

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council passes Law 21-142, Fiscal Year 2017 Local Budget Act of 2016
- D.C. Council passes Law 21-144, Fair Shot Minimum Wage Amendment Act of 2016
- D.C. Council schedules a public hearing on Bill 21-0708, End Taxation Without Representation Amendment Act of 2016
- Department of Energy and Environment announces funding availability for Wildlife Rehabilitation Services
- Department of Forensic Sciences establishes certification, calibration, and maintenance guidelines for breath alcohol evidential instruments
- Department of Health announces funding availability for Healthy Food Initiatives
- Department of Human Resources proposes rules for implementing quality step increases
- Public Service Commission solicits input on the future of the District of Columbia Universal Service Trust Fund

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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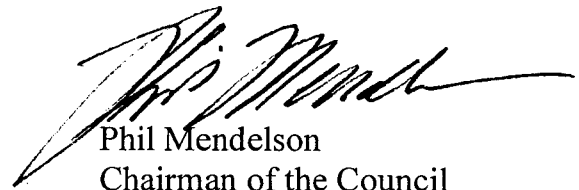
NOTICE

D.C. LAW 21-140

**“School Attendance Clarification
Amendment Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-508 on first and second readings April 19, 2016, and May 3, 2016, respectively. Following the signature of the Mayor on June 1, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-411 and was published in the June 10, 2016 edition of the D.C. Register (Vol. 63, page 8207). Act 21-411 was transmitted to Congress on June 13, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-411 is now D.C. Law 21-140, effective July 26, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

June 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30

July 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25

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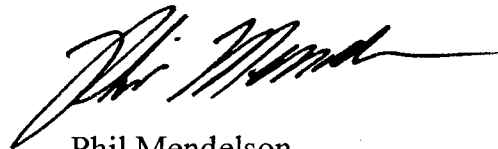
NOTICE

D.C. LAW 21-141

**“Homeless Shelter Replacement
Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-620 on first and second readings May 17, 2016, and May 31, 2016, respectively. Following the signature of the Mayor on June 13, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-412 and was published in the June 17, 2016 edition of the D.C. Register (Vol. 63, page 8453). Act 21-412 was transmitted to Congress on June 16, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-412 is now D.C. Law 21-141, effective July 29, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

June 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30

July 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-142

“Fiscal Year 2017 Local Budget
Act of 2016”

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-668 on first and second readings May 17, 2016, and May 31, 2016, respectively. Following the signature of the Mayor on June 15, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-414 and was published in the June 24, 2016 edition of the D.C. Register (Vol. 63, page 8786). Act 21-414 was transmitted to Congress on June 16, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-414 is now D.C. Law 21-142, effective July 29, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

June 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30

July 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28

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NOTICE

D.C. LAW 21-143

**“Repeal of Outdated and Unnecessary
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Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-377 on first and second readings April 5, 2016, and April 19, 2016, respectively. The legislation was deemed approved without the signature of the Mayor on May 10, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-392 and was published in the May 20, 2016 edition of the D.C. Register (Vol. 63, page 7589). Act 21-392 was transmitted to Congress on May 23, 2016 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 21-392 is now D.C. Law 21-143, effective August 17, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

May	23, 24, 25, 26, 27, 31
June	1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30
July	1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
August	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16

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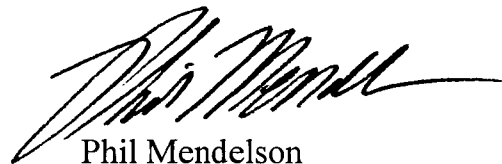
NOTICE

D.C. LAW 21-144

**“Fair Shot Minimum Wage Amendment
Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-712 on first and second readings June 7, 2016, and June 21, 2016, respectively. Following the signature of the Mayor on June 27, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-429 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9275). Act 21-429 was transmitted to Congress on July 8, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-429 is now D.C. Law 21-144, effective August 19, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-145

**“New Bethany Baptist Church Real
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As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-178 on first and second readings May 3, 2016, and June 7, 2016, respectively. Following the signature of the Mayor on June 29, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-430 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9279). Act 21-430 was transmitted to Congress on July 8, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-430 is now D.C. Law 21-145, effective August 19, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18

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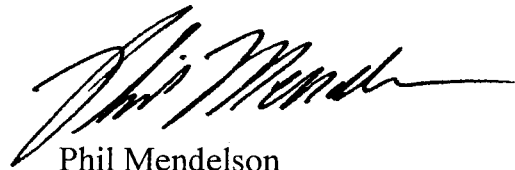
NOTICE

D.C. LAW 21-146

**“Medical Marijuana Cultivation Center
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As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-721 on first and second readings May 3, 2016, and June 7, 2016, respectively. Following the signature of the Mayor on June 29, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-431 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9282). Act 21-431 was transmitted to Congress on July 8, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-431 is now D.C. Law 21-146, effective August 19, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18

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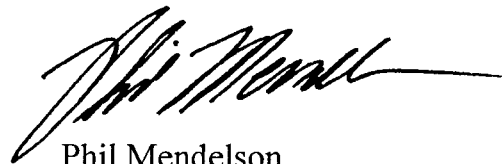
NOTICE

D.C. LAW 21-147

**“Sale to Minors Penalty Clarification Temporary
Amendment Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-729 on first and second readings May 3, 2016, and June 7, 2016, respectively. Following the signature of the Mayor on June 29, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-432 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9284). Act 21-432 was transmitted to Congress on July 8, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-432 is now D.C. Law 21-147, effective August 19, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-148

**“Fiscal Year 2016 Second Revised Budget
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Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-666 on first and second readings May 31, 2016, and June 21, 2016, respectively. Following the signature of the Mayor on June 30, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-443 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9304). Act 21-443 was transmitted to Congress on July 11, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-443 is now D.C. Law 21-148, effective August 20, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-149

**“Sale of Synthetic Drugs Temporary
Amendment Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-735 on first and second readings May 3, 2016, and June 7, 2016, respectively. Following the signature of the Mayor on June 30, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-444 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9314). Act 21-444 was transmitted to Congress on July 11, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-444 is now D.C. Law 21-149, effective August 20, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19

COUNCIL OF THE DISTRICT OF COLUMBIA

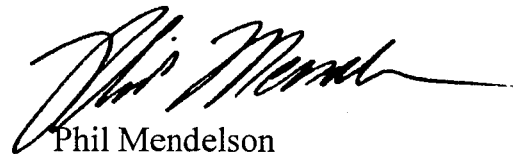
NOTICE

D.C. LAW 21-150

**“Mandatory Driver Instruction Regulation
Temporary Amendment Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-745 on first and second readings May 3, 2016, and June 7, 2016, respectively. Following the signature of the Mayor on June 30, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-445 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9319). Act 21-445 was transmitted to Congress on July 11, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-445 is now D.C. Law 21-150, effective August 20, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19

COUNCIL OF THE DISTRICT OF COLUMBIA

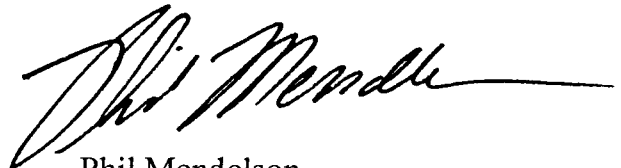
NOTICE

D.C. LAW 21-151

“Fieldstone Lane Designation
Act of 2016”

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-228 on first and second readings March 1, 2016, and June 7, 2016, respectively. Following the signature of the Mayor on June 30, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-446 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9321). Act 21-446 was transmitted to Congress on July 11, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-446 is now D.C. Law 21-151, effective August 20, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19

COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW 21-152

**“Carry’s Way and Guethler’s Court
Designation Act of 2016”**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-341 on first and second readings March 1, 2016, and June 7, 2016, respectively. Following the signature of the Mayor on June 30, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-447 and was published in the July 8, 2016 edition of the D.C. Register (Vol. 63, page 9323). Act 21-447 was transmitted to Congress on July 11, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-447 is now D.C. Law 21-152, effective August 20, 2016.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

July	11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
August	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19

ENROLLED ORIGINAL

A RESOLUTION

21-557

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To appoint Dr. Malika Fair to the Not-For-Profit Hospital Corporation Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Not-For-Profit Hospital Corporation Board of Directors Malika Fair Appointment Resolution of 2016”.

Sec. 2. The Council of the District of Columbia appoints:

Dr. Malika Fair
2804 33rd Street, S.E.
Washington, D.C. 20020
(Ward 7)

as a member of the Not-For-Profit Hospital Corporation Board of Directors pursuant to section 5115 of the Not-For-Profit Hospital Corporation Establishment Amendment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 44-951.04), for a term to end March 15, 2018.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the appointee, the chairperson of the Not-For-Profit Hospital Corporation Board of Directors, and the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

21-558

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To approve the negotiated master agreement submitted by the Public Service Commission between the Public Service Commission and employees who are in Compensation Unit 1 and represented by the American Federation of State, County, and Municipal Employees, District Council 20, AFL-CIO.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Master Agreement between the American Federation of State, County, and Municipal Employees, District Council 20, AFL-CIO and the Public Service Commission of the District of Columbia Approval Resolution of 2016”.

Sec. 2. Pursuant to section 1717(j) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-617.17(j)), the Council of the District of Columbia approves the master agreement, which was transmitted by the Public Service Commission to the Council on June 14, 2016, between the Public Service Commission and its employees who are included in Compensation Unit 1 and represented by the American Federation of State, County, and Municipal Employees, District Council 20, AFL-CIO, for a period that runs from the date of approval of this agreement until September 30, 2019.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Office of the Mayor, the American Federation of State, County, and Municipal Employees, District Council 20, AFL-CIO, and the Public Service Commission.

Sec. 4. 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. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT**

ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE ON

B21-0697, the “Advisory Neighborhood Commissions Omnibus Amendment Act of 2016”

on

Thursday, September 29, 2016, at 4:30 PM
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Anita Bonds, Chairperson of the Committee on Housing and Community Development, will hold the final public hearing on B21-0697, the “Advisory Neighborhood Commissions Omnibus Amendment Act of 2016”. The public hearing will be held on Thursday, September 29, 2016, at 4:30 PM in Room 500 of the John A. Wilson Building.

The Advisory Neighborhood Commissions Omnibus Amendment Act of 2016 proposes a wide variety of changes to laws governing the Advisory Neighborhood Commissions. Key proposals in the bill include clarifying requirements for agency notification to Advisory Neighborhood Commissions (ANCs); clarifying the requirements of great weight; providing a remedial process for cases where notice or great weight requirements are not properly followed; streamlining ANC notice to the community; providing for a modest office space in each ward for ANCs to share; and creating a stipend for Commissioners who regularly attend ANC meetings.

Those who wish to testify are requested to telephone the Committee on Housing and Community Development, at (202) 724-8198, or email omontiel@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any), by close of business on September 28, 2016. Persons wishing to testify are encouraged to submit 15 copies of written testimony. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Community Development, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004, or as an email attachment to omontiel@dccouncil.us. The record will close at 5:00 p.m. on Friday, October 7, 2016.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT
MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

**B21-0708, the End Taxation Without Representation Amendment Act of 2016;
B21-0759, the Bicycle Awareness Motor Vehicle License Plate Amendment Act
of 2016;
B21-0784, the Women Veteran License Plates Establishment Amendment Act of
2016; and
B21-0814, the Department of Motor Vehicles Extension of Deadlines
Amendment Act of 2016**

Monday, September 19, 2016
At 11:30 a.m.
in Room 500 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Monday, September 19, 2016, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B21-0708, the End Taxation Without Representation Amendment Act of 2016; B21-0759, the Bicycle Awareness Motor Vehicle License Plate Amendment Act of 2016; B21-0784, the Women Veteran License Plates Establishment Amendment Act of 2016; and B21-0814, the Department of Motor Vehicles Extension of Deadlines Amendment Act of 2016. The hearing will begin at 11:30 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B21-0708, the End Taxation Without Representation Amendment Act of 2016 would require the Department of Motor Vehicles to include the phrase “End Taxation without Representation” on the standard motor vehicle tag. The bill would also require the Mayor to design and produce a motor vehicle identification tag with the phrase “We Demand Statehood”, and would authorize the Mayor to establish application and display fees. B21-0759, the Bicycle Awareness Motor Vehicle License Plate Amendment Act of 2016 would require the Mayor to issue a motor vehicle identification tag with a bicycle awareness design. The bill would also establish application and display fee amounts, and would authorize the Mayor to establish other amounts by rule. B21-0784, the Women Veteran License Plates Establishment Amendment Act of 2016 would require the Mayor to issue motor vehicle identification tags bearing the inscription “Woman Veteran”, establish fee amounts for the identification tags, and list permitted uses of fees collected from issuance of the tags. Finally, B21-0814, the Department of Motor Vehicles Extension of Deadlines Amendment Act of 2016, would permit the Director of the Department of Motor Vehicles to extend the time period for certain transactions without penalty, to account for the closure of

the District government or the DMV due to an administrative action, an emergency, or similar circumstance.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 5 copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on October 3, 2016.

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

Posting Date: September 2, 2016
Petition Date: October 17, 2016
Hearing Date: October 31, 2016
Protest Hearing: January 11, 2017

License No.: ABRA-104007
Licensee: Fasol, LLC
Trade Name: Brown Street Market
License Class: Retailer's Class "A" Liquor Store
Address: 3320 Brown Street, N.W.
Contact: Michael Fasami: 202-754-0029

WARD 1

ANC 1D

SMD 1D01

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 for 1:30pm on January 11, 2017.

NATURE OF OPERATION

New Liquor Store market.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 8 am -12 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/2/2016**

Notice is hereby given that:

License Number: ABRA-101155

License Class/Type: C Restaurant

Applicant: 2032 P St LLC

Trade Name: Emissary

ANC: 2B02

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

2032 P ST NW

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

A HEARING WILL BE HELD ON:

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	6 am - 1:30 am	10:30 am - 1:30 am
Monday:	6 am - 1:30 am	11:30 am - 1:30 am
Tuesday:	6 am - 1:30 am	11:30 am - 1:30 am
Wednesday:	6 am - 1:30 am	11:30 am - 1:30 am
Thursday:	6 am - 1:30 am	11:30 am - 1:30 am
Friday:	6 am - 2:30 am	11:30 am - 2:30 am
Saturday:	6 am - 2:30 am	10:30 am - 2:30 am

ENDORSEMENT(S): Entertainment Sidewalk Cafe

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: September 2, 2016
Petition Date: October 17, 2016
Hearing Date: October 31, 2016
Protest Hearing: January 11, 2017

License No.: ABRA-104016
Licensee: Gakyu, LLC
Trade Name: Sushi Gakyu
License Class: Retailer's Class "C" Restaurant
Address: 1420 New York Avenue, N.W.
Contact: Steve O'Brien: 202-625-7700

WARD 2

ANC 2C

SMD 2C01

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 for 4:30pm on January 11, 2017.

NATURE OF OPERATION

New Restaurant featuring Japanese cuisine. Total Occupancy load is 67. Sidewalk Café with 24 seats.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE

SALES/SERVICE/CONSUMPTION FOR PREMISES AND SIDEWALK CAFE

Sunday through Saturday 11 am - 12 am

**HISTORIC PRESERVATION REVIEW BOARD
NOTICE OF PUBLIC HEARING**

The D.C. Historic Preservation Review Board will hold a public hearing to consider applications to designate the following properties as historic landmarks or historic districts in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the properties to the National Register of Historic Places:

Case No. 11-21: Old Naval Observatory
2300 E Street NW/2301 Constitution Avenue NW
Square 34, Lots 802, 803, 804 and part of 805/Reservation 4
Applicant: D.C. Preservation League
Owner: United States of America
Affected Advisory Neighborhood Commission: 2A

Case No. 14-03: E Street Complex
2430 E Street/2301 Constitution Avenue NW
Square 34, Part of Lot 805/Reservation 4
Applicant: D.C. Preservation League
Owner: United States of America
Affected Advisory Neighborhood Commission: 2A

Case No. 16-17: Observatory Hill
2300 E Street NW/2301 Constitution Avenue NW
Square 34, Lots 802, 803, 804 and part of 805/Reservation 4
Applicant: U.S. General Services Administration
Owner: United States of America
Affected Advisory Neighborhood Commission: 2A

The hearing will take place at **9:00 a.m. on Thursday, October 27, 2016**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

The Board's hearing is open to all interested parties or persons. Public and governmental agencies, Advisory Neighborhood Commissions, property owners, and interested organizations or individuals are invited to testify before the Board. Written testimony may also be submitted prior to the hearing. All submissions should be sent to the Historic Preservation Office.

For each property, a copy of the designation application is currently on file and available for inspection. They may be found on the Historic Preservation Office website at <http://planning.dc.gov/page/pending-landmarks-and-districts>. A copy of the staff report and recommendation for each will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates the properties, they will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the properties to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Qualification for Federal Grants for Historic Preservation When Funds Are Available: The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District of Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a

majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For further information, contact Tim Dennee, Landmarks Coordinator, at 202-442-8847.

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

TIME AND PLACE: **Thursday, November 3, 2016, @ 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. 16-09 (1200 3rd Street, LLC – Consolidated PUD & Related Map Amendment @ Square 747, Lot 8)

THIS CASE IS OF INTEREST TO ANC 6C

On April 19, 2016, the Office of Zoning received an application from 1200 3rd Street, LLC (the “Applicant”). The Applicant is requesting approval of a consolidated planned unit development and PUD-related map amendment. The Office of Planning provided its report on June 2, 2016 in support of setting the application down for a public hearing. The Zoning Commission set the case down for a hearing at its public meeting June 13, 2016. The Applicant provided its prehearing statement on July 27, 2016.

The property that is the subject of this application consists of approximately 106,139 square feet of land area and is located at 1200 3rd Street, N.E. (Square 747, Lot 8). The subject property is zoned C-M-3 (effective September 6th, this zone will be (PDR-3).

The Applicant proposes to rezone the property to the C-3-C Zone District (effective September 6th, this zone will be MU-9) in order to construct a mixed-use development including retail, hotel and residential uses. The proposed PUD includes approximately 50,000 square feet of retail, 200 hotel rooms, and 650 residential units, including approximately 50 affordable units. The project will have a floor area ratio (“FAR”) of 6.99, a maximum height of 120 feet and a lot occupancy of approximately 96% at grade and 64% above the podium. Approximately 353 parking spaces, including 60 hotel valet spaces, will be provided on-site.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 4.

How to participate as a witness.

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

statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

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 an 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, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning’s website at: <https://app.dcoz.dc.gov/Help/Forms.html>.** This form may also be obtained from the Office of Zoning at the address stated below.

Subtitle Z § 406.2 provides that the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Pursuant to Subtitle Z § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

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

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

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

Pursuant to Subtitle Z § 408.4, 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, 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.

How to participate as a witness.¹

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

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR Subtitle Z § 404.1. 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 an 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, or 14 days prior to a scheduled public meeting if seeking advanced party status consideration, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: <https://app.dcoz.dc.gov/Help/Forms.html>.** This form may also be obtained from the Office of Zoning at the address stated below.

Pursuant to 11-Z DCMR § 406.2, the written report of an affected ANC shall be given great weight if received at any time prior to the date of a Commission meeting to consider final action, including any continuation thereof on the application, and sets forth the information that the report must contain. Under 11-Z DCMR § 406.3, if an ANC wishes to participate in the hearing, it must file a written report at least seven days in advance of the public hearing and provide the name of the person who is authorized by the ANC to represent it at the hearing.

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

¹ **Do you need assistance to participate?** If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

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 11 DCMR Subtitle Z § 408.4, 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, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

DEPARTMENT OF FORENSIC SCIENCES

NOTICE OF FINAL RULEMAKING

The Director of the Department of Forensic Sciences (the Director), pursuant to the authority set forth in Section 16 of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code §§ 5-1501.01 *et seq.* (2012 Repl.)) (DFS Establishment Act), hereby gives notice of the adoption of a new Chapter 37 (Breath Alcohol Testing Program) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking establishes requirements for the certification, calibration, and maintenance of breath alcohol evidential instruments for providing forensic science services and training pertaining to forensic testing of breath for alcohol content. Additionally, this rulemaking defines the role and responsibilities of the Office of the Chief Medical Examiner's Breath Alcohol Program Manager and the process to obtain, and maintain, certification as a licensed operator and licensed technician. These rules are consistent with the admissibility criteria set forth in Section 3q of the Anti-Drunk Driving Act of 1982, effective April 20, 2013 (D.C. Law 19-260; D.C. Official Code § 50-2206.52 (2014 Repl.)).

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 27, 2014 at 61 DCR 6443, and amendments were made to the Notice of Second Proposed Rulemaking published in the *D.C. Register* on April 29, 2016, at 63 DCR 6649. No comments were received during this thirty (30) day notice period that ended on May 28, 2016. A proposed resolution to approve the rulemaking, pursuant to Section 16 of the DFS Establishment Act, was transmitted to the Council on April 21, 2016 (See Proposed Resolution 21-0663, the Breath Alcohol Testing Program Rulemaking Approval Resolution of 2016). These rules were deemed approved by the Council of the District of Columbia after a forty-five (45) day notice period ending on July 8, 2016.

These rules were adopted as final on July 8, 2016, and will become final upon publication of this notice in the *D.C. Register*.

Title 28 DCMR, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, is amended by adding a new Chapter 37, BREATH ALCOHOL TESTING PROGRAM, to read as follows:

CHAPTER 37 BREATH ALCOHOL TESTING PROGRAM

- 3700 Breath Alcohol Program Oversight Responsibilities
- 3701 Breath Alcohol Program Manager
- 3702 Records Retention And Inspection
- 3703 Approval of Evidential Instruments
- 3704 Operator Licenses
- 3705 Renewal of Operator Licenses
- 3706 Revocation of Operator Licenses

- 3707 Technician Licenses
- 3708 Renewal of Technician Licenses
- 3709 Revocation of Technician Licenses
- 3710 Acceptable Ranges for Evidential Breath Tests
- 3799 Definitions

3700 BREATH ALCOHOL PROGRAM OVERSIGHT RESPONSIBILITIES

3700.1 The Department of Forensic Sciences (DFS) is responsible for overseeing certain aspects of the District’s Breath Alcohol Program, including:

- (a) Testing and certifying the accuracy of District evidential instruments used by District law enforcement personnel;
- (b) Developing a program for District law enforcement personnel to become trained and certified as operators of evidential instruments;
- (c) Developing policies and procedures for the operation and maintenance of all evidential instruments used by District law enforcement personnel; and
- (d) Developing policies and procedures for the maintenance of records demonstrating that the evidential instruments used by District law enforcement personnel are in proper operating condition.

3700.2 Pursuant to Section 8(c) of the Department of Forensic Sciences Establishment Act of 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.07(d)), the Director of DFS may delegate some or all of these responsibilities to the Office of the Chief Medical Examiner (OCME).

3700.3 Pursuant to a memorandum of agreement between DFS and OCME, the Director of DFS has delegated the administration of the District’s Breath Alcohol Program to the OCME.

3701 BREATH ALCOHOL PROGRAM MANAGER

3701.1 The Director of OCME shall appoint a Breath Alcohol Program Manager (Program Manager), who shall be responsible for ensuring the proper implementation of OCME’s responsibilities related to the District’s Breath Alcohol Program.

3701.2 The primary functions of the Program Manager, or designee, are to:

- (a) Provide technical and administrative support for the District’s Breath Alcohol Program;

- (b) Maintain all records that pertain to the calibration, certification, accuracy, and validity of, and data generated from, evidential instruments;
- (c) Maintain all records pertaining to the licensure of operators and technicians;
- (d) Maintain evidential instruments and affiliated equipment;
- (f) Establish standards for the testing and certification of evidential instruments;
- (e) Supervise data collection for the certification of evidential instruments;
- (g) Select site location(s) for evidential instruments, in consultation with the Metropolitan Police Department;
- (h) Provide testimony as an expert witness, either by affidavit or in person, or in any other manner approved by the court, regarding breath alcohol testing;
- (i) Adopt and, as needed, amend a manual setting forth standards and procedures for breath alcohol program administration, including standards and procedures for the calibration, certification, and maintenance of evidential instruments. This manual is currently titled the “Quality Management Manual Breath Alcohol Program” (Quality Manual);
- (j) Adopt and, as needed, amend a manual setting forth standards and procedures for operator training and licensing, including standards and procedures for basic evidential instrument operation, basic troubleshooting, and subject testing procedures. This manual is currently titled the “Basic Training Program for Breath Alcohol Operators” (Operator’s Manual); and
- (k) Adopt and, as needed, amend a manual setting forth standards and procedures for technician training and licensure. This manual is currently titled the “Technician Training Manual Breath Alcohol Program” (Technician Training Manual).

3702**RECORDS RETENTION AND INSPECTION**

3702.1

The Program Manager, or designee, shall maintain all records that pertain to the calibration, certification, accuracy, and validity of, and data generated from, evidential instruments used by the District’s Breath Alcohol Program, for a minimum of five (5) years.

3702.2 The Program Manager, or designee, shall provide copies of the records listed in § 3702.1 for inspection upon request from the following:

- (a) The Mayor; or the Mayor's authorized representative;
- (b) The Office of the United States Attorney for the District of Columbia;
- (c) The Office of the Attorney General for the District of Columbia;
- (d) The Metropolitan Police Department;
- (e) The Office of the District of Columbia Auditor;
- (f) The Office of the Inspector General; and
- (g) Any other law enforcement agency with appropriate jurisdiction.

3703 APPROVAL OF EVIDENTIAL INSTRUMENTS

3703.1 The Program Manager, or designee, shall certify all evidential instruments used by licensed operators.

3703.2 Each evidential instrument shall be certified in accordance with the admissibility criteria set forth in Section 3q of the Anti-Drunk Driving Act of 1982, effective April 27, 2013 (D.C. Law 19-266; D.C. Official Code § 50-2206.52).

3703.3 The standards for testing and certifying an evidential instrument shall be set forth in the Quality Manual.

3703.4 An operator shall not use an evidential instrument to administer an evidential breath test unless the device has been certified by the Program Manager, or designee.

3704 OPERATOR LICENSES

3704.1 No individual shall operate an evidential instrument to test the alcohol content of breath unless the individual is licensed by the Program Manager, or designee, as an operator.

3704.2 Prior to initial licensure as an operator, an individual shall successfully complete a course of instruction that meets the criteria set forth in the Operator's Manual.

3704.3 Prior to initial licensure, an individual must also provide evidence that he or she has successfully completed a Standardized Field Sobriety Testing course taught in accordance with the curriculum established by the National Highway Traffic Safety Administration.

3704.4 The Program Manager, or designee, shall issue an operator license card to each individual that is approved for licensure as an operator. The license card shall include the full name of the operator, a unique license number, and the expiration date of the license. The Program Manager, or designee, shall also issue to the operator a unique personal identification number (“PIN”), which shall be associated with the license.

3704.5 An operator license shall be valid for two (2) years unless earlier revoked by the Program Manager, or designee.

3707.3 A licensed operator shall be considered a certified breath test operator for the purposes of Section 3q of the Anti-Drunk Driving Act of 1982, effective April 20, 2013 (D.C. Law 19-260; D.C. Official Code § 50-2206.52).

3705 RENEWAL OF OPERATOR LICENSES

3705.1 In order to be eligible for renewal of his or her operator license, an operator shall satisfactorily complete a course of instruction approved by the Program Manager, or designee, as referenced in the Operator Manual.

3705.2 Upon renewal of a license, the Program Manager, or designee, shall issue a new operator license card to the operator. The new license shall be valid for a period of two (2) years unless earlier revoked by the Program Manager, or designee.

3706 REVOCATION OF OPERATOR LICENSES

3706.1 The Program Manager, or designee, may revoke an operator’s license and deactivate the associated PIN if:

- (a) An operator voluntarily surrenders his or her license;
- (b) An operator fails to properly perform his or her duties in a manner required by the Operator’s Manual;
- (c) The operator transfers to a position where licensure as an operator is no longer desired;
- (d) The operator fails to renew his or her license before its expiration date;
- (e) An operator’s employment with the agency under which the license was acquired is terminated; or
- (f) The operator fails to safeguard the scientific integrity of the Breath Alcohol Program.

3706.2 An individual with a revoked license shall not operate an evidential instrument.

3707 TECHNICIAN LICENSES

3707.1 No individual shall certify, calibrate, or maintain an evidential instrument, unless the person is licensed by the Program Manager, or designee, as a technician.

3707.2 Prior to initial licensure as a technician, an individual shall:

- (a) Obtain an operator license by successfully completing a course of instruction that meets the criteria set forth in the Operator's Manual; and
- (c) Meet the requirements for licensure as a technician as set forth in the Technician Training Manual.

3707.3 A technician license issued pursuant to this section shall be valid for two (2) years from the date it is issued, unless earlier revoked by the Program Manager, or designee.

3707.4 In order to maintain his or her licensure as a technician, the individual must also maintain a valid operator license in accordance with the Operator's Manual and the provisions of this chapter.

3707.3 A licensed technician shall be considered a certified technician for the purposes of Section 3q of the Anti-Drunk Driving Act of 1982, effective April 20, 2013 (D.C. Law 19-260; D.C. Official Code § 50-2206.52).

3708 RENEWAL OF TECHNICIAN LICENSES

3708.1 In order to be eligible for renewal of his or her technician license, a technician shall have satisfactorily completed a course of instruction approved by the Program Manager, or designee, as referenced in the Technician Training Manual and have a valid operator license.

3708.2 A technician license renewed pursuant to this section shall be valid for two (2) years.

3709 REVOCATION OF TECHNICIAN LICENSES

3709.1 The Program Manager, or designee, shall revoke a technician's license, and deactivate the associated PIN, if:

- (a) The technician is no longer actively engaged in the District's Breath Alcohol Program;
- (b) The technician deceitfully obtained licensure;

- (c) The technician fails to carry out responsibilities set forth in the Quality Manual; or
- (d) The technician fails to maintain a valid operator license;
- (e) The technician fails to renew his or her technician license before its expiration date; or
- (f) The technician failed to safeguard the scientific integrity of the Breath Alcohol Program.

3710 ACCEPTABLE RANGES FOR EVIDENTIAL BREATH TESTS

- 3710.1 The reference standard used to conduct an accuracy check of an evidential instrument must agree within ± 0.005 grams of alcohol per two hundred ten (210) liters of breath of the predicted value.
- 3710.2 If the evidential instrument accuracy check falls outside of the acceptable range as defined in § 3710.1, the evidential instrument shall be disabled and a licensed operator shall not administer an evidential breath test with that instrument.
- 3710.3 Duplicate breath specimens shall be collected and the analytical results of the paired breath specimens must correlate within ± 0.02 grams of alcohol per 210 liters of breath of each other in order for a breath test to be considered valid.

3799 DEFINITIONS

- 3799.1 For the purposes of this section, the following terms shall have the meanings ascribed below:

Accuracy check – an evaluation made by an evidential instrument of a reference standard with a predicted value. The accuracy check occurs during the evidential breath test sequence.

Certification – the process by which reference standards are evaluated and a series of tests performed to verify the accuracy of the evidential instrument.

DFS – The Department of Forensic Sciences.

Evidential instrument – an analytical breath alcohol measuring device that has been issued a “Certificate of Instrument Accuracy” as defined by the Quality Manual and has been placed into field service to collect evidence.

Licensed operator – an individual licensed under this title by the Program Manager, or designee, as an operator.

Licensed technician – an individual licensed under this title by the Program Manager, or designee, as a technician.

OCME – The Office of the Chief Medical Examiner.

Operator’s Manual – the training manual for operators of evidential instruments, entitled “Basic Training Program for Breath Alcohol Operators,” maintained by the Program Manager, or designee.

Predicted value – a value produced by an evidential instrument for each evidential breath test based upon the barometric pressure compensation and the reference standard value.

Quality Manual – the manual for administration of the District’s Breath Alcohol Program, entitled “Quality Management Manual Breath Alcohol Program,” maintained by the Program Manager, or designee.

Reference standard – a commercial dry gas standard consisting of ethanol and balanced nitrogen traceable to the National Institute of Standards and Technology with a verified known value. The verified known value for evidential breath alcohol tests is 0.082g of alcohol per 210L of air.

Subject – an individual that is given an evidential breath test which is administered by a licensed operator.

Subject test – an evidential breath alcohol test of a subject that meets the criteria defined in the Operator’s Manual.

Technician Training Manual – the manual that defines the training program for technicians in the Breath Alcohol Program.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2014 Repl. & 2016 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 intent to adopt a new Chapter 100 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled, “Lactation Services.”

This proposed rule sets forth the services covered under Medicaid to promote breastfeeding of infants, including lactation consultation education and support, breast pumps and lactation supplies, and banked donor milk. These lactation services are included in “pregnancy-related services” under 42 C.F.R. § 440.210, durable medical equipment under Section 2110(a)(12) of the Social Security Act, and Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services pursuant to Section 1905(a)(4)(B) of the Social Security Act, respectively. Extensive research studies have documented many short-term and long-term benefits of breastfeeding for both the nursing infant and mother, and the Centers for Medicare and Medicaid Services (CMS) encourages States to increase access to lactation services. The U.S. Preventive Services Task Force (USPSTF) specifically recommends coordinated interventions throughout pregnancy, birth, and infancy to increase breastfeeding initiation, duration, and exclusivity. This proposed rule supports breastfeeding as the optimal way to feed infants. Additionally, this proposed rule sets standards for Medicaid participation and identifies health care practitioners eligible for reimbursement of lactation services.

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

Title 29 DCMR, PUBLIC WELFARE, is amended by adding a new Chapter 100 as follows:

CHAPTER 100 LACTATION SERVICES

- 10000 General Provisions
- 10001 Lactation Consultation, Education, and Support
- 10002 Breast Pumps and Lactation Supplies
- 10003 Banked Donor Milk
- 10004 Records
- 10005 Reimbursement
- 10006 Audits and Reviews
- 10099 Definitions

10000 GENERAL PROVISIONS

- 10000.1 These rules establish the standards and conditions of reimbursement of lactation services under the District of Columbia Medicaid Program.
- 10000.2 The provisions of this chapter governing conditions of participation for providers of lactation services shall be in support and furtherance of breastfeeding as the optimal way to feed infants.
- 10000.3 The following lactation services, included in this chapter, shall be consistent with the regulations set forth herein:
- (a) Lactation consultation, education, and support;
 - (b) Breast pumps and lactation supplies; and
 - (c) Banked donor milk.

10001 LACTATION CONSULTATION, EDUCATION, AND SUPPORT

- 10001.1 Lactation consultation, education, and support shall mean evaluation of the mother and infant's overall breastfeeding readiness, education on proper breastfeeding techniques, education on the proper use of a breast pump, and delivery of other necessary information and assistance to enhance breastfeeding.
- 10001.2 Lactation consultation, education, and support shall be reimbursed by the Department of Health Care Finance (DHCF) under the "pregnancy-related services" benefit, subject to any requirements set forth in the State Plan, implementing rules, and any subsequent amendments thereto.
- 10001.3 Lactation consultation, education, and support shall be covered for Medicaid-eligible women as follows:
- (a) One (1) prenatal visit; and
 - (b) Up to six (6) visits during the sixty (60) day postpartum period. The sixty (60) day postpartum period shall be defined as beginning on the last day of pregnancy and extending through the end of the calendar month in which the sixtieth (60th) day after the end of the pregnancy falls.
- 10001.4 Reimbursable lactation consultation, education, and support may be provided in a clinic, physician's office, freestanding birth center, or in the home, by practitioners set forth under Subsection 10001.5.

10001.5 The following practitioners shall deliver lactation consultation, education, and support services in the settings described in Subsection 10001.4:

- (a) A certified nurse mid-wife, licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985 (HORA), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2015 Supp.)), Chapter 58 (Nurse-Midwives) of Title 17 of the District of Columbia Municipal Regulations (DCMR), and who demonstrates current certification by the International Board of Lactation Consultant Examiners (IBLCE) to deliver lactation consultation, education, and support; or
- (b) A registered lactation consultant, who demonstrates current certification by the IBLCE to deliver lactation consultation, education, and support.

10001.6 In order for a provider under Subsection 10001.5 to receive Medicaid reimbursement, each provider shall comply with all provider screening and enrollment requirements set forth under Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR. Additionally, a registered lactation consultant shall meet the following requirements, unless Subsection 10001.7 applies:

- (a) Deliver lactation consultation, education, and support only when the services are ordered and/or prescribed by a physician, nurse practitioner, or certified nurse midwife who is licensed pursuant to HORA and corresponding rules, and is screened and enrolled in accordance with Chapter 94 of Title 29 DCMR;
- (b) Submit a copy of the order or prescription for lactation consultation, education and support with each claim that is submitted for Medicaid reimbursement; and
- (c) Complete an orientation session on billing provided by DHCF or its agent.

10001.7 If a registered lactation consultant is employed by or has a contract with a Federally Qualified Health Center (FQHC) to deliver lactation consultation, education, and support, and the FQHC submits claims for reimbursement to DHCF for those services in accordance with Chapter 45 (Medicaid Reimbursement for Federally Qualified Health Centers) of Title 29 DCMR, the registered lactation consultants shall not bill DHCF separately for those services.

10002 BREAST PUMPS AND LACTATION SUPPLIES

10002.1 Breast pumps described under Subsection 10002.3 and lactation supplies described under Subsection 10002.4 are reimbursable for mothers with infants under “durable medical equipment,” subject to any requirements set forth in the

District of Columbia State Plan for Medical Assistance (State Plan), § 996 of Title 29 DCMR, and any subsequent amendments thereto.

10002.2 Breast pumps and lactation supplies described under Subsections 10002.3 and 10002.4 shall be reimbursable if:

- (a) The criteria set forth under Subsection 10002.3 is met;
- (b) Prescribed by one of the following providers that has been screened and enrolled pursuant to Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR and has a treatment relationship with the beneficiary or infant:
 - (1) A physician licensed pursuant to HORA and corresponding rules;
 - (2) A nurse practitioner licensed as an advanced practice registered nurse pursuant to HORA and corresponding rules; or
 - (3) A certified nurse mid-wife licensed as an advanced practice registered nurse pursuant to HORA and corresponding rules; and
- (c) The infant is between the age of zero (0) and twelve (12) months, unless DHCF or its agent grants prior authorization when an infant is older than twelve (12) months.

10002.3 The following breast pumps are available to beneficiaries in accordance with Subsection 10002.2, subject to the following additional requirements:

- (a) Hospital grade, or multi-user, electric pump only available for rental through prior authorization under the following circumstances:
 - (1) A mother and infant are separated due to illness;
 - (2) A mother is unable to feed directly from the breast due to congenital anomalies;
 - (3) A mother is unable to feed directly from the breast due to the prematurity of the baby;
 - (4) A mother requires induced lactation;
 - (5) A mother requires re-lactation;
 - (6) An infant is adopted; or

(7) A mother or infant has other medical or psychological conditions that preclude effective feeding at the breast.

(b) Individual electric breast pump for a mother who needs to maintain lactation because of separation from the infant on a regular basis, such as being employed.

(c) Manual breast pump for a mother who needs to occasionally express milk.

10002.4 Subject to the requirements under Subsection 10002.2, the following lactation supplies shall be reimbursed by DHCF:

(a) A maximum of two (2) breast pump kits, including tubing, valves, flanges, and collection bottles;

(b) Nipple shields; and

(c) Supplemental feeding tubes/devices and syringes.

10003 BANKED DONOR MILK

10003.1 Medicaid-reimbursable banked donor milk shall be provided on an outpatient basis for Medicaid-eligible mothers with infants, and shall be provided in accordance with the following requirements:

(a) The infant is between the age of zero (0) and twelve (12) months, unless DHCF or its agent grants prior authorization when an infant is older than twelve (12) months;

(b) The infant requires banked donor milk due to the following reasons:

(1) Banked donor milk is necessary for the infant to thrive because the infant is fragile, preterm, or is medically compromised, such as having a diagnosis of formula intolerance, metabolic conditions, or genetic conditions requiring human milk; and

(2) The mother cannot breastfeed due to illness, death, surgery, chronic condition, or drug or medication use that is contraindicated for breastfeeding;

(c) The requesting physician is the infant's treating physician and has documented medical necessity in accordance with Subsection 10003.2 of this chapter;

(d) The requesting physician has discussed with the parent or guardian the benefits and risks of using banked donor milk, including infectious disease, freshness, effects of pasteurization, nutrients, and growth factors;

- (e) The requesting physician has addressed with the donated human milk bank donor screening, pasteurization, milk storage, and transport of the donated milk;
- (f) The requesting physician has provided an informed consent form that the parent or guardian has signed and dated, and indicates that the risks and benefits of using banked donor milk have been discussed with them; and
- (g) The banked donor milk is pasteurized, donated by a screened donor, and supplied by a donated human milk bank that meets the following requirements:
 - (1) Is screened and enrolled in Medicaid pursuant to the requirements set forth in Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR;
 - (2) Is approved by the Human Milk Bank Association of North America (HMBANA) and meets other standards as may be adopted by DHCF;
 - (3) Adheres to guidelines set forth by HMBANA and meets other standards as may be adopted by DHCF; and
 - (4) Transports banked donor milk in a manner that protects the milk from contamination, thawing, and refreezing.

10003.2 The following documentation shall be submitted to DHCF for review and approval in order to determine the medical necessity of banked donor milk:

- (a) A Donated Human Milk Request Form that is:
 - (1) Completed and signed by the treating physician on an initial or continuing request for authorization, and specifies the quantity and time frame; and
 - (2) Completed by the donated human milk bank, and specifies the quantity and time frame;
- (b) The following written documentation from the treating physician to support a finding that banked donor milk is medically necessary for the beneficiary:
 - (1) A detailed explanation of why the particular infant cannot survive and grow as expected on any other formula (*e.g.*, elemental,

special, or routine formulas or food) or any enteral nutritional product other than donor human milk;

(2) A detailed explanation of why donated human milk must be used to correct or ameliorate a documented condition or defect; and

(3) Documentation that the infant participated in a clinical feeding trial of an appropriate nutritional product every one hundred eighty (180) days. If the infant is too fragile for a feeding trial, documentation must support the illness that makes the infant too fragile to test; and

(c) The informed consent that identifies the risks and benefits for the parent or guardian of using banked donor milk.

10003.3 A request for authorization for banked donor milk shall be completed, signed, and submitted to DHCF by the treating physician every ninety (90) days, and shall expire upon the infant's first birthday.

10004 RECORDS

10004.1 Each provider shall maintain complete and accurate records reflecting the specific lactation services ordered and provided to each beneficiary. Additionally, the ordering physician of donated human milk and the donated human milk bank shall each maintain copies of the Donated Human Milk Request form.

10004.2 Each provider shall permit reviews and on-site inspections to be conducted by CMS, its agents, DHCF and its agents to determine provider compliance with all applicable laws.

10004.3 Each provider shall maintain, and make available upon request by authorized federal and local Medicaid personnel, complete financial records covering its operations.

10004.4 All financial and treatment records and information shall be maintained for a period of at least ten (10) years following the date of treatment for which a claim for reimbursement was made or when all audits or investigations have been completed, whichever is longer.

10004.5 Each provider shall comply with the terms of its Medicaid Provider Agreement with respect to the maintenance of all beneficiary and financial records.

10004.6 All medical records shall be maintained in accordance with the Health Insurance Protection and Affordability Act of 1996 (HIPAA), effective August 21, 1996 (Pub. L. 104-191, 110 Stat. 1936) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), enacted under Title XIII of

Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L. 111-5).

10005 REIMBURSEMENT

10005.1 Each provider shall comply with the requirements set forth in Chapter 14 (Health-Care Assistance Reimbursement) of Title 29 DCMR.

10005.2 DHCF shall establish fees and reimbursement for only those services outlined in Subsections 10001 through 10003. Reimbursement for lactation services shall be made according to the District of Columbia Medicaid fee schedule available online at <http://www.dc-medicaid.com>.

10006 AUDITS AND REVIEWS

10006.1 DHCF shall perform audits to ensure that Medicaid payments are consistent with efficiency, economy, and quality of care and made in accordance with federal and District rules governing Medicaid.

10006.2 Each Provider shall allow access to relevant records and program documentation upon request and during an on-site audit or review by DHCF, other District of Columbia government officials and representatives of the United States Department of Health and Human Services (HHS).

10099 DEFINITIONS

10099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Breast pump - A device used to extract breast milk from a lactating mother. The following are breast pumps for the purposes of this chapter:

- (a) **Hospital grade electric breast pump** - A breast pump with high levels of suction and pressure that are typically larger and heavier than other breast pumps.
- (b) **Individual electric breast pump** - A breast pump that typically runs on batteries or household current, and is typically lightweight and compact.
- (c) **Manual breast pump** - A breast pump that does not run on electricity and allows the user to produce the suction and control the pressure exerted from the pump.

Induced lactation - The process of making milk without going through pregnancy and birth.

Nipple shields - A cover which a mother places over her nipple prior to breastfeeding.

Pregnancy-related services - Services that are necessary for the health of the pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant.

Re-lactation - The process of rebuilding milk supply when it has reduced significantly or is not of sufficient quantity to sustain the baby, after weeks or months of not breastfeeding.

Supplemental lactation aides - a device that allows a breastfeeding mother to supplement the infant with expressed breast milk.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, N.W., Suite 900, 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 of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

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

The Director of the District of Columbia Department of Human Resources, with the concurrence of the City Administrator, and authorized pursuant to Section 404(a) 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 § 1-604.04(a) (2014 Repl.)), Section 108a of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.88a (2014 Repl. & 2016 Supp.)), and Mayor's Order 2008-92, dated June 26, 2008, gives notice of the intent to adopt the following amendment to Chapter 11 (Classification and Compensation) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

If adopted, the proposed rules will amend Section 1126 (District Service Salary System – General Provisions) to reflect the independent personnel authority of the Attorney General; amend Subsection 1152.5 to provide that the denial of a pay claim is a final decision not subject to further grievance or other administrative review; and add Section 1156 to implement quality step increases.

Chapter 11, CLASSIFICATION AND COMPENSATION, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

Subsections 1126.20 through 1126.27 of Section 1126, DISTRICT SERVICE SALARY SYSTEM - GENERAL PROVISIONS, are amended to read as follows:

- 1126.20 A new appointment in the Legal Service may be made at any step on the appropriate LS salary schedule.
- 1126.21 A new appointment in the Legal Service to a Senior Executive Attorney Service (SEAS) position or non-SEAS management position may be made at an appropriate rate, as specified in Subsections 1126.22 through 1126.26 of this section.
- 1126.22 The Attorney General may designate the appropriate starting salary for new appointments to supervisory attorney positions in the Office of the Attorney General (OAG) on the LX Schedule or other appropriate salary schedule, based on the criteria established in Subsection 1126.23 of this section.
- 1126.23 The personnel authority shall designate the appropriate starting salary for agency supervisory attorneys, including general counsels and deputy general counsels, under the LX Schedule (or its equivalent), based upon, but not limited to, the following criteria:

- (a) Number of employees supervised;
- (b) Complexity of the duties and responsibilities;
- (c) Experience and skills; and
- (d) Job performance.

1126.24 The salary of an attorney compensated on the LX Schedule who is temporarily assigned to a position at a higher or lower level on the LX Schedule, or its equivalent, may be set at any salary within the salary range of the temporary assignment or at a salary within the salary range of the level of the attorney’s regular position. Upon termination of the temporary assignment, the attorney shall return to the position and salary the attorney occupied prior to the temporary assignment.

1126.25 Attorneys paid from an LX salary schedule, or equivalent, shall not receive overtime pay or premium pay.

1126.26 The salary of an attorney compensated outside of the LX Schedule who is temporarily assigned to a position on the LX Schedule may be set at any salary within the salary range of the level to which the attorney is temporarily assigned. Upon termination of the temporary assignment, the attorney shall return to the position and salary the attorney occupied prior to the temporary assignment.

1126.27 Employees holding appointments in positions not on the LX Schedule on the effective date of this section shall continue to be paid their existing salary until a personnel action is effected establishing a salary within the salary range for the designated level of the covered positions on the LX Schedule.

Subsections 1152.4 and 1152.5 of Section 1152, PAY CLAIMS, are amended to read as follows:

1152.4 The pay authority shall either grant or deny the pay claim in writing. The failure of the pay authority to issue a written decision within the time specified in Subsection 1152.3 shall toll the three (3) year limitation established in Subsection 1152.1.

1152.5 A written decision by the pay authority either granting or denying a pay claim shall constitute the final decision on the claim and shall not be grievable or subject to further administrative review.

A new Section 1156, QUALITY SALARY INCREASE, is added to read as follows:

1156 QUALITY SALARY INCREASE

1156.1 The personnel authority may authorize a quality salary increase for exceptional service for an employee in the Career, Educational, or Legal Service who is entitled to a regular within-grade increase, but has not reached the maximum step of his or her grade.

1156.2 A quality salary increase may be authorized only once in any twelve (12) month period and may not be granted if the employee has received a monetary incentive award for performance within the same twelve (12) month period, pursuant to Chapter 19.

1156.3 A quality salary increase awarded under this section may be granted only when the employee's performance rating assigned for the most recent rating period prior to the granting of the quality salary increase is "Highly Effective Performer" or "Role Model," or their equivalent. The quality salary increase shall be awarded as follows:

Performance Evaluation Level	Number of Steps
Highly Effective Performer	1
Role Model or equivalent	2

1156.4 A quality salary increase shall be subject to the availability of funds.

1156.5 A quality salary increase awarded under this section shall not affect the waiting period requirement contained in Sections 1127 or 1129 for within-grade increases.

Comments on this proposed rulemaking should be submitted, in writing, within thirty (30) days of the date of the publication of this notice in the *D.C. Register* to Justin Zimmerman, Associate Director, Policy and Compliance Administration, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 330S, Washington, D.C. 20001, or via email to Justin.Zimmerman@dc.gov. Additional copies of these proposed rules are available at the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGRM28-2016-01, IN THE MATTER OF THE COMMISSION'S RULES GOVERNING UNIVERSAL SERVICE

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice pursuant to Sections 34-802, 2-505, and 34-2003 of the District of Columbia Code¹ of its intent to amend Chapter 28 (Universal Service) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The proposed amendments take into account changes mandated by the Federal Communications Commission's ("FCC") *Lifeline Modernization Order*.² The amendments change the definition of universal services to be supported by the District of Columbia Universal Service Trust Fund and the eligibility requirements.

2802 DISTRICT OF COLUMBIA UNIVERSAL SERVICES

2802.1 District of Columbia Universal Services shall consist of the following services:

- (a) Voice telephony services:
 - (1) Voice grade access to the public switched network or its functional equivalent, with the ability to place and receive calls;
 - (2) Minutes of use for local service provided at no additional cost to end users;
 - (3) Access to emergency services, including, access to 911 and enhanced 911 (E911) services;
 - (4) Toll limitation services for qualifying low-income consumers at no charge to the customer.

¹ D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2012 Repl.) and D.C. Official Code § 34-2002(g) (2012 Repl.).

² *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order and Order on Reconsideration ("Lifeline Modernization Order"), rel. April 27, 2016.

(b) Telecommunications Relay Service (TRS).

2820 DISTRICT OF COLUMBIA LIFELINE SERVICE PROGRAM

2820.1 The District of Columbia Lifeline Service Program is a program designed to operate in conjunction with the Federal Lifeline Program, to provide a low monthly recurring rate to qualifying residential subscribers for basic local exchange service.

2820.2 In order to qualify for the Lifeline service, customers must show that they either:

(a) Fall below one hundred thirty-five percent (135%) of the Federal Poverty income guidelines for a household of that size; or

(b) Participate in one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); or Veterans or Survivors Pension Benefit.

2820.3 Each ETC shall file tariffs implementing a Lifeline service that is consistent with both FCC and Commission regulations.

2820.4 Lifeline subsidies shall not be available to customers on a retroactive basis.

2820.5 When the entity responsible for certifying Lifeline customers notifies an ETC that a customer no longer qualifies for Lifeline service, the Lifeline rate will revert to the serving ETC's standard tariffed retail rate.

2820.6 Lifeline service is only available at the qualifying customer's principal residence. An applicant for Lifeline service may report only one (1) address in the District of Columbia as the principal place of residence. Post office boxes are not acceptable designations of residence. Where applicable, an apartment number must be provided.

2820.7 Each household receiving lifeline service is limited to one (1) lifeline service. The lifeline service is non-transferable to any other person or household.

2820.8 Participants in the District's Lifeline Program are eligible to receive Toll Restriction Service at no charge.

2820.9 District of Columbia residents who meet all eligibility requirements shall not be denied Lifeline service because of unpaid toll charges.

3. Any person interested in commenting on the subject matter of this proposed rulemaking must submit comments and reply comments in writing no later than thirty (30) days and forty-five (45) days, respectively, from the date of publication of this Notice in the *D.C.*

Register. Comments and reply comments are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C., 20005. After the comment period expires, the Commission will take final rulemaking action.

DISTRICT DEPARTMENT OF TRANSPORTATION**NOTICE OF PROPOSED RULEMAKING**

The Director of the District Department of Transportation (“Department”), pursuant to the authority set forth in Section 103 of the Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.03 (2013 Repl.)), Sections 4(5)(A) (assigning authority to coordinate and manage public space permits and records to the Department Director), 5(a)(4)(A) (assigning duty to review and approve public space permit requests to the Department Director), 6(b) (transferring the public right-of-way maintenance function previously delegated to the Department of Public Works (DPW) under Section III (F) of Reorganization Plan No. 4 of 1983 to the Department), and 9j (rulemaking authority) of the Department of Transportation Establishment Act of 2002 (“DDOT Establishment Act”), effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.03(5)(A), 50-921.04(a)(4)(A), 50-921.05(b), and 50-921.18 (2014 Repl. & 2016 Supp.)), Section 604 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.04 (2013 Repl. & 2016 Supp.)) (authorizing rules concerning rental of public space), and Mayor’s Order 2016-5, dated January 12, 2016, hereby gives notice of the intent to adopt amendments to Chapter 1 (Occupation and Use of Public Space) and Chapter 37 (Special Trees) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

These proposed rules will amend the regulations in Title 24 DCMR, Chapter 1, governing the beautification of tree spaces. The existing regulations became effective on July 7, 1989, and field inspections have found that many of the practices allowed by the original regulations have resulted in tree damage and the loss of numerous street trees. The proposed amendments would: require a permit to plant a tree in a tree space, install any structure in a tree space, or install or modify a tree fence in a tree space; make explicit the District of Columbia’s authority to remove either permitted or unpermitted trees planted in tree spaces; make explicit in this chapter the requirement that an owner or occupant keep the tree space adjacent to his or her property free of refuse; prohibit plantings from being placed too close to the base of a tree; expand the list of prohibited plant types and ground cover types; prohibit solid barriers and certain types of borders around tree spaces; specify the type of fencing that qualifies for a tree fence permit; incorporate by reference Subsection 608.06 of the District of Columbia Department of Transportation Standard Specifications for Highways and Structures (2013) and drawing number 608.13 of the District of Columbia Department of Transportation Standard Drawings (August 2015) with respect to the standards specified in both documents for tree fences; and make explicit the authority of District of Columbia (“District”) employees or contractors authorized by the District government to remove a non-compliant or hazardous tree space beautification.

The proposed rules will also amend the regulations in Title 24, Chapter 37, to eliminate two mitigation procedures a property owner can follow to obtain a permit to remove a tree on the property that has a minimum circumference of fifty-five inches (Special Tree). The property owner may no longer plant a quantity of saplings whose aggregated circumference at the time of planting will equal or exceed the circumference of the Special Tree(s) to be removed. Furthermore, the proposed rulemaking will eliminate the ability for a property owner to plant any

saplings to offset the amount of money that must be paid into the Tree Fund to remove a Special Tree. This rulemaking is necessitated by the need to address the threat to the public welfare posed by an abrupt and substantial change in the process for removing Special Trees. Property owners in the District, including single family homes and large commercial properties have relied on the ability to plant saplings to partially or completely eliminate the need to pay into the Tree Fund when removing a Special Tree. Title IV, Subtitle C of the Sustainable DC Omnibus Act of 2013, effective December 17, 2014 (D.C. Law 20-0142; 61 DCR 8045 (August 8, 2014)) ends that practice. In order to transition to payment only, this rulemaking is required to clarify how it will affect those individuals that already have a permit and those that have not yet received a permit from the District Department of Transportation (“DDOT”). The rulemaking will enable DDOT to coordinate safely and efficiently the transition to the new Special Tree requirements in the least disruptive manner possible, avoiding unnecessary impositions placed on the public.

The proposed rules will be transmitted to the D.C. Council for a forty-five (45)-day review period and shall be deemed disapproved in the absence of Council action within the 45-day review period. Final rulemaking action to adopt these amendments shall be taken after the Council’s review period and at least thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 1, OCCUPATION AND USE OF PUBLIC SPACE, of Title 24 DCMR, PUBLIC SPACE AND SAFETY, is amended as follows:

Section 109, BEAUTIFICATION OF TREE SPACES, is amended to read as follows:

109 BEAUTIFICATION OF TREE SPACES

- 109.1 The regulations contained in this section apply to the unpaved area of the sidewalk, which is reserved by the District government for planting trees and is referred to in this section as “tree space”.
- 109.2 The owner or occupant of property adjacent to a tree space is responsible for keeping the tree space clean and free of refuse pursuant to 21 DCMR § 702.
- 109.3 The beautification of a tree space shall not require a public space permit unless the beautification includes the planting of a tree, the installation of any structure, or the installation or modification of a tree fence. Tree Space beautification activities that do not require a permit must comply with the requirements of this section and any other applicable law or regulation.
- 109.4 The beautification of a tree space may only be undertaken by the owner or occupant of the property that abuts the tree space, provided:

- (a) The tree space beautification shall be undertaken solely at the personal risk and expense of that owner or occupant; and
- (b) Such care and keeping of the tree space beautification shall remain the responsibility of that owner or occupant.

109.5 The beautification of a tree space shall not extend:

- (a) Over the curb or the sidewalk;
- (b) Within three feet (3 ft.) of a crosswalk or paved bus stop landing;
- (c) Within six feet (6 ft.) of an entrance to an alley;
- (d) Within six feet (6 ft.) of a street corner;
- (e) Within two feet (2 ft.) from the base of an existing street tree; or
- (f) Within four feet (4 ft.) of a parking meter or a fire hydrant.

109.6 In a continuous tree space, tree space beautification areas shall be not more than nine feet (9 ft.) long, and at least six feet (6 ft.) shall separate each beautified area.

109.7 The grade of a tree space shall not be altered in conjunction with a tree space beautification effort, except with mulch spread to a depth of two to three inches (2 – 3 in.), but not placed directly against or mounded at the base of the tree.

109.8 The use of the following as ground cover is prohibited:

- (a) Gravel, rocks, bricks, stone, or concrete pavers or any other paving material, except as authorized by a public space permit; or
- (b) Any type of landscape fabric or plastic sheeting.

109.9 To protect the health of the tree and the environment, no person shall plant or maintain any of the following plant types in a tree space:

- (a) Plants having a deep root system;
- (b) Any plant whose mature height is over eighteen inches (18 in.);
- (c) Any vegetables;
- (d) Any plants which spread by way of subsurface shoots or runners; or
- (e) Any plants which climb or intertwine.

- (f) Any invasive plant species.
- 109.10 To protect the safety of the public and the health of the tree, the use of wickets; hoop-style fencing; fencing having sharp points; or raised wooden, brick, stone or masonry borders, edging, or walls of any kind to border a tree space is prohibited.
- 109.11 Notwithstanding § 109.10, a tree fence, border, or edging existing on June 1, 2016, that was consistent with the version of these rules in effect on May 30, 2016 may remain until such time as it is removed by the owner or occupant of the property which abuts the tree space or by District government employees or contractors authorized by the District government.
- 109.12 A tree space may be bordered by a tree fence which shall:
- (a) Only be installed as authorized by a valid public space permit issued by the Director of the District Department of Transportation;
 - (b) Meet or exceed the District's specifications for an ornamental tree fence found in § 608.06 of the District of Columbia Department of Transportation Standard Specifications for Highways and Structures (2013), as such specifications are amended from time to time (DDOT Standard Specifications) available at <http://ddot.dc.gov/page/standard-specifications-highways-and-structures>;
 - (c) Be assembled and installed as shown on the ornamental tree fence drawing number 608.13 found in the District of Columbia Department of Transportation Standard Drawings (August 2015) as such standard drawings are revised from time to time (DDOT Standard Drawings) available at <http://ddot.dc.gov/page/standard-drawings-2015>; and
 - (d) Not restrict the flow of rainwater runoff from the sidewalk into the tree space.
- 109.13 Notwithstanding § 109.12, a tree space may be bordered by a tree fence of an alternate design if it meets all of the following:
- (a) The design allows the unrestricted flow of rainwater runoff from the sidewalk into the tree space;
 - (b) The material, fabrication and installation specifications are reasonably consistent with those required by the DDOT Standard Specifications, for an ornamental tree fence;
 - (c) The tree fence is designed to only border the tree space on the three (3) sides that do not abut the curb line;

- (d) The tree fence is designed to have side panels which are set back at least fourteen inches (14 in.) from the vertical face of the roadway curb as shown on the drawings in Subsection 608.13 for an ornamental tree fence as found in the DDOT Standard Drawings; and
 - (e) The height of the tree fence shall be approximately eighteen inches (18 in.) tall as measured from the sidewalk or curb elevation.
- 109.14 The District government may enter a tree space without the permission of the owner or occupant of the property that abuts the tree space.
- 109.15 A tree space beautification may be destroyed or removed and disposed of by the District government or its agents, if destruction or removal and disposal is necessary for the following construction, repair, or maintenance activities:
- (a) Street construction or reconstruction;
 - (b) Curb and gutter construction, reconstruction or repair;
 - (c) Sidewalk construction or reconstruction;
 - (d) Tree removal or planting; or
 - (e) Modification to the tree space, including, but not limited to the following:
 - (i) Expanding the tree space; and
 - (ii) Altering the grade and soil condition prior to a tree planting.
- 109.16 A tree space beautification that is not in compliance with this section, and that is hazardous to the public or the health of the tree, as determined by the Director of the District Department of Transportation, may be removed and disposed of by District government employees or contractors.
- 109.17 This section shall not be construed to supersede the provisions of Chapter 11 (Downtown Streetscape) of Title 24 of the District of Columbia Municipal Regulations.

Section 199, DEFINITIONS, is amended as follows:

New definitions are added, prior to the definition of “Person”, to read as follows:

Invasive Plant Species – one of the following plants:
Grasses and Sedges

Bamboos (*Bambusa vulgaris*, *Phyllostachys aurea* and *Pseudosasa japonica*)
Bog Bulrush (*Schoenoplectus mucronatus*)
Common Reed (*Phragmites australis*)
Japanese Stiltgrass (*Microstegium vimineum*)
Wavyleaf Basketgrass (*Oplismenus hirtellus* ssp. *undulatifolius*)

Herbaceous Forbs

Beefsteak Plant (*Perilla frutescens*)
Canada Thistle (*Cirsium arvense*)
Chinese Lespedeza (*Lespedeza cuneata*)
Common Daylily (*Hemerocallis fulva*)
Dame's Rocket (*Hesperis matronalis*)
European Stinging Nettle (*Urtica dioica*)
Fig Buttercup (*Ficaria verna*)
Garlic Mustard (*Alliaria petiolata*)
Ground Ivy (*Glechoma hederacea*)
Japanese Knotweed (*Fallopia japonica*)
Nodding Star of Bethlehem (*Ornithogalum nutans*) and Sleepydick (*Ornithogalum umbellatum*)
Purple Loosestrife (*Lythrum salicaria*)
Spotted Knapweed (*Centaurea stoebe* ssp. *micranthos*)

Shrubs and Subshrubs

Amur Honeysuckle (*Lonicera maackii*)
Autumn Olive (*Elaeagnus umbellata*)
Japanese Barberry (*Berberis thunbergii*)
Japanese Meadowsweet (*Spiraea japonica*)
Linden Viburnum (*Viburnum dilatatum*)
Morrow's Honeysuckle (*Lonicera morrowii*)
Multiflora Rose (*Rosa multiflora*)
Privets (*Ligustrum obtusifolium*, *L. ovalifolium*, *L. sinense* and *L. vulgare*)
Wineberry (*Rubus phoenicolasius*)
Winged Burning Bush (*Euonymus alatus*)

Vines

Black Swallow-Wort (*Cynanchum louiseae*)
Chinese Wisteria (*Wisteria sinensis*)
Chocolate Vine (*Akebia quinata*)
Common Periwinkle (*Vinca minor*)
English Ivy (*Hedera helix*)
Japanese Honeysuckle (*Lonicera japonica*)
Japanese Hop (*Humulus japonicus*)
Japanese Wisteria (*Wisteria floribunda*)
Kudzu (*Pueraria montana* var. *lobata*)
Mile-a-Minute (*Persicaria perfoliata*)

Oriental Bittersweet (*Celastrus orbiculatus*)
Pale Swallow-Wort (*Cynanchum rossicum*)
Porcelainberry (*Ampelopsis brevipedunculata*)
Sweet Autumn Virginsbower (*Clematis terniflora*)
Winter Creeper (*Euonymus fortunei*)

A new definition is added, prior to the definition of “Downtown Streetscape Area”, to read as follows:

Sidewalk – the portion of the surface space located between the curb line and the building line intended for the use of pedestrians.

New definitions are added, after the definition of “Downtown Streetscape Area”, to read as follows:

Tree fence – a low enclosure of an open design that separates the sidewalk from the tree space and is designed and constructed in accordance with DDOT guidelines.

Tree space – an unpaved portion of the sidewalk that is reserved by the District government for the planting of a tree.

Tree space beautification – a visual improvement made to a tree space using live plant materials other than trees, such as grass, tropical flowers, or other shallow rooted plants having decorative flowers or foliage.

Chapter 37, SPECIAL TREES, is amended as follows:

Section 3701, PERMIT APPLICATION PROCEDURES FOR A SPECIAL TREE REMOVAL PERMIT, is amended as follows:

Subsection 3701.3 is repealed.

Subsection 3701.7 is amended to read as follows:

3701.7 If an International Society of Arboriculture certified arborist or an Urban Forestry Administration arborist determines that the tree to be removed is not a Hazardous Tree and is not a tree that has been identified in § 3701.9, or if the applicant stipulates as to both on the permit application, no Special Tree Removal Permit shall be issued until the applicant pays into the Tree Fund a tree replacement fee equivalent to thirty-five dollars (\$35) per inch of circumference of each Special Tree that is to be removed.

Section 3702, PERMIT CONDITIONS FOR REPLACEMENT TREES, is amended to read as follows:

3702 PERMIT CONDITIONS FOR REPLACEMENT TREES

- 3702.1 Notwithstanding Section 3701 of this title, any Special Tree Removal Permit issued prior to December 17, 2014, with a permit condition allowing the applicant for the Special Tree Removal Permit to plant replacement trees to partially or completely offset the tree replacement fee shall remain valid; provided the special tree was removed prior to June 15, 2015.

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Alice Kelly, Manager, Policy and Governmental Affairs, District Department of Transportation, 55 M Street, S.E., 7th Floor, Washington, D.C. 20003. An interested person may also send comments electronically to publicspace.policy@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation's website at www.ddot.dc.gov.

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

NOTICE OF SECOND EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in Section 101(a) of the Moratorium Amendment Act of 1999, effective May 3, 2001 (D.C. Law 13-298; D.C. Official Code § 25-351(a) (2012 Repl.)), as amended, and in accordance with Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1967 (82 Stat. 1206; D.C. Official Code § 25-381(a) (2012 Repl.)), as amended (D.C. APA), hereby gives notice of its intent to amend, on an emergency basis, Section 308 (Glover Park Moratorium Zone) of Chapter 3 (Limitations on Licenses) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

On December 4, 2015, the Advisory Neighborhood Commission (ANC) 3B filed a Petition to Extend and Amend the Glover Park Liquor License Moratorium (Petition) with the Board. The Petition asked the Board to extend the Glover Park Moratorium, which was slated to expire on February 22, 2016, for ninety (90) days while the ANC, the community, and stakeholders continued to explore the continuation of the moratorium.

On February 3, 2016, the Board adopted the Glover Park Moratorium Zone Notice of Emergency Rules, five (5) to zero (0) to take effect immediately. The emergency rules were published in the *D.C. Register* at 63 DCR 5303 (April 8, 2016) and expired on May 3, 2016. On March 30, 2016, the Board held a public hearing to receive comments from the community and the alcohol retail industry concerning the moratorium.

After considering the oral and written comments from interested parties, the Board adopted the Glover Park Moratorium Zone Notice of Emergency and Proposed Rulemaking on April 20, 2016, by a vote of five (5) to zero (0). The emergency and proposed rules went into effect at that time for one hundred twenty (120) days; expiring on August 18, 2016. The emergency and proposed rules retain the moratorium for Class CT, DT, CN, DN, CX, and DX licenses, but remove the moratorium for Class CR and A licenses.

The Glover Park Moratorium Zone Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on June 24, 2016, at 63 DCR 8890 and expired on August 18, 2016. The thirty (30)-day public comment period, however, ended on July 24, 2016, with the Board having not received any comments.

On August 3, 2016, the Board voted, five (5) to zero (0), to send the Glover Park Moratorium Zone Notice of Emergency and Proposed Rulemaking to the Council for the mandatory ninety (90)-day comment period. See ABC Board Dispositions-August 3, 2016, at www.abra.dc.gov.

The emergency and proposed rules would before the Council review period ends. In order to avoid the termination of the moratorium, the Board, in accordance with Section 6(c) of the D.C. APA, has determined that emergency action is necessary for the immediate preservation of

health, safety, and welfare of District of Columbia residents, by (1) ensuring that the limitations placed on the issuance of new retailer's licenses are maintained; and (2) keeping the existing GPMZ in place while the Council reviews the emergency and proposed rules. As such, the Board voted, five (5) to zero (0), to adopt the present Glover Park Moratorium Zone Notice of Emergency Rulemaking on August 3, 2016. The emergency rules took effect at that time and will remain so for one hundred twenty (120) days, expiring on December 1, 2016, unless superseded.

Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 308, GLOVER PARK MORATORIUM ZONE, is amended to read as follows:

308 GLOVER PARK MORATORIUM ZONE

- 308.1 No new retailer's license class CT, CN, CX, DN, DT, or DX shall be issued for a period of five (5) years from the effective date of this section in the area that extends approximately one thousand two hundred feet (1,200 ft.) in all directions from 2436 Wisconsin Avenue, N.W., Washington, D.C. 20007.
- 308.2 The Glover Park Moratorium Zone is more specifically described as beginning at Tunlaw Road and Fulton Street; East on Fulton Street to Wisconsin Avenue; South on Wisconsin Avenue to Edmunds Street; East on Edmunds Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to Observatory Circle; Southwest around Observatory Circle to Calvert Street; West on Calvert Street to Wisconsin Avenue; Southeast on both sides of Wisconsin Avenue to 35th Street; South on 35th Street to Whitehaven Parkway; West on Whitehaven Parkway to 37th Street; North on 37th Street to U Street; West on U Street to a point of intersection of Huidekoper Place and W Street; West on W Street to 39th Street; North on 39th Street to Davis Place; East on Davis Place to Tunlaw Road; North and Northwest on Tunlaw Road to Fulton Street.
- 308.3 All hotels, whether present or future, shall be exempt from the Glover Park Moratorium Zone.
- 308.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class CT, CN, CR, CX, DN, DT, or DX within the Glover Park Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.
- 308.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Glover Park Moratorium Zone to a new location within the Glover Park Moratorium Zone.

- 308.6 A license holder outside the Glover Park Moratorium Zone shall not be permitted to transfer its license to a location within the Glover Park Moratorium Zone.
- 308.7 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.
- 308.8 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.
- 308.9 This section shall expire five (5) years after the date of publication of the notice of final rulemaking.

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

NOTICE OF EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the District of Columbia Official Code § 25-211(b) (2012 Repl. & 2016 Supp.) and Mayor's Order 2001-96, dated June 28, 2001, as revised by Mayor's Order 2001-102, dated July 23, 2001, and in accordance with Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1967 (82 Stat. 1206; D.C. Official Code § 25-381(a) (2012 Repl.)), as amended (D.C. APA), hereby gives notice of the adoption, on an emergency basis, of amendments to Section 712 (Pub Crawls) of Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The amendments: (1) revise the pub crawl license requirements; (2) establish a pub crawl licensing fee; (3) give the Board more authority to manage pub crawls; and (4) strengthens the requirements for pub crawl applicants regarding their responsibilities before, during, and after pub crawl events, to include having a litter plan in place.

On January 13, 2016, the Board adopted the Pub Crawls Notice of Emergency and Proposed Rulemaking. The emergency and proposed rules were published in the *D.C. Register* on March 18, 2016, at 63 DCR 4098 [Expired]. On March 2, 2016, the Board held a public hearing to receive comments from the community and interested persons concerning the pub crawl rules. The feedback the Board received was generally supportive.

After thoroughly reviewing the oral and written comments it received, the Board adopted the Pub Crawls Notice of Second Emergency and Proposed Rulemaking (Second Emergency and Proposed Rules) on April 6, 2016. In the Second Notice, the Board made several comprehensive changes to the pre-existing emergency and proposed rules, including:

1. Requiring pub crawl promoters/organizers (Applicants) to submit their pub crawl applications to the Board sixty (60) days before the event;
2. Providing for Department of Public Works (DPW) to have ten (10) days to review a pub crawl application as opposed to forty-eight (48) hours; and
3. In addition to notifying the Metropolitan Police Department and DPW; requiring Applicants to notify the D.C. Department of Fire and Emergency Medical Services sixty (60) days before the event.

The Board also revised the definition of "pub crawl" and expounded upon the litter plan requirements and submission timelines. Lastly, the Board amended the Civil Penalty Schedule to include "participating in an unlawful pub crawl," which it determined will be a second-tier violation.

The Notice of Second Emergency and Proposed Rulemaking was published in the *D.C. Register* on July 8, 2016, at 63 DCR 9426. The emergency rules expired on August 4, 2016, and the

thirty (30)-day comment period ended on August 7, 2016. Presently, the Board has not received any comments in response to the Notice of Second Emergency and Proposed Rulemaking and will likely move forward with submitting the rules to the Council for the District of Columbia for the mandatory ninety (90)-day review period at the close of the comment period. In the interim, emergency action is necessary.

The Board, in accordance with Section 6(c) of the D.C. APA, finds emergency rulemaking action is necessary for the immediate preservation of health, safety, and welfare of District of Columbia (District) residents. Specifically, emergency action is needed (1) to ensure that pub crawls are conducted in a responsible, safe, and orderly manner; and (2) to protect the rights and privileges of affected District residents and businesses.

These emergency rules were adopted by the Board on August 3, 2016, by a five (5) to zero (0) vote and became effective on that date. The rules will remain in effect for up to one hundred twenty (120) days, expiring on December 1, 2016, unless superseded. This emergency rulemaking supersedes the emergency and proposed rules adopted by the Board on April 6, 2016.

Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 712, PUB CRAWLS, is amended as follows:

712 PUB CRAWLS

- 712.1 A promoter/organizer (“Promoter/Organizer” or “Applicant”) of a “pub crawl” shall be required to obtain a pub crawl license. The Promoter/Organizer shall submit an application for a pub crawl license that contains a Pub Crawl Event Form for each pub crawl event at least sixty (60) days prior to the applicant’s first scheduled pub crawl event. The sixty (60)-day in advance filing requirement shall apply to all pub crawl applications filed after July 1, 2016.
- 712.2 A Promoter/Organizer shall obtain the Board’s approval prior to hosting any pub crawl events not included in the Promoter/Organizer’s pub crawl license application. The Promoter/Organizer shall submit a Pub Crawl Event Form to the Board for approval of any subsequent pub crawl event not listed on the Promoter/Organizer pub crawl license application at least sixty (60) days in advance of the event. The Board may conduct a hearing for purposes of considering the Promoter/Organizer’s Pub Crawl Event Form submission.
- 712.3 For purposes of this section, a “pub crawl event” shall be defined as an organized group of establishments within walking distance which participate in the promotion of the event featuring the sale or service of alcoholic beverages during a specified time period.

- 712.4 The application fee for a pub crawl license shall be five hundred dollars (\$500). The pub crawl license fee shall cover all pub crawl events held by the licensee in a calendar year. A pub crawl license shall expire at the end of the calendar year in which it is issued. The requirement for a pub crawl license and application fee shall apply to applications filed after April 1, 2016.
- 712.5 No later than sixty (60) days prior to the scheduled date of the pub crawl event, the applicant must provide the Metropolitan Police Department, the D.C. Fire and Emergency Medical Service, and the Board with a Pub Crawl Event Form which shall include the following information:
- (a) The names and addresses of all licensed establishments which are expected to participate;
 - (b) The geographic area where the event will take place;
 - (c) The anticipated number and maximum number of participants;
 - (d) The actual hours of the event;
 - (e) The operational plan and security plan; and
 - (f) The plan for litter prevention, control and removal; and
 - (g) The location of the designated registration area(s).
- 712.6 The operational and security plan required by § 712.5(e) shall be posted at the designated registration area(s) and shall include, at a minimum:
- (a) The name and number of security personnel contracted for the event;
 - (b) A plan for controlling underage drinking; and
 - (c) The method to be used for checking participants' identification.
- 712.7 The litter plan required by § 712.5(f) shall:
- (a) Set a timeframe within which the litter removal vendor(s) will remove litter from the geographic area(s) in which the pub crawl occurred. The timeframe shall require that litter be removed by no later than 10 a.m. on the day after the pub crawl; and
 - (b) Include the following minimum requirements:

- (1) Litter shall be cleaned from both sides of the street of the entire block where an establishment participating in a pub crawl is located and on both sides of the street for all blocks between establishments;
- (2) Litter shall be removed from tree boxes and planters on both sides of the street for the entire length of the block;
- (3) Litter removal shall include the cleaning of human waste (*e.g.*, vomit);
- (4) The litter removal company or companies shall not place trash and other debris in trash receptacles; and
- (5) The litter removal company or companies shall comply with the District's solid waste and sanitation regulations located in Chapters 7 (Solid Waste Control) and 8 (Solid Waste Container Specifications) of Title 21 of the District of Columbia Regulations.

- 712.8 The Applicant shall submit a signed contract and proof of payment for litter removal services within seventy two (72) hours from the conclusion of the pub crawl event.
- 712.9 The litter plan shall be approved, in writing, by the District Department of Public Works (DPW) within ten (10) days of the Promoter/Organizer filing the litter plan with DPW.
- 712.10 The Promoter/Organizer or its designee(s) must remain at the pub crawl event to superintend for the duration of the event, and shall neither purchase nor consume alcoholic beverages during the event.
- 712.11 The Board shall approve the Applicant's list of participating licensed establishments for each pub crawl event. In doing so, the Board shall determine each listed licensed establishment's eligibility to participate in the pub crawl event in accordance with §§ 712.12 and 712.13.
- 712.12 No establishment with more than two (2) primary tier violations within two (2) years of the scheduled date of the event may participate in a pub crawl event.
- 712.13 No licensed establishment may participate in a pub crawl event if it is prohibited from participating by the terms of its Settlement Agreement or Board Order.
- 712.14 Pub crawl events may not promote excessive drinking and may not include unlimited amounts of drinks for one (1) price (*i.e.*, "all you can drink" specials).

- 712.15 Literature describing “responsible drinking practices” shall be available at all pub crawl event designated registration area(s).
- 712.16 All advertising and promotional materials for pub crawl events shall:
- (a) Include a statement that “You must be twenty-one (21) or older to participate”;
 - (b) Promote the use of public transportation; and
 - (c) Include the plan for a designated driver program for the event.
- 712.17 Establishments that are required by law to serve food shall have food available for purchase during the hours of the pub crawl event.
- 712.18 The issuance of a pub crawl license shall be solely in the Board’s discretion. The Board shall approve or deny a pub crawl application no less than fourteen (14) days prior to the date of the pub crawl event.
- 712.19 The Board may place restrictions upon the hours, participating licensed establishments, and the number, nature or size of pub crawl events held under a pub crawl license in order to protect public safety.
- 712.20 The Board may also fine, suspend, or revoke the pub crawl license if the Promoter/Organizer:
- (a) Fails to control the environment of a pub crawl;
 - (b) Has sustained community complaints or police action;
 - (c) Fails to comply with the terms of its pub crawl license or pub crawl application, including the litter plan and security and/operational plans; or
 - (d) Otherwise violates this title or D.C. Official Code §§ 25-101, *et seq.*
- 712.21 Any enforcement action taken in accordance with § 712.20 shall be in accordance with D.C. Official Code §§ 25-441 through 25-447 and Chapter 16 (Contested Hearings, Non-Contested Hearings, Protested Hearings, and Procedures) of this title.
- 712.22 When reviewing an application for a pub crawl license, the Board may consider the Applicant’s conduct and management of previous pub crawl events.

- 712.23 Licensed establishments shall not participate in an unlicensed pub crawl event. It shall be the licensed establishment’s responsibility to verify whether the pub crawl event is licensed by the Board.
- 712.24 The Board may prohibit a licensed establishment that participated in an unlicensed pub crawl event or has sustained community complaints or police action from participating in future pub crawl events for up to a year from the date of the incident.
- 712.25 Licensed establishments shall post in a conspicuous place for the duration of the pub crawl event a copy of the pub crawl organizer’s license for each pub crawl event in which they participate. The pub crawl license shall list the name and date of the pub crawl event and the name of the Promoter/Organizer.
- 712.26 A licensed establishment shall not be permitted to participate in more than one (1) pub crawl event at one time.
- 712.27 A pub crawl license is not required for a pub crawl containing fewer than two hundred (200) participants.
- 712.28 The Board shall not approve a pub crawl application for July 4, October 31, or December 31.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, is amended as follows:

Section 800, ABRA CIVIL PENALTY SCHEDULE, is amended by adding the following fine to the civil penalty schedule:

23 DCMR 712.23	Participating in an Unlicensed Pub Crawl	Secondary	Y
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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, SEPTEMBER 7, 2016
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
Ruthanne Miller, James Short

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00069; Alta Strada-City Vista, LLC, t/a Alta Strada, 465 K Street, NW, License #100140, Retailer CR, ANC 6E
Application to Renew the License

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00070; Hilltop Hospitality, LLC, t/a Mission, 1606 20th Street, NW, License #94290, Retailer CR, ANC 2B
Application to Renew the License

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00073; Fernando Postigo, t/a Sol Mexican Grill, 1251 H Street, NE, License #92192, Retailer CT, ANC 6A
Substantial Change (Request a Change of Hours of Sales, Operation and Live Entertainment)

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00067; Nispero, LLC, t/a El Nuevo Migueleno, 1721 Columbia Road, NW, License #75403, Retailer CR, ANC 1C
Application to Renew the License

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00045; Hanks on the Hill, LLC, t/a Hanks Oyster Bar, 633 Pennsylvania Ave, SE, License #89718, Retailer CR, ANC 6B
Application to Renew the License

Board's Calendar
September 7, 2016

Protest Hearing (Status) 9:30 AM

Case # 16-PRO-00047; Appioo, LLC, t/a Appioo, 1924 9th Street, NW, License #94795, Retailer CR, ANC 1B

Application to Renew the License

Protest Hearing (Status) 9:30 AM

Case # 16-PRO-00049; Howard Theatre Entertainment, LLC, t/a Howard Theatre, 620 T Street, NW, License #88646, Retailer CX, ANC 1B

Application to Renew the License

Protest Hearing (Status) 9:30 AM

Case # 16-PRO-00051; 1819 14th Ventures, LLC, t/a El Centro D.F., 1819 14th Street, NW, License #84847, Retailer CR, ANC 1B

Application to Renew the License

Show Cause Hearing (Status) 9:30 AM

Case # 15-CMP-00788; HSR, Inc., t/a New Dodge Market, 3620 14th Street, NW, License #99565, Retailer B, ANC 1A

No ABC Manager on Duty, Failed to Post License Conspicuously in the Establishment

Show Cause Hearing (Status) 9:30 AM

Case # 16-PRO-00006; Lee Casa Lebrato, Inc., t/a Casa Lebrato, 1733 Columbia Road, NW, License #98074, Retailer B, ANC 1C

Sold Go-Cups

Show Cause Hearing (Status) 9:30 AM

Case # 16-CMP-00405; Amaya-1, LLC, t/a La Cabana Restaurant, 3614 14th Street, NW, License #74849, Retailer CR, ANC 1A

No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM

Case # 16-CMP-00406; Amaya-1, LLC, t/a La Cabana Restaurant, 3614 14th Street, NW, License #74849, Retailer CR, ANC 1A

No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM

Case # 16-251-00087; Terfneh Kahsay, t/a Salina Restaurant, 1936 9th Street, NW, License #82969, Retailer CT, ANC 1B

Follow-up To Show Cause Hearing on August 3, 2016

Board's Calendar
September 7, 2016

Show Cause Hearing* 10:00 AM

Case # 16-CMP-00103; S & L, LLC, t/a Midnight Delicatessen, 4701 Georgia Ave, NW, License #95044, Retailer B, ANC 4D

No ABC Manager on Duty

Show Cause Hearing* 11:00 AM

Case # 16-251-00031; Arzo Amin, t/a Grace Period, 350 G Street, SW, License #99262, Retailer Caterer, ANC 6D

Failed to use Caterer's License in the Authorized Manner, No ABC Manager on Duty, Failed to Provide Records for Purchased Alcoholic Beverages

Pub Crawl 11:30 AM

Applicant: Christine Benner, Date of Event: October 29, 2016, Event: Lindy Promotions, LLC, (Nightmare on M Street), Neighborhood: Multiple Licensed Premise, Size of Event 5000

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Protest Hearing* 1:30 PM

Case # 16-PRO-00042; Roof Top DC, LLC, t/a Bar Deco, 717 6th Street, NW License #97418, Retailer CR, ANC 2C

Application to Renew the License

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

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

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, SEPTEMBER 7, 2016
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Month day, 2016 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#16-251-00161, Player’s Lounge, 2737 MLK Jr. Ave S.E., Retailer CN, License # ABRA-001271

2. Case#16-CMP-00527, Smith Point, 1338 Wisconsin Avenue N.W., Retailer CT, License # ABRA-060131

3. Case#16-251-00153, Club Timehri, 2439 18th Street N.W., Retailer CT, License # ABRA-077730

4. Case#16-251-00156, The 51st State, 2512 L Street N.W., Retailer CT, License # ABRA-071333

5. Case#16-251-00155, Opera Ultra Lounge, 1400 I Street N.W., Retailer CN, License # ABRA-084711

6. Case#16-251-00130, La Villa Cafe’, 6115 Georgia Avenue N.W., Retailer CR, License # ABRA-094826

7. Case#16-CMP-00038, Sticky Rice, 1222-1224 H Street N.E., Retailer CR, License # ABRA-072783

8. Case#16-CMP-00645, Queen of Sheba, 1503 9th Street N.W., Retailer CR, License # ABRA-073644

9. Case#16-CMP-00417, Hop and Wine Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

10. Case#16-CMP-00419, Hop and Wine Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

11. Case#16-CMP-00421, Hop and Wine Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

12. Case#16-CMP-00422, Hop and Wine Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

13. Case#16-CMP-00424, Hop and Wine Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

14. Case#16-CMP-00426, Hop and Wine Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

15. Case#16-CMP-00427, Hop and Wine Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

16. Case#16-CMP-00428, Hop and Wine Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

17. Case#16-CMP-00430, Hop and Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

18. Case#16-CMP-00432, Hop and Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler, License # ABRA-086140

19. Case#16-CMP-00433, Hop and Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler,
License # ABRA-086140

20. Case#16-CMP-00435, Hop and Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler,
License # ABRA-086140

21. Case#16-CMP-00436, Hop and Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler,
License # ABRA-086140

22. Case#16-CMP-00438, Hop and Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler
License # ABRA-086140

23. Case#16-CMP-00439, Hop and Beverages, 1344 4th Street N.E., Retailer "A" Wholesaler
License # ABRA-086140

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, SEPTEMBER 7, 2016 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 1A. SMD 1A02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Ogden Market*, 1500 Ogden Street NW, Retailer B, License No. 078255.

2. Review Application for Safekeeping of License – Original Request. ANC 1A. SMD 1A04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Park Market*, 3400 13th Street NW, Retailer B, License No. 094178.

3. Review Application for Safekeeping of License – Original Request. ANC 4C. SMD 4C08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Chez Billy*, 3813 Georgia Avenue NW, Retailer CT, License No. 087703.

4. Review Request to Extend Safekeeping of License – Second Request. Original Safekeeping Date: 12/2/2015. ANC 1B. SMD 1B12. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *U & Pizza*, 1250 U Street NW, Retailer CR, License No. 092159.

5. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: 4/27/2016. ANC 5E. SMD 5E01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *& Pizza*, 666 Monroe Street NE, Retailer CR, License No. 094478.

6. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: 4/27/2016. ANC 2B. SMD 2B05. No outstanding fines/citations. No outstanding violations.

No pending enforcement matters. No conflict with Settlement Agreement. **& Pizza**, 1215 Connecticut Avenue NW, Retailer CR, License No. 096845.

7. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: 4/27/2016. ANC 2C. SMD 2C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **& Pizza**, 1005 E Street NW, Retailer CR, License No. 094712.
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8. Review Application for New Retailer Class DX Multipurpose Facility. ANC 2E. SMD 2E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Escape Room Live**, 3345 M Street NW, Retailer DX, License No. 104030.
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9. Review Request for Change of Hours. **Approved Hours of Operation and Alcoholic Beverage Sales and Consumption on Premise and for Sidewalk Cafe:** Sunday-Thursday 12pm to 2am, Friday-Saturday 12pm to 3am. **Approved Hours of Live Entertainment on Premise and Sidewalk Cafe:** Sunday-Thursday 10pm to 2am, Friday-Saturday 10pm to 3am. **Proposed Hours of Operation on Premise:** Sunday-Thursday 6am to 2am, Friday-Saturday 6am to 3am. **Proposed Hours of Operation for Sidewalk Café:** Sunday-Thursday 7am to 2am, Friday-Saturday 7am to 3am. ANC 1C. SMD 1C03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. **Asmara Lounge and Restaurant**, 2218-2220 18th Street NW, Retailer CR, License No. 102180.
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10. Review Request for Change of Hours. **Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:** Sunday-Thursday 11:30am to 1am, Friday-Saturday 11:30am-3am. **Approved Hours of Live Entertainment:** Monday 6:30pm to 9:30pm, Wednesday 7pm to 10pm. **Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:** Sunday 11am to 1am, Monday-Thursday 11:30am to 1am, Friday 11:30am to 3am, Saturday 11am to 3am. ANC 2E. SMD 2E02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. **Bistro Lepic**, 1736 Wisconsin Avenue NW, Retailer CR, License No. 021918.
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11. Review Application for Summer Garden with seating for 48 patrons. **Proposed Hours of Operation for Summer Garden:** Sunday-Saturday 9:30am to 12am. **Proposed Hours of Alcoholic Beverage Sales and Consumption for Summer Garden:** Sunday-Saturday 9:30am to 11:30pm. ANC 1B. SMD 1B02. No outstanding fines/citations. Two Enforcement

investigations pending (16-CMP-00504 and 16-CMP-00505). Staff Settlement pending. No conflict with Settlement Agreement. *Dukem Ethiopian Restaurant & Market/Apple Lounge*, 1114-1118 U Street NW, Retailer CR, License No. 072469.

12. Review Application for Tasting Permit. ANC 5E. SMD 5E07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Han's Market*, 1942 1st Street NW, Retailer B, Licensing No. 103200.

13. Review Application for Manager's License. *Nancy P. Hernandez*-ABRA 102977.

***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.**

DISTRICT OF COLUMBIA COMMISSION ON THE ARTS AND HUMANITIES**NOTICE OF PUBLIC MEETING****Board of Commissioners**

The Board of Commissioners of the District of Columbia Commission on the Arts and Humanities (DCCAHA) will be holding a meeting on Thursday, September 22, 2016 at 3:30 p.m. The meeting will be held in the DCCAHA Large Conference Room at 200 I Street, SE, Suite 1400, Washington, DC. Below is the draft agenda for this meeting. A final agenda will be posted to the DCCAHA website at <http://dcarts.dc.gov/page/commissioner-meetings>.

For further information, please contact the front desk at (202) 724-5613.

DRAFT AGENDA

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|-----|--------------------------------|---------------------------|
| 1. | Public Comment Period | |
| 2. | Call to Order | Chairperson |
| 3. | Adoption of the Agenda | All Commissioners Present |
| 4. | Adoption of Minutes | All Commissioners Present |
| 5. | Chairperson's Report | Chairperson |
| 6. | Executive Director's Report | Executive Director |
| 7. | Office of the Poet Laureate | Poet Laureate |
| 8. | Committee Reports | Respective Committees |
| 9. | Panel Recommendations | |
| 10. | Unfinished Business | All Commissioners Present |
| 11. | New Business and Announcements | All Commissioners Present |
| 12. | Adjournment | Chairperson |

BRIDGES PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

The Bridges Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from Vendors or Consultants for the following service(s):

- Nursing Services

Proposal Submission

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **2:00 p.m. EST on September 9, 2016** unless otherwise stated in associated RFP's. Proposals should be emailed to bids@bridgespcs.org

No phone call submission or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

D.C. BILINGUAL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

The DC Bilingual Public Charter School in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 (“Act”), hereby solicits expressions of interest from Vendors or Consultants for the following service(s):

- Heat and Air Conditioning (HAVC) Services
- Field Trip Transportation Services

Proposal Submission

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **2:00 p.m. EST on September 9, 2016** unless otherwise stated in associated RFP’s. Proposals should be emailed to bids@dcbilingual.org.

No phone call submission or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. Heat and Air Conditioning Services). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

E.L. HAYNES PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Graphic Design**

E.L. Haynes Public Charter School (“ELH”) was founded in 2004 and has a program based on nationally recognized best practices for advancing student achievement. E.L. Haynes’ mission is that every E.L. Haynes student of every race, socioeconomic status, and home language will reach high levels of academic achievement and be prepared to succeed at the college of his or her choice. We currently serve grades PK-12 with 1,200 students and 220 staff members.

E.L. Haynes is soliciting proposals from qualified vendors for graphic design services as described in the scope of work below. As brand consistency and evolution are fundamental to the perceptions of the organization, priority will be given to qualified graphic design vendors with familiarity with the E.L. Haynes logo and brand. The school maintains a strong organizational brand through our adaptable logo, slate of colors, website, print materials, stationary, business cards, and other channels that have come to define us to the broader public.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, September 9, 2016. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum
E.L. Haynes Public Charter School
Phone: 202.667-4446 ext 3504
Email: kyochum@elhaynes.org

EAGLE ACADEMY PUBLIC CHARTER SCHOOL
REQUEST FOR QUALIFICATIONS

Eagle Academy Public Charter School, in accordance with Section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby solicits proposals to provide the following services as a part of an OSSE SOAR Public Facilities grant.

- Architectural Services
- Civil Engineer Services
- Environmental Audit/Geotechnical Report & Survey Services
- Owner's Representative Services

Project Summary

Eagle Academy PCS will commence the final phase of its Ward 8 construction project. Following the U.S. General Services Administration Design Guide for facilities for young children, Eagle's team will build a facility that will meet the needs of children, teachers, administrators and parents by designing "through the eyes of a child," with a resulting sensitivity to children's scale, including how they will use the space, what they will see, and what kind of experience they will have.

Submittal is Due: Friday, September 9, 2016 by 5:00 p.m.

Submittal Terms

1. Submittal Requirements – Please limit your submittal to less than 50 pages, and submit your submittal by the time specified above. No late submittals will be accepted. **Submittals should be directed to the attention of Mayra Martinez-Fernandez, mmartinez@eagleacademypcs.org.**
2. Award of Contract – If the results of this RFQ warrant the awarding of a contract, Eagle Academy PCS anticipates the decision to be made by Monday, September 12, 2016. Eagle Academy will negotiate terms and fees with the top selected firm(s). Eagle Academy PCS reserves the right to reject any and all bids at its sole discretion.

EAGLE ACADEMY PUBLIC CHARTER SCHOOL
REQUEST FOR QUALIFICATIONS

Professional Educational Consulting Services

Project Summary

Your firm is invited to submit qualifications to provide professional educational consulting services to support Eagle Academy Public Charter School's Kindergarten through Third Grade students and teachers through: a Reading Specialist to support K-3 students as well as a Classroom Assessment Scoring System (CLASS) Mentor to support K-3 teachers during the 2016-2017 school year as a part of an OSSE SOAR Academic Quality grant. Information about these positions is detailed further in the "Criteria for Selecting a Firm" section of this RFQ.

Criteria for Selecting a Firm for K-3 Reading Specialist

The following criteria will be used to rate the submittals:

- Ability to conduct timely pre-testing to assess potentially at-risk students in the realms of reading fluency, reading comprehension, and phonics/phonemic awareness.
- Expertise using pre-assessment data to develop Individual Literacy Plans for students to receive tutoring in multi-sensory literacy programs.
- Ability to conduct timely post-testing to assess student progress in the realms of reading fluency, reading comprehension, and phonics/phonemic awareness.
- Expertise completing data reports to assess student progress
- Experience providing Reading Specialists with degree in literacy or related field as well as training in two or more of the following multi-sensory literacy programs: Orton Gillingham, Lindamood Phoneme Sequencing, Language to Literacy.
- Experience administering normative assessments including the Woodcock Reading Mastery Test-R Word Attack Subtest, Gray Oral Reading Test-V, and the Slosson Oral Reading Test-R.
- Experience writing Individual Literacy Plans
- Expertise developing school-wide literacy plans.
- Expertise developing and delivering professional development including workshops and in-class coaching on key literacy skills

Criteria for Selecting a Firm for CLASS K-3 Mentoring

The following criteria will be used to rate the submittals:

- Expertise in conducting CLASS evaluations, providing on-site mentoring/coaching and supports, developing supplemental CLASS resources, and aligning CLASS with early childhood curricula needed for teachers in order to increase performance on end-of-year CLASS assessments.
- A high-quality mentoring/coaching team that: 1) is trained/certified in the CLASS assessment, 2) has 5+ years of experience in early childhood education, 3) has prior teaching and mentoring/coaching experience

- Experience and expertise in providing on-site mentoring to teachers (i.e., direct observation, demonstration, feedback, collaborative consulting, planning, classroom-based coaching).
- Experience developing or adapting curricula to align with assessments such as CLASS.
- Experience conducting CLASS professional development presentations in early childhood settings.
- Experience and expertise in conducting CLASS evaluations

Submittal is Due: Friday, September 9, 2016 by 5:00 p.m.

Submittal Terms

1. Submittal Requirements – Please limit your submittal to less than 50 pages, and submit your submittal by the time and place specified in electronic form. No late submittals will be accepted. **Submittals should be directed to the attention of Mayra Martinez-Fernandez, mmartinez@eagleacademypcs.org.**
2. Award of Contract – If the results of this RFQ warrant the awarding of a contract, Eagle Academy PCS anticipates the decision to be made by Monday, September 12, 2016. Eagle Academy will negotiate terms and fees with the top selected firm. Eagle Academy PCS reserves the right to reject any and all bids at its sole discretion.

DEPARTMENT OF ENERGY AND ENVIRONMENT**NOTICE OF FILING OF
A VOLUNTARY CLEANUP ACTION PLAN****3418 4th Street, SE**

Pursuant to § 636.01(a) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 et seq., as amended April 8, 2011, DC Law 18-369 (herein referred to as the “Act”)), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch, is informing the public that it has received a Voluntary Cleanup Action Plan (VCAP) requesting to perform a remediation action at real property located at 3418 4th Street, SE, Washington, DC 20032. The applicant for the referenced address (Case Number VCP 2015-036) is BBI Holdings, Inc., 128 M Street, NW, Washington, DC 20001. The application identifies the presence of dry cleaning solvent compounds in soil and groundwater. The applicant intends to re-develop the property into a Child and Family Development Center for homeless infants and toddlers.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-8C) for the area in which the property is located. The VCAP is available for public review at the following location:

Voluntary Cleanup Program
Department of Energy and Environment (DOEE)
1200 1st Street, N.E., 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the VCAP by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-2289. An electronic copy of the VCAP may be viewed at <http://doee.dc.gov/service/vcp-cleanup-sites>.

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

Please refer to Case No. VCP 2015-036 in any correspondence related to this cleanup plan.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY**Wildlife Rehabilitation Services**

The Department of Energy and Environment (the Department) seeks eligible entities to fund an applicant to provide wildlife rehabilitation services in the District of Columbia for sick, injured, and orphaned native and naturalized wild animals. The amount available for the project is approximately \$200,000.00. This amount is subject to availability of funding and approval by the appropriate agencies.

Beginning 9/2/2016, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doe.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to the announcement for this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to 2016wildlifeRFA.grants@dc.gov with "Request copy of RFA 2016-1612-FWD" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Joanne Goodwin at (202) 535-1798 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Joanne Goodwin RE:2016-1612-FWD" on the outside of the envelope.

The deadline for application submissions is 10/3/2016, at 5:00 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2016wildlifeRFA.grants@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

- Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
- Faith-based organizations;
- Government agencies
- Universities/educational institutions; and
- Private Enterprises.

For additional information regarding this RFA, write to: 2016wildlifeRFA.grants@dc.gov.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Pharmacy (“Board”) hereby gives notice pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.) of another change in its regularly scheduled monthly meeting for September 1, 2016 and of the cancellation of its monthly meeting for October 6, 2016.

Thursday, September 1, 2016, the disciplinary hearing scheduled for this date has been postponed with a new date to be determined. Therefore, the Board will now have a limited open session (public) meeting in which the only item on the agenda will be to vote to move into the executive (closed) session meeting to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14). The open (public) session will begin at 9:00 a.m. and will end following the vote to move into the executive (closed) session. Following the open (public) session, the Board will meet in executive (closed/non-public) session to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14).

Thursday, October 6, 2016, this meeting has been cancelled. The Department of Health (DOH) will be closed this date for a mandatory All Hands Meeting for all DOH employees.

The Board of Pharmacy meets at 899 North Capitol Street, NE, 2nd Floor, Washington, D.C. 20002. The agendas for all open (public) session meetings will be posted at least one business day before the meeting on the Board of Ethics and Government Accountability website at <http://www.bega-dc.gov/board-commission/meetings>. This website may also be accessed through a link on the DOH website, www.doh.dc.gov.

DEPARTMENT OF HEALTH (DOH)

NOTICE OF FUNDING AVAILABILITY (NOFA)

RFA# CHA_HFAI_09.16.16

The District of Columbia, Department of Health (DOH) is soliciting applications from qualified applicants to provide services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement provides public notice of the Department of Health's intent to make funds available for the purpose described below. The applicable Request for Applications (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DOH terms and conditions for applying for and receiving funding.

General Information:

Funding Opportunity Title:	Healthy Food Access Initiatives
Funding Opportunity Number:	INSERT EGMS FO#
RFA ID#:	RFA #CHA_HFAI_09.16.16
Opportunity Category:	Competitive
DOH Administrative Unit:	Community Health Administration
DOH Program Bureau	Nutrition and Physical Fitness Bureau
Program Contact:	Amelia Peterson-Kosecki, Bureau Chief amelia.peterson-kosecki@dc.gov (202) 442-9140
Program Description:	The Government of the District of Columbia, Department of Health (DOH), Community Health Administration (CHA) is soliciting applications from qualified applicants to provide healthful food access programming to eligible District residents. Funding will support two separate healthful food access program areas: (1) Program that ensures the delivery of fresh produce to small retailers and corner stores operating in Wards 5, 7 and 8; and (2) Provision of home delivered meals to District residents who are incapacitated due to chronic illness. Applicants may propose projects which will increase access to and consumption of healthful foods by the target population. Project implementation is projected to begin in November, 2016.
Eligible Applicants	Nonprofit organizations or businesses with a demonstrated track record in providing healthful food and nutrition and wellness education services to culturally diverse, limited income District residents.

Anticipated # of Awards:	3
Anticipated Amount Available:	\$750,000
Floor Award Amount:	\$225,000
Ceiling Award Amount:	\$300,000

Funding Authorization

Legislative Authorization	FY 17 Budget Support Act of 2016
Associated CFDA#	Not Applicable
Associated Federal Award ID#	Not Applicable
Cost Sharing / Match Required	No
RFA Release Date:	Friday, September 16, 2016
Pre-Application Meeting (Date)	September 23, 2016
Pre-Application Meeting (Time)	2:00 to 3:00 p.m.
Pre-Application Meeting (Location/Conference Call Access)	899 North Capitol Street, NE – 3 rd Floor
Letter of Intent Due date:	September 28, 2016
Application Deadline Date:	Friday, October 14, 2016
Application Deadline Time:	By 6:00 p.m.
Links to Additional Information about this Funding Opportunity	DC Grants Clearinghouse http://opgs.dc.gov/page/opgs-district-grants-clearinghouse . DOH EGMS https://dcdoh.force.com/GO__ApplicantLogin2

Notes:

1. DOH reserves the right to issue addenda and/or amendments subsequent to the issuance of this NOFA, or to rescind the NOFA.
2. Awards are contingent upon the availability of funds.
3. Individuals are not eligible for DOH grant funding.
4. Applicants must have a DUNS #, TaxID#, be registered in the federal Systems for Award Management (SAM).
5. Effective September 1, 2016, grant application submissions will be done via the DOH Enterprise Grants Management System (EGMS). Applicants must register to obtain an EGMS account at least two weeks prior to the submission deadline date.
6. DOH is located in a secured building. Government issued identification must be presented for entrance.

DEPARTMENT OF HEALTH**PUBLIC NOTICE**

Please take notice that, effective Friday, September 9, 2016, the Department of Health's Immunization Program staff will relocate from 77 P Street, NE, Washington, DC 20002 to 899 North Capitol Street, NE, 3rd Floor, Washington, DC 20002.

Please take further notice that, through Tuesday, September 27, 2016, the Department of Health's Immunization Clinic will continue to receive clients and operate normal hours of 10:00 am to 1:00 pm every Monday and Tuesday at 77 P Street, NE, Washington, DC 20002.

**HOWARD UNIVERSITY MIDDLE SCHOOL OF MATHEMATICS & SCIENCE
PUBLIC CHARTER SCHOOL**

REQUEST FOR PROPOSALS

In Compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, Howard University Public Charter Middle School of Mathematics & Science hereby post notice that it will be will be accepting bids for the following services:

1. **Auditor to perform the 2016 Financial Statement Audit**

Howard University Public Charter Middle School of Mathematics and Science is seeking a vendor to perform the audit of its 2016 financial statements.

Interested parties should contact Dayton Watkins at (202) 806-7725, or via email at Dayton.watkins@HU-MS2.org, beginning Friday, August 22, 2016 to receive a copy of the bid package. The deadline for responses to this request is **Wednesday, September 7, 2016 at 5 pm.**

Those interested in responding to this RFP must be included on the list of auditors approved to perform 2016 audits for DC Public Charter Schools issued by District of Columbia Public Charter School Board.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF INQUIRYFORMAL CASE NO. 988, IN THE MATTER OF THE DEVELOPMENT OF UNIVERSAL SERVICE STANDARDS AND THE UNIVERSAL SERVICE TRUST FUND FOR THE DISTRICT OF COLUMBIA,

1. On April 27, 2016, the Federal Communications Commission (“FCC”) released its Third Report and Order, Further Report and Order and Order on Reconsideration Regarding Lifeline (“*Lifeline Modernization Order*”).¹ This Order expands the federal Lifeline program to cover broadband services, but does so in a way that may require major changes to the rules and administration of the District of Columbia Universal Service Trust Fund (“DC USTF”) administered by the Public Service Commission of the District of Columbia (“Commission”). This Notice of Inquiry sets forth some of the changes required by the *Lifeline Modernization Order* and seeks input from interested persons on the future of the DC USTF.

Synopsis of *Lifeline Modernization Order*

2. The existing federal Lifeline service program provides support for voice service for low income subscribers. In the *Lifeline Modernization Order*, the FCC states that the federal Lifeline fund will support payment for stand-alone fixed and mobile broadband services as well as bundled voice and broadband services. The *Lifeline Modernization Order* also establishes minimum service standards for broadband and mobile voice services to be funded by the federal Lifeline program. The FCC establishes a five and one-half year transition period, during which the mobile voice and data requirements will increase, while voice-only financial support will be phased out and eliminated by December 31, 2021.²

3. The FCC also creates a National Verifier, which is envisioned to become the sole entity responsible for verifying Lifeline service customer eligibility under an accelerated timeframe. The *Lifeline Modernization Order* streamlines the programs that qualify a subscriber for Lifeline service, so that only Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Insurance, Federal Public Housing Assistance, Veterans Pension benefit programs, and current Tribal benefit programs, are to be considered. Applicants with incomes below 135% of the federal poverty level also qualify.³ States can no longer have any additional qualifying programs or income levels for federal Lifeline service.

¹ *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order and Order on Reconsideration (“*Lifeline Modernization Order*”), rel. April 27, 2016.

² *Lifeline Modernization Order*, ¶ 6.

³ *Lifeline Modernization Order*, ¶ 7.

4. The FCC creates a new eligible telecommunications carrier (“ETC”) designation process for Lifeline Broadband Providers (“LBP”), the entities that seek to provide Lifeline broadband service. These providers obtain ETC designations from the FCC, and do not have to be designated by the states to receive federal funding. The FCC creates a streamlined process for LBPs. The FCC also modifies some of the advertising requirements for Lifeline service for certain Lifeline service providers.⁴ For mobile LBPs, the FCC establishes requirements to provide certain percentages of Wi-Fi and hotspot-enabled devices.⁵ The FCC sets an annual budget of \$2.25 billion for Lifeline service.⁶

5. Administration of the Lifeline program is also modified in the *Lifeline Modernization Order*. The FCC implements measures to determine the effectiveness of the federal Lifeline program and reforms the non-usage rules for mobile Lifeline service. Instead of annual recertification by a fixed date, the FCC institutes rolling recertification deadlines based on the subscriber’s enrollment date as of 2017. For broadband Lifeline subscribers, they will not be able to switch providers for a 12-month period, while voice Lifeline subscribers cannot switch providers for 60 days. There may also be a national eligibility form, instead of the numerous eligibility forms that now exist.⁷

6. The FCC rules become effective on varying dates, depending on whether they need Office of Management and Budget (“OMB”) approval. Most of the rules become effective on the later of December 1, 2016 or OMB Paperwork Reduction Act approval.

Lifeline Modernization Order Changes that Affect the DC USTF

Services to be Supported by Federal Lifeline Funding – Broadband and Voice

7. The FCC determined that broadband Internet access service (“BIAS”) should now be supported by federal Lifeline funding. BIAS is defined by the FCC as:

“a mass market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.”⁸

⁴ *Lifeline Modernization Order*, ¶ 8.

⁵ *Lifeline Modernization Order*, ¶ 9.

⁶ *Lifeline Modernization Order*, ¶ 10.

⁷ *Lifeline Modernization Order*, ¶ 11.

⁸ *Lifeline Modernization Order*, ¶ 30.

BIAS can be offered either as a stand-alone service or in conjunction with voice service to qualify for Lifeline support.⁹ BIAS can be provided by either mobile telecommunications service providers or by fixed wireline service providers.

8. While BIAS can be offered as a stand-alone or bundled option, the FCC determined that federal Lifeline service should no longer support stand-alone voice services in the future. This support will be phased out over five and one-half years.¹⁰ Prior to December 1, 2019, Lifeline support for voice-only service will remain at the current rate of \$9.25 per line per month. On December 1, 2019, the support will decline to \$7.25 per line per month, while on December 1, 2020, the support will decline to \$5.25 per line per month. On December 1, 2021, all support for voice-only Lifeline service will cease.¹¹

9. This change in support will affect funding for Verizon Washington, DC Inc.'s ("Verizon DC") Economy II service, the only Lifeline service that the Commission oversees. Until December 1, 2019, the level of federal financial support for Economy II service will remain unchanged, but after that date the federal financial support will decrease until it finally ceases. The Commission seeks input from Verizon DC on its plans for addressing the decrease and cessation of federal financial support for Lifeline voice-only service. If Verizon DC chooses not to seek designation to provide BIAS service, then how does Verizon DC intend to address the decrease and elimination of federal Lifeline service financial support beginning in 2019? Will Verizon DC seek to increase Economy II service rates for Lifeline service customers, or will Verizon DC seek increased funding from the DC USTF? Is there another option that Verizon DC seeks to pursue?

10. The Commission also seeks input regarding whether any entity, including Verizon DC and any other telecommunications service provider, is going to seek FCC designation to provide BIAS in the District of Columbia. If so, then will the BIAS service offered be a stand-alone service or a BIAS service combined with voice service? When will the entity be applying for the LBP ETC designation from the FCC?

State Universal Service Programs

11. The FCC asserts that the *Lifeline Modernization Order* should not be read to preclude or limit state Lifeline service programs. The FCC permits and indeed encourages states to create and implement their own broadband adoption programs for low income residents.¹² The Commission seeks input about whether the DC USTF should be expanded to include funding for broadband services. Comments on this issue should address:

- a. The legality of providing broadband services through the DC USTF;

⁹ *Lifeline Modernization Order*, ¶ 30.

¹⁰ *Lifeline Modernization Order*, ¶ 48.

¹¹ *Lifeline Modernization Order*, ¶ 64, 117.

¹² *Lifeline Modernization Order*, ¶ 257, n. 689.

- b. Whether broadband service support through the DC USTF is necessary;
- c. The type of broadband service that should be supported by the DC USTF;
- d. The cost of providing broadband service support through the DC USTF; and
- e. Administrative issues regarding broadband service support by the DC USTF.

Effect of *Lifeline Modernization Order* on Existing ETCs

12. The *Lifeline Modernization Order* contains specific rules for existing ETCs. For those ETCs designated as “Lifeline-only” ETCs (as opposed to those that receive high cost support), they can choose whether to offer BIAS as well as voice service. However, if a Lifeline-only ETC chooses not to offer BIAS, then it must inform the FCC about this decision.¹³ For ETCs that receive both Lifeline and high cost support, the same rules apply but with additional rules for the provision of BIAS in high cost areas.¹⁴

13. The District of Columbia has no high cost areas for federal universal service financial support. Thus, Verizon DC is in effect a “Lifeline-only” service provider. The Commission seeks input from Verizon DC on whether it will choose to offer BIAS service or whether it will remain a voice-only Lifeline service provider.

Advertising by ETCs

14. Currently, ETCs providing Lifeline service must advertise the availability of Lifeline service using “media of general distribution.”¹⁵ The FCC clarifies this term to mean “media reasonably calculated to reach the general public.”¹⁶ For LBP, the FCC clarifies that this term also refers to specific media that is targeted to the demographic for a particular service offering. The Commission seeks input from Verizon DC on whether it plans to change its advertising based on these changes in the *Lifeline Modernization Order*.

15. All persons interested in commenting on these issues or any other effects of the *Lifeline Modernization Order* on the DC USTF or the provision of Lifeline service in the District of Columbia are invited to submit written comments and reply comments no later than 30 and 45 days, respectively, after the publication of this Notice of Inquiry in the D.C. Register. Written comments should be filed with: Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 or at the Commission’s website at <http://www.dcpsc.org>.

¹³ *Lifeline Modernization Order*, ¶ 299-301.

¹⁴ *Lifeline Modernization Order*, ¶ 309-311.

¹⁵ *Lifeline Modernization Order*, ¶ 363, citing 47 U.S.C. § 214 (e)(1)(B).

¹⁶ *Lifeline Modernization Order*, ¶ 364.

RICHARD WRIGHT PUBLIC CHARTER SCHOOL**INVITATION FOR BID****Food Service Management Services**

Richard Wright PCS is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2016-2017 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on September 2, 2016 from Alisha Robert on 202.388.1011 ext. 123 or aroberts@richardwrightpcs.org

Proposals will be accepted at 770 M Street SE Washington DC 20003 on September 26, 2016 not later than 3:00pm.

All bids not addressing all areas as outlined in the IFB will not be considered.

WASHINGTON LATIN PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

Issued: September 2, 2016

The Washington Latin Public Charter School solicits expressions of interest in the form of proposals with references from qualified vendors for Educational Travel Services. We specifically seek a vendor to arrange an educational trip to Morocco in the spring of 2017. Questions and proposals may be e-mailed directly to aporcelli@latinpcs.org and gizurieta@latinpcs.org with the subject line Educational Travel Services.

Deadline for submissions is **12pm (noon) September 9, 2016**. No phone calls please. E-mail is the preferred method for responding but you can also mail (must arrive by deadline) proposals and supporting documents to the following address:

Washington Latin Public Charter School
Attn: Finance Office
5200 2nd Street NW
Washington, DC 20011

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Sewerage Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Sewerage Services Committee will be holding a meeting on Thursday, September 15, 2016 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

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| 1. Call to Order | Committee Chairperson |
| 2. AWTP Status Updates
BPAWTP Performance | Assistant General Manager,
Plant Operations |
| 3. Status Updates | Chief Engineer |
| 4. Project Status Updates | Director, Engineering &
Technical Services |
| 5. Action Items
- Joint Use
- Non-Joint Use | Chief Engineer |
| 6. Emerging Items/Other Business | |
| 7. Executive Session | |
| 8. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

**Joint Environmental Quality and Sewerage Services Committee and
Water Quality and Water Services Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Sewerage Services Committee and Water Quality and Water Services Committee will be holding a joint meeting on Thursday, September 15, 2016 at 10:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to the DC Water’s website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

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|----------------------------|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Asset Management Update | Chief Engineer |
| 3. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Tuesday, September 27, 2016 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com.

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

- | | |
|---|------------------------------|
| 1. Call to Order | Chairman |
| 2. July & August 2016 Financial Report | Director of Finance & Budget |
| 3. Agenda for October Committee Meeting | Chairman |
| 4. Adjournment | Chairman |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Governance Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Wednesday, September 14, 2016 at 9:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | | |
|----|---|---------------------------------|
| 1. | Call to Order | Chairperson |
| 2. | Government Affairs: Update | Government Relations
Manager |
| 3. | Update on the Compliance Monitoring Program | TBD |
| 4. | Update on the Workforce Development Program | Contract Compliance Officer |
| 5. | Emerging Issues | Chairperson |
| 6. | Agenda for Upcoming Committee Meeting (TBD) | Chairperson |
| 7. | Executive Session | |
| 8. | Adjournment | Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, September 14, 2016 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dcwater.com.

DRAFT AGENDA

- 1. Call to Order Committee Chairperson
- 2. Other Business
- 3. Executive Session Committee Chairperson
- 4. Adjournment Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

**Retail Water & Sewer Rates Committee and
Finance and Budget Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) DC Retail Water & Sewer Rates Committee and the Finance and Budget Committee will be holding a joint meeting on Tuesday, September 27, 2016 at 10:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to the DC Water’s website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

- | | |
|--------------------------------------|-------------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Briefing on IAC for CAP Customers | Chief Financial Officer |
| 3. Other Business | Chief Financial Officer |
| 4. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Water Quality and Water Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Water Quality and Water Services Committee will be holding a meeting on Thursday, September 15, 2016 at 11 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- 1. **Call to Order** Committee Chairperson
- 2. **Water Quality Monitoring** Assistant General Manager, Consumer Ser.
- 3. **Action Items** Assistant General Manager, Consumer Ser.
- 4. **Emerging Issues/Other Business** Assistant General Manager, Consumer Ser
- 5. **Executive Session**
- 6. **Adjournment** Committee Chairperson

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

Appeal No. 18991 of John Stokes, pursuant to 11 DCMR §§ 3100 and 3101, from a decision of the Zoning Administrator (“ZA”), Department of Consumer and Regulatory Affairs (“DCRA”), made December 31, 2014, to issue Building Permit B1503050 (“the permit”), allowing an addition to a one-family dwelling located at 1521 Varnum Street, N.W., and the conversion of the dwelling to a seven-unit apartment building in the R-4 District (Square 2698, Lot 817).

HEARING DATES: May 5, 2015, June 30, 2015, and September 15, 2015
DECISION DATE: September 29, 2015

ORDER DENYING APPEAL

This appeal was submitted to the Board of Zoning Adjustment (“Board”) by John Stokes. Mr. Stokes (the “Appellant”) challenged the decision of the ZA to approve an addition to an existing one-family dwelling in the R-4 zone, thereby allowing the conversion of the dwelling to a seven-unit apartment house. The Appellant claims that the permit was unlawful for several reasons, the primary one being that the ZA erred in his determination to allow a minor deviation from the lot area requirements under § 407.1 of the Zoning Regulations. Following a public hearing during which the Board considered all of the grounds alleged by the Appellant, the Board voted to deny the appeal.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on May 5, 2015. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, to Advisory Neighborhood Commission (“ANC”) 4C, to DCRA, and to the owner of the subject property, Varnum Holdings LLC (the “Owner”).

Parties

Appellant

The Appellant in this case is John Stokes. Mr. Stokes resides at 1519 Varnum Street, N.W., adjacent to the subject property.

DCRA

The Appellee, DCRA, is the agency of the government of the District of Columbia that is authorized, among other things, to issue building permits. DCRA was represented by its Office

of the General Counsel, Maximilian Tondro, Esq. The Zoning Division of DCRA is headed by the Zoning Administrator (“ZA”), Matthew LeGrant, and is charged with administering the Zoning Regulations. Mr. LeGrant testified at the public hearing on behalf of DCRA.

Property Owner

As the owner of the subject property, Varnum Holdings LLC is automatically a party under 11 DCMR § 3199.1, and will hereafter be referred to as the Owner. The Owner was represented by Sullivan & Barros, LLP, Martin B. Sullivan, Esq.

The Affected ANC

ANC 4C, as the affected ANC, was automatically a party to the appeal by virtue of 11 DCMR § 3199.1(a).

ANC Report

The ANC submitted two reports in this matter. In a resolution dated March 11, 2015, issued after a regularly scheduled monthly meeting with a quorum present, the ANC voted to support the appeal. (Exhibit 18.) In a separate motion, the ANC authorized Mr. John Stokes to present the ANC report before the Board, and to have Mr. Stokes represent the ANC before the Board. (Exhibit 18.) In its initial report, the ANC alleged that the permit unlawfully allowed violations of the Zoning Regulations regarding height and density, rear and side yard requirements, overcrowding, parking lot requirements, and roof structure requirements. (Exhibit 18.) In a later submission, dated August 12, 2015, after a regularly scheduled monthly meeting with a quorum present, the ANC voted to submit a “Letter of Support” further detailing its support of the appeal (Exhibits 71 and 72.) Among other things, the ANC stated in its report that the ZA erred in approving the permit because: (1) The proposal was not a “conversion” of one building, but a proposal to construct two separate buildings; and, (2) When exercising its discretion to allow a minor deviation of the lot area requirements, the ZA failed to take into account the preamble language pertaining to the R-4 Regulations, such as the fact that “apartment houses are specifically discouraged” in the R-4 District. Ms. Elisa Irwin, the Commissioner for Single Member District ANC 4C03, testified on behalf of the ANC at the public hearing on the appeal.

Requests to Participate as a Party

Several neighbors filed Requests for Party Status and/or Requests to Intervene in support of the Appeal. (See Exhibits 55, 56, 58, 66, 67, and 73, filed during the period of time between August 30 and September 1, 2015.) The Board treated these requests as requests to participate as a party under § 3106.2. Subsection 3106.2 requires that such requests be filed not less than 14 days prior to the date set for the hearing. Because the hearing was initially set for May 5, 2015, all of the requests to participate as a party were untimely, and were therefore denied. However, the Board afforded the neighbors an opportunity to testify in support of the appeal.

Persons in Support of the Appeal

The Board also received written submissions from neighboring property owners in support of the appeal. (See, for example, Exhibits 19, 27, and 34-39.)

Motions and Continuances

The May 5, 2015 hearing date. As stated, the public hearing was first scheduled for May 5, 2015, and the Board heard testimony from the Appellant and Henrik Weng (a neighbor in support of the appeal) on that date. However, the Board also noted the lack of specificity in the Appellant's pleading (the Statement on Appeal), and in Appellant's testimony. Following extended colloquy between the Board and the Appellant, the Appellant requested a continuance. The Board continued the hearing to June 30, 2015 to allow Appellant to file a revised appeal that contained more particularized claims. The Board also allowed responses to Appellant's filing from DCRA and the Owner, and a reply by the Appellant to said responses. The Board set a timetable for all filings.

The June 30, 2015 hearing date. The Appellant filed a revised Statement of Appeal (Exhibit 42) in accordance with the Board's directive. DCRA and the Owner filed late responses to the revised Statement, and requested that the Board accept the late responses, claiming there had been a good faith misunderstanding of the due date that was set by the Board on May 5. The Appellant requested a second continuance, partly so he could "reply" to the late responses from the Owner and DCRA, and partly so he could retain an architect to review plans and elevations that had been provided by DCRA. The Board granted the requests by DCRA and the Owner to accept their late filings. The Board also granted the Appellant's second request for a continuance, and scheduled a continued hearing for September 15, 2016.

The September 15, 2015 hearing date. Prior to the September 15 hearing date, the Board received a third request for a continuance from the Appellant (Exhibit 57), and responses in opposition to this request from DCRA and the Owner (Exhibits 62 and 64.) The Appellant withdrew the continuance request. As discussed previously, the Board also received and ruled on the Requests for Party Status from various neighbors. During the September 15 hearing, the Board focused on the merits of the appeal. The Board heard further testimony from the Appellant, and also heard testimony from DCRA, the Owner, a representative of ANC 4C, and four neighbors who testified in support of the appeal.

Scope of the Hearing

The Board requested clarification from the Appellant regarding the alleged violations of the Zoning Regulations. Based upon the testimony of the Appellant and his revised Statement on Appeal, the Board clarified that this appeal was based upon alleged violations of the following Zoning Regulations:

- §2500 Impermissible second building,
- §407 ZA flexibility rule,
- §101 Purpose of the Zoning Regulations,

BZA APPEAL NO. 18991

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- §330 Purpose of the R-4 zone district,
- §199 Definitions of the terms “basement” and “cellar,”
- §403 Lot occupancy requirements,
- §402 FAR (floor area ratio) requirements,
- §404 Rear yard requirements,
- §405 Side yard requirements, and
- §411 Rooftop structure requirement.

The ANC representative testified that the ANC’s claims of alleged violations were the same as those raised by the Appellant. (Hearing Transcript (“Tr.”), September 15, 2015, p.149-152.)

Closing of the Record

The Board closed the record at the end of the public hearing on September 15, 2015 and set the case for decision on September 29, 2015.

FINDINGS OF FACT

The Property

1. The subject property is located at 152 Varnum Street, N.W. (Square 2698, Lot 817) in the R-4 zone district.
2. The property is currently improved with a one-family dwelling that was constructed prior to May 12, 1958.
3. The property has a land area of 6,279 square feet.

The Proposed Project

Proposed Conversion to Apartment House

4. Prior to June 26, 2015, it was permissible to convert a pre-1958 structure into an apartment house, provided the lot occupancy requirements were met under § 403, and provided there was at least 900 square feet of land area for each apartment unit (11 DCMR § 330.5(e).)¹
5. The Owner proposed converting the structure to a seven unit apartment house, a proposal that required 6,300 square feet of land area under § 330.5(e).

¹ As was discussed during the proceedings, § 330.5 has since been amended and such conversions became more restrictive, and § 407.1 was also amended to disallow the ZA from applying its minor deviations when determining the minimum lot area needed for such conversions (Z.C. Order No. 14-11.) However, the amended regulation went into effect on June 26, 2015, after the permit in this case was issued. Therefore, the amended regulation is not relevant to this appeal.

6. The property was approximately 21 square feet short of the minimum required amount of land area, or 0.33% short of the minimum required amount.

ZA Flexibility

7. Subsection 407.1 of the Zoning Regulations allows minor flexibility to the ZA to permit a deviation from the lot area requirements, subject to specified criteria, where the deviation does not exceed two percent of the minimum area requirements.
8. On August 11, 2014, the ZA issued a Determination Letter which granted minor flexibility pursuant to § 407.1 for the lot area deviation to allow the proposal for a matter-of-right addition and conversion to a seven-unit apartment house. (Exhibit 24.)
9. The Determination Letter noted that the deviation from § 401.3 is the only deviation required, and that the requested deviation of 0.33% (a third of one-percent) satisfied the “quantitative” requirement of § 407.1(a).
10. The Determination Letter concluded that the deviation would also satisfy the “qualitative” requirements of § 407.1(b) because it would not “impair the purpose of the otherwise applicable regulations”.
11. The Determination Letter noted that the degree of deviation requested is only one-third of one percent, which will have no apparent impact on adjacent properties. The Determination Letter noted the purpose of the R-4 District is to stabilize remaining one-family dwellings, but also noted the uniquely large size of this property compared to surrounding properties and the fact the conversion to an apartment house was already permitted as a matter-of-right. The Determination Letter noted that granting the deviation would allow seven units at market size for an apartment house in the District, rather than six slightly larger units. Despite the additional unit, the ZA noted that the lot occupancy, height, density, and other aspects of the property would not be increased as a result of the requested deviation. (Exhibit 24.)

Building Permit Application and Plans

12. On August 18, 2014, shortly after the Determination Letter was issued, the Owner submitted proposed plans for the project, and applied for a building permit for the proposed conversion.
13. The application was for an addition to an existing building, where three of the four structural walls would be retained and an addition would be built to the rear of the existing building. (Exhibit 45.)
14. The approved plans depict one proposed building which shares the same stairwell, walls, and roof. (Exhibit 43A, at 10-13 (Sheets A202-205).)

15. The approved plans specify a total height of 39 feet and 11 inches, as measured from the existing grade at the midpoint of the main façade of the proposed building closest to the street line, up to the highest part of the roof. (Exhibit 22, Sheet A204, "Building Elevations", #1 Front Elevation.)
16. The approved plans specify three stories and a cellar. The height of the cellar is three feet and seven inches above the adjacent finished grade. The adjacent finished grade was measured from the existing grade at the midpoint of the main façade of the building (Exhibit 22, Sheet A204, "Building Elevations", #1 Front Elevations.)
17. The approved plans depict the proposed lot occupancy, including façade balconies, at 50%. (Exhibit 22, Sheet A000, "Cover Sheet" and Sheet A001, "Existing and New Work Site Plans".)
18. The approved plans show one side yard of 16 feet.
19. The approved plans provide for a rear yard of approximately 21½ feet. (Exhibit 22, Sheet A001, "Existing and New Work Site Plans".)
20. The approved plans show that the proposed air conditioning units on the rooftop rise three feet above the rooftop deck. (Exhibit 43A, Sheet A205.) Other rooftop mechanical equipment - aside from the air conditioning units - is located inside of an enclosure.

The Building Permit

21. On December 23, 2014, DCRA issued Building Permit No. B1411058 (Exhibit 81), which authorized the conversion of a one-family dwelling into two flats.
22. On December 31, 2014, DCRA issued a revised permit, Building Permit No. B1503050, which corrected the work description of the earlier permit to reflect the conversion of a one-family dwelling into a multi-family dwelling.
23. At the time of the public hearing, construction had not begun. However, DCRA had issued two stop work orders: one for a stairway penthouse setback deficiency, and the other for a failure to include all applicable plans with a neighbor notification form.
24. According to DCRA and the Owner, both of these deficiencies were corrected, and the stop work orders were lifted.
25. On June 25, 2015, DCRA issued Building Permit No. B1506170 to reflect these corrections.

The Appeal

26. This appeal was filed on February 27, 2015.

27. One side of the building to be converted shares and will continue to share an existing party wall with Appellant's residence. (Exhibit 30, Written Testimony of Appellant.)

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(1) (2008 Repl.), to hear and decide appeals where it is alleged that there is error in any decision made by an administrative officer in the administration of the Zoning Regulations. The decision in this case is DCRA's issuance of the building permit. The alleged zoning errors were the ZA's determinations that: the proposal was for a conversion of one building and not the construction of two separate buildings; the height/story requirements were met; there was no violation of the FAR requirements; the minimum rear yard requirements were met; the side yard requirements were met; the rooftop structure requirements were met; and the requested minor deviation for lot area requirements could be granted. As will be explained below, the Board concludes that, the ZA did not err in any of the above determinations. The following will examine each claim of error.

The Claim of Two Separate Buildings

The Appellant's position is that the proposal includes an impermissible second building at the property in violation of § 2500 of the Zoning Regulations.² Appellant alleges that "over 90% of the original house ... will be removed" and "there will be two buildings, the first of which will consist of four apartments The second building will have three apartments on three floors...". (Exhibit 42, Appellant's Revised Statement on Appeal.) Appellant is incorrect. As indicated in the approved plans, there is only one proposed building at the property, and this building shares the same stairwell, walls, and roof. (Finding of Fact 14.)

The Zoning Regulations define a building as not "separated [i.e., connected] from the ground up or from the lowest floor up." (11 DCMR §199.1, "Building".) The Board has held that

The definition of "building" under §199.1 permit separate portions of a structure to be considered as a single building for zoning purposes provided that a communication exists between those separate portions at or above the main floor. (BZA Application No. 18263-B of Stephanie and John Lester (2011).)

As the approved plans demonstrate, this definition has been met and a single building was approved.

² The citation to § 2500 assumes that the second of the two alleged buildings is an accessory building that exceeds the matter of right limits of that section. The section of the Zoning Regulation that limits the number of principal building on a lot in a residence zone is § 2516, which permits more than one principal building by special exception.

The Claim Regarding the Minor Deviation for Lot Area Requirements

Subsection 407.1 of the Zoning Regulations authorizes the ZA to allow a minor deviation from up to two area requirements, including a deviation up to two percent from the lot area requirements of § 401.

In *Appeal No. 18108 of Advisory Neighborhood Commission 3C* (2011), the Board stated that the application of § 407.1 requires a two-part standard: not merely a quantitative or numerical exercise to calculate a permitted deviation, but also a qualitative analysis regarding whether a deviation would impair the purpose of the otherwise applicable regulations. In this case, the ZA engaged in both a quantitative and qualitative analysis.

Quantitative Analysis

As explained previously, the Owner sought one minor deviation from the lot area requirements so that it could convert a structure to seven apartment units instead of six apartment units.³ Because the Zoning Regulations require a minimum lot area of 900 square feet for each apartment unit, a total of 6,300 square feet of land area was required for the project. The subject property consists of 6,279 square feet of land area, and is therefore 21 feet short of the minimum required amount, or 0.33%. The ZA's Determination Letter states that only one request for a deviation was made, and that this request was for only a 0.33% deviation from the lot area requirements. (Finding of Fact 9.)

Qualitative Analysis

The ZA also conducted a qualitative analysis and determined that the deviation would not impair the purpose of the otherwise applicable regulations. It is this portion of the analysis which the Appellant contests and it will be examined more closely.

As described in Findings of Fact 10 and 11, the ZA considered several qualitative factors in his analysis, for example: the extremely small amount of the deviation required, the uniquely large size of the lot, the fact that conversions to apartment houses were allowed as a matter-of-right, the relative consistency in character between a six-unit building and a seven-unit building, the fact that the seven-unit configuration provides fairly large living units (1,350 square feet) for an apartment in the District, and the fact that this decision does not allow for any increase in the overall density or bulk of the proposed project.

Appellant argues that a qualitative analysis should have included:

1. An analysis of § 101 of Title 11, particularly § 101.1 (b), which provides that in "their interpretation and application, the provisions of this title shall be held to be the minimum requirements ... to ... [p]revent undue concentration of population

³ As proposed, six of the units will comply with the 900 square feet minimum and the seventh unit will be 879 square feet.

and the overcrowding of land” and § 102.1 (b), which states that the “regulations in this title ... are designed with consideration of the... [c]haracter of the respective districts ... ; and

3. Further analysis of the purpose of the R-4 zone district (stating the R-4 zone is not an apartment house district, and the purpose of the R-4 is to stabilize the remaining one-family dwellings.)

As explained above, the ZA did consider the purpose of the R-4 zone, but also noted that conversions to apartment houses were allowed as a matter-of-right. With respect to § 101, the Board concluded in *Appeal 18108*, that § 101 is not pertinent because it contains statements about the nature of the Zoning Regulations in general. The Board believes that the ZA correctly identified the pertinent regulations and properly analyzed the impact of the deviation on their intended purposes.

In sum, the Board is not persuaded by the Appellant that an error occurred in the decision of the ZA, pursuant to § 407.1, to approve a minor deviation in the minimum lot area required so as to allow a seventh apartment unit.

The Claim of Excessive Height/Number of Stories

The Appellant also alleges that the proposed building violates the requirements of § 400 in that it exceeds the maximum allowable height (40 feet) and the maximum number of stories (three). This claim is incorrect.

Regarding the building height, the approved plans indicate that the total height of the building is 39 feet and 11 inches. (Finding of Fact 15.) This height is within the maximum height of 40 feet which is allowed in the R-4 zone district. (11 DCMR § 400.1.)⁴ Moreover, the ZA utilized the measuring process specified by §§ 400.15-400.17, by measuring the height from the existing grade at the midpoint of the main façade of the proposed building up to the highest part of the roof. (Finding of Fact 15.)

Regarding the number of stories, § 400.1 limits buildings in an R-4 zone district to three stories in height. The definition of “story” excludes cellars and stairways or other rooftop structures. (11 DCMR § 199.1.) The term “cellar” is defined as space with a ceiling less than four feet above the adjacent finished grade. The approved plans specify three stories and a cellar, and that the floor of the first floor is three feet and seven inches above the adjacent finished grade. (Finding of Fact 16.)

The Appellant disputes the measurements regarding the height and the number of stories, claiming that the building height and lower level cellar should be measured from the window well on the west wall. However, the ZA testified that it was longstanding practice to treat

⁴ The amendments referred to earlier in this Order also reduced matter of right height for this type of development to 35 feet, subject to up to five additional feet by special exception.

window wells as exceptions to grade, and that the correct practice was to measure from the adjacent grade. (Tr., September 15, 2015, p. 173.) The Board finds this interpretation to be reasonable. Moreover, under § 400.1, maximum height is measured in terms of feet and in terms of stories. In residential zones, the building height and number of stories are both measured from the center of the front of the building, not the side of the building, where the window wells are. (See, 11 DCMR §§ 400.15 and 400.16.)

The Claim of Excessive FAR

The Appellant has alleged that the permit approval violates § 402, which governs floor area ratio (“FAR”) requirements in residential districts. However, there is no FAR requirement in the R-4 zone district, where the subject property is located. (See, 11 DCMR § 402.4.) The FAR requirement is first prescribed in the R-5 zone district, where it is 0.9. (*Id.*) The Appellant acknowledges that no FAR requirement is prescribed in the R-4 zone. However, he asserts that the proposed building has a FAR of 1.5, an amount that exceeds the allowable FAR in the R-5 zone. As such, Appellant argues that the R-4 Zoning Regulations should not be interpreted to permit an amount of density that would be disallowed in the R-5 zone. Even assuming that the Appellant’s calculations are correct⁵, any anomaly between the densities permitted within more and less restrictive zone districts can only be rectified by the Zoning Commission through a text amendment, not by the ZA or this Board. (See, D.C. Official Code § 6-651.07(e) (“The Board ... shall not have the power to amend any regulation or map.”))

The Claim of an Insufficient Rear Yard

The Appellant alleges that the proposed building does not meet the requirements of § 404.1 which requires a minimum rear yard of 20 feet. However, the Board finds no evidence of this claim. The approved plans show a rear yard of approximately 21½ feet. (Finding of Fact 19.)

The Claim of Insufficient Side Yards

The Appellant claims that what he refers to as the second apartment building is proposed up to the lot line abutting his property. He also claims that under § 405 of the Regulations, a side yard is required on each free standing side of this purported second building. (Exhibit 42, p. 4.) However, as explained earlier, the Appellant erroneously treats the proposed rear addition as a second building. For zoning purposes, there is only one building. Subsection 405.6 of the Regulations states that if a side yard is provided, it must be a minimum of eight feet. In this case, there is one side yard provided that is 16 feet in width. (Finding of Fact 18.) Thus, the side yard requirement has been met.

Moreover, the Appellant’s reliance on § 405.3 is misplaced. Subsection 405.3 only applies to buildings that do “not share a common division wall” with another building. As the Appellant

⁵ The Appellant would count the lower level “basement” as building area toward the FAR. (Tr., September 15, 2015, p. 155.) As discussed above, the Board has concluded that the lower level is a “cellar”, which does not count as building area toward FAR. Thus, the Appellant’s FAR calculation of 1.5 may be inaccurate.

states, the building to be converted shares a party wall with the Appellant's residence. (Finding of Fact 26.)

The Rooftop Structure Claim

The Appellant contends that the presence of rooftop air conditioners on two separate locations violates § 411.3 of the Regulations, requiring that all mechanical equipment be housed in a single enclosure.⁶ However, the approved plans show air conditioning units on the rooftop that rise three feet above the rooftop deck. (Finding of Fact 20.) Under § 411.17, rooftop structures less than four feet above a roof are exempt from other requirements of § 411 governing roof structures. Thus, this claim also lacks merit.

ANC

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (D.C. Official Code §1-309.10(d) (1012 Repl.)) As noted, ANC 4C voted to support Mr. Stokes' appeal and participated fully in the proceedings before the Board. As also noted, the ANC raised the same issues and concerns that were raised by the Appellant in his appeal. Therefore, for the reasons explained above, the Board finds the ANC's advice not to be persuasive.

CONCLUSION

For reasons discussed above, it is hereby **ORDERED** that the appeal is **DENIED**.

VOTE: 3-1-1 (Lloyd J. Jordan, Jeffrey L. Hinkle, and Frederick L. Hill voting to DENY the appeal, affirming the Zoning Administrator; Anthony J. Hood opposed to the motion; Marnique Y. Heath, not participating.)

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

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

FINAL DATE OF ORDER: August 19, 2016

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.

⁶ As a result of an amendment to § 411 occurring after the issuance of the building permit, this exemption was moved to § 411.2 and reworded. Other claims regarding the rooftop structures were not pressed by Appellant because permit revisions occurred to correct discrepancies with respect to equal height and rooftop setbacks.

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

Application No. 19133 of St. Thomas' Episcopal Parish, pursuant to 11 DCMR § 3103.2, for variance relief from the lot occupancy requirements under § 532.1 to allow the construction of an addition to an existing church building to create a new church and multifamily residential building in the DC/SP-1 District at premises 1772 Church Street, N.W. (Square 156, Lot 369).

HEARING DATE: December 15, 2015
DECISION DATE: January 12, 2016

DECISION AND ORDER

This application was submitted by St. Thomas' Episcopal Parish (the "Applicant") on September 1, 2015. The application requested an area variance from the lot occupancy requirements under § 532.1 to allow the construction of an addition to build a church and a multifamily residential building where a small church structure and park now exist in the DC/SP-1 District at 1772 Church Street N.W. (Square 156, Lot 369) (the "Subject Property"). Following a public hearing, the Board voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 9, 2015, 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 2; Advisory Neighborhood Commission ("ANC") 2B, the ANC in which the subject property is located; and Single Member District/ANC 2B07. Pursuant to 11 DCMR § 3112.14, on September 10, 2015 the Office of Zoning mailed letters providing notice of the hearing to the Applicant's representatives, ANC 2B, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on October 2, 2015 (62 DCR 12978).

Party Status. The Applicant and ANC 2B were automatically parties in this proceeding. The Board granted two requests for party status in opposition to the application: one from Church Street Neighbors ("CSN"), an unincorporated membership association comprised of neighbors living in the near vicinity of the subject property, and one from the Dupont Circle Citizens Association ("DCCA"), which is the civic association of the Dupont Circle neighborhood.

OP Report. By memorandum dated December 8, 2015, OP recommended approval of the zoning relief requested by the Applicant finding that all three elements of the variance test were met. (Exhibit 33.) OP concluded that the property was subject to exceptional conditions as a result of the Parish Hall being a contributing building in the historic district and the church's 120-year

history at its present location. OP concluded that these exceptional conditions would result in a practical difficulty for the Applicant to comply strictly with the lot occupancy requirements. OP noted that it “would be practically difficult to create a historically compatible design that could accommodate all necessary first floor functions for the Church (including the sanctuary and communal worship spaces) while conforming to the lot occupancy limit.” OP also stated that the new church and residential program would need to be in one building to allow the Church to remain on-site, but due to the Parish Hall, it would be difficult to reduce the lot occupancy on the lower floors. Further, OP concluded the Historic Preservation Review Board’s condition that the streetwall must be consistent with other buildings on Church and 18th Streets, would leave only the rear (south) of the Project for potential reduction in lot occupancy, but reducing lot occupancy in this location would create practical difficulties because of the necessity of accommodating certain first floor functions in the new residential construction. As to the third prong of the variance test, OP concluded that granting the relief would not result in a substantial detriment to the public good because the building would only exceed the permitted lot occupancy on the lower floors, and would have a proposed FAR less than would be permitted as a matter of right. OP also noted that the design includes multiple setbacks to minimize the appearance of the building as it rises above the Parish Hall and approaches the lower density rowhouses to the east, and the two-story addition atop the main block of the Parish Hall has been designed with setbacks to ensure that they would not be visible from street view. Finally, OP found that granting the relief would not substantially impair the intent, purpose, and integrity of the zone plan, because the “Project’s restrained scale and setbacks from the residential areas should ensure that the Project would be an effective buffer and serve as a transition between the adjoining commercial and residential areas.” (Exhibit 33.)

On January 5, 2016, OP submitted a supplemental report that responded to the Board’s request that OP obtain the advice of the Zoning Administrator to explain why the three-foot setback from the property line that is part of a larger setback area is defined as a court and not a rear yard and to clarify whether the area would continue to be defined as a court if the three-foot-wide area were removed. Based upon the applicable definitions, OP explained why the Zoning Administrator considered the three-foot area to be a court and why its removal would not affect the remaining setback from being considered a court. (Exhibit 149.)

DDOT. By memorandum dated December 8, 2015, DDOT indicated no objection to approval of the application. However, DDOT did indicate that the Applicant is expected to continue to work with DDOT on public space issues, as well as the location of short-term bicycle parking. (Exhibit 34.)

ANC Report. By letter dated December 10, 2015, ANC 2B indicated that, at a properly noticed public meeting on December 9, 2015 with a quorum present, the ANC voted 6-2-0 to oppose the application. (Exhibit 72.) The ANC noted that the Applicant’s property “is located in the Dupont Circle Historic District, and as such has protections to ensure that alterations of existing structures are compatible with the character of the historic district, and to ensure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district.” The ANC noted that this “may result in a development being unable to maximize the height and density otherwise allowed by the underlying zoning regulations.” However, the ANC did not believe that maintaining historic conditions in an historic district is a

practical difficulty that would necessitate a lot occupancy variance and the applicant understood the underlying historic district and zoning overlays before designing the project.” Further, “from a neighborhood perspective the ANC does not believe that the decisions of the Historic Preservation Review Board necessitate a zoning variance.” The ANC also expressed its disagreement with the Applicant that the only location to remove the building’s footprint is at the rear (south) along the alley, and requested that the Applicant work with the Historic Preservation Office staff to set the building back 6.7% from 18th Street. The ANC further indicated that it worked with community, developers, and the Church to develop a Memorandum of Understanding which would address quality of life issues, but was unable to reach consensus and finalize a document. Finally, the ANC noted that the majority of residents who have contacted ANC 2B about the project have expressed opposition to the requested variance expressing concerns, among other things, about the increased traffic and adverse effects on parking, airflow, and light in the neighborhood that would result.

FINDINGS OF FACT

The Subject Property

1. The Subject Property is located on the south side of Church Street, N.W., near its intersection with 18th Street N.W. (Square 156, Lot 369). Square 156 is generally rectangular, defined by Church Street on the north, 18th Street on the west, P Street on the south, and 17th Street on the east.
2. Lot 369 is rectangular in shape and contains approximately 15,612 square feet of land area. It is bounded to the north by Church Street, to the south by a 12-foot public alley, to the east by a three-story dwelling, and to the west by 18th Street. The lot measures 95 feet by 165 feet.
3. The Subject Property is zoned SP-1 and is also included in the Dupont Circle Overlay District (“DC Overlay”). Surrounding properties to the north, south, and west are also located in the SP-1 Zone District. Other properties in Square 156 to the east are located in the R-5-B Zone District.
4. The surrounding area contains a mix of office buildings, chanceries, apartment buildings (moderate to high density), and row dwellings and flats. The heights and densities of the nearby buildings vary greatly. Immediately to the north are institutional offices and high density apartment buildings. Along Church Street further to the east are row dwellings and flats, and Church Street is bookended at 17th Street by large apartment buildings. Directly west across 18th Street are chanceries and other institutional and/or office uses. One block further west toward Dupont Circle are more institutional and retail uses and a high density office building.
5. The Subject Property is located in the Dupont Circle Historic District.
6. The Subject Property is improved with the Parish Hall of St. Thomas’ Episcopal Parish, which is located at the far eastern end of the Property. The front (north) façade of the Parish

Hall is set back approximately three feet from the Church Street property line. (Exhibits 6F and 139.)

7. The Property was formerly improved with the main church building of St. Thomas' Episcopal Parish, but that structure was lost to a fire in 1970. On the western side of the Property, where much of the former church building once stood, there is a private park that the Applicant has allowed the public to use.

The Applicant's Project

8. The Applicant will construct an addition to the existing Parish Hall to create a new mixed-use church and multifamily residential building (the "Project"). The church and the residential components will function largely independently, but the Project will be one building for zoning purposes. The Project will include three distinct elements: the new church, the new residential structure, and the Parish Hall, which will be incorporated into the residential structure. A shared underground parking garage, accessed via a ramp off the alley to the south, will service the entire Project. (Exhibits 6A, 6F, and 139.)
9. The new church element, located at the western end of the Property along 18th Street, will contain a sanctuary, church function rooms, classrooms, church offices, and community meeting and gathering space. The first floor of the church building will contain a large entry lobby that will also function as a ruins gallery to display the remnants of the original church. It will also include a reception area, a conference room, and offices. The second floor of the church element will contain the main sanctuary and all of the associated rooms and function spaces – such as the vestibule, cry room, and chapel – that must be contained within one floor. The third and fourth floors will contain classrooms and meeting space. (Exhibits 6A, 6F, and 139.)
10. The new residential element will be on the eastern side of the Property and will incorporate and preserve the Parish Hall. The residential building will have two components: the Parish Hall with an addition above it, and the addition to the west of the Parish Hall and east of the new church element. The residential element will incorporate multiple setbacks above the fourth floor of the addition west of the Parish Hall and above the third floor of the Parish Hall to minimize the Project's appearance of height and density in response to historic preservation concerns and guidelines as articulated by the Historic Preservation Review Board. The residential element will contain approximately 56 units. (Exhibits 6A, 6F, and 139.)
11. The Applicant will expand the alley to the south onto the Property at the ground level. The Applicant will devote three to six feet of width to the alley, through an easement, to effectively widen the alley to 15-18 feet for the length of the Property. (Tr. of December 15, 2015, p 117.)
12. The Project will have a maximum height of 70 feet (no penthouse) and a FAR of 4.22. Except for lot occupancy, the Project will comply with the Zoning Regulations (11 DCMR). The Applicant requested relief from the lot occupancy requirements as set forth below. (Exhibits 6A, 6F, and 139.)

Zoning Relief

13. In the SP-1 Zone District, the Zoning Regulations permit a maximum lot occupancy of 80% for a building with residential use. The lot occupancy of the Project will exceed 80% on residential floors 1 – 4, with a maximum lot occupancy of 86.7% on the first floor. However, to accommodate setbacks, residential floors 5 – 7 will have conforming lot occupancies decreasing from 77.6% to 50.3% as the Project increases in height. The Applicant requested a variance from § 532.1 to accommodate the nonconforming lot occupancy on residential floors 1 – 4. (Exhibits 3 and 6A.)

Exceptional Condition

14. Since the loss of the main church, the church has been operating out of the Parish Hall. The church has used the Parish Hall for religious, social, and community functions.
15. The Church has a 120-year history of its presence and activity on the Property, including loss of its former sanctuary to fire, which compels it to rebuild a new church building on the Property.
16. The Applicant requires approximately 5,000 square feet to accommodate the sanctuary (170 seats), vestibule, cry room, and chapel on the same floor in the new church element. The church requires this amount of single floor space to allow sufficient area for its congregation, including room for growth, to participate in religious services. Without this amount of single-floor area, the church would not be able conduct its religious exercises in the manner it sees fit, adequately provide community services, and perform functions consistent with its mission. The single-floor area necessary to accommodate all of the second floor functions in the church will have a lot occupancy of 32.2%.
17. The Parish Hall is a contributing building to the historic district. Consequently, it cannot be altered unless the Mayor or her agent finds that the issuance of an alteration permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner. (D.C. Official Code § 6-1104 (f).)
18. The Historic Landmark and Historic District Protection Act (“the Act”) defines “necessary in the public interest” to mean consistent with the purposes of the Act or necessary to allow the construction of a project of special merit. (D.C. Code § 6-1108(b).) The Applicant is not claiming economic hardship or that this is a project of special merit. Therefore, the Applicant must demonstrate that the proposed alteration of the Parish Hall and the proposed new construction is inconsistent with the applicable purposes of the Historic District and the Act.
19. With respect to properties in historic districts, those applicable principles are:
 - (A) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;
 - (B) To assure that alterations of existing structures are compatible with the character of the historic district; and

- (C) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district. (D.C. Official Code § 6-1101(b)(1).)
20. Pursuant to § 9(b) of the Act (D.C. Official Code § 6-1108), the Applicant requested the Historic Preservation Review Board (“HPRB”) to conduct a conceptual review of the project for compliance with the provisions of the Act. The Project received concept approval from HPRB on July 23, 2015. (Exhibit 6A.)
21. Consistent with the Act’s purposes, the vast majority of the Parish Hall will be retained for the Project.¹ The portion of the Parish Hall that will be retained will have a lot occupancy of 19.2%. (Exhibits 6A, 6F, and 139.)

Practical difficulty

22. The first floor of the new construction for the residential element, between the Parish Hall and the new church, needs to accommodate certain portions of the residential program. The residential lobby must be located in the new construction, as opposed to the Parish Hall, because the main core of the building (elevator, egress stairs, building mechanical risers, etc.) must fully stack and run from the garage up to the top level of the building. The addition above the Parish Hall does not extend fully to the top of the residential element. (Exhibits 6A, 6F, and 139.)
23. The taller massing of the Project is oriented toward the Church in the center of the site in order to accommodate historic concerns and to maintain the height setback from the Parish Hall. Since the Parish Hall portion of the Project does not extend up to the 7th Floor, it cannot contain the main building core. (Exhibits 6A, 6F, and 139.)
24. Based on the Project’s configuration and massing, the Applicant needs to accommodate the residential lobby, mailboxes, trash area, two egress stairs and their associated egress access paths and corridors, and other necessary ground floor functions in a single-floor space sufficiently large. (Exhibits 6A, 6F, and 139.)
25. The ground floor of the new construction for the residential element, between the church and the Parish Hall, must accommodate the area of the parking ramp, which will consume floor area otherwise available for residential functions. No more of the Parish Hall can be removed, and the parking level would be highly inefficient if entered through the Parish Hall (i.e., perpendicular to the alley). Locating the ramp in the Parish Hall would also fill the entire historic structure with the ramp, which would be contrary to preservation and rehabilitation of a contributing historic building. Because DDOT policies strongly favor parking access from the public alley, the only feasible location for the parking ramp is within the footprint of the new construction of the residential element adjacent to the alley. (Exhibits 6A, 6F, and 139.)
26. The parking ramp must occupy at least 950 square feet of the ground floor area dedicated to the new construction area of the residential element. This would leave insufficient floor

¹ Only a small portion of the rear of the Parish Hall will be removed.

- area for the other ground floor residential functions if the Project were to conform to the lot occupancy limit. It is not practical to accommodate the functions in such a small area. (Exhibits 6A, 6F, and 139.)
27. Because of historic constraints, it would not be practical to remove footprint from the new residential structure from the Church Street façade. Historic design principles generally dictate that building façades should maintain the building line consistent with the Parish Hall, which is what the proposed new structure would do. The Applicant would risk HPRB disapproval of a design that further recesses from the building line along Church Street established by the Parish Hall. Thus, the new residential structure must occupy more of the lot to the north to maintain holding the Church Street property line. (Exhibits 6A, 25, 25A, 33, and 139.)
 28. Similarly, because of historic design principles that favor constructing to or near the property line and single-floor space requirements that necessitate extending the church building as far west as possible, it would not be feasible to set back the church element from 18th Street or otherwise remove building footprint along 18th Street. (Exhibits 6A, 25, 25A, 33, and 139.)
 29. Reducing the Project's footprint at its rear (south) is the only location where it is theoretically possible for a conforming lot occupancy, but that would create design and functionality burdens. Further, such a reduction would not noticeably affect the height or massing as viewed from 18th and Church Streets. (Exhibits 6A, 25, 25A, and 139.)
 30. At the ground floor, reducing building footprint from the alley (south) side of the Project would severely disrupt the back-of-house functions in the residential element. If building footprint were removed, then the secondary egress points, which must open onto the alley, would have to be relocated. This would result in a reduction of the area available for the trash room, bike room, and rear elevator access to the loading platform, thereby rendering these spaces largely useless. (Exhibits 25, 25A, and 139.)
 31. Reducing the footprint of residential floors 2 – 6 from the alley side of the Project would leave the parking ramp uncovered and create highly inefficient residential units. An uncovered parking ramp would create multiple operational problems, such as an unsafe space for loiterers and a place where leaves, debris, snow, and trash could easily collect. In addition, removing floor area from the upper floors would compromise the south-facing residential units because they would be too small to accommodate all necessary functions, even if the core were shifted. (Exhibits 25, 25A, and 139.)
 32. In the garage, shifting the elevator core to accommodate a reduction in footprint from the alley side of the Project would create a narrow, non-compliant drive aisle that would eliminate multiple parking spaces, thereby necessitating a variance for parking. (Exhibits 25, 25A, and 139.)

The public good and the zone plan

33. The Project will allow for adequate light and air to nearby properties. The setbacks at the upper floors, which will result in significantly less lot occupancy at those floors and

- considerably less density overall, will reduce the Project's massing and bulk to allow the passage of ample light and air. (Exhibits 6A, 6F, and 139.)
34. The lot occupancy of the Project will be nearly identical to that of the combined Parish Hall and former church on the site (approximately 87.6%), so the Project will recreate a condition that was compatible with and characteristic of the Property and the neighborhood. (Exhibit 139.)
 35. The proposed height, density, and form of the Project are consistent with many other buildings in close proximity to the Property, including buildings on 17th, 18th, and P Streets; and Dupont Circle. (Exhibits 6D, 6F, 139.)
 36. The widening of the alley onto the Property will prevent traffic conflicts and crowding of the alley, but it will not reduce the Project's lot occupancy. (Exhibits 6A and 6F.)
 37. The Project's design features, including the upper floor setbacks, will reduce the appearance of mass and height, and will result in a redistribution of density at the lower floors. (Exhibits 6A, 6F, 139.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks an area variance from the lot occupancy requirements under § 532.1 to allow the construction of an addition to the existing Parish Hall for a new mixed-use multifamily residential and church building in the DC/SP-1 District at premises 1772 Church Street N.W. (Square 156, Lot 369). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (*See* 11 DCMR § 3103.2.)

Based on the findings of fact, the Board concludes that this application satisfies the requirements for variance relief in accordance with § 3103.2.

The Board concurs with the Office of Planning that the subject property "includes several characteristics which contribute to an exceptional situation." (Exhibit 33.) The property is improved with the existing Parish Hall which, as a contributing building to the historic district, may only be altered in a manner that retains its historic attributes and is compatible with its historic district. The design of the project therefore had to be compatible with the Parish Hall and the historic district. Also the church has a 120-year history at the present location and requires new and expanded facilities to accomplish its mission.

In fact, the contributing nature of the Parish Hall would in and of itself represent an exceptional condition. The District of Columbia Court of Appeals found that a landmark designation created an exceptional condition because it “reflects characteristics of exceptional design requiring special treatment in the planning of contiguous structures and additions.” *United Unions, Inc. v. D.C. Bd. of Zoning Adjustment*, 554 A.2d 313, 317 (D.C. 1989). The Parish Hall, though not a designated landmark, nevertheless possesses contributing features that also reflect an exceptional design that constrains the extent to which it may be altered and an addition added.

The Board finds that strict application of the lot occupancy regulations would result in a practical difficulty to the Applicant due to the exceptional condition affecting the Property.

Because of historic constraints, it would not be practical to remove footprint from the new residential structure from the Church Street façade. Historic design principles generally dictate that building façades should maintain the building line consistent with the Parish Hall, which is what the proposed new structure would do. The Applicant would risk HPRB disapproval of a design that further recesses from the building line along Church Street established by the Parish Hall. Thus, the new residential structure must occupy more of the lot to the north to maintain holding the Church Street property line.

As noted, the Applicant needs adequate space for its various services and functions. Given that the single floor area necessary to accommodate all of the second floor functions in the church will have a lot occupancy of 32.2%, and the Parish Hall, which cannot be demolished absent extraordinary circumstances, (*see* D.C. Code § 6-1104), occupies a significant portion of the lot, the subject property is subject to significant constraints as to what may be built and where.

Moreover, the ground floor of the new construction for the residential element, between the church and the Parish Hall, must accommodate the area of the parking ramp, which will consume floor area otherwise available for residential functions. The parking level would be highly inefficient if entered through the Parish Hall (i.e., perpendicular to the alley). Locating the ramp in the Parish Hall would also fill the entire historic structure with the ramp, which would be contrary to preservation and rehabilitation of a contributing historic building. Because DDOT policies strongly favor parking access from the public alley, the only feasible location for the parking ramp is within the footprint of the new construction of the residential element adjacent to the alley. The parking ramp must occupy at least 950 square feet of the ground floor area dedicated to the new construction area of the residential element. This would leave insufficient floor area for the other ground floor residential functions if the Project were to conform to the lot occupancy limit.

Further, strict application of the Zoning Regulations would result in an inefficient and substandard building design with operational difficulties. Several unique circumstances result in a practical difficulty for the Applicant. It would be practically difficult to create a historically compatible design that could accommodate all necessary first floor functions for the church (including the sanctuary and communal worship spaces) while conforming to the lot occupancy limit; the historic Parish Hall and the proposed residential program would make it difficult to reduce the Project’s lot occupancy on the lower floors. Variance relief would be needed for a realistic and practicable use of the Applicant’s property as a church and residential building. In

this case, the demonstrated inefficient and functionally challenged design of the Project that would result from compliance with the lot occupancy regulations would impose an unnecessary burden upon the Applicant. The Applicant sufficiently demonstrated that no reasonably feasible alternative for reducing lot occupancy exists; thus, the proposed design would result in a practical difficulty that is greater than the minor relief being sought. As a matter of law, the Applicant's demonstrated burdens constitute a practical difficulty that warrants variance relief.

The Board does not find that approval of the requested variance relief would cause substantial detriment to the public good or would substantially impair the intent, purpose, and integrity of the zone plan.

As noted by OP, "the building would only exceed the permitted lot occupancy on the lower floors, and would have a proposed FAR less than would be permitted as a matter of right." (Exhibit 33.) Furthermore, the proposal includes multiple setbacks to minimize the appearance of the building as it rises above the Parish Hall and approaches the lower density rowhouses to the east. The Project's lot occupancy would not cause substantial harm to the Zoning Regulations and would be consistent with the general provisions of the SP District, which include the following:

500.2 The major purpose of the SP District shall be to act as a buffer between adjoining commercial and residential areas, and to ensure that new development is compatible in use, scale, and design with the transitional function of this zone district.

500.3 The SP District is designed to preserve and protect areas adjacent to Commercial Districts that contain a mix of row houses, apartments, offices, and institutions at a medium to high density, including buildings of historic and architectural merit.

(11 DCMR §§ 500.2, 500.3.)

The Project's restrained scale and setbacks from the residential areas suggest that the Project would be an effective buffer and serve as a transition between the adjoining commercial and residential areas.

The Board finds the argument made by the parties in opposition to be unpersuasive. Much of the opposition was related to the loss of the park that the community has enjoyed. However, the park is actually the private property of the church, and the community does not have a right to use that space. Furthermore, both the CSN and the DCCA expressed concerns regarding the application's compatibility with the historic district. However, the Board notes that in granting concept approval, the HPRB was required to find that such compatibility existed. And while the Board is not compelled to accept the HPRB conclusion, the evidence in the record clearly corroborates its finding.

As to the contention by CSN, DCCA, the ANC, and some persons in opposition that the Project is incompatible with the DC Overlay, the Board notes that DC Overlay does not have any prescriptions or prohibitions other than those relating to planned unit developments and curb

cuts, so there are no standards by which to assess the Project's conformance. To this point, the Board previously determined that the Zoning Administrator's failure to assess a project's general compatibility with the DC Overlay was not an appealable action. *See BZA Appeal No.18851 of James Hill et. al.* Since any use or structure permitted by the underlying SP-1 zone is also permitted in the DC Overlay, if the Project complied with lot occupancy, then it would necessarily comply with the DC Overlay. Thus, a variance from the lot occupancy requirements does not translate into a nonconformity with the DC Overlay because there is no provision in the DC Overlay under which to also seek relief. Nevertheless, the Board finds that this Project is compatible with the DC Overlay general provisions and with the Dupont Circle neighborhood because of the substantial upper-floor setbacks, absence of a penthouse, significant preservation of the Parish Hall, and the concept approval by the HPRB.

Finally, both parties in opposition contended that the planned new construction would result in substantial detriment to light and air. However, neither the CSN nor the DCCA explained or provided evidence showing how the proposed lot occupancy would cause a more substantial diminution of light and air than a structure the Applicant could construct as a matter of right. Conversely, the Applicant demonstrated that the massing of the Project will decrease with height, which will constrain adverse light and air impacts. Finally, as stated previously, the project is consistent with the SP-1 District. Therefore, the Board finds the testimony of the Applicant and the OP report to be persuasive as to this issue.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) In this case, OP recommended approval of the application. For the reasons stated above, the Board finds OP's advice, and its analysis of how the Applicant met the variance test as summarized earlier in this order, to be persuasive.

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)).) In this case ANC 2B voted to oppose the application. ANC 2B expressed several issues and concerns as summarized earlier in this order. The Board acknowledges the ANC's and other parties' contention that presence of the historic Parish Hall and the decision of the HPRB does not result in a practical difficulty from complying with the lot occupancy requirements, but the Board is not persuaded. The ANC did not consider the confluence of all of the factors that contribute to the exceptional condition on the Property, and the Board finds that retention of the historic Parish Hall, and the associated HPRB review process, is a significant component of, and relevant to, the exceptional condition. Similarly, the Board disagrees with the ANC's belief that satisfying historic requirements and the HPRB's decision are not the basis for a variance. The HPRB's approval implemented the protections afforded this contributing building by virtue of its inclusion in the historic district, protections which the ANC report noted. The design approved by the HPRB retained the Parish Hall's contributing elements and assured that the addition would complement these historic elements, but also created practical difficulties that this variance alleviates. And as to the ANC's observation that the Applicant was aware of the historic preservation constraints before designing the project, the Board notes that prior knowledge of a property's exceptional conditions does not negate a claim of practical difficulty. *See Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1168 (D.C. 1990).

The Board further acknowledges the ANC's contention that the Applicant could reduce the lot occupancy of the Project from 18th Street. However, for the reasons stated above, the Board finds that this option raises historic preservation concerns and is not feasible. The Board does not question ANC 2B's assertion that the majority of comments it received expressed opposition to the application based upon perceived adverse impacts, but the record simply does not support this conclusion. Similarly, the inability to reach agreement on a memorandum of understanding to address "quality of life issues" is not legally relevant to this application because the evidence in the record proves that even without such an MOU this variance will not impair the public good.

For the foregoing reasons, the Board does not find the ANC's advice to deny the zoning relief to be persuasive.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the lot occupancy requirements under § 532.1 of the Zoning Regulations to allow the construction of a residential and church addition to an existing building in the DC/SP-1 District at 1772 Church Street, N.W. (Square 156, Lot 359). Accordingly, it is **ORDERED** that the application is **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 25A - PLANS, AS REVISED BY EXHIBIT 151 - REVISED SITE PLAN.**

VOTE: 4-0-1 (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Peter G. May 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: August 19, 2016

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.

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