line. At the rear, the addition will be set back 28 feet, four inches from the rear lot line.

15. The addition will have windows on each of its three sides. The northern side wall will contain a large window near a similar, smaller window in the existing dwelling; both windows will be visible from the patio of the neighboring dwelling. Another window, on the south side of the second floor of the planned addition, will be visible from the patio of the dwelling to the south. The addition will also have windows on the ground level on the south side, which will be separated from the adjoining property by the Applicant's driveway and some plantings.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 223 of the Zoning Regulations to allow a two-story addition to a one-family detached dwelling, not meeting requirements for lot occupancy, rear yard, or enlargement of a nonconforming structure in the R-1-B zone at 2709 36th Street, N.W. (Square 1938, Lot 811). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception,

[3] The Applicant also received a demolition permit on May 24, 2013 for interior demolition of non-load bearing walls, and a building permit on October 25, 2013 for removal of load-bearing walls. Building permits were issued to replace existing concrete slabs (on May 30, 2013) and for interior renovations (on June 6, 2013). The building permit issued September 11, 2013 authorized the planned addition and interior renovations pertaining to mechanical, electrical, and plumbing systems.

despite not meeting all zoning requirements, subject to certain conditions. These conditions include that the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular the light and air available to neighboring properties must not be unduly affected, the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage.

Based on the findings of fact, the Board finds that the requested special exception satisfies the requirements of §§ 223 and 3104.1. The new addition will not unduly affect the light and air available to neighboring properties due to its size and location. The addition will comply with the minimum eight-foot requirement for side yard setback on both sides of the Applicant's dwelling. The rear yard of the enlarged dwelling will remain compliant with zoning requirements, with a setback in excess of the minimum requirement of 25 feet. The 15-foot-wide alley at the rear of the subject property will provide additional distance between the Applicant's dwelling and the residences to the east, which are all located at least 70 feet from the rear of the enlarged dwelling. But for the nonconforming northern side yard of the existing dwelling, which requires the inclusion of that area in the calculation of lot occupancy, the Applicant's dwelling, with the enlargement, would comply with the maximum lot occupancy allowed as a matter of right. Including the side yard area, the lot occupancy of the enlarged dwelling will remain within the maximum of 50% allowed by special exception in accordance with § 223.

Due to the design of the planned addition, which will maintain the setback of the existing dwelling on the upper floors, the enlarged dwelling will remain smaller than a building constructed to the maximum dimensions permitted as a matter of right on the property. The Applicant and the party in opposition both submitted studies to illustrate the impacts on light to neighboring properties associated with the dwelling on the subject property, considering the dwelling before construction began on the addition, the dwelling with the planned addition, and a building built to the maximum dimensions permitted as a matter of right (see Exhibits 68 and 72). While the addition will diminish the light available to the abutting property to the north somewhat, the Board does not find that light or air would be unduly affected, or that the addition would have a substantially adverse effect on the use or enjoyment of the neighboring dwelling or property. Rather, the new construction will not significantly alter the shadow impacts of the existing dwelling, and will be those typically associated with dwellings built in compliance with matter-of-right area requirements. The addition will be set back eight feet from the northern property line, and will not alter the existing condition of the nonconforming side yard.

The Board also concludes that the addition will not unduly compromise the privacy of use and enjoyment of neighboring properties. While the planned addition will have several relatively large windows, most of them are situated on the eastern façade, overlooking the Applicant's own rear yard, and will be located a considerable distance from the neighboring properties to the east, across the alley. The addition will also have windows facing the abutting property to the south, where the side yard on the Applicant's property will exceed the minimum zoning requirement.

The dwelling on the property abutting to the south also has windows that face the Applicant's property, with extensive plantings along the retaining wall that block views between the two residences.

The addition will have one window that will face the abutting property to the north. That window will be set back more than eight feet from the common property line, compliant with the zoning requirement. The new window will be located near a window in the existing house, which is set back less than five feet from the property line. The abutting property to the north also has a nonconforming side yard, and the dwelling on that property has windows that face the Applicant's property, in addition to the windows in the accessory structure located along the property line in common with the Applicant's lot. The Applicant testified that landscaping will be installed in the northern side yard area to mitigate any privacy concerns associated with the new addition. The Board conditions its approval of the application on the installation of a decorative screening, preferably selected with the cooperation of the resident of the abutting dwelling, to mitigate any adverse impacts on privacy associated with the new addition.

The new addition, together with the original building, will not substantially visually intrude on the character, scale, and pattern of houses along the street frontage. A one-story portion of the addition will be visible from the street frontage, but the new addition will be most visible from the public alley at the rear of the subject property. When viewed from the alley, the addition will appear relatively large due to the change in grade on the lot, which slopes toward the alley, and the relatively large windows will be visible. However, the building will remain a one-family dwelling in appearance as well as in use, and will comply with restrictions imposed by the Zoning Regulations with respect to height and number of stories. The subject property is located in a neighborhood where residences have been constructed in a variety of styles. As the Office of Planning noted, the "architectural style of the buildings along this portion of 36th Street and the neighborhood in general is varied with no consistent pattern…" where some houses "are of a comparable size" and some "have been renovated and exhibit modern elements." (Exhibit 45.) An aerial view of the vicinity of the subject property shows the variety of styles and sizes of nearby houses. (See Exhibit 54.) The Zoning Regulations do not require "conformity" with the neighborhood, as asserted by the party in opposition.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) In this case, ANC 3C voted to recommend denial of the application, finding that the new addition would have a substantially adverse effect on the use and enjoyment of nearby properties after examining photographs submitted by neighbors. For the reasons discussed above, the Board does not concur with the ANC's finding of adverse impacts. The ANC also cited an absence of

graphical representations by the Applicant and other instances in which the Applicant had not followed the necessary procedure to obtain zoning relief. The Board regrets that the application was not submitted until after the new construction was substantially completed. However, the Applicant began construction after obtaining a building permit, albeit one later determined to have been based on a survey eventually found to be in error. That error, and the belatedly discovered need for zoning relief, had no bearing on the Board's deliberations in this proceeding. The Board considered the planned addition and found that the Applicant satisfied the requirements for special exception approval, without regard for the timing of the application.

The Board concludes that the new addition will satisfy the requirements of § 223 and is unlikely to result in a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, or affect light and air available to neighboring properties. The Board also concludes that the addition will be in harmony with the general purpose and intent of the Zoning Regulations because the new construction will be consistent with the intent of the R-1 District to protect quiet residential areas developed with one-family detached dwellings and to stabilize the residential areas and promote a suitable environment for family life.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception to allow a two-story addition to a one-family detached dwelling, not meeting requirements for lot occupancy, rear yard, or enlargement of a nonconforming structure in the R-1-B zone at 2709 36th Street, N.W. (Square 1938, Lot 811). Accordingly, it is **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 11 AND THE FOLLOWING CONDITION**:

1. The Applicant shall install decorative screening to mitigate any potential privacy impacts created by the new addition on the abutting property to the north. The Applicant shall select the screening in cooperation with the resident of that property, or install an acceptable screening selected in good faith.

VOTE: 4-0-1 (Lloyd J. Jordan, Anthony J. Hood, Marnique Y. Heath, and Jeffrey L. Hinkle to Approve; 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: October 9, 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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PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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

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 CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19041-A of District Properties.com Inc., pursuant to 11 DCMR § 3103.2, for variances from the lot area and width requirements under § 401, and the side yard requirements under § 405, to allow the construction of a new two-story, one-family dwelling on a vacant lot in the R-2 District at premises 4926 Foote Street, N.E. (Square 5180, Lot 3).

HEARING DATE: July 14, 2015[1] and September 22, 2015
DECISION DATE: September 22, 2015

CORRECTED SUMMARY ORDER[2]

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 15 (original) and 21 (revised).)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. ANC 7C did not submit a report for this application. The ANC submitted several letters requesting postponement of the hearing so that the ANC could meet with the Applicant to review the application. (Exhibits 20, 25 and 27.) While the Board did postpone the hearing in response to the first request and continued the case at the July 14, 2015 hearing, the Board denied the other requests to postpone the hearing again in September, having found that the Applicant had shown sufficient diligence in attempting to work with the ANC. (See, Exhibit 26.) Also, the Applicant submitted a letter of support for the application from an adjacent neighbor. (Exhibit 26A.)

[1]This case was continued from July 14, 2015, to allow the Applicant time to meet the posting requirements for the public and to reach out to the ANC and neighborhood.

[2]The corrected summary order corrects a misspelling in the Applicant's name in the caption. That is the only change from the original order.

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 19.) The District Department of Transportation filed a report expressing no objection to the application. (Exhibit 18.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from the strict application of the lot area and width requirements under § 401, and the side yard requirements under § 405, to allow the construction of a new two-story, one family dwelling on a vacant lot in the R-2 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from §§ 401 and 405, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the 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 5.**

VOTE: 5-0-0 (Lloyd J. Jordan, Frederick L. Hill, Marnique Y. Heath, Jeffrey L. Hinkle, and Peter G. May to APPROVE).

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: October 8, 2015

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A

BZA APPLICATION NO. 19041-A
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REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19076 of Kelly Gorsuch, pursuant to 11 DCMR § 3103.2, for a variance from the use requirements under § 330.5, to allow the conversion of a one-family dwelling into a restaurant in the R-4 District at premises 1544 9th Street N.W. (Square 365, Lot 813).

HEARING DATE: October 6, 2015
DECISION DATE: October 6, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated June 15, 2015, from the Zoning Administrator, which stated that Board of Zoning Adjustment ("Board" or "BZA") approval is required for the following:

> "Variance from § 330.5 to convert a Single-Family Dwelling to a Restaurant in the R-4 Residential District. (§ 3103.2)."

(Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. At the hearing, ANC 6E filed a letter report, dated October 5, 2015, which indicated that at a properly noticed, regularly scheduled public meeting held on September 1, 2015, with a quorum present, the ANC voted 6 in favor:0 opposed :1 abstention to support the application with seven conditions. (Exhibit 26.)

The Office of Planning ("OP") submitted a timely report of support for the application with three conditions. (Exhibit 23.) By its letter, dated September 29, 2015, the District Department of Transportation ("DDOT") submitted a timely report of "no objection" to the application. (Exhibit 25.)

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 a variance from the use requirements under § 330.5, to allow the conversion of a one-family dwelling into a restaurant in the R-4 District. 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 ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proving under 11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application be **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 AND THE FOLLOWING CONDITIONS:**

1. All trash and recyclables shall be stored within the fenced rear yard, with collection from Q Street only. Collection of all refuse shall take place only between 9:00 a.m. and 9:00 p.m. to avoid disturbing adjacent residential neighbors. No recyclables shall be placed within dumpsters between 9:00 p.m. and 9:00 a.m. to protect adjacent residential neighbors from excessive noise.

2. No outdoor seating or parking shall be permitted within rear yard.

3. Only the evening meal shall be served, by reservation only, with no more than two seatings per evening. One table may be left open each evening for neighborhood residents without a reservation. Trash and recyclables, including waste oil, shall be stored in the fenced area at the west of the building, with all trash service being accomplished from that rear location. No trash or recyclables shall be stored in public space on either 9th or Q Streets, N.W., regardless of whether said space is considered "parking" and maintained by the property owner under an easement.

4. No vehicles associated with the property, the business, or any parties, including the owners and employees, shall be parked on public space on the 9th or Q Streets, N.W., sides of the property, or in the vacant area on the west side of the building on the property at any time. No Residential Parking Permit(s) shall be applied for or issued to any vehicles registered at the address 1544 9th Street, N.W.

5. The Applicant shall engage a valet parking service to provide parking for the restaurant's customers during all hours of operation.

6. Any alterations of the exterior of the building at 1544 9th Street, N.W., and any signage for the restaurant shall be approved by the DC Office of Planning's Historic Preservation Office, as the property is located within the boundaries of Shaw Historic District.

7. The green space "parking" area on the Q Street side of the building at 1544 9th Street, N.W. shall not be used for outdoor seating for the restaurant, but instead shall be maintained as a green space, including a garden where herbs and vegetables for use in the restaurant's kitchen may be grown. If the green area at the rear of the property is to be fenced, the Applicant shall seek approval from the DC Office of Planning's Historic Preservation Office, and said fencing shall be of a character consistent with historic fencing found in the Shaw Historic District.

8. The curb cut on the Q Street side of the property shall be eliminated and restored to its normal original condition, at the property owner's sole expense, including costs of permits and all construction necessary to accomplish this work.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

VOTE: **3-0-2** (Marnique Y. Heath, Marcie I. Cohen, and Frederick L. Hill, to Approve; Jeffrey L. Hinkle, not participating or voting; the third Mayoral appointee vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 8, 2015

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

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

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

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19078 of Andrew and Hope McCallum, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the side yard requirements under § 405, and the nonconforming structure requirements under § 2001.3, to construct a rear addition to an existing one-family dwelling in the R-2 District at premises 4108 Garrison Street, N.W. (Square 1738, Lot 44).

HEARING DATE: October 6, 2015
DECISION DATE: October 6, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 14 (original Form 135) and 31 (revised Form 135).)[1]

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 3E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. ANC 3E submitted a resolution noting that at a properly noticed meeting on September 9, 2015, at which a quorum was present, it voted 5-0-0 in support of the application. The ANC stated that if the Board determines that the relief is different from what was presented to and supported by the ANC, that it would request postponement of the hearing to afford the ANC an opportunity to consider the revisions. However, the requested relief was not revised, and the Board moved forward with the hearing. (Exhibit 30.)

The Office of Planning ("OP") also submitted a report in support of the application. (Exhibit 29.) The D.C. Department of Transportation filed a report expressing no objection to the application. (Exhibit 27.)

Two letters of support were submitted into the record from the adjacent neighbors to the subject property. (Exhibits 12 and 13.)
As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, 405, and 2001.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

[1] At the Board's request, the Applicant filed a revised Self-Certification Form (Form 135) to more clearly reflect the side yard calculations.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 405, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, is hereby **GRANTED, SUBJECT TO THE APPROVED REVISED ARCHITECTURAL PLANS & ELEVATIONS AT EXHIBIT 26.**

VOTE: **3-0-2** (Marcie I. Cohen, Frederick L. Hill, and Marnique Y. Heath to Approve; Jeffrey L. Hinkle not present, not voting; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 8, 2015

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 13-14B
(Jair Lynch Development Partners – Modification to PUD @ Square 3128, Lot 800 – McMillan Reservoir Slow Sand Filtration Site – Parcel 4)
October 15, 2015

THIS CASE IS OF INTEREST TO ANC 5E, 1B, and 5A

On October 13, 2015, the Office of Zoning received an application from Jair Lynch Development Partners (the "Applicant") for approval of a modification to a previously approved planned unit development ("PUD") for the above-referenced property.

The property that is the subject of this application consists of Lot 800 in Square 3128 in northwest Washington, D.C. (Ward 5), also known as the McMillan Reservoir Slow Sand Filtration Site. The McMillan PUD site is bounded by Michigan Avenue, N.W. (north), Channing Street, N.W. (south), North Capitol Street, N.W. (east), and First Street, N.W. (west). Parcel 4, the subject of this notice, is located along the eastern edge of the PUD Site and is bounded by North Capitol Street to the east, with North Service Court, Evarts Street, and Quarter Street (a new private street) to the north, south and west, respectively. An approved PUD-related map amendment rezoned the property, for the purposes of this project, to C-3-C/CR.

The Applicant proposes to make modifications to the previously approved plans as necessary to accommodate programmatic requirements that are specific to the retail tenant that that has been identified since the Commission's initial approval, namely, Harris Teeter.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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