VOL. 63 – NO. 53 DECEMBER 23, 2016

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-576, At-Risk Tenant Protection Clarifying Emergency Amendment Act of 2016
- D.C. Council enacts Act 21-577, Death with Dignity Act of 2016
- D.C. Council enacts Act 21-578, Sale of Synthetic Drugs Amendment Act of 2016
- Department of Consumer and Regulatory Affairs revises provisions in the Construction Codes Supplement of 2013
- Department of Energy and Environment announces funding availability for the Solar Works DC program
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for the Great Streets Small Business Grants – Bladensburg/Benning (H Street NE)
- Office of Public-Private Partnerships schedules an Industry Forum on the Smart Lighting Project

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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

Deadlines for Submission of Documents for Publication

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

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

Viewing the DC Register

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

Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. ACTS

A21-573 Medical Marijuana Dispensary Emergency Amendment Act of 2016 [B21-952] ..... 015689 - 015690

A21-574 Modifications to Human Care Agreement No. DCJM-2012-H-0004-16 Approval and Payment Authorization Emergency Act of 2016 [B21-956] ..... 015691 - 015692

A21-575 PCC Stride, Inc., Human Care Agreement No. CW43691 Approval and Payment Authorization Emergency Act of 2016 [B21-957] ..... 015693 - 015694

A21-576 At-Risk Tenant Protection Clarifying Emergency Amendment Act of 2016 [B21-966] ..... 015695 - 015696

A21-577 Death with Dignity Act of 2016 [B21-38] ..... 015697 - 015707

A21-578 Sale of Synthetic Drugs Amendment Act of 2016 [B21-261] ..... 015708 - 015712

A21-579 Georgia Avenue Retail Priority Area Temporary Amendment Act of 2016 [B21-936] ..... 015713 - 015714

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

Notice of Intent to Act on New Legislation -
Proposed Resolutions PR21-1078, PR21-1087, PR21-1088, PR21-1089, and PR21-1096 ..... 015715 - 015716

OTHER COUNCIL ACTIONS

Consideration of Temporary Legislation -
B21-978 Youth Services Coordination Task Force Temporary Amendment Act of 2016 015717

B21-985 Medical Respite Services Exemption Temporary Amendment Act of 2016 015717

B21-989 Pharmaceutical Detaining Licensure Exemption Temporary Amendment Act of 2016 015717

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

OTHER COUNCIL ACTIONS CONT'D

Notice of Reprogramming Requests -

21-274 Request to reprogram $1,727,000 of Fiscal Year 2017 Local funds budget authority within the Office of the State Superintendent of Education (OSSE) ..... 015718 - 015719

21-275 Request to reprogram $2,060,319 of Fiscal Year 2017 Local funds budget authority within the District of Columbia Public Schools (DCPS) ..... 015718 - 015719

21-276 Request to reprogram $2,000,000 of Fiscal Year 2017 Pay-As-You-Go (Paygo) Capital funds budget authority and allotment from the District Department of Transportation (DDOT) to the Local funds budget of the Office of Deputy Mayor for Planning and Economic Development (DMPED) ..... 015718 - 015719

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -

21 - ANC 2A - New 015720
Arroz - ANC 2F - New 015721
Darnell's - ANC 1B - Renewal - CORRECTION 015722
Darnell's - ANC 1B - Renewal - RESCIND 015723
Dixie Liquor - ANC 2E - Transfer to a New Location 015724
Green Island Café/Heaven & Hell - ANC 1C - Summer Garden 015725
Lemon Cuisine Of India - ANC 2B - New 015726
Penn Quarter Sports Tavern - ANC 2C - Summer Garden 015727
WeWork - ANC 6C - New 015728

Housing and Community Development, Department of -

Fiscal Year 2016 - Consolidated Annual Performance Evaluation Report (CAPER) - January 10, 2017 015729

Zoning Adjustment, Board of - February 8, 2017 Hearings -

17549A Georgetown Visitation Preparatory School - ANC-2E ..... 015730 - 015734
18915A Aminta - ANC-6B ..... 015730 - 015734
19382 GPI Holdings US LLC - ANC-5E ..... 015730 - 015734
19395 Embassy of the State of Kuwait - ANC-3F ..... 015730 - 015734
19407 The Friends of Lowell Street (Appeal) - ANC-3D ..... 015730 - 015734
19408 Serra Sippel - ANC-5B ..... 015730 - 015734
19409 Maple Park Associates, LLC - ANC-4B ..... 015730 - 015734
19415 Verizon Wireless - ANC-6D ..... 015730 - 015734

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PUBLIC HEARINGS CONT'D

Zoning Adjustment, Board of - February 15, 2017 Hearings -
19134A Embassy of Zambia - ANC-2D ..... 015735 - 015738
19398 Jim Borbely - ANC-5E ..... 015735 - 015738
19400 Alabama Avenue, LLC - ANC-8B ..... 015735 - 015738
19423 James Courtney - ANC-6B ..... 015735 - 015738
19425 William Gowin - ANC-5E ..... 015735 - 015738
19426 699 14th Street LLC - ANC-2C ..... 015735 - 015738
19427 The Bird - ANC-2F ..... 015735 - 015738
19428 1937 2nd Street NE LLC - ANC-5E ..... 015735 - 015738

FINAL RULEMAKING

Consumer and Regulatory Affairs, Department of -
Amend 12 DCMR (Construction Codes Supplement of 2013),
Subtitles: A (Building Code Supplement of 2013),
B (Residential Code Supplement of 2013),
G (Property Maintenance Code Supplement of 2013),
H (Fire Code Supplement of 2013), to revise provisions
in the Construction Codes Supplement of 2013 ..... 015739 - 015764

Health Care Finance, Department of - Amend 29 DCMR
(Public Welfare), Ch. 9 (Medicaid Program),
Sec. 903 (Outpatient and Emergency Room Services),
to extend the provision of supplemental payments to
eligible District hospitals that participate in the Medicaid
program for outpatient hospital services to September 30, 2017 ..... 015765 - 015766

Health Care Finance, Department of - Amend 29 DCMR
(Public Welfare), Ch. 9 (Medicaid Program), to revise in
its entirety Sec. 964 (Dental Services), to update the
parameters of the Medicaid dental program ..... 015767 - 015774

Health Care Finance, Department of - Amend 29 DCMR
(Public Welfare), Ch. 52 (Medicaid Reimbursement for
Mental Health Rehabilitative Services), Sec. 5213 (Reimbursement),
to establish a new reimbursement rate for Rehabilitation/Day
Services (Rehab Day) ..... 015775 - 015783

Tax and Revenue, Office of - Amend 9 DCMR (Taxation and
Assessments), Ch. 3 (Real Property Taxes), Sec. 336 (Fees),
to clarify the recording fee requirements for instruments in
which the District is a party or has a beneficial interest 015784

Tax and Revenue, Office of - Amend 9 DCMR (Taxation and
Assessments), Ch. 3 (Real Property Taxes), to repeal text for
Sec. 337 (Eligibility for Senior Citizen Homestead Tax Relief)
and Sec. 338 (Application for Senior Citizen Homestead Tax Relief)
and designate sections as RESERVED 015785

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PROPOSED RULEMAKING

Housing Authority, DC - Amend 14 DCMR (Housing), Ch. 62 (Low Rent Housing: Rent and Lease), to repeal Sec. 6211 (Pet Ownership in Public Housing), Ch. 61 (Public Housing: Admission and Recertification), to add Sec. 6126 (Pet Ownership in Public Housing), to allow individuals living in public housing properties designated for the elderly and/or disabled to own common household pets ..... 015786 - 015788

EMERGENCY AND PROPOSED RULEMAKING

Education, Office of the State Superintendent of - Amend 5 DCMR (Education), Subtitle A (Office of the State Superintendent of Education), to add Ch. 2 (District Subsidized Child Care Services), Sections 200 - 204, and Sec. 299 (Definitions), to establish the District of Columbia's child care subsidy rates and sliding fee schedule for child care services; Also repeals 29 DCMR (Public Welfare), Ch. 3 (Child Development Facilities), Sec. 380 (District Subsidized Child Care Services).....015789 - 015799

Housing Authority, DC (DCHA) - Amend 14 DCMR (Housing), Ch. 83 (Rent and Housing Assistance Payments), Sec. 8300 (Payment Standard Amount), to increase the Payment Standards, allowing DCHA to authorize and pay higher rent subsidies on behalf of participants of the Housing Choice Voucher Program .....015800 - 015801

Zoning Commission, DC - Z.C. Case No. 08-06I to amend 11 DCMR (Zoning Regulations of 2016), Subtitle Y (Board of Zoning Adjustment Rules of Practice and Procedure), Ch. 2 (Public Participation), Sec. 206 (Submitting Comments or Filing Documents Electronically or by E-Mail), and Subtitle Z (Zoning Commission Rules of Practice and Procedure), Ch. 2 (Public Participation), Sec. 206 (Submitting Comments or Filing Documents Electronically or by E-Mail), to make minor modifications to certain amendments adopted through Z.C. Order No. 08-06A .....015802 - 015803

NOTICES, OPINIONS, AND ORDERS
MAYOR'S ORDERS

2016-195 Reappointments and Appointments – State Advisory Panel on Special Education for the District of Columbia (Aaron McCormick, Molly Whalen, Julie Camerata, Kenneth Taylor, and Latoria Brent).....015804

2016-196 Appointment – District of Columbia Workforce Investment Council (Antwanye Ford) 015805

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
MAYOR'S ORDERS CONT'D

2016-197 Appointments – Child Fatality Review Committee (Heather Stowe and Lubna Jamal) 015806

2016-198 Appointment – Director, Office of Communications (Rob Hawkins) 015807

2016-199 Delegation of Authority to the Director of the Department of General Services to Execute a Lease Agreement for the Yards Marina 015808

NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES

Cesar Chavez Public Charter School DC -
Request for Proposals -
HVAC and Mechanical Maintenance Services 015809
Legal Services 015810

Disability Services, Department on -
D.C. State Rehabilitation Council to Hold Bi-Monthly Public Meetings -
2017 Meeting Schedule 015811

D.C. Statewide Independent Living Council to Hold Bi-Monthly Public Meetings - 2017 Meeting Schedule 015812

Energy and Environment, Department of -
Notice of Funding Availability - Solar Works DC ..... 015813 - 015814

Ethics and Government Accountability, Board of -
Draft Advisory Opinion -
1559-001 Social Media and the Code of Conduct ..... 015815 - 015826

Health, Department of -
Board of Medicine Meeting - December 28, 2016 015827

Judicial Disabilities and Tenure, Commission on -
Judicial Tenure Commission Begins Reviews of Judges Eric T. Washington, Jeanette Clark, Lee F. Satterfield, Michael W. Farrell, and Linda D. Turner ..... 015828 - 015829

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D

Legal Counsel, Mayor's Office of -
Freedom of Information Act Appeals
2016-67 Michael Slota....015830 - 015833
2016-68 Phyllis Mayo....015834 - 015836
2016-69 Jimmy Gardner....015837
2016-70 Steven Oster....015838
2016-71 David Brooks....015839 - 015841
2016-72 Raoul Hughes....015842 - 015844
2016-73 Francisca Recio....015845 - 015852
2016-74 Fritz Mulhauser....015853
2016-75 Mary Wellbank....015854 - 015856
2016-76 Channing Cooper....015857 - 015859
2016-77 Veronica Ogunsula....015860 - 015864
2016-78 Tom Frank....015865
2016-79 Laila Miller....015866 - 015868
2016-80 Scott Michelman....015869 - 015874
2016-81 Keith Preddie....015875 - 015878
2016-82 Frederic Schwartz....015879
2016-83 Mark Eckenwiler....015880
2016-84 Jose Cuesta Leiva....015881 - 015886
2016-86 Benoit Brookens....015887 - 015888

Planning and Economic Development, Office of the Deputy Mayor for -
Notice of Funding Availability - Great Streets Small
Business Grants – Bladensburg/Benning (H Street NE)....015889 - 015890

Public Service Commission -
2017 Schedule of Commission Open Meetings....015891

Public-Private Partnerships, Office of -
Notice of Intent to Host Smart Lighting Project
Industry Forum - January 24-25, 2017....015892

Secretary, Office of the -
Recommendations for Appointment as DC Notaries Public -
Effective February 1, 2017....015893 - 015897

Thurgood Marshall Academy Public Charter High School -
Request for Proposals - Caterer for Gala....015898

Zoning Adjustment, Board of - Cases -
18315-A Evermay Georgetown, LLC - ANC 2E - Order....015899 - 015903
19103 TPC 5th & I Partners LLC - ANC 6E - Order....015904 - 015918
19353 770 Park LLC - ANC 1A - Order....015919 - 015923
19381 District of Columbia Public Schools - ANC 4A - Order....015924 - 015926

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D

Zoning Commission - Cases -
15-19 411 New York Avenue Holdings, LLC - Order..... 015927 - 015968
15-28 Foulger-Pratt Development, LLC - Order..... 015969 - 015998
16-28 ANC 4A - Notice of Filing 015999

Zoning Commission -
Notice of Closed Meetings for 2017 016000

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-573

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMEBER 19, 2016

To amend, on an emergency basis, the Legalization of Marijuana for Medical Treatment Initiative of 1999 to increase the number of medical marijuana dispensaries that may be registered to operate in the District from 5 to 6, and to require the Mayor to open an application period for the registration of a medical marijuana dispensary in Ward 7 or Ward 8.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Marijuana Dispensary Emergency Amendment Act of 2016".

Sec. 2. Section 7(d)(2) of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.06(d)(2)), is amended as follows:

(a) Subparagraph (A) is amended by striking the number "5" and inserting the number "6" in its place.

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

"(D) The Mayor shall open an application period for the registration of a dispensary in Ward 7 or Ward 8 within 60 days after the effective date of the Medical Marijuana Dispensary Emergency Amendment Act of 2016, passed on emergency basis on December 6, 2016 (Enrolled version of Bill 21-952).".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director 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. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 19, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-574

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 19, 2016

To approve, on an emergency basis, Modification Nos. 5 and 6 and proposed Modification No. 7 to Human Care Agreement No. DCJM-2012-H-0004-16 to provide residential habilitation, supported living, host home, and related residential expenses to District persons with intellectual and developmental disabilities and to authorize payment for the services received and to be received under the contract modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Human Care Agreement No. DCJM-2012-H-0004-16 Approval and Payment Authorization Emergency Act of 2016".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 5 and 6 and proposed Modification No. 7 to Human Care Agreement No. DCJM-2012-H-0004-16 with Innovative Life Solutions, Inc., to provide residential habilitation, supported living, host home, and related residential expenses to District persons with intellectual and developmental disabilities, and authorizes payment in the total not-to-exceed amount of $1,065,514.32 for services received and to be received under the contract modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 19, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-575

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMEBER 19, 2016

To approve, on an emergency basis, Human Care Agreement No. CW43691 with PCC Stride, Inc., and proposed Modification No. 5 to provide extended family home services and to authorize payment for the services received and to be received under the contract and contract modification.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "PCC Stride, Inc., Human Care Agreement No. CW43691 Approval and Payment Authorization Emergency Act of 2016".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Human Care Agreement No. CW43691 with PCC Stride, Inc., and proposed Modification No. 5 to provide extended family home services, and authorizes payment in the total not-to-exceed amount of $1,164,168.69 for services received and to be received under the contract and contract modification.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 19, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-576

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 19, 2016

To amend, on an emergency basis, Chapter 39 of Title 28 of the District of Columbia Official Code to clarify that the Office of the Attorney General is authorized to petition the Superior Court to issue temporary or permanent injunctions against housing providers that violate certain consumer protection laws that protect tenants.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "At-Risk Tenant Protection Clarifying Emergency Amendment Act of 2016".

Sec. 2. Chapter 39 of Title 28 of the District of Columbia Official Code is amended as follows:

(a) Section 28-3909 is amended as follows:

(1) Strike the phrase "Corporation Counsel" wherever it appears and insert the phrase "Office of the Attorney General" in its place.

(2) Subsection (c)(5) is amended by striking the phrase "Corporation's Counsel's" and inserting the phrase "Office of the Attorney General's" in its place.

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

"(d) The Office of the Attorney General may apply the provisions and exercise the duties of this section to landlord-tenant relations.".

(b) Section 28-3910(a) is amended by striking the phrase "Corporation Counsel" and inserting the phrase "Office of the Attorney General" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 19, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-577

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMEBER 19, 2016

To provide procedures and requirements regarding the request for and dispensation of covered medications to qualified patients seeking to die in a humane and peaceful manner, to define the duties of attending physicians and consulting physicians, to provide for counseling of patients and family notification, to require informed decision-making and waiting periods, to require reporting from the Department of Health, to outline the effect of the act on contracts, wills, insurance, and annuity policies, to provide for immunities, liabilities, and exceptions, to provide an opt-out provision for health care providers, to provide for claims against a qualified patient's estate for costs incurred by the District government when a qualified patient ingests a covered medication in public, and to establish criminal penalties.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Death with Dignity Act of 2016".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Attending physician" shall have the same meaning as provided in section 2(1) of the Natural Death Act of 1981, effective February 25, 1982 (D.C. Law 4-69; D.C. Official Code § 7-621(1)); provided, that the attending physician's practice shall not be primarily or solely composed of patients requesting a covered medication.

(2) "Capable" means that, in the opinion of a court or the patient's attending physician, consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate health care decisions to health care providers.

(3) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease and who is willing to participate in the provision of a covered medication to a qualified patient in accordance with this act.

(4) "Counseling" means one or more consultations as necessary between a District licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is capable and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(5) "Covered medication" means a medication prescribed pursuant to this act for the purpose of ending a person's life in a humane and peaceful manner.

(6) "Department" means the Department of Health.

(7) "Health care facility" means a hospital or long-term care facility.

(8) "Health care provider" means a person, partnership, corporation, facility, or institution that is licensed, certified, or authorized under District law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(9) "Hospital" shall have the same meaning as provided in section 2(1) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(1)).

(10) "Informed decision" means a decision by a qualified patient to request and obtain a prescription for a covered medication that is based on an appreciation of the relevant facts and is made after being fully informed by the attending physician of:

(A) His or her medical diagnosis;

(B) His or her prognosis;

(C) The potential risks associated with taking the covered medication;

(D) The probable results of taking the covered medication; and

(E) Feasible alternatives to taking the covered medication, including comfort care, hospice care, and pain control.

(11) "Long-term care facility" means a nursing home or community residence facility, as defined by section 2(3) and (4), respectively, of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(3) and (4)), or an assisted living residence, as defined by section 201(4) of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code § 44-102.01(4)).

(12) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(13) "Patient" means a person who has attained 18 years of age, resides in the District of Columbia, and is under the care of a physician.

(14) "Physician" shall have the same meaning as provided in section 2(4) of the Natural Death Act of 1981, effective February 25, 1982 (D.C. Law 4-69; D.C. Official Code § 7-621(4)).

(15) "Qualified patient" means a patient who:

(A) Has been determined to be capable; and

(B) Satisfies the requirements of this act in order to obtain a prescription for a covered medication.

(16) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within 6 months.

Sec. 3. Requests for a covered medication.

(a) To request a covered medication, a patient shall:

(1) Make 2 oral requests, separated by at least 15 days, to an attending physician.

(2) Submit a written request, signed and dated by the patient, to the attending physician before the patient makes his or her 2nd oral request and at least 48 hours before a covered medication may be prescribed or dispensed.

(b)(1) A written request made pursuant to subsection (a)(2) of this section shall be witnessed by at least 2 individuals who, in the presence of the patient, attest to the best of their knowledge and belief that the patient is capable, acting voluntarily, and is not being unduly influenced to sign the request.

(2) If the patient is a patient in a long-term care facility at the time the written request is made under subsection (a)(2) of this section, one of the witnesses shall be an individual designated by the facility who has met the qualifications specified in the Department's regulations.

(3) One of the witnesses shall be a person who is not:

(A) A relative of the patient by blood, marriage, or adoption;

(B) At the time the request is signed, entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(C) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(4) The patient's attending physician at the time of the request shall not be a witness.

(c) A written request made pursuant to subsection (a)(2) of this section shall be in substantially the following form:

"REQUEST FOR MEDICATION TO END MY LIFE IN A HUMANE AND PEACEFUL MANNER

"I, _____, am an adult of sound mind.

"I am suffering from _____, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

"I have been fully informed of my diagnosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

"I request that my attending physician prescribe medication that will end my life in a humane and peaceful manner.

"INITIAL ONE:

[ ] I have informed my family of my decision and taken their opinion into consideration.

[ ] I have decided not to inform my family of my decision.

[ ] I have no family to inform of my decision.

"I understand that I have the right to rescind this request as any time.

"I understand the full import of this request, and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within 3 hours of taking the medication to be prescribed, my death may take longer, and my physician has counseled me about this possibility.

"I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

"Signed:

"Dated:

"DECLARATION OF WITNESSES:
"We declare that the person signing this request:
(a) Is personally known to us or has provided proof of identity;
(b) Signed this request in our presence;
(c) Appears to be of sound mind and not under duress, fraud, or undue influence;
(d) Is not a patient for whom either of us is the attending physician.
"Date:
"Witness 1:
"Address:
"Witness 1 signature:
"Date:
"Witness 2:
"Address:
"Witness 2 signature:
"NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at the health care facility where the person is a patient or resident. If the patient is a patient at a long-term care facility, one of the witnesses shall be an individual designated by the facility.".

Sec. 4. Responsibilities of the attending physician.

(a) Upon receiving a written request for a covered medication pursuant to section 3(a)(2), the attending physician shall:

(1) Determine that the patient:

(A) Has a terminal disease;

(B) Is capable;

(C) Has made the request voluntarily; and

(D) Is a resident of the District of Columbia;

(2) Inform the patient of:

(A) His or her medical diagnosis;

(B) His or her prognosis;

(C) The potential risks associated with taking a covered medication;

(D) The probable result of taking a covered medication; and

(E) The feasible alternatives to taking a covered medication, including comfort care, hospice care, and pain control;

(3) Refer the patient to a consulting physician;

(4) Refer the patient to counseling if appropriate, pursuant to section 5;

(5) Inform the patient of the availability of supportive counseling to address the range of possible psychological and emotional stress involved with the end stages of life;

(6) Recommend that the patient notify next of kin, friends, and spiritual advisor, if applicable, of his or her decision to request a covered medication;

(7) Counsel the patient about the importance of having another person present when the patient takes a covered medication and of not taking a covered medication in a public place;

(8) Inform the patient that he or she has an opportunity to rescind a request for a covered medication at any time and in any manner;

(9) Verify, immediately before writing the prescription for a covered medication, that the patient is making an informed decision; and

(10) Fulfill the medical record documentation requirements of section 7.

(b) If a consulting physician receives a referral for a patient from an attending physician pursuant to subsection (a)(3) of this section, the consulting physician shall:

(1) Examine the patient and his or her relevant medical records to confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease;

(2) Verify, in writing, to the attending physician that the patient:

(A) Is capable;

(B) Is acting voluntarily; and

(C) Has made an informed decision; and

(3) Refer the patient to counseling if appropriate, pursuant to section 5.

Sec. 5. Counseling referral.

(a) If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient to counseling.

(b) No covered medication shall be prescribed until the patient receives counseling and the psychiatrist or psychologist performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

Sec. 6. Dispensing a covered medication and reporting requirements.

(a) An attending physician may not prescribe or dispense a covered medication, unless:

(1) The patient has satisfied the requirements of sections 3 and 5, if applicable;

(2) The attending physician has satisfied the requirements of sections 4 and 5, if applicable; and

(3) The attending physician has offered the patient an opportunity to rescind his or her request for a covered medication immediately before prescribing or dispensing the covered medication.

(b) After the attending physician ensures that the requirements provided in subsection (a) of this section have been met, the attending physician may:

(1) Dispense a covered medication, including ancillary medications intended to minimize the patient's discomfort, directly to the qualified patient; provided, that the attending physician is authorized to do so in the District of Columbia pursuant to the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-903.02), and has a current Drug Enforcement Administration certificate issued pursuant to 21 C.F.R. § 1301.35; or

(2) After a qualified patient completes the form under section 3(c):

(A) Contact a pharmacist and inform the pharmacist of the prescription for a covered medication; and

(B) Deliver the written prescription for a covered medication personally, or by telephone, facsimile, or electronically to the pharmacist.

(c) Upon receiving a written prescription for a covered medication by an attending physician under subsection (b)(2) of this section, the pharmacist may dispense the covered medication to the following:

(A) The patient;

(B) The attending physician; or

(C) An expressly identified agent designated by the qualified patient, with the designation communicated to the pharmacist by the patient verbally or in writing.

(d) A pharmacist, upon dispensing a covered medication under subsection (c) of this section, shall immediately notify the attending physician that the covered medication was dispensed.

(e) Within 30 days after a health care provider dispenses a covered medication, the attending physician shall file with the Department a copy of the information required by section 7 on a form created by the Department.

(f) Within 30 days after a patient ingests a covered medication, or as soon as practicable after the a health care provider is made aware of a patient's death resulting from ingesting the covered medication, the health care provider shall notify the Department of a patient's death.

(g) Notwithstanding any other provision of law, the attending physician may sign the patient's death certificate.

(h) The cause of death listed on a death certificate shall identify the qualified patient's underlying medical condition consistent with the International Classification of Diseases without reference to the fact that the qualified patient ingested a covered medication.

(i)(1) The Office of the Chief Medical Examiner shall review each death involving a qualified patient who ingests a covered medication and, if warranted by the review, may conduct an investigation.

(2) The review required by paragraph (1) of this subsection shall not constitute an inquiry for the purposes of section 12 of the Vital Records Act of 1981, effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code § 7-211); provided, that an investigation authorized by paragraph (1) of this subsection shall constitute an inquiry for the purposes of the Vital Records Act of 1981, effective October 8, 1981 (D.C. Law 4-34; D.C. Official Code § 7-211).

Sec. 7. Medical record documentation requirements.

(a) The attending physician shall document and file in the medical record of the patient requesting a covered medication:

(1) All oral requests by a patient for a covered medication;

(2) All written requests by a patient for a covered medication;

(3) The attending physician's:

(A) Diagnosis and prognosis of the patient;

(B) Determination that the patient is a District resident and is capable, acting voluntarily, and has made an informed decision when requesting a covered medication;

(C) Offer to the patient to rescind his or her request for a covered medication before the patient makes his or her second oral request;

(D) Notation that all requirements under this act have been met; and

(E) Notation regarding all steps taken to carry out the patient's request for a covered medication, including a notation of the covered medication prescribed;

(4) The consulting physician's:

(A) Diagnosis and prognosis of the patient;

(B) Verification that the patient is capable, acting voluntarily, and has made an informed decision when requesting a covered medication; and

(5) If a patient is referred to counseling pursuant to section 5, a report by the psychiatrist or psychologist of the outcome and determinations made during counseling.

Sec. 8. Reporting requirements.

(a) Beginning one year after the effective date of this act, and on an annual basis thereafter, the Department shall review the records maintained under section 7 for the purpose of gathering data and ensuring compliance with this act.

(b) The Department shall generate and make available to the public an annual statistical report of information collected pursuant to subsection (a) of this section. The report shall include:

(1) The number of qualified patients for whom a prescription for a covered medication was written;

(2) The number of known qualified patients who died each year for whom a prescription for a covered medication was written, and the cause of death of those patients;

(3) The number of known deaths in the District from using a covered medication;

(4) The number of physicians who wrote prescriptions for a covered medication; and

(5) Of the qualified patients who died due to using a covered medication, demographic percentages organized by the following characteristics:

(A) Age at death;

(B) Education level, if known;

(C) Race;

(D) Sex;

(E) Type of insurance, including whether or not they had insurance, if known; and

(F) Terminal disease.

Sec. 9. Effect on construction of wills and contracts.

(a) A provision in a contract, will, or other agreement executed on or after the effective date of this act, whether written or oral, is not valid if the provision would affect whether a person may make or rescind a request for a covered medication.

(b) An obligation owing under any contract, will, or other agreement executed on or after the effective date of this act may not be conditioned or affected by a person making or rescinding a request for a covered medication.

Sec. 10. Insurance and annuity policies.

(a) The sale, procurement, or issuance of any life, health, accident insurance, annuity policy, employment benefits, or the rate charged for any policy may not be conditioned upon or affected by the making or rescinding of a qualified patient's request for a covered medication.

(b) A qualified patient's act of ingesting a covered medication shall not have an effect upon a life, health, accident insurance, annuity policy, or employment benefits.

(c) Nothing in this section shall be construed to limit the ability of an insurance or annuity provider from investigating a claim for benefits for a death.

Sec. 11. Health care provider participation; notification; permissible sanctions.

(a) No health care provider shall be obligated under this act, by contract, or otherwise, to participate in the provision of a covered medication to a qualified patient.

(b) If a health care provider is unable or unwilling to carry out a patient's request for a covered medication under this act and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request of the patient, a copy of the patient's relevant medical records to the new health care provider.

(c) A health care provider may prohibit any other health care provider that it employs or contracts with from providing a covered medication under this act on the prohibiting health care provider's premises; provided, that the prohibiting health care provider has notified the health care provider of this policy before the employee or contractor has provided a covered medication.

(d) Notwithstanding section 12, if, before a covered medication has been provided, the prohibiting health care provider has notified the sanctioned health care provider that it prohibits providing a covered medication under this act, the prohibiting health care provider may impose the following sanctions:

(1) Loss of privileges, loss of membership, or other sanction pursuant to the prohibiting health care provider's medical staff bylaws, policies, and procedures, if the sanctioned health care provider is a member of the prohibiting health care provider's medical staff and participates under this act while on staff on the premises of the prohibiting health care provider's health care facility;

(2) Termination of the lease or other property contract or other nonmonetary remedies provided under the lease or property contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned health care provider participates under this act while on the premises of a prohibiting health care provider's health care facility or on the property that is owned by or under the direct control of the prohibiting health care provider;

(3) Termination of an employment contract or other nonmonetary remedies provided by contract if the sanctioned health care provider participates under this act in the course and scope of the sanctioned health care provider's duties as an employee or independent contractor of the prohibiting health care provider; or

(4) Any other sanctions and penalties in accordance with the prohibiting health care provider's policies and practices; provided, that no sanctions or penalties shall be imposed under this paragraph without a procedure for contesting the sections and penalties.

(e) Nothing in this section shall be construed to prevent:

(1) A health care provider from participating under this act while acting outside the course and scope of the health care provider's duties as an employee or independent contractor of the prohibiting health care provider;

(2) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the health care provider's duties as an employee or independent contractor of the prohibiting health care provider;

(3) A health care provider from making an initial determination pursuant to the standard of care that a patient has a terminal disease and informing him or her of the medical prognosis;

(4) A health care provider from providing information about this act upon the request of the patient; or

(5) A health care provider from providing a patient, upon request, with a referral to another health care provider.

(f) Sanctions issued pursuant to subsection (d) of this section are not reportable under section 513(a)(4)(C) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.13(a)(4)(C)).

Sec. 12. Immunities, liabilities, and exceptions.

(a) Except as provided in section 11, no person shall be subject to civil or criminal liability or professional disciplinary action for:

(1) Participating in good faith compliance with this act;

(2) Refusing to participate in providing a covered medication under this act; or

(3) Being present when a qualified patient takes a covered medication.

(b) Nothing in this act shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist, psychologist, or other health care provider participating in this act.

(c) No request by a patient for a covered medication made in good-faith compliance with the provisions of this act shall provide the basis for the appointment of a guardian or conservator.

Sec. 13. Claims by District government for costs incurred.

If the District government incurs costs resulting from the death of a qualified patient ingesting a covered medication pursuant to this act in a public place, the District government shall have a claim against the estate of the qualified patient to recover such costs and reasonable attorney fees related to enforcing the claim.

Sec. 14. Penalties.

(a) A person who, without authorization of the patient, willfully alters or forges a request for a covered medication or conceals or destroys a rescission of a request for a covered medication with the intent or effect of causing the patient's death is punishable as a Class A felony.

(b) A person who, without authorization of the patient, willfully coerces or exerts undue influence on a patient to request or ingest a covered medication with the intent or effect of causing the patient's death is punishable as a Class A felony.

Sec. 15. Rules.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to:

(1) Develop the form to collect the medical record information required by section 7;

(2) Facilitate the collection of the medical record information required by section 7; and

(3) Provide for the return of and safe disposal of unused covered medications.

(b) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act, including rules to:

(1) Specify the recommended methods by which a qualified patient, who so desires, may notify first responders of his or her intent to ingest a covered medication; and

(2) Establish training opportunities for the medical community to learn about the use of covered medications by qualified patients seeking to die in a humane and peaceful manner, including best practices for prescribing the covered medication.

Sec. 16. Construction.

(a) Nothing in this act may be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, active euthanasia, or any other method or medication not authorized under this act.

(b) Actions taken in accordance with this act do not constitute suicide, assisted suicide, mercy killing, or homicide.

(c) Nothing in this act shall be construed to authorize a qualified patient to ingest a covered medication in a public place.

Sec. 17. Freedom of Information Act exemption.

The information collected by the Department pursuant to this act shall not be a public record and may not be made available for inspection by the public under the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), or any other law.

Sec. 18. Applicability.

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

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

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

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

Sec. 18. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report 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. 19. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 19, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-578

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMEBER 19, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Sale of Synthetic Drugs Amendment Act of 2016".

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

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

(1) Strike the phrase "in his judgment" and insert the phrase "in the Mayor's judgment" in its place.

(2) Strike the phrase "he may deem sufficient" and insert the phrase "the Mayor may deem sufficient" in its place.

(b) Subsection (a-2) is amended as follows:

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

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

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

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

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

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

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

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

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

"(ii) The Mayor may issue a notice to revoke all licenses issued to the licensee pursuant to this chapter; and

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

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

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

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

"(V) The Mayor shall notify the Office of the Attorney General upon sealing a licensee's premises, or a portion of the premises.

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

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

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

"(C) If a licensee's premises, or a portion of the premises, is sealed under subparagraph (A) or (B) of this paragraph, a licensee shall have the right to request a hearing with the Office of Administrative Hearings within 3 business days after service of notice of the sealing of the premises under subparagraph (E) of this paragraph.

"(D) If a licensee timely requests a hearing under subparagraph (C) of this paragraph, the Office of Administrative Hearings shall hold a hearing before an administrative law judge within 3 business days after receiving the request.

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

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

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

"(iii) The right, within 3 business days after service of notice of the sealing of the premises, to request a hearing with the Office of Administrative Hearings;

"(iv) The right to a hearing before an administrative law judge, within 3 business days after a timely request being received by the Office of Administrative Hearings; and

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

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

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

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

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

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

"(II) The individual or business providing, distributing, displaying, or selling the product does not typically provide, distribute, display, or sell products

that are used for that product's marketed use (such as liquor stores, smoke shops, or gas or convenience stores selling "plant food");

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

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

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

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

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

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

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

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

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

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

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

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

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

"(2) A licensee engaged in the purchase, sale, exchange, or any other form of commercial transaction involving a synthetic drug in violation of D.C. Official Code § 47-2844(a-2)(1A) shall have the right to request a hearing within 3 business days after service of notice of the sealing of the premises. The Office of Administrative Hearings shall hold a hearing within 3 business days of receipt of a timely request, and shall issue a decision within 3 business days after the hearing.".

Sec. 4. Chapter 32 of Title 16 of the District of Columbia Municipal Regulations is amended as follows:

(a) Section 3200.1 is amended by adding a new paragraph (f) to read as follows:

"(f) Class 6 – Infractions that involve the purchase, sale, exchange, or any other form of commercial transaction involving the sale of a synthetic drug in violation of D.C. Official Code §47-2844(a-2)(1A).".

(b) Section 3201.1 is amended by adding a new paragraph (e) to read as follows:

"(e) For Class 6 infractions, the fines are as follows:

"(1) For the first offense $10,000; and

"(2) For the second and subsequent offenses $20,000.".

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report 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. 6. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 19, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-579

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMEBER 19, 2016

To amend, on a temporary basis, the Great Streets Neighborhood Retail Priority Areas Approval Resolution of 2007 to expand the boundaries of the Ward 4 Georgia Avenue Retail Priority Area.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Georgia Avenue Retail Priority Area Temporary Amendment Act of 2016".

Sec. 2. Section 2(4) of the Great Streets Neighborhood Retail Priority Areas Approval Resolution of 2007, effective July 10, 2007 (Res. 17-257; 54 DCR 7194), is amended to read as follows:

"(4) Ward 4 Georgia Avenue Retail Priority Area, consisting of the parcels, squares, and lots within or abutting the area bounded by a line beginning at the intersection of Euclid Street, N.W., and Georgia Avenue, N.W.; continuing north along Georgia Avenue, N.W., to Kenyon Street, N.W.; then continuing west along Kenyon Street, N.W., to Sherman Avenue, N.W.; then continuing north along Sherman Avenue, N.W., to New Hampshire Avenue, N.W.; then continuing northeast along New Hampshire Avenue, N.W., to Spring Road, N.W.; then continuing northwest along Spring Road, N.W., to 14th Street, N.W.; then continuing north along 14th Street, N.W., to Longfellow Street, N.W.; then continuing east along Longfellow Street, N.W., to Georgia Avenue, N.W.; then continuing north along Georgia Avenue, N.W., to Eastern Avenue, N.W.; then continuing southeast along Eastern Avenue, N.W., to Kansas Avenue, N.E.; then continuing southwest along Kansas Avenue, N.E., to Blair Road, N.W.; then continuing south along Blair Road, N.W., to North Capitol Street, N.E.; then continuing south along North Capitol Street, N.E., to Kennedy Street, N.W.; then continuing west along Kennedy Street, N.W., to Kansas Avenue, N.W.; then continuing southwest along Kansas Avenue, N.W., to Varnum Street, N.W.; then continuing east along Varnum Street, N.W., to 7th Street, N.W.; then continuing south along the center line of 7th Street, N.W., until the point where 7th Street, N.W., becomes Warder Street, N.W.; then continuing further south along Warder Street, N.W., to Kenyon Avenue, N.W.; then continuing west along Kenyon Avenue, N.W., to Georgia Avenue, N.W.; and then south on Georgia Avenue, N.W., to the beginning point;".

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director 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. 4. Effective date.

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

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 19, 2016

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

PROPOSED RESOLUTIONS

PR21-1078	Department of Corrections Good Time Credits Approval Resolution of 2016 Intro. 12-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary
PR21-1087	Board of Professional Counseling Victoria Sardi-Brown Confirmation Resolution of 2016 Intro. 12-13-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services
PR21-1088	Apprenticeship Council Courtland Cox Confirmation Resolution of 2016 Intro. 12-13-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole, Subcommittee on Workforce
PR21-1089	Board of Nursing Vera Mayer Confirmation Resolution of 2016 Intro. 12-13-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

PR21-1096 Sense of the Council Regarding Short-term Rental Accommodations Resolution of 2016

Intro. 12-20-16 by Councilmember Nadeau and Retained by the Council

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B21-978, Youth Services Coordination Task Force Temporary Amendment Act of 2016, **B21-985**, Medical Respite Services Exemption Temporary Amendment Act of 2016, and **B21-989**, Pharmaceutical Detaining Licensure Exemption Temporary Amendment Act of 2016 were adopted on first reading on December 20, 2016. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on January 10, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 21-274: Request to reprogram $1,727,000 of Fiscal Year 2017 Local funds budget authority within the Office of the State Superintendent of Education (OSSE) was filed in the Office of the Secretary on December 16, 2016. This reprogramming is needed to ensure that OSSE will be able to support the requirements of the Healthy Tots Act of 2014 and Environmental Literacy program initiatives.

RECEIVED: 14 day review begins December 19, 2016

Reprog. 21-275: Request to reprogram $2,060,319 of Fiscal Year 2017 Local funds budget authority within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on December 16, 2016. This reprogramming is needed to ensure that DCPS will be able to support enrollment changes within multiple District schools.

RECEIVED: 14 day review begins December 19, 2016

Reprog. 21-276: Request to reprogram $2,000,000 of Fiscal Year 2017 Pay-As-You-Go (Paygo) Capital funds budget authority and allotment from the District Department of Transportation (DDOT) to the Local funds budget of the Office of Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on December 16, 2016. This reprogramming is needed to construct steps from Banneker Overlook to Maine Avenue SW for ease of pedestrian access from L'Enfant Plaza to Wharf project.

RECEIVED: 14 day review begins December 19, 2016

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February 20, 2017
Protest Hearing Date:	April 19, 2017

License No.:	ABRA-104945
Licensee:	Event Space, LLC
Trade Name:	21
License Class:	Retailer's Class "C" Tavern
Address:	2121 K Street, N.W.
Contact:	Jeff Jackson: (202) 251-1566

WARD 2 ANC 2A SMD 2A06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date. **The Protest Hearing date** is scheduled on **April 19, 2017 at 4:30 p.m.**

NATURE OF OPERATION

New Class "C" Tavern with 100 seats and a Total Occupancy Load of 100. Tavern will serve American food and crepes for private events only. Tavern will not be open to the general public.

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

Sunday through Thursday 10 am - 2 am, Friday and Saturday 10 am – 3 am

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

Sunday through Saturday 10 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February 20, 2017
Protest Hearing Date:	April 19, 2017

License No.:	ABRA-104996
Licensee:	MassKap, LLC
Trade Name:	Arroz
License Class:	Retailer's Class "C" Restaurant
Address:	901 Massachusetts Avenue NW
Contact:	Jeff Jackson, Agent: 202-251-1566

WARD 2 ANC 2F SMD 2F06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **April 19, 2017 at 4:30 p.m.**

NATURE OF OPERATION

Full-service restaurant serving Spanish cuisine and seafood. Total Occupancy Load of 270 and a Summer Garden with 70 seats.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE AND IN SUMMER GARDEN

Sunday 11 am – 11 pm, Monday through Thursday 11:30 am – 11 pm, Friday 11:30 am – 12 am, and Saturday 11 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/21/2014

**CORRECTION

Notice is hereby given that:
License Number: ABRA-095113 **License Class/Type: C Tavern**
Applicant: Darnell Perkins & Associates LLC
Trade Name: Darnell's
ANC: 1B11

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

944 FLORIDA AVE NW, Washington, DC **20001

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

1/5/2015

HEARING WILL BE HELD ON

1/20/2015

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

ENDORSEMENTS: Cover Charge, Dancing, Entertainment, Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 11 pm	10 am -11 pm	6 pm - 11 pm
Monday:	8 am - 11 pm	10 am - 11 pm	6 pm - 11 pm
Tuesday:	8 am - 11 pm	10 am - 11 pm	6 pm - 11 pm
Wednesday:	8 am - 11 pm	10 am - 11 pm	6 pm - 11 pm
Thursday:	8 am - 11 pm	10 am - 11 pm	6 pm - 11 pm
Friday:	8 am - 1 am	10 am - 1 am	6 pm - 1 am
Saturday:	8 am - 1 am	10 am - 1 am	6 pm - 1 am

Days	Hours of Summer Garden Operation	Hours of Sales Summer Garden
Sunday:	8 am - 11 pm	10 am - 11 pm
Monday:	8 am - 11 pm	10 am - 11 pm
Tuesday:	8 am - 11 pm	10 am - 11 pm
Wednesday:	8 am - 11 pm	10 am - 11 pm
Thursday:	8 am - 11 pm	10 am - 11 pm
Friday:	8 am - 12 am	10 am - 12 am
Saturday:	8 am - 12 am	10 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
11/21/2014

**RESCIND

Notice is hereby given that:
License Number: ABRA-095113 **License Class/Type: C Tavern**
Applicant: Darnell Perkins & Associates LLC
Trade Name: Darnell's
ANC: 1B11

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

944 FLORIDA AVE NW, Washington, DC **20002

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

1/5/2015

HEARING WILL BE HELD ON

1/20/2015

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

ENDORSEMENTS: Cover Charge, Dancing, Entertainment, Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 11 pm	10 am -11 pm	6 pm - 11 pm
Monday:	8 am - 11 pm	10 am - 11 pm	6 pm - 11 pm
Tuesday:	8 am - 11 pm	10 am - 11 pm	6 pm - 11 pm
Wednesday:	8 am - 11 pm	10 am - 11 pm	6 pm - 11 pm
Thursday:	8 am - 11 pm	10 am - 11 pm	6 pm - 11 pm
Friday:	8 am - 1 am	10 am - 1 am	6 pm - 1 am
Saturday:	8 am - 1 am	10 am - 1 am	6 pm - 1 am

Days	Hours of Summer Garden Operation	Hours of Sales Summer Garden
Sunday:	8 am - 11 pm	10 am - 11 pm
Monday:	8 am - 11 pm	10 am - 11 pm
Tuesday:	8 am - 11 pm	10 am - 11 pm
Wednesday:	8 am - 11 pm	10 am - 11 pm
Thursday:	8 am - 11 pm	10 am - 11 pm
Friday:	8 am - 12 am	10 am - 12 am
Saturday:	8 am - 12 am	10 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February 20, 2017

License No.:	ABRA-104976
Licensee:	Dixie Georgetown, Inc.
Trade Name:	Dixie Liquor
License Class:	Retailer's Class "A" Liquor Store
Address:	3429 M Street, N.W.
Contact:	Kevin Lee, Esq.: (703) 941-3144

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Licensee requests to transfer location of liquor license from 1507 U Street NW, to 3429 M Street NW with a Change of Hours request

CURRENT HOURS OF OPERATION
Sunday from 8 am – 9 pm, and Monday through Saturday from 8 am – 10 pm

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES
Sunday from 9 am – 9 pm, and Monday through Saturday 9 am – 10 pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES
Sunday through Saturday 9 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February 20, 2017

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

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has applied for a Substantial Change under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Summer Garden with seating for 40.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11 am - 2 am, Friday & Saturday 11 am – 3 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Saturday 11 am - 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February 20, 2017
Protest Hearing Date:	April 19, 2017
License No.:	ABRA-104923
Licensee:	ISG Restaurant Inc.
Trade Name:	Lemon Cuisine Of India
License Class:	Retailer's Class "C" Restaurant
Address:	2120 P Street, N.W.
Contact:	Gurjeet Singh: 804-475-1538

WARD 2 ANC 2B SMD 2B02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **April 19, 2017 at 1:30 p.m.**

.

NATURE OF OPERATION

New fine-dining Indian restaurant. Total Occupancy Load of 115.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 11:30 am through 10 pm, Monday through Thursday 11:30 am through 11 pm, Friday and Saturday 11:30 am through 11:30 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February 20, 2017

License No.:	ABRA-076039
Licensee:	Top Shelf, LLC
Trade Name:	Penn Quarter Sports Tavern
License Class:	Retailer's Class "C" Tavern
Address:	639 Indiana Avenue, N.W.
Contact:	Andrew Kline: (202) 686-7600

WARD 2 ANC 2C SMD 2C03

Notice is hereby given that this licensee has applied for a Substantial Change under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009.** Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Summer Garden with seating for 49.

CURRENT HOURS OF OPERATION FOR PREMISES
Sunday through Thursday 6:30 am - 2 am, Friday & Saturday 6:30 am – 3 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11 am – 1:30 am, Friday & Saturday 11 am – 2:30 am

PROPOSED HOURS OF OPERATION FOR SUMMER GARDEN
Sunday through Thursday 6:30 am - 2 am, Friday & Saturday 6:30 am – 3 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Thursday 11 am – 1:30 am, Friday & Saturday 11 am – 2:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 23, 2016
Protest Petition Deadline:	February 6, 2017
Roll Call Hearing Date:	February 20, 2017
Protest Hearing Date:	April 19, 2017
License No.:	ABRA-104726
Licensee:	600 H Apollo Tenant, LLC
Trade Name:	WeWork
License Class:	Retailer's Class "C" Tavern
Address:	600 H Street, N.E.
Contact:	Stephen O'Brien: 202 625-7700

WARD 6 ANC 6C SMD 6C05

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 20, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **April 19, 2017 at 1:30 p.m.**

.

NATURE OF OPERATION

New Tavern. It will be a shared professional office space with food, beverages, and wine available for members (tenants) and their guests. Members may stage events for clients and guests, which may include audio visual components and entertainment. Total Occupancy Load is 100. Summer Garden with 60 seats.

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

Monday through and Saturday 11 am to 10 pm

HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES AND SUMMER GARDEN

Monday through and Saturday 6 pm to 9 pm

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

PUBLIC HEARING NOTICE

Tuesday, January 10, 2017

District of Columbia's Fiscal Year 2016

Consolidated Annual Performance Evaluation Report (CAPER)

Polly Donaldson, Director, DC Department of Housing and Community Development (DHCD or the Department) will conduct a public hearing on Tuesday, January 10, 2017, to discuss the District's Fiscal Year (FY) 2016 performance in its use of funds received from the U.S. Department of Housing and Urban Development (HUD). DHCD received approximately $37,148,917 from HUD in Fiscal Year 2016 through four programs: the Community Development Block Grant (CDBG) Program; the HOME Investment Partnerships Program; the Emergency Shelter Grant (ESG) Program; and the Housing for Persons with AIDS (HOPWA) Program. DHCD administers the CDBG and HOME funds directly; the Department entered into an agreement with the DC Department of Human Services (DHS) for the Prevention of Homelessness to administer the ESG grant; and transferred the HOPWA grant to the DC Department of Health (DOH).

In preparation for the submission of the FY 2016 Consolidated Annual Performance and Evaluation Report (CAPER) to HUD, DHCD is soliciting public comment on the District's effectiveness during FY 2016 at using federal funds to meet the District's housing and community development needs. These comments will form part of DHCD's and the District's evaluation, as required by federal regulations (24 CFR 91.520). This hearing is reserved for a discussion of the District's FY 2016 performance.

The hearing will be held on Tuesday, January 10, 2017, at the Department of Housing and Community Development, 1800 Martin Luther King, Jr. Avenue, SE, 1st floor conference room at 6:30 pm. If you would like to testify, you are encouraged to register in advance either by e-mail at DHCDEVENTS@dc.gov or by calling (202) 442-7239. Please provide your name, address, telephone number, and organization affiliation, if any.

Telecommunications Device for the Deaf (TDD) relay service will be provided by calling (800) 201-7165. Sign language interpretation and language translation services will be available upon request by calling Pamela Hillsman, seven days prior to the hearing on (202) 442-7251. Persons, who require interpretation or language translation, must specify the language of preference (i.e. Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Language interpretation service will be provided to pre-registered persons only.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, FEBRUARY 8, 2017
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

THIS CASE HAS BEEN ADMINISTRATIVELY POSTPONED FROM THE PUBLIC HEARING OF JANUARY 25, 2017:

WARD THREE

19395 ANC-3F **Application of the Embassy of the State of Kuwait**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the accessory structure location requirements of Subtitle D § 5000.4, to allow the installation of a security booth in front of an Ambassador's residence in the R-8 Zone at premises 3107 Fessenden Street N.W. (Square 2277, Lot 8).

THIS CASE HAS BEEN ADMINISTRATIVELY POSTPONED FROM THE PUBLIC HEARING OF JANUARY 25, 2017:

WARD FIVE

19382 ANC-5E **Application of GPI Holdings US LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the lot occupancy requirements of Subtitle E § 304.1, to construct an addition to an existing four-unit apartment house in the RF-1 Zone at premises 709 Jackson Street N.E. (Square 3649, Lot 810).

THIS CASE HAS BEEN ADMINISTRATIVELY POSTPONED FROM THE PUBLIC HEARING OF JANUARY 25, 2017:

WARD THREE

19407 ANC-3D **Appeal of The Friends of Lowell Street**, pursuant to 11 DCMR §§ 3100 and 3101, from a June 30, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue S.O. 16-04562, for the subdivision of a lot in the R-1-A District at premises 4925 Lowell Street N.W. (Square 1436, Lot 34).

THIS CASE HAS BEEN ADMINISTRATIVELY POSTPONED FROM THE PUBLIC HEARING OF JANUARY 25, 2017:

WARD FIVE

19408 ANC-5B **Application of Serra Sippel**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the nonconforming structure requirements of Subtitle C § 202.2, the lot occupancy requirements of Subtitle D § 304.1, the rear yard requirements of Subtitle D § 306.1, the side yard requirements of Subtitle D § 307. 1, and the side yard requirements of Subtitle D § 307.5, to allow a second-story rear addition and porch to an existing one-family dwelling in the R-1-B Zone at premises 3619 15th Street N.E. (Square 4005, Lot 18).

THIS CASE HAS BEEN ADMINISTRATIVELY POSTPONED FROM THE PUBLIC HEARING OF JANUARY 25, 2017:

WARD FOUR

19409 ANC-4B **Application of Maple Park Associates, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the eating and drinking establishment requirements of Subtitle H § 1106.1(e)(1), to establish a coffee shop in the NC-2 Zone at premises 232 Carroll Street N.W. (Square 3354, Lot 833).

THIS APPLICATION WAS POSTPONED FROM THE PUBLIC HEARING OF DECEMBER 14, 2016 BY THE APPLICANT AND ADMINISTRATIVELY POSTPONED FROM THE PUBLIC HEARING OF JANUARY 25, 2017:

WARD TWO

17549A ANC-2E **Application of Georgetown Visitation Preparatory School**, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance of BZA Order No. 17549, now requesting special exception relief under the R-use requirements of Subtitle U § 203.1(l), to complete additions to existing academic buildings, increase student enrollment to 530, and increase faculty and staff to 125 for an existing private school in the R-3 Zone at premises 1524 35th Street N.W. (Square 1292, Lot 202).

THIS APPLICATION WAS POSTPONED FROM THE PUBLIC HEARING OF NOVEMBER 30, 2016 BY THE APPLICANT AND ADMINISTRATIVELY POSTPONED FROM THE PUBLIC HEARING OF JANUARY 25, 2017:

WARD SIX

18915A
ANC-6B

Application of Aminta, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance of BZA Order No. 18915, now requesting special exception relief under the parking requirements of Subtitle C § 703, and the loading requirements of Subtitle C § 909, and variance relief under the lot occupancy requirements of Subtitle G § 404.1, to construct a mixed-use building in the MU-4 Zone at premises 1330-1338 Pennsylvania Avenue S.E. (Square 1044, Lots 12, 29, and 802).

WARD SIX

19415
ANC-6D

Application of Verizon Wireless, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the antenna towers and monopole requirements of Subtitle C § 1313.9, to locate a temporary Cell on Wheels ("COW") in the RF-1 Zone at premises located on Square 643E, Lot 800).

PLEASE NOTE:

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

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

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

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic
ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የ ተለየ እርዳታ ካስፈለገ ዎት ወይም የ ቋንቋ እርዳታ አገ ልግሎቶች (ትርጉም ወይም ማስተርጎ ማ ካስፈለገ ዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 **ወይም በኤሜል** Zelalem.Hill@dc.gov **ይገ ናኙ። እነ ኚህ አገ ልግሎቶች የ ሚሰጡ በት ጻ ነ ው።**

Chinese
您需要有人帮助参加活动吗？
如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

French
Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean
참여하시는데 도움이 필요하세요?
특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish
¿Necesita ayuda para participar?
Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese
Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

FREDERICK L. HILL, CHAIRPERSON
ANITA BUTANI D'SOUZA, VICE CHAIRPERSON
CARLTON HART, NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, FEBRUARY 15, 2017
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

19134A
ANC-2D
Application of the Embassy of Zambia, pursuant to 11 DCMR Subtitle Y § 301 and the Foreign Missions Act, to allow the continued temporary location of a chancery in the D/R-3 District at premises 2200 R Street N.W. (Square 2512, Lot 808).

WARD FIVE

19398
ANC-5E
Application of Jim Borbely, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the nonconforming structure requirements of Subtitle C § 202.2, the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to permit the construction of a one-story rear deck addition to an existing one-family dwelling in the RF-1 Zone at premises 1922 First Street N.E. (Square 3532, Lot 23).

THIS CASE HAS BEEN POSTPONED FROM THE PUBLIC HEARING OF JANUARY 11, 2017 AT THE APPLICANT'S REQUEST:

WARD EIGHT

19400
ANC-8B
Application of Alabama Avenue, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RA-use requirements of Subtitle U § 421.1, to allow the construction of a 30-unit apartment building in the RA-1 Zone at premises 2495 Alabama Avenue S.E. (Square 5730, Lots 13, 15, 17, 19, 21, 23, and 913).

WARD SIX

19423
ANC-6B
Application of James Courtney, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 504.1, to construct a second-story addition to an existing one-family dwelling in the RF-3 Zone at premises 416 G Street S.E. (Square 822, Lot 803).

WARD FIVE

19425 ANC-5E **Application of William Gowin**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the roof top/upper floor addition requirements of Subtitle E § 206.1(a), and the height requirements of Subtitle E § 303.1, to add a third floor with roof deck to an existing flat in the RF-1 Zone at premises 30 Quincy Place N.E. (Square 3521, Lot 57).

WARD TWO

19426 ANC-2C **Application of 699 14th Street LLC**, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception under the rear yard requirements of Subtitle I §§ 205.1 and 205.5, and variances from the habitable penthouse requirements of Subtitle C § 1500.3(d), and from the ground floor preferred-use requirements of Subtitle I § 601.2(a), to construct an addition to the rear of an existing historic commercial building for use as an office building with ground-floor retail in the D-7 Zone at premises 619 14th Street N.W. and 1336-1342 G Street N.W. (Square 253, Lots 53-55, 67, 817, and 818).

WARD TWO

19427 ANC-2F **Application of The Bird**, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for special exceptions under the nonconforming structure requirements of Subtitle C § 202.2, and the rear yard requirements of Subtitle G § 405.2, and a variance from the FAR requirements of Subtitle G § 402.1, to construct a retractable awning over a terraced dining area for a restaurant in the MU-4 Zone at premises 1337 11th Street N.W. (Square 339, Lot 33).

WARD FIVE

19428 ANC-5E **Application of 1937 2nd Street NE LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2(m), to add an additional unit to an existing four-unit apartment house in the RF-1 Zone at premises 1937 2nd Street N.E. (Square 3565, Lot 55).

PLEASE NOTE:

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

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the

testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

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

**Note that party status is not permitted in Foreign Missions cases.*

Do you need assistance to participate?

Amharic
ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የ ተለየ እርዳታ ካስፈለገ ዎት ወይም የ ቋንቋ እርዳታ አገ ልግሎቶች (ትርጉም ወይም መስተርጎም) ካስፈለገ ዎት እባክዎን ከስብሰባው ኣምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 **ወይም በኤሜል** Zelalem.Hill@dc.gov **ይገ ናኙ። እነ ኝህ አገ ልግሎቶች የ ሚሰጡ በነ ጻ ነ ው።**

Chinese
您需要有人帮助参加活动吗？
如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

French
Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean
참여하시는데 도움이 필요하세요?
특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish
¿Necesita ayuda para participar?

Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese
Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

FREDERICK L. HILL, CHAIRPERSON
ANITA BUTANI D'SOUZA, VICE CHAIRPERSON
CARLTON HART, NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF FINAL RULEMAKING

The Chairperson of the Construction Codes Coordinating Board (Chairperson), pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2012 Repl. & 2016 Supp.)) and Mayor's Order 2009-22, dated February 25, 2009, as amended, hereby gives notice of the adoption of the following amendments to Subtitles A (Building Code Supplement of 2013), Subtitle B (Residential Code Supplement of 2013), Subtitle G (Property Maintenance Code Supplement of 2013), and Subtitle H (Fire Code Supplement of 2013) of Title 12 (Construction Codes Supplement of 2013), of the District of Columbia Municipal Regulations (DCMR).

This final rulemaking (1) revises provisions in the 2013 District of Columbia Building Code, the 2013 District of Columbia Fire Code and the 2013 District of Columbia Residential Code to clarify fire and life safety regulations for the operation of child development homes and expanded child development homes as home occupations in the District of Columbia; (2) revises provisions in the 2013 District of Columbia Building Code, the 2013 District of Columbia Fire Code and the 2013 District of Columbia Property Maintenance Code to clarify the authority of the code official to take emergency measures where there is imminent danger; and (3) revises the 2013 District of Columbia Building Code to clarify and coordinate the relationship between the 2013 District of Columbia Construction Codes and the Flood Hazard Rules set forth in 20 DCMR, Chapter 31, for projects located in Special Flood Hazard Areas.

A Notice of Proposed Rulemaking was published on February 5, 2016 at 63 DCR 1308. No comments were received, and no changes have been made.

The Council approved the rulemaking through PR21-781 on October 14, 2016. These rules were adopted as final on November 2, 2016 and will become effective upon publication of this rulemaking in the *D.C. Register*.

To clearly show the changes being made to the Construction Codes Supplement, additions are shown in underlined text and deletions are shown in ~~strikethrough~~ text.

Title 12 DCMR, DISTRICT OF COLUMBIA CONSTRUCTION CODES SUPPLEMENT OF 2013, is amended as follows:

Chapter 1, ADMINISTRATION AND ENFORCEMENT, of Title 12-A DCMR, BUILDING CODE SUPPLEMENT OF 2013, is amended as follows:

Section 101, GENERAL, is amended as follows:

Insert new Section 101.3.3.1 in the 2013 District of Columbia Building Code to read as follows:

101.3.3.1 Home Day Care. Appendix M of the *Residential Code* shall apply to home day care, including Child Development Homes where oversight is provided by the Office of the State Superintendent of Education or a successor agency, where:

1. The home day care is provided in detached one and two-family dwellings or townhouses within the scope of the *Residential Code;* and
2. The home day care is legally operated as a home occupation under the *Zoning Regulations*.

Section 104, DUTIES AND POWERS OF BUILDING OFFICIALS, is amended as follows:

Add new Sections 104.9.4.1 and 104.9.4.2 to the 2013 District of Columbia Building Code to read as follows:

104.9.4.1 Additional Requirements for Manufactured Homes in Special Flood Hazard Areas. Manufactured Homes in *Special Flood Hazard Areas* shall also comply with the requirements of Section 3107 of Title 20 DCMR. New and replacement *manufactured home*s to be located in flood hazard areas as established in Table R301.2(1) of the *Residential Code* are also required to meet the applicable requirements of Section R322 of the *Residential Code.*

109.4.2 Recreational Vehicles in Special Flood Hazard Areas. If a recreational vehicle is placed in a *Special Flood Hazard Area* for 180 or more consecutive days and such recreation vehicle is not ready for highway use, a permit shall be obtained from the *Department* pursuant to Section 105 and shall comply with the *Floodplain Management Regulations*.

Add new Sections 104.10.4, 104.10.4.1, and 104.10.4.2 to the 2013 District of Columbia Building Code to read as follows:

104.10.4 Floodplain Management Regulations. The *Floodplain Management Regulations* shall apply to all proposed development in *Special Flood Hazard Areas.*

104.10.4.1 Incorporation of Flood Hazard Rules By Reference. The *Flood Hazard Rules* contain certain provisions, including, but not limited to, Sections 3102.3, 3103, 3104, 3106, 3107 and 3108 of Title 20 DCMR, that apply to the design and construction of buildings and structures in *Special Flood Hazard Areas.* These provisions are intended to be administered and enforced by the *Department*. To facilitate this administration and enforcement, those provisions of the *Flood Hazard Rules* that apply to the design and construction of buildings and structures in a *Special Flood Hazard Area* are incorporated into and become a part of the *Construction Codes* by this reference.

104.10.4.2 Variances. Requests for a variance from the *Flood Hazard Rules* shall be granted pursuant to and in accordance with Section 3108 of Title 20 DCMR.

Section 105, PERMITS, is amended as follows:

Revise Section 105.1.6 of the 2013 District of Columbia Building Code to read as follows:

105.1.6 Licensing Requirements. Electrical, mechanical, plumbing, elevator and fuel work requiring a permit shall be performed, as applicable, by a licensed electrician, plumber, gas-fitter, elevator mechanic, elevator contractor and/or refrigeration and air-conditioning mechanic licensed pursuant to D.C. Official Code §§ 47- 2853.01 *et seq*. (2012 Repl.)

Revise Section 105.1.9 of the 2013 District of Columbia Building Code to read as follows:

105.1.9 Posting of Permit. The permit, or a copy thereof, shall be kept on the work site and conspicuously displayed at a location visible from the street until the completion of the project. Public information deemed relevant by the *code official* for all permits issued by the *Department* shall be published on the *Department'*s website.

Add new Section 105.3.12 to the 2013 District of Columbia Building Code to read as follows:

105.3.12 Permit Applications in Special Flood Hazard Areas. An applicant for a building permit in a *Special Flood Hazard Area* shall comply with the *Floodplain Management Regulations*.

Section 116, EMERGENCY MEASURES, is amended as follows:

Revise Section 116 of the 2013 District of Columbia Building Code to read as follows:

116 EMERGENCY MEASURES

116.1 Imminent Danger - Emergency Authority. When an emergency exists, the ~~The~~ *code official* is hereby authorized ~~and empowered~~ to take such actions as the *code official* deems necessary to meet such emergency in accordance with this Section 116. An emergency shall exist ~~order and require the occupants to vacate the *premises* forthwith~~ when, in the opinion of the *code official* there is imminent danger due to an unsafe *building*, *structure* or condition including, but not limited to: ~~of~~ ~~failure or~~ collapse or potential collapse of a *building* or other *structure* which endangers life; ~~or~~ when the health or safety of occupants of the *premises* or those in the proximity of the *premises* is immediately endangered by an unsanitary condition or the operation of defective or dangerous equipment; ~~or~~ when any *structure* or part of a *structure* has fallen and life is endangered by the occupation of the *structure*; or when there is actual or potential danger ~~to the *building* occupants, or those in the proximity of any *structure*~~ because of the presence of explosives; explosive fumes or vapors; ~~or~~ toxic fumes, gases, or materials; or other hazardous or toxic conditions. The *code official* shall cause to be posted at each entrance to such *structure* a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the [*code*

official]." It shall be unlawful for any *person* to enter such *structure* so posted except for the purpose of securing the *structure*, making the required repairs, removing the hazardous condition, or demolishing the same.

116.2 **Emergency Work ~~Temporary Safeguards.~~** Whenever, in the opinion of the *code official*, an emergency exists, ~~there is imminent danger due to an unsafe condition~~, the *code official* is authorized to ~~shall~~ order the necessary work to be done (including, but not limited to, temporary safeguards, repairs, *demolition*, or *razing)* to render such *structure* ~~temporarily~~ safe whether or not the legal procedure herein described has been instituted and is authorized ~~shall further cause such other action to be take~~ to take such other action as the *code official* deems necessary to meet such emergency. For the purposes of this Section 116, the *code official* is authorized to employ the necessary labor and materials to perform the necessary emergency work as expeditiously as possible.

116.2.1 Historic Buildings. Prior to undertaking emergency work on any building or other structure that is listed (either as an individual listing or as a contributing resource to a listed historic district) in the D.C. or National Register of Historic Places, the *code official* shall consult with the State Historic Preservation Officer as required by D.C. Official Code §§ 6-801 and 6-802 (2012 Repl. & 2015 Supp.).

116.3 **Closing Streets.** When necessary for the public safety, the *code official* is authorized to temporarily close sidewalks, streets, *buildings*, other *structures*, and places adjacent to such unsafe *structure*, and prohibit them from being used.

116.4 **Occupied Premises.** When in the opinion of the *code official* an emergency exists, the *code official* is authorized to order any occupants of the *premises* to vacate the *premises* within the time period specified by the *code official*, subject to the provisions of Section 116.6 for tenants and occupants of residential *premises*.

~~**Emergency Repairs.** For the purposes of this section, the *code official* shall employ the necessary labor and materials to perform the required work as expeditiously as possible.~~

116.5 **Costs of Emergency Work ~~Repairs.~~** Where the *code official* causes emergency work to be done pursuant to Section 116.2 ~~or Section 116.4~~, the costs incurred in the performance of emergency work, and expenses incident thereto, shall be paid from appropriations of the District of Columbia on certification of the *code official* and shall be assessed as a tax against the property on which the emergency work or repairs were performed, carried as a tax on the regular tax rolls, and collected in the same manner as real estate taxes are collected. Nothing herein shall be deemed to preclude conversion of a special assessment lien to an administrative judgment, enforceable in the same manner as any other civil judgment under District of Columbia law, as authorized by D.C. Official Code §

42-3131.01 (2012 Repl. & 2015 Supp.).

116.5.1 Additional costs of emergency work ~~repairs~~. Costs of emergency work ~~repairs~~ shall also be deemed to include, but are not limited to, costs associated with cleaning the premises to comply with the *Construction Codes*, utility removal or disconnection costs, court costs, fines, and penalties. If the *code official* determines that no other shelter is available to *tenants* or occupants removed from residential *premises* pursuant to this Section 116, the *code official* has discretion to assess all expenses incident to *tenant* relocation as a cost of emergency repairs, including, but not limited to, temporary housing, security deposits and the first month's rent if required.

116.6 Special Provisions Applicable to Residential Premises.

116.6.1 Copies of Notices and Orders. The *code official* shall provide *tenants* of residential *premises* with copies of notices and orders issued pursuant to this Section 116 in accordance with Section 113.2.1.3. The *code official* shall not be subject to any other *tenant* notification provisions, except as expressly set forth in Section 113.2.1.3.

116.6.2 Building Closures. Where the *code official* posts a closure or imminently dangerous notice or order pursuant to this Section 116 in a residential *premises*, the *code official* is authorized to order all *tenants* or occupants to vacate the imminently dangerous *structure* or *dwelling unit.* The notice or order shall include the time by which the *premises* must be vacated, provided that tenants and occupants shall be given at least 24 hours to vacate, unless the *code official* determines that *tenants* and occupants must leave the *premises* immediately for their personal safety. If any *tenant* or occupant fails to vacate the *structure* or unit within the time specified in the notice or order, the *code official* is authorized to order removal of the *tenant* or occupant from the *structure* or unit.

116.6.1 Other Rental Housing Provisions. The removal of tenants from imminently dangerous *premises*, or the service of an order to vacate, pursuant to this Section 116 shall not be considered an eviction or notice to vacate under D.C. Official Code § 42-3505.01 (2012 Repl. & 2015 Supp.). Notwithstanding the foregoing, nothing herein shall be construed to nullify or abrogate any other rights to which a *tenant* is entitled under District laws or regulations, including relocation assistance, the right to reoccupy the rental unit following rehabilitation, or the right to pursue rights and remedies under D.C. Official Code, Title 42, Chapter 34 (2012 Repl. & 2015 Supp.).

116.7 Appeals. Imminent danger notices and orders, and other orders and notices issued pursuant to this Section 116, are appealable to OAH pursuant to Section 112.2.1, but any appeal shall not stay the enforcement of the notice or order. Any person ordered to take emergency measures or actions shall comply with such order forthwith within the time period specified by the *code official*. The expedited

hearing procedures set forth in Section 112.2.3 shall not apply to orders and notices issued pursuant to this Section 116.

Chapter 2, DEFINITIONS, is amended as follows:

Section 202, DEFINITIONS, is amended as follows:

Add new definitions to Section 202 of the 2013 District of Columbia Building Code to read as follows:

FLOOD HAZARD RULES. The provisions of Chapter 31 of Title 20 DCMR.

FLOODPLAIN MANAGEMENT REGULATIONS. The *Flood Hazard Rules* in combination with the flood protection provisions of the *Construction Codes*, including but not limited to flood load and flood resistant construction requirements in the *Building Code*, *Residential Code and Existing Building Code.*

Appendix M, HOME DAY CARE – R-3 OCCUPANCIES, of Title 12-B DCMR, RESIDENTIAL CODE SUPPLEMENT OF 2013, is amended as follows:

Revise Appendix M of the 2013 District of Columbia Residential Code to read as follows:

APPENDIX M HOME DAY CARE ~~R-3 OCCUPANCY~~

AM101 GENERAL

AM101.1 General.
This appendix shall apply to a home day care operated within ~~an~~ existing detached one and two-family *dwellings* and townhouses. ~~It is to include buildings and structures~~ within the scope of ~~regulated by~~ the *Residential Code* and occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians or relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. Appendix M does not apply to the following:

~~**Exceptions:**~~

1. Day care facilities that are classified as Group E or Group I-4 under the *Building Code*.

2. Adult day care where any of the clients are *incapable of self-preservation*, unless such persons are cared for in rooms located on a *level of exit discharge* serving such rooms and each room has an *exit* door directly to the exterior.

3. A child day care facility within a *dwelling unit* that is located in a multi-family building classified as an R-2 occupancy.

AM101.2 Number of occupants. For purposes of this Appendix, the number of occupants of a

dwelling unit used for home day care shall include care receivers, caregivers, residents and guests. Where a provision of this Appendix expressly refers to a number of children, children residing in the dwelling shall be included in the calculation total.

AM101.3 Other requirements. The requirements of this Appendix M shall not abrogate, or be deemed to abrogate, any other applicable legal requirements imposed on owners and operators of home day care facilities, including but not limited to the *Zoning Regulations*, Title 11 DCMR, the District of Columbia Department of Health Child Development Facility Regulations, Title 29 DCMR, and Title III of the Americans with Disabilities Act of 1990, (Pub. L. No. 101-336, 104 Stat. 328 (1990)).

AM101.4 Sprinkler requirements. Home day care facilities located in *existing dwelling units that are not protected by an automatic sprinkler system* and that meet the requirements of Appendix M are not required to be protected by an *automatic sprinkler system* in accordance with Section R313.

AM102 DEFINITIONS

EXIT. That portion of a *means of egress* system between the *exit access* and the exit discharge or public way. *Exit* components include exterior exit doors at the *level of exit discharge*, interior *exit* stairways, interior *exit* ramps, *exit* passageways, exterior *exit* stairways and exterior *exit* ramps and horizontal exits.

EXIT ACCESS. That portion of a *means of egress* system that leads from any occupied point in a *building* or *structure* to an *exit*.

EXIT DISCHARGE, LEVEL OF. The story at the point at which the *exit* terminates and the *exit* discharge begins.

MEANS OF EGRESS.A continuous and unobstructed path of vertical and horizontal egress travel from any occupied portion of a building or structure to the exterior at grade. A *means of egress* consists of three separate and distinct parts: the *exit access*, the *exit* and the *exit* discharge.

AM103 MEANS OF EGRESS

~~**AM103.1 Exits required.**~~
~~If the occupant load of the residence is more than nine, including those who are residents, during the time of operation of the day care, two exits are required from the ground level *story*. Two exits are required from a home day care operated in a *manufactured home* regardless of the occupant load. Exits shall comply with Section R311.~~

~~**AM103.1.1 Exit access prohibited.**~~
~~An exit access from the area of day care operation shall not pass through bathrooms, bedrooms, closets, garages, fenced rear *yards* or similar areas.~~

~~**Exception:** An exit may discharge into a fenced *yard* if the gate or gates remain unlocked during day care hours. The gates may be locked if there is an area of refuge located within the fenced *yard* and more than 50 feet (15 240 mm) from the *dwelling*. The area of refuge shall be large enough to allow 5 square feet (0.5 m^2) per occupant.~~

~~**AM103.1.2 Basements.** If the *basement* of a *dwelling* is to be used in the day care operation, two exits are required from the *basement* regardless of the occupant load. One of the exits may pass through the *dwelling* and the other must lead directly to the exterior of the *dwelling*.~~

~~**Exception:** An emergency and escape window complying with Section R310 and which does not conflict with Section AM103.1.1 may be used as the second means of egress from a*basement.*~~

AM103.1 Means of egress. The *means of egress* from each level of the one and two family *dwelling unit* used as a home day care occupancy shall comply with this section.

AM103.1.1 Below grade level. Below grade levels shall be provided with two means of egress, one of which shall consist of an *exit* door that provides direct access to the exterior.

Exception: One and two family *dwelling units* used as a home day care occupancy where the occupancy is equipped throughout with an automatic sprinkler system in accordance with Section R313 shall provide an *exit* door that provides direct access to the exterior.

AM103.1.2 At grade level nine occupants or less. At grade levels with an occupant load of nine or less shall be provided with an *exit* door that provides direct access to the exterior and a means of escape in compliance with Section R310.

Exception: One and two family *dwelling units* used as a home day care occupancy equipped with an automatic sprinkler system in accordance with Section R313 need only provide an *exit* door that provides direct access to the exterior.

AM103.1.3 At grade level more than nine occupants. At grade levels with an occupant load of more than nine shall be provided with two *means of egress* one of which shall be an *exit* door that provides direct access to the exterior.

AM103.1.4 Second story nine occupants or less. The second story with an occupant load of nine or less shall be provided with a means of *exit access* and a means of escape in compliance with Section R310.

AM103.1.5 Second story more than nine occupants. The second story with an occupant load of more than nine shall be provided with two *means of egress* one of which shall be an *exit* door that provides direct access to the exterior.

Exception: One and two family *dwelling units* used as a home day care occupancy equipped with an automatic sprinkler system in accordance Section R313 need only provide a means of *exit access* and a means of escape in compliance with Section R310.

AM103.1.6 Third story. The third story shall not be used for as a home day care occupancy.

Exception: Where the *dwelling* used for home day care is equipped throughout with an automatic sprinkler system in accordance with Section R313 and the third story is provided with a means of *exit access* and a means of escape in compliance with Section R310.

AM103.2 Yards. If the *yard* is to be used as part of the home day care operation it shall be fenced in accordance with AM103.2.

AM103.2.1 Type of fence and hardware. The fence shall be of durable materials and be at least 6 feet (1529 mm) tall, completely enclosing the area used for the day care operations. Each opening shall be a gate or door equipped with a self-closing and self-latching device to be installed at a minimum of 5 feet (1528 mm) above the ground.

Exception: The door of any *dwelling* which forms part of the enclosure need not be equipped with self-closing and self-latching devices.

AM103.2.2 Construction of fence. Openings in the fence, wall or enclosure required by this section shall have intermediate rails or an ornamental pattern that do not allow a sphere 4 inches (102 mm) in diameter to pass through. In addition, the following criteria must be met:

1. The maximum vertical clearance between *grade* and the bottom of the fence, wall or enclosure shall be 2 inches (51 mm).

2. Solid walls or enclosures that do not have openings, such as masonry or stone walls, shall not contain indentations or protrusions, except for tooled masonry joints.

3. Maximum mesh size for chain link fences shall be $1^{1}/_{4}$ inches (32 mm) square, unless the fence has slats at the top or bottom which reduce the opening to no more than $1^{3}/_{4}$inches (44 mm). The wire shall not be less than 9 gage [0.148 inch (3.8 mm)].

AM103.2.3. Decks. Decks that are more than 12 inches (305 mm) above *grade* shall have a guard in compliance with Section R312.

~~**AM103.2 Width and height of an exit.**~~
~~The minimum width of a required exit is 36 inches (914 mm) with a net clear width of 32 inches (813 mm). The minimum height of a required exit is 6 feet, 8 inches (2032 mm).~~

AM103.3 Type of lock and latches for *exits*. Regardless of the occupant load served, *exit* doors shall be capable of being opened from the inside without the use of a key or any special knowledge or effort. When the occupant load is 10 or less, a night latch, dead bolt or security chain may be used, provided such devices are capable of being opened from the inside without the use of a key or tool, and mounted at a height not to exceed 48 inches (1219 mm) above the finished floor.

AM103.4 Landings. Landings for stairways and doors shall comply with Section R311, except that landings shall be required for the exterior side of a sliding door when a home day care is being operated in the *dwelling* ~~in a Group R-3 occupancy~~.

AM104 SMOKE DETECTION

AM104.1 General.
Smoke alarms shall be installed in all *dwellings* used for home day care. Smoke alarms shall be installed in accordance with Section R313. In addition to the locations required by Section R313 smoke alarms shall be installed in all areas used for napping.

~~Smoke detectors shall be installed in *dwelling* units used for home day care operations. Detectors shall be installed in accordance with the approved manufacturer's instructions. If the current smoke detection system in the *dwelling* is not in compliance with the currently adopted code for smoke detection, it shall be upgraded to meet the currently adopted code requirements and Section AM103 before day care operations commence.~~

~~**AM104.2 Power source.**~~
~~Required smoke detectors shall receive their primary power from the building wiring when that wiring is served from a commercial source and shall be equipped with a battery backup. The detector shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Required smoke detectors shall be interconnected so if one detector is activated, all detectors are activated.~~

~~**AM104.3 Location.**~~
~~A detector shall be located in each bedroom and any room that is to be used as a sleeping room, and centrally located in the corridor, hallway or area giving access to each separate sleeping area. When the *dwelling* unit has more than one *story*, and in *dwellings* with *basements*, a detector shall be installed on each *story* and in the *basement*. In *dwelling* units where a *story* or*basement* is split into two or more levels, the smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a detector shall be installed on each level. When sleeping rooms are on the upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In *dwelling* units where the ceiling height of a room open to the hallway serving the bedrooms or sleeping areas exceed that of the hallway by 24 inches (610 mm) or more, smoke detectors shall be installed in the hallway~~

~~and the adjacent room. Detectors shall sound an alarm audible in all sleeping areas of the *dwelling* unit in which they are located.~~

AM105 CARBON MONOXIDE DETECTION

AM105.1 General. Carbon monoxide alarms shall be installed in all *dwellings* used for home day care equipped with a fuel burning appliance or an attached garage. Carbon monoxide alarms shall be installed in accordance with Section R315.

AM106 OCCUPANT LOAD

AM106.1 Maximum number of occupants. The maximum number of occupants allowed in a home day care facility shall be determined by the square footage of those portions of the *dwelling unit* legally used for home day care activities. The occupant load factor shall be 35 square feet net per occupant, provided that, regardless of square footage, the maximum number of clients served in home day care shall not exceed 12 persons.

AM106.2 Infants. The minimum staff-to-client ratio for children age two or younger (referred to herein as "infants") shall be 1:2, provided that the number of infants shall not, under any circumstances, exceed six. Where children of various ages are present in a home day care facility, including the caregiver's children, the following table shall apply:

Table AM 106.3 Family Home Provider Adult/Child Ratio

Age of children[1]	Adult /Child Ratio	Maximum Group size
1 infant and between 1 and 11 children over 2 years of age	1:6	12
2 infants and between 1 and 4 children over 2 years of age	1:6	6
3 infants and between 1 and 6 children over 2 years of age	1:3 (but at least 2 caregivers)	9
4 infants and between 1 and 8 children over 2 years of age	1:3 (but at least 2 caregivers)	12
5 infants and between 1 and 4 children over 2 years of age	3 caregivers	9
6 infants and between 1 and 3 children over 2 years of age	3 caregivers	9

[1] A child who is non-ambulatory will be treated the same as an infant for purposes of the adult/child ratio.

AM106.4 Adults. The minimum staff- to- client ratio for adults in *dwellings* used for home day care operations shall be as follows:

1. One care giver for every two adult occupants *incapable of self-preservation* shall be maintained at all times in *dwellings* not protected with automatic sprinklers in accordance with Section R313;

2. One care giver for every six adult occupants *incapable of self-preservation* shall be maintained at all times in *dwellings* protected with automatic sprinklers in accordance with Section R313;

3. One care giver for every six adult occupants capable of self-preservation shall be maintained at all times in *dwellings* used for home day care operations.

AM107 FIRE EXTINGUISHERS

AM107.1 General. Multi-purpose fire extinguishers of a type approved for use in residences must be maintained in good working condition and installed in the kitchen and outside the furnace room of the *dwelling*. The caregivers must know how to use the fire extinguishers installed in a home day care. Fire extinguishers with gauges must show a full charge. Fire extinguishers with seals must have unbroken seals.

AM108 FIRE SAFETY AND EVACUATION PLANS

AM108.1 Submission of plan. Prior to operation, the home day care provider must submit a written fire safety and evacuation plan to the *code official*, using a form furnished by the *code official* or an approved equivalent form. The plan, as approved by the *code official*, must be posted in a conspicuous place in the home day care or filed in a place in the home day care which is available for review by employees and by the parents or guardians of the persons in care. The approved emergency evacuation plan must describe the following at a minimum:

AM108.2 Contents. The fire safety and evacuation plan shall include the following:

1. how children and adults will be made aware of an emergency;

2. primary and secondary evacuation routes;

3. floor plans identifying the location of the evacuation routes and other *means of egress,* and the location of portable fire extinguishers;

4. methods of evacuation, including the meeting place where children and adults will meet after evacuating the home, and how attendance will be taken to determine if all occupants have been successfully evacuated or have been accounted for;

5. the procedure for notification of authorities and the parents/guardians of the

persons in care;

6. procedures and recordkeeping for emergency evacuation drills and employee training that complies with AM108.3; and

7. such other information as the *code official* shall require.

AM108.3 Emergency evacuation drills; employee training and response procedures. Emergency evacuation drills shall be conducted at least monthly. Drills should be conducted in exactly the same manner as an actual emergency (except for notifying emergency personnel). The home day care provider shall keep a written record of monthly evacuation drills in a form approved by the *code official*. The record must include total egress time from the time the alarm sounds until everyone reaches the meeting place. The record must also list the number of children in care and adults present, and the *exit* that was used. Employees shall be trained in the fire emergency procedures described in the fire safety and emergency evacuation plan as part of new employee orientation.

AM108.4 Matters not provided for. Home day care providers shall comply with any requirements that are deemed essential for the safety of the occupants of the day care home by the *code official*.

AM109 INTERIOR FINISH, DECORATIVE MATERIALS AND FURNISHINGS

AM109.1 General. The selected interior finishes, decorative materials and furnishings for home day care facilities shall comply with Chapter 8 of the *Fire Code*.

Chapter 1, ADMINISTRATION AND ENFORCEMENT, of Title 12-G, PROPERTY MAINTENANCE CODE SUPPLEMENT OF 2013, is amended as follows:

Section 109, EMERGENCY MEASURES, is amended as follows:

Revise Section 109 of the 2013 District of Columbia Property Maintenance Code to read as follows:

109 EMERGENCY MEASURES

109.1 ***Imminent danger – Emergency Authority.*** When an emergency exists, the ~~The~~ *code official* is hereby authorized ~~and empowered~~ to take such actions as the *code official* deems necessary to meet such emergency in accordance with this Section 109. An emergency shall exist ~~order and require the tenants or occupants to vacate a *premises* forthwith~~ when, in the opinion of the *code official*~~:~~ there is imminent danger due to an unsafe building, structure or condition, including, but not limited to: ~~of failure or~~ collapse or potential collapse of a building or other structure which endangers life; when the health or safety of occupants of the *premises* or those in the proximity of the *premises* is immediately endangered by an unsanitary condition or the operation of defective or dangerous equipment; ~~or~~ when any structure or part of a structure has fallen and life is endangered by the

occupation of the structure; when there is actual or potential danger ~~to the building occupants or those in the proximity of any structure~~ because of the presence of explosives, explosive fumes or vapors, ~~or~~ toxic fumes, gases, or materials; or ~~when the health or safety of occupants of the *premises* or those in the proximity of the *premises* is immediately endangered by an unsanitary condition or the operation of defective or dangerous equipment~~ other hazardous or toxic conditions. The *code official* shall cause to be posted at each entrance to such structure a notice or order reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the *code official*." It shall be unlawful for any *person* to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition, or demolishing the same.

109.1.1 Special provisions applicable to residential premises.

109.1.1.1 Copies of notices and orders. The *code official* shall provide *tenants* of *residential premises* with copies of notices and orders issued pursuant to this Section 109 in accordance with Section 107.7. The *code official* shall not be subject to any other *tenant* notification provisions, except as expressly set forth in Section 107.7.

109.1.1.2 Building closures. Where the *code official* posts a closure or imminently dangerous notice or order pursuant to Section 109.1 in a residential *premises*, the *code official* is authorized to order all *tenants* or occupants to vacate the imminently dangerous structure or *dwelling unit.* The notice or order shall include the time by which the *premises* must be vacated, provided that tenants and occupants shall be given at least 24 hours to vacate, unless the *code official* determines that *tenants* and occupants must leave the *premises* immediately for their personal safety. If any *tenant* or occupant fails to vacate the structure or unit within the time specified in the notice or order, the *code official* is authorized to order removal of the *tenant* or occupant from the structure or unit.

109.1.1.3 Other rental housing provisions. The removal of tenants from imminently dangerous premises, or the service of an order to vacate, pursuant to this Section 109 shall not be considered an eviction or notice to vacate under D.C. Official Code § 42-3505.01 (2012 Repl. & 2015 Supp.). Notwithstanding the foregoing, nothing herein shall be construed to nullify or abrogate any other rights to which a *tenant* is entitled under District laws or regulations, including relocation assistance, the right to reoccupy the rental unit following rehabilitation, or the right to pursue rights and remedies under D.C. Official Code Title 42, Chapter 34 (2012

Repl. & 2015 Supp.).

109.1.2 Appeals. Imminent danger notices and orders, and other notices and orders issued pursuant to this Section 109, are appealable to OAH pursuant to Section 107.8, but any appeal shall not stay the enforcement of the notice or order. Any person ordered to take emergency measures or actions shall comply with such order forthwith. The expedited hearing procedures set forth in Section 107.8.2 shall not apply to orders and notices issued pursuant to this Section 109.

~~**109.1.3 Historic preservation.** Emergency measures affecting a historic landmark or a building or structure located within an historic district shall comply with D.C. Official Code § 6-803(b) (2012 Repl.).~~

109.2 **Emergency work ~~Temporary Safeguards~~.** Whenever, in the opinion of the *code official*, an emergency exists, ~~there is imminent danger due to an unsafe condition~~, the *code official* is authorized to ~~shall~~ order the necessary work to be done (including ~~the boarding up of openings~~, but not limited to, temporary safeguards, repairs, *demolition*, or *razing*) to render such *structure* ~~temporarily~~ safe whether or not the legal procedure herein described has been instituted and shall take such other action as the *code official* deems necessary to meet such emergency. For the purposes of this Section 109, the *code official* is authorized to employ the necessary labor and materials to perform the necessary emergency work as expeditiously as possible.

109.2.1 Historic preservation. Prior to undertaking emergency work on any building or other structure that is listed (either as an individual listing or as a contributing resource to a listed historic district) in the D.C. or National Register of Historic Places, the *code official* shall consult with the State Historic Preservation Officer as required by D.C. Official Code §§6-801 and 6-802 (2012 Repl. & 2015 Supp.).

109.3 **Closing streets.** When necessary for the public safety, the *code official* is authorized to temporarily close sidewalks, streets, buildings, other structures, and places adjacent to such unsafe structure, and prohibit them from being used.

109.4 **Occupied premises.** When in the opinion of the *code official* an emergency exists, the *code official* is authorized to order any occupants of the *premises* to vacate the *premises* within the time period specified by the *code official*, subject to the provisions of Section 109.1.1 for tenants and occupants of residential *premises*.

~~**Emergency repairs.** For the purposes of this section, the *code official* shall employ the necessary labor and materials to perform the required work as expeditiously as possible.~~

109.5 **Costs of emergency work ~~repairs~~.** Where the *code official* causes emergency work to be done pursuant to Section 109.2 ~~or Section 109.4~~, the costs incurred in the performance of emergency work and expenses incident thereto shall be paid from appropriations of the District of Columbia on certification of the *code official* and shall be assessed as a tax against the property on which the emergency work or repairs were performed in accordance with Section 106.5. Nothing herein shall be deemed to preclude conversion of a special assessment lien to an administrative judgment, enforceable in the same manner as any other civil judgment under District of Columbia law, as authorized by D.C. Official Code § 42-3131.01 (2012 Repl. & 2015 Supp.).

109.5.1 Additional costs of emergency work ~~repairs~~. Costs of emergency work ~~repairs~~ shall also be deemed to include, but are not limited to, costs associated with cleaning the premises to comply with the *Property Maintenance Code*, utility removal or disconnection costs, court costs, fines, and penalties. If the *code official* determines that no other shelter is available to tenants or occupants removed from residential premises pursuant to this Section 109, the *code official* has discretion to assess all expenses incident to *tenant* relocation as a cost of emergency repairs, including, but not limited to, temporary housing, security deposits and the first month's rent if required.

109.6 **Condemnation.** The *code official* is authorized to refer a building or structure determined to be imminently dangerous under this Section 109 to the Board of Condemnation of Insanitary Buildings for issuance of an order of condemnation pursuant to D.C. Official Code § 6-903 (2012 Repl. & 2015 Supp.).

Chapter 1, ADMINISTRATION AND ENFORCEMENT, of Title 12-H, FIRE CODE SUPPLEMENT OF 2013, is amended as follows:

Section 111, EMERGENCY MEASURES, is amended as follows:

Revise Section 111 of the 2013 District of Columbia Fire Code to read as follows:

111 EMERGENCY MEASURES

111.1 **Imminent Danger.** When an emergency exists the ~~The~~ *code official* is hereby authorized ~~and empowered~~ to take such actions as the *code official* deems necessary to meet such emergency in accordance with this Section 111. An emergency shall exist ~~order and require the occupants to vacate the *premises* forthwith~~ when, in the opinion of the *code official* any work, operations, processes, or conditions regulated by the *Fire Code* create an imminent danger ~~to building occupants or those in proximity of any premises~~ because of: the hazard of fire and explosion arising from the storage, handling or use of structures, materials, or devices; fire hazards in the structure or on the *premises* from occupancy or operation; conditions affecting the safety of fire fighters and

emergency responders during emergency operations; or conditions hazardous to life, property, or public welfare. The *code official* shall cause to be posted at each entrance to such *structure* a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the [*code official*]." It shall be unlawful for any *person* to enter such *structure* except for the purpose of securing the *structure*, making the required repairs, removing the hazardous condition, or of demolishing the same.

111.2 **Emergency Work ~~Temporary Safeguards~~.** Whenever, in the opinion of the *code official*, an emergency exists, ~~there is imminent danger due to an unsafe condition~~, the *code official* is authorized to ~~shall~~ order the necessary work to be done (including, but not limited to, the boarding up of openings, temporary safeguards, repairs, *demolition*, or *razing*) to render such structure or *premises* ~~temporarily~~ safe whether or not the legal procedures ~~set forth in Section~~ 109herein described have been instituted~~;~~ and is authorized to take ~~shall further cause such other action to be take~~ such other action as the *code official* deems necessary to meet such emergency. For the purposes of this section, the *code official* is authorized to employ the necessary labor and materials to perform the necessary emergency work as expeditiously as possible.

111.2.1 Historic Buildings. Prior to undertaking emergency work on any building or other structure that is listed (either as an individual listing or as a contributing resource to a listed historic district) in the D.C. or National Register of Historic Places, the *code official* shall consult with the State Historic Preservation Officer as required by D.C. Official Code §§6-801 and 6-802 (2012 Repl. & 2015 Supp.).

111.3 **Closing Streets.** When necessary for the public safety, the *code official* is authorized to temporarily close sidewalks, streets, *buildings*, other *structures*, and places adjacent to such unsafe *structure*, and prohibit them from being used.

111.4 **Occupied Premises.** When in the opinion of the *code official* an emergency exists, the *code official* is authorized to order any occupants of the *premises* to vacate the *premises* within the time period specified by the *code official*, subject to the provisions of Section 111.6 for tenants and occupants of residential *premises*.

~~**Emergency Repairs.** For the purposes of this section, the *code official* shall employ the necessary labor and materials to perform the required work as expeditiously as possible.~~

111.5 **Costs of Emergency Work ~~Repairs.~~** Where the *code official* causes emergency work to be done pursuant to Section 111.2 ~~or Section 111.4~~, the costs incurred in the performance of emergency work, and expenses incident thereto, shall be paid from appropriations of the District of Columbia on certification of the *code official* and shall be assessed as a tax against the property on which the emergency

work or repairs were performed, carried as a tax on the regular tax rolls, and collected in the same manner as real estate taxes are collected. Nothing herein shall be deemed to preclude conversion of a special assessment lien to an administrative judgment, enforceable in the same manner as any other civil judgment under District of Columbia law, as authorized by D.C. Official Code §42-3131.01 (2012 Repl. & 2015 Supp.).

111.6 Special Provisions Applicable to Residential Premises. Where the *code official* posts a closure or imminently dangerous notice or order pursuant to this Section 111 in a residential *premises*, the *code official* is authorized to order all *tenants* or occupants to vacate the imminently dangerous *structure* or *dwelling unit.* The notice or order shall include the time by which the *premises* must be vacated, provided that tenants and occupants shall be given at least 24 hours to vacate, unless the *code official* determines that *tenants* and occupants must leave the *premises* immediately for their personal safety. If any *tenant* or occupant fails to vacate the *structure* or unit within the time specified in the notice or order, the *code official* is authorized to order removal of the *tenant* or occupant from the *structure* or unit.

111.6.1 Additional provisions for residential building closures. Where the *code official* posts a closure or imminently dangerous order or notice in a residential *structure* or *dwelling unit* pursuant to this Section 111, the following additional provisions shall apply.

1. The notice or order shall specify a date by which *tenants* or occupants are required to vacate the *residential building* or *dwelling unit*.

2. The notice or order shall include a statement informing *tenants* or occupants of the *building* or unit of the right to appeal pursuant to Section 108.1.

3. A copy of the notice or order shall be provided to *tenants* in accordance with Section 109.2.2.

4. The notice shall provide contact information for the Office of the Tenant Advocate.

111.6.2 Other Rental Housing Provisions. The removal of tenants from imminently dangerous *premises*, or the service of an order to vacate, pursuant to this Section 111 shall not be considered an eviction or notice to vacate under D.C. Official Code § 42-3505.01 (2012 Repl. & 2015 Supp.). Notwithstanding the foregoing, nothing herein shall be construed to nullify or abrogate any other rights to which a *tenant* is entitled under District laws or regulations, including relocation assistance, the right to reoccupy the rental unit following rehabilitation, or the right to pursue rights and remedies under D.C. Official Code, Title 42, Chapter 34 (2012 Repl. & 2015 Supp.).

Chapter 3, GENERAL REQUIREMENTS, is amended as follows:

Insert a new Section 319 in the 2013 District of Columbia Fire Code to read as follows:

319 DAY CARE FACILITIES IN DWELLING UNITS

319.1 Fire safety inspection required. No day care facility located in a *dwelling unit* shall be operated without a fire safety inspection conducted by the *code official* prior to commencement of operations and annually thereafter.

319.2 Day care homes in 1-or 2-family homes or townhouses. Day care facilities that are operated within existing detached one and two-family *dwellings* and townhouses within the scope of the *Residential Code* shall comply with the fire safety provisions in Appendix K. Appendix K does not apply to the following:

1. Day care facilities in a *dwelling unit* which is not the primary residence of the person operating the facility;

2. Day care facilities that are classified as Group E or Group I-4 under the *Building Code*.

3. Adult day care where any of the clients are *incapable of self-preservation*, unless such persons are cared for in rooms located on a *level of exit discharge* serving such rooms and each room has an *exit* door directly to the exterior.

319.3 Day care homes in multi-family buildings. Day care facilities located in a *dwelling unit* within a multi-family building classified as a R-2 occupancy are prohibited.

Exception: Where, on the date of initial adoption of this Section 319.3, the day care facility is legally operating in the *dwelling unit* pursuant to a child development home license issued by the Office of the State Superintendent of Education, provided that (a) the *dwelling unit* is not located above the third floor of the R-2 building or, if operating above the third floor, the building must be equipped throughout with an automatic sprinkler system that complies with Section 903.2.8; and (b) the child development home requests a fire safety inspection from the *Fire Code Official* within thirty (30) days after initial adoption of Section 319.

319.4 Existing day care homes. Except as provided in Section 319.3, day care facilities in existing *dwelling units* that were licensed as child development homes by the Office of the State Superintendent of Education and legally operating, as of the date of initial adoption of Section 319, shall have a 12-month period to come into compliance with the *Fire Code*.

Insert a new Appendix K-Home Day Care in the 2013 Fire Code to read as follows:

APPENDIX K HOME DAY CARE

The provisions contained in this appendix are adopted in the District of Columbia.

AK101 GENERAL

K101.1 General.

This appendix shall apply to a home day care (a) operated within existing detached one and two-family *dwellings* and townhouses within the scope of the *Residential Code* and (b) occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians or relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. Appendix K does not apply to the following:

1. Day care facilities that are classified as Group E or Group I-4 under the *Building Code*.

2. Adult day care where any of the clients are *incapable of self-preservation*, unless such persons are cared for in rooms located on a *level of exit discharge* serving such rooms and each room has an *exit* door directly to the exterior.

3. A child day care facility within a *dwelling unit* that is located in a multi-family building classified as an R-2 occupancy.

K101.2 Number of occupants. For purposes of this Appendix, the number of occupants of a *dwelling unit* used for home day care shall include care receivers, caregivers, residents and guests. Where a provision of this Appendix expressly refers to a number of children, children residing in the *dwelling unit* shall be included in the calculation total.

K101.3 Other requirements. The requirements of this Appendix K shall not abrogate, or be deemed to abrogate, any other applicable legal requirements imposed on owners and operators of home day care facilities, including but not limited to the *Zoning Regulations*, Title 11 DCMR, the District of Columbia Department of Health Child Development Facility Regulations, Title 29 DCMR, and Title III of the Americans with Disabilities Act of 1990, (Pub. L. No. 101-336, 104 Stat. 328 (1990)).

K101.4 Sprinkler requirements. Home day care facilities located in *existing dwelling units that are not protected by an automatic sprinkler system* and that meet the requirements of Appendix K are not required to be protected by an *automatic sprinkler system* in accordance with Section R313 of the *Residential Code* and Section 903.2.8 of the *Fire Code* as applicable.

AK102 DEFINITIONS

EXIT. That portion of a means of egress system between the *exit access* and the *exit* discharge or public way. *Exit* components include exterior *exit* doors at the *level of exit discharge*, interior *exit* stairways, interior *exit* ramps, *exit* passageways, exterior *exit* stairways and exterior *exit* ramps and horizontal *exits*.

EXIT ACCESS. That portion of a *means of egress* system that leads from any occupied point in

a *building* or *structure* to an *exit*.

EXIT DISCHARGE, LEVEL OF. The story at the point at which the *exit* terminates and the *exit* discharge begins.

MEANS OF EGRESS.A continuous and unobstructed path of vertical and horizontal egress travel from any occupied portion of a building or structure to the exterior at grade. A means of egress consists of three separate and distinct parts: the *exit access*, the *exit* and the *exit* discharge.

AK103 MEANS OF EGRESS

K103.1 Means of egress. The means of egress from each level of the one or two family *dwelling unit* used as a home day care occupancy shall comply with this section.

K103.1.1 Below grade level. Below grade levels shall be provided with two means of egress, one of which shall consist of an *exit* door that provides direct access to the exterior.

Exception: One and two family dwelling units used as a home day care occupancy where the occupancy is equipped throughout with an automatic sprinkler system in accordance with Section R313 of the *Residential Code* or Section 903.2.8 of the *Fire Code*, as applicable, shall provide an *exit* door that provides direct access to the exterior.

K103.1.2 At grade level 9 occupants or less. At grade levels with an occupant load of 9 or less shall be provided with an *exit* door that provides direct access to the exterior and a means of escape in compliance with Section R310 of the *Residential Code*.

Exception: One and two family *dwelling units* used as a home day care occupancy equipped with an automatic sprinkler system in accordance with Section R313 of the *Residential Code* or Section 903.2.8 of the *Fire Code*, as applicable, need only provide an *exit* door that provides direct access to the exterior.

K103.1.3 At grade level more than 9 occupants. At grade levels with an occupant load of more than 9 shall be provided with two *means of egress* one of which shall be an *exit* door that provides direct access to the exterior.

K103.1.4 Second story 9 occupants or less. The second story with an occupant load of 9 or less shall be provided with a means of *exit access* and a means of escape in compliance with Section R310 of the *Residential Code*.

K103.1.5 Second story more than 9 occupants. The second story with an occupant load of more than 9 shall be provided with two *means of egress* one of which shall be an *exit* door that provides direct access to the exterior.

Exception: One and two family *dwelling units* used as a home day care occupancy equipped with an automatic sprinkler system in accordance with Section R313 of the *Residential Code* or Section 903.2.8 of the *Fire Code*, as applicable, need not only provide means of *exit access* and a means of escape in compliance with Section R310 of the *Residential Code*.

K103.1.6 Third story. The third story of a one or two-family *dwelling* or townhouse shall not be used as a home day care occupancy.

Exception: Where the *dwelling unit* used as a home day care occupancy is equipped throughout with an automatic sprinkler system in accordance with Section R313 of the *Residential Code* or Section 903.2.8 of the *Fire Code*, as applicable, and the third story is provided with a means of *exit access* and a means of escape in compliance with Section R310 of the *Residential Code*.

K103.2 Yards. If the *yard* is to be used as part of the home day care operation it shall be fenced in accordance with K103.2.

K103.2.1 Type of fence and hardware. The fence shall be of durable materials and be at least 6 feet (1529 mm) tall, completely enclosing the area used for the day care operations. Each opening shall be a gate or door equipped with a self-closing and self-latching device to be installed at a minimum of 5 feet (1528 mm) above the ground.

Exception: The door of any *dwelling* which forms part of the enclosure need not be equipped with self-closing and self-latching devices.

K103.2.2 Construction of fence. Openings in the fence, wall or enclosure required by this section shall have intermediate rails or an ornamental pattern that do not allow a sphere 4 inches (102 mm) in diameter to pass through. In addition, the following criteria must be met:

1. The maximum vertical clearance between *grade* and the bottom of the fence, wall or enclosure shall be 2 inches (51 mm).

2. Solid walls or enclosures that do not have openings, such as masonry or stone walls, shall not contain indentations or protrusions, except for tooled masonry joints.

3. Maximum mesh size for chain link fences shall be $1^1/_4$ inches (32 mm) square, unless the fence has slats at the top or bottom which reduce the opening to no more than $1^3/_4$inches (44 mm). The wire shall not be less than 9 gage [0.148 inch (3.8 mm)].

K103.2.3. Decks. Decks that are more than 12 inches (305 mm) above *grade* shall have a guard in compliance with Section R312 of the

Residential Code.

K103.3 Type of lock and latches for *exit*s.

Regardless of the occupant load served, *exit* doors shall be capable of being opened from the inside without the use of a key or any special knowledge or effort. When the occupant load is 10 or less, a night latch, dead bolt or security chain may be used, provided such devices are capable of being opened from the inside without the use of a key or tool, and mounted at a height not to exceed 48 inches (1219 mm) above the finished floor.

K103.4 Landings.

Landings for stairways and doors shall comply with Section R311 of the *Residential Code*, except that landings shall be required for the exterior side of a sliding door when a home day care is being operated in a Group R-3 occupancy.

AK104 SMOKE DETECTION

K104.1 General. Smoke alarms shall be installed in all home day care occupancies. Smoke alarms shall be installed in accordance with Section R313 of the *Residential Code* or Section 907.2.11.2 of the *Fire Code* as applicable. In addition to the locations required by Section R313 of the *Residential Code* or Section 907.2.11.2, smoke alarms shall be installed in all areas used for napping.

AK105 CARBON MONOXIDE DETECTION

K105.1 General. Carbon monoxide alarms shall be installed in all home day care occupancies equipped with a fuel burning appliance or an attached garage. Carbon monoxide alarms shall be installed in accordance with Section R315 of the *Residential Code* or Section 908.7 of the *Fire Code* as applicable.

AK106 OCCUPANT LOAD

K106.1 Maximum number of occupants. The maximum number of occupants allowed in a home day care facility shall be determined by the square footage of those portions of the *dwelling unit* legally used for home day care activities. The occupant load factor shall be 35 square feet net per occupant, provided that, regardless of square footage, the maximum number of clients served in home day care shall not exceed 12 persons.

K106.2 Infants. The minimum staff-to-client ratio for children age two or younger (referred to herein as "infants") shall be 1:2, provided that the number of infants shall not, under any circumstances, exceed six. Where children of various ages are present in a home day care facility, including the caregiver's children, the caregiver/child ration shall comply with Table K106.2 following table shall apply:

Table K 106.2 Home Day Care Caregiver/Child Ratio

Age of children[1]	Adult /Child Ratio	Maximum Group size
1 infant and between 1 and 11 children over 2 years of age	1:6	12
2 infants and between 1 and 4 children over 2 years of age	1:6	6
3 infants and between 1 and 6 children over 2 years of age	1:3 (but at least 2 caregivers)	9
4 infants and between 1 and 8 children over 2 years of age	1:3 (but at least 2 caregivers)	12
5 infants and between 1 and 4 children over 2 years of age	3 caregivers	9
6 infants and between 1 and 3 children over 2 years of age	3 caregivers	9

[1] A child who is non-ambulatory will be treated the same as an infant for purposes of the caregiver/child ratio,

K106.4 Adults. The minimum staff- to- client ratio for adults in *dwellings* used for home day care operations shall be as follows:

1. One care giver for every two adult occupants *incapable of self-preservation* shall be maintained at all times in *dwellings* not protected with automatic sprinklers in accordance with Section R313;

2. One care giver for every six adult occupants *incapable of self-preservation* shall be maintained at all times in *dwellings* protected with automatic sprinklers in accordance with Section R313 of the *Residential Code* or Section 907.2.11.2 of the *Fire Code* as applicable;

3. One care giver for every six adult occupants capable of self-preservation shall be maintained at all times in *dwellings* used for home day care operations.

AK107 FIRE EXTINGUISHERS

K107.1 General. Multi-purpose fire extinguishers of a type approved for use in residences must be maintained in good working condition and installed in the kitchen and outside the furnace room of the *dwelling*. The caregivers must know how to use the fire extinguishers installed in a home day care. Fire extinguishers with gauges must show a full charge. Fire extinguishers with

seals must have unbroken seals.

AK108 FIRE SAFETY AND EVACUATION PLANS

K108.1 General . An *approved* fire safety and evacuation plan shall be prepared and maintained by the home day care provider, and available on the premises for reference and review by employees and by the parents and guardians of the persons in care. The plan must be posted in a conspicuous place in the home day care or filed in a place in the home day care which is available to the parents or guardians of the persons in care. The fire safety and evacuation plan shall be furnished to the *fire code official* for review upon request. Fire safety and evacuation plans shall be reviewed and updated annually or as necessitated by changes in staff assignments, occupancy or the physical arrangement of the building.

K108.2 Contents. The fire safety and evacuation plan shall include the following:

1. how children and adults will be made aware of an emergency;

2. primary and secondary evacuation routes;

3. floor plans identifying the location of the evacuation routes and other *means of egress*, and the location of portable fire extinguishers;

4. methods of evacuation, including the meeting place where children and adults will meet after evacuating the home, and how attendance will be taken to determine if all occupants have been successfully evacuated or have been accounted for;

5. the procedure for notification of authorities and the parents/guardians of the persons in care;

6. procedures and record for emergency evacuation drills and employee training that complies with K108.3; and

7. such other information as the *code official* shall require.

K108.3 Emergency evacuation drills; employee training and response procedures. Emergency evacuation drills shall be conducted at least monthly. Drills should be conducted in exactly the same manner as an actual emergency (except for notifying emergency personnel). The home day care provider shall keep a written record of monthly evacuation drills. The record must include total egress time from the time the alarm sounds until everyone reaches the meeting place. The record must also list the number of children in care and adults present, and the *exit* that was used. The record shall be available for review by the *code official* upon request. Employees shall be trained in the fire emergency procedures described in the fire safety and emergency evacuation plan as part of new employee orientation.

K108.4 Matters not provided for. Home day care providers shall comply with any requirements that are deemed essential for the safety of the occupants of the day care home by

the *fire code official*.

AK109 INTERIOR FINISH, DECORATIVE MATERIALS AND FURNISHINGS

K109.1 General. The selected interior finishes, decorative materials, and furnishings for home day care facilities shall comply with Chapter 8.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2016 Supp.)), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to Section 903 (Outpatient and Emergency Room Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The effect of these rules is to extend the provision of supplemental payments to eligible hospitals located within the District of Columbia that participate in the Medicaid program for outpatient hospital services rendered through September 30, 2017.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on September 30, 2016 at 63 DCR 011917. No comments were received and no changes have been made for these final rules.

The corresponding State Plan Amendment (SPA) to the District of Columbia State Plan for Medical Assistance (State Plan) was approved by the Council of the District of Columbia through the Fiscal Year 2017 Budget Support Act of 2016, effective July 20, 2016 (D.C. Act 21-463; 63 DCR 009843 (July 29, 2016)). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) subsequently approved the corresponding SPA with an effective date of October 1, 2016.

The Director adopted these rules as final on December 9, 2016 and they shall become effective on the date of publication of this notice in the *D.C. Register.*

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsection 903.31 of Section 903, OUTPATIENT AND EMERGENCY ROOM SERVICES, is amended as follows:

903.31 Beginning FY 2017, each eligible hospital shall receive a supplemental hospital access payment calculated as set forth below:

(a) For visits and services beginning October 1, 2016 and ending on September 30, 2017, quarterly access payments shall be made to each eligible private hospital. Each payment shall be an amount equal to each hospital's District Fiscal Year (DFY) 2014 outpatient Medicaid payments divided by the total in District private hospital DFY 2014 outpatient

Medicaid payments multiplied by one quarter (1/4) of the total outpatient private hospital access payment pool. The total outpatient private hospital access payment pool shall be equal to the total available spending room under the private hospital outpatient Medicaid upper payment limit for DFY 2017;

(b) United Medical Center: For visits and services beginning October 1, 2016 and ending on September 30, 2017, quarterly access payments shall be made as follows: (1) Each payment shall be equal to one quarter (1/4) of the total outpatient public hospital access payment pool; and (2) The total outpatient public hospital access payment pool shall be equal to the total available spending room under the District-operated hospital outpatient Medicaid upper payment limit for DFY 2017;

(c) Payments shall be made fifteen (15) business days after the end of the quarter for the Medicaid visits and services rendered during that quarter; and

(d) For purposes of this section, the term District Fiscal Year shall mean dates beginning on October 1st and ending on September 30th.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; 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 adoption of an amendment to Section 964 (Dental Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules update the parameters of the Medicaid dental program by aligning coverage with best practices and improving the regulatory framework for adults and children. Delivery of dental services is based on medical appropriateness, allowing the agency to maintain a dental program that meets the needs of all qualified Medicaid beneficiaries. These rules clarify the services available to each covered population, as well as the criteria that must be met and the documentation that must be provided in order to obtain prior authorization for certain covered services.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 8, 2016 at 63 DCR 005295. No comments were received and no changes have been made for these final rules.

The corresponding State Plan Amendment (SPA) to the District of Columbia State Plan for Medical Assistance (State Plan) was approved by the Council of the District of Columbia on July 22, 2016 (PR 21-0817). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) subsequently approved the corresponding SPA with an effective date of November 1, 2016.

The Director adopted these rules as final on December 9, 2016 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 964, DENTAL SERVICES, is deleted in its entirety and replaced to read as follows:

964 DENTAL SERVICES

964.1 Subject to requirements established in this section, the Department of Health Care Finance (DHCF) shall reimburse for dental services, as further described in these rules, provided to the following eligible populations:

(a) Medicaid beneficiaries under the age of twenty-one (21);

(b) Medicaid beneficiaries twenty-one (21) years of age and older who reside in an intermediate care facility for individuals with intellectual disabilities (ICF/IID) or are enrolled in the 1915(c) Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities, as described in 29 DCMR §§ 1900 *et seq.*; and

(c) Medicaid beneficiaries twenty-one (21) years of age and older who do not reside in an ICF/IID and are not enrolled in the 1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities.

964.2 Medicaid reimbursement shall be provided for dental services furnished to Medicaid beneficiaries, in a dental facility, under the direction of a dentist who meets the requirements of § 964.8.

964.3 Medicaid beneficiaries under the age of twenty-one (21) shall be eligible to receive dental services as a required component of the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit.

964.4 Medicaid reimbursement for dental services provided under the EPSDT benefit to Medicaid beneficiaries under the age of twenty-one (21) shall include those services provided:

(a) At intervals that meet reasonable standards of dental practice as determined by DHCF after consultation with recognized dental organizations involved in child health;

(b) At such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(c) Which include, at a minimum, preventive services; relief of pain and infections; restoration of teeth; and maintenance of dental health.

964.5 Medicaid beneficiaries under the age of eighteen (18) shall not be eligible to receive dental implants without prior authorization from DHCF or its agent.

964.6 Medicaid beneficiaries under the age of twenty-one (21) shall be eligible to receive orthodontic services subject to the requirements set forth in § 964.7.

964.7 Before delivering an orthodontic service to a Medicaid beneficiary under the age of twenty-one (21), a provider shall obtain prior authorization from DHCF or its agent. To be eligible for reimbursement of orthodontic services, the beneficiary's dental or orthodontia provider shall demonstrate that the beneficiary meets at least one (1) of the following criteria:

(a) Has an adjusted score greater than or equal to fifteen (15) on the Handicapping Labio-Lingual Deviation (HLD) Index;

(b) Exhibits one (1) or more of the following Automatic Qualifying Conditions that causes dysfunction due to a handicapping malocclusion and is supported by evidence in the beneficiary's treatment records:

(1) Cleft palate deformity;

(2) Cranio-facial anomaly;

(3) Deep impinging overbite causing the destruction of soft tissues of the palate where tissue laceration and/or clinical attachment loss are present;

(4) Crossbite of individual anterior teeth causing clinical attachment loss where recession of the gingival margins is present;

(5) Severe traumatic deviation; or

(6) Overjet greater than nine (9) millimeters or mandibular protrusion greater than three and one half (3.5) millimeters; or

(c) Has otherwise established a medical need for orthodontic treatment by demonstrating two (2) or more of the conditions below and justified the need in an accompanying narrative prepared by the ordering or referring dentist, orthodontist, primary care physician, speech pathologist, or behavioral health provider:

(1) A speech pathology that has proven non-responsive to medical treatment without orthodontic treatment, which has been diagnosed by a licensed speech therapist;

(2) Dysfunctional masticatory capacity as a result of the existing relationship between the maxillary and mandibular arches;

(3) Significant facial asymmetry;

(4) Severe maxillary, mandibular, or bi-maxillary protrusion or other physical deviation; or

(5) Other conditions that affect the medical, social, or emotional function of the patient as demonstrated by objective evidence provided by the patient's primary care physician or behavioral health provider.

964.8 In order to be reimbursed by Medicaid, providers of dental services, with the exception of children's fluoride varnish treatments, shall be dentists or dental hygienists working under the supervision of a dentist, who meet the following requirements:

(a) Provide services consistent with the scope of practice authorized pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2012 Repl. & 2016 Supp.)), or consistent with the applicable professional practices act within the jurisdiction where services are provided; and

(b) Have a current District of Columbia (District) Medicaid Provider Agreement that authorizes the provider to bill for dental services for the covered populations.

964.9 A primary care physician or pediatrician may administer, and receive Medicaid reimbursement for providing, preventive fluoride varnish treatment to children, unless expressly prohibited by the scope of practice in the state where the physician is licensed.

964.10 In order to be reimbursed by Medicaid, any dental service provided to a Medicaid beneficiary twenty-one (21) years of age or older that requires inpatient hospitalization or general anesthesia shall be prior authorized by DHCF or its agent.

964.11 Medicaid beneficiaries twenty-one (21) years of age and over shall be eligible to receive, the following dental services:

(a) General dental examinations consisting of preventive services, which include routine cleaning and oral hygiene instruction every six (6) months;

(b) Emergency, surgical, and restorative services including crowns and root canal treatment;

(c) Denture reline and rebase, limited to one (1) over a five (5) year period unless additional services are prior authorized;

(d) Complete radiographic survey, including full mouth series, bitewing and panoramic x-rays, limited to one (1) every three (3) years unless additional services are prior authorized;

(e) Periodontal scaling and root planing, provided that the following criteria are met:

(1) Evidence of bone loss must be present on the current radiographs, full mouth x-ray series or bitewing x-rays to support the diagnosis of periodontitis;

(2) There must be current periodontal charting with six (6) point measurements and mobility noted, including the presence of pathology and periodontal prognosis;

(3) The pocket depths must be greater than four (4) millimeters; and

(4) The classification of the periodontology case type must be in accordance with guidelines established by the American Academy of Periodontology, available at: https://www.cda-adc.ca/jadc/vol-66/issue-11/594.pdf (last accessedOctober 12, 2016).

(f) Initial placement of a removable prosthesis, limited to one (1) per arch every five (5) years per beneficiary unless prior authorized; and

(g) Dental implants, only if prior authorized and provided that the following criteria are met:

(1) The requested dental implants are for the replacement of permanent teeth;

(2) Any active periodontal disease must be treated and under control prior to requesting dental implants;

(3) Existing teeth with caries and endodontic lesions must be treated prior to requesting dental implants; and

(4) The tooth or teeth to be replaced must have an opposing occlusion.

964.12 Four (4) dental implants for the maxillary arch and two (2) dental implants for the mandibular arch shall be authorized for a completely edentulous beneficiary.

964.13 When teeth adjacent to the site of requested dental implants require crowns or demonstrate significant disease or injury, and/or there are multiple missing teeth, more conservative treatment shall be considered as an alternative to dental implants to treat the condition and replace all missing teeth.

964.14 A provider shall submit the following written documentation with a prior authorization request for the replacement of a removable prosthesis:

(a) A letter from the beneficiary to the provider describing the reason for the denture replacement request, which includes the beneficiary's D.C.

Medicaid number, date, home address, telephone number, and signature; and

(b) For beneficiaries who attest that a denture no longer fits due to a significant medical condition, the request shall include a letter from the beneficiary's physician or surgeon documenting the medical condition and a letter from the beneficiary's dentist stating that the existing denture cannot be made functional by adjusting, relining, or rebasing it.

964.15 The following documentation shall be submitted with a prior authorization request for dental implants:

(a) Clinical justification for the dental implants, including the reasons conventional removable dentures cannot be used to replace the missing teeth;

(b) A summary of the beneficiary's medical history indicating the absence of systemic, behavioral, psychological, neurologic, and/or psychiatric disorders, including habits (e.g. substance abuse, tobacco use, and alcohol use) that may affect dental implant surgery, healing, and/or response to therapy;

(c) An evaluation of the proximity of the site of the requested dental implants to adjacent vital structures including but not limited to maxillary sinuses, fossae, foramina, mandibular canals, and adjacent teeth or roots;

(d) Periodontal charting, radiographic documentation of the absence of clinical calculus, oral hygiene status, and the date of the most recent oral prophylaxis not to exceed six (6) months prior to the request for the dental implants;

(e) Documentation of adequate quality, mass and density of alveolar bone and soft tissues;

(f) Documentation of at least three (3) millimeters of inter-dental space between the site of the requested dental implants and adjacent roots to maintain periodontal health and form; and

(g) A complete restorative treatment plan for the requested dental implants.

964.16 Dental implants shall not be replaced within five (5) years of initial placement without prior authorization from DHCF or its agent.

964.17 Medicaid beneficiaries twenty-one (21) years of age and over shall not be eligible to receive the following dental services:

(a) Local anesthesia used in conjunction with surgical procedures that are billed separately;

(b) Hygiene aids, including toothbrushes and dental floss;

(c) Cosmetic or aesthetic procedures;

(d) Medication dispensed by a dentist that a beneficiary could obtain over-the-counter from a pharmacy;

(e) Acid etch for a restoration that is billed separately;

(f) Fixed prosthodontics (such as a bridge), unless prior authorized;

(g) Gold restoration, inlay, or onlay, including cast non-precious and semiprecious metals;

(h) Duplicative x-rays;

(i) Space maintainers;

(j) Denture replacement when reline or rebase would correct the problem;

(k) Prosthesis cleaning;

(l) Removable unilateral partial dentures that are one-piece cast metal including clasps and teeth; and

(m) Dental implants replacing wisdom teeth.

964.18 Reimbursement for dental services provided to Medicaid beneficiaries twenty-one (21) years of age and older who do not reside in an ICF/IID and are not enrolled in the 1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities shall be made according to the DHCF fee schedule, available online at http://www.dc-medicaid.com, and shall cover all services related to the procedure.

964.19 Reimbursement for dental services provided to Medicaid beneficiaries twenty-one (21) years of age and older who reside in an ICF/IID or are enrolled in the 1915(c) HCBS Waiver for Individuals with Intellectual and Developmental Disabilities shall be made at the increased rate described in 29 DCMR § 1921 and reflected in the DHCF fee schedule, available online at http://www.dc-medicaid.com.

964.99 DEFINITIONS

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

Dental Hygienist – A person who is licensed as a dental hygienist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2016 Supp.)) or licensed as a dental hygienist in the jurisdiction where the services are provided.

Dental Implant - A device specially designed to be placed surgically within or on the mandibular or maxillary bone as a means of providing for dental replacement.

Dentist – A person who is licensed as a dentist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201, *et seq.* (2012 Repl. & 2016 Supp.)) or licensed as a dentist in the jurisdiction where the services are provided.

Facility – A dental facility that is enrolled as a District Medicaid provider.

Inpatient Hospitalization - Treatment in a hospital that requires at least one (1) overnight stay.

Orthodontic Services - Medically appropriate services that are necessary to correct severe handicapping malocclusion in beneficiaries under the age of twenty-one (21).

Treatment Plan – A written plan that includes diagnostic findings and treatment recommendations resulting from a comprehensive evaluation of the dental health needs of a beneficiary.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (Director), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 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 adoption of an amendment to Section 5213 (Reimbursement) of Chapter 52 (Medicaid Reimbursement for Mental Health Rehabilitative Services) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking establishes a new reimbursement rate for Rehabilitation/Day Services (Rehab Day). Rehab Day is a structured clinical program offered under the Mental Health Rehabilitative Services (MHRS) program that is intended to develop skills and foster social role integration through a range of social, psycho-educational, behavioral and cognitive mental health interventions.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on September 30, 2016 at 63 DCR 011901. One comment was received in regard to the new reimbursement rate for Rehab Day. The commenter proposed that the Department of Health Care Finance (DHCF) not implement the rate change at this time since the proposed rate change does not reflect the cost of delivering Rehab Day services. The commenter further explains that providers have seen costs increase with no corresponding increase to the rates. The commenter additionally asserts that the cost of these services is likely to be studied by the Department of Behavioral Health (DBH) in Fiscal Year (FY) 2017, which may result in a reversal of the decreased rate. DHCF and DBH thoroughly reviewed and considered the comment received and determined that no substantive changes to the rulemaking should be made. Based on a rate study report that DBH completed in October 2013, the recommended reimbursement rate for Rehab Day was $103.53, which was a median between greatly disparate provider charges. Following discussions with providers, the original reimbursement rate was set at $123.05, which was well above the recommended rate. The five percent (5%) decrease from the original $123.05 to the proposed $116.90 still leaves the reimbursement rate well above the recommended rate. DBH does intend to initiate a rate reimbursement review in the next year. At this time, there is no way to anticipate if the recommended rate for Rehab Day will increase; thus, there is no justification for delaying the establishment of the new reimbursement rate. Therefore, no substantive changes were made to the text of the proposed rulemaking.

The Director has adopted these rules as final on December 14, 2016 and they shall become effective on the date of publication of this rulemaking in the *D.C. Register*.

Chapter 52, MEDICAID REIMBURSEMENT FOR MENTAL HEALTH REHABILITATIVE SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 5213, REIMBURSEMENT, is amended to read as follows:

5213 REIMBURSEMENT

5213.1 Medicaid reimbursement for Mental Health Rehabilitative Services (MHRS) provided to consumers, other than consumers who are deaf or hearing-impaired, shall be determined as follows:

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
Diagnostic/ Assessment	T1023HE	An assessment, at least 3 hours in duration	$256.02
	H0002	An assessment, 40 – 50 minutes in duration to determine eligibility for admission to a mental health treatment program	$85.34
Medication Training& Support	H0034	15 minutes	$44.65 – Individual
	H0034HQ	15 minutes	$13.52 – Group
Counseling	H0004	15 minutes	$26.42 – Individual
	H0004HQ	15 minutes	$8.00 – Group
	H0004HR	15 minutes	$26.42 – Family with Consumer On-Site
	H0004HS	15 minutes	$26.42 – Family without Consumer On-Site

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
	H0004HETN	15 minutes	$27.45 – Individual Off-Site
Community Support	H0036	15 minutes	$21.97 – Individual
	H0036HQ	15 minutes	$6.65 – Group
	H0036UK	15 minutes	$21.97 – Collateral
	H0036AM	15 minutes	$21.97 – Physician Team Member
	H0038	15 minutes	$21.97 – Self-Help Peer Support
	H0038HQ	15 minutes	
	H0038HS	15 minutes	$6.65 –Self-Help Peer Support Group
	H0038HQHS	15 minutes	$21.97 – Family/Couple Peer Support without Consumer
	H0036HR	15 minutes	
	H0036HS	15 minutes	
	H0036U1	15 minutes	$6.65 – Family/Couple Peer Support Group Without Consumer
			$21.97 – Family with Consumer
			$21.97 – Family without Consumer

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
			$21.97– Community Residence Facility
	H2023	15 minutes	$18.61– Supported Employment (Therapeutic)
Crisis/ Emergency	H2011	15 minutes	$36.93
Day Services	H0025	One day, at least 3 hours in duration	$116.90
Intensive Day Treatment	H2012	One day, at least 5 hours in duration	$164.61
Community-Based Intervention (Level I – Multi-Systemic Therapy)	H2033	15 minutes	$57.42
Community-Based Intervention (Level II and Level III)	H2022	15 minutes	$35.74
Community-Based Intervention (Level IV – Functional Family Therapy)	H2033HU	15 minutes	$57.42
Assertive	H0039	15 minutes	$38.04 –

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
Community Treatment			Individual
	H0039HQ	15 minutes	$11.51 – Group
Trauma Focused Cognitive Behavioral Therapy	H004ST	15 minutes	$35.74
Child-Parent Psychotherapy for Family Violence	H004HT	15 minutes	$35.74

5213.2 Medicaid reimbursement for MHRS provided to consumers who are deaf or hearing-impaired shall be determined as follows:

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
Diagnostic/ Assessment	T1023HEHK	An assessment, at least 3 hours in duration	$345.63
	H0002HK	An assessment, 40 – 50 minutes in duration to determine eligibility for admission to a mental health treatment program	$115.21
Medication Training& Support	H0034HK	15 minutes	$60.28 – Individual
	H0034HQHK	15 minutes	$18.25 – Group
Counseling	H0004HK	15 minutes	$35.67 – Individual

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
	H0004HQHK	15 minutes	$10.80 – Group
	H0004HRHK	15 minutes	$35.67 – Family with Consumer On-Site
	H0004HSHK	15 minutes	$35.67 – Family without Consumer On-Site
Community Support	H0036HK	15 minutes	$29.66 – Individual
	H0036HQHK	15 minutes	$8.98 – Group
	H0036UKHK	15 minutes	$29.66 – Collateral
	H0036AMHK	15 minutes	$29.66 – Physician Team Member
	H0038HK	15 minutes	$29.66 – Self-Help Peer Support
	H0038HQHK	15 minutes	
	H0038HSHK	15 minutes	$8.98 –Self-Help Peer Support Group
	H0038HQHK	15 minutes	$29.66 – Family/Couple Peer Support without Consumer
	H0036HRHK	15 minutes	
	H0036HSHK	15 minutes	
	H0036U1HK	15 minutes	$8.98 – Family/Couple Peer Support Group Without Consumer
			$29.66 – Family

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
			with Consumer $29.66 – Family without Consumer $29.66– Community Residence Facility
	H2023HK	15 minutes	$25.12 Supported Employment (Therapeutic)
Crisis/ Emergency	H2011HK	15 minutes	$49.85
Day Services	H0025HK	One day, at least 3 hours in duration	$166.12
Intensive Day Treatment	H2012HK	One day, at least 5 hours in duration	$222.22
Community-Based Intervention (Level I – Multi-Systemic Therapy)	H2033HK	15 minutes	$77.52
Community-Based Intervention (Level II and Level III)	H2022HK	15 minutes	$48.25
Community-Based Intervention (Level IV – Functional	H2033HUHK	15 minutes	$77.52

SERVICE	CODE	BILLABLE UNIT OF SERVICE	RATE
Family Therapy)			
Assertive Community Treatment	H0039HK	15 minutes	$51.35 – Individual
	H0039HQHK	15 minutes	$15.54 – Group
Trauma Focused Cognitive Behavioral Therapy	H004STHK	15 minutes	$48.25
Child-Parent Psychotherapy for Family Violence	H004HTHK	15 minutes	$48.25

5213.3 The Department of Behavioral Health (DBH) shall be responsible for payment of the District's share or the local match for all MHRS in accordance with the terms and conditions set forth in the Memorandum of Understanding between Department of Health Care Finance (DHCF) and DBH. DHCF shall claim the federal share of financial participation for all MHRS services.

5213.4 Providers shall not bill the client or any member of the client's family for MHRS services. DBH shall bill all known third-party payors prior to billing the Medicaid Program.

5213.5 Medicaid reimbursement for MHRS is not available for:

(a) Room and board costs;

(b) Inpatient services (including hospital, nursing facility services, intermediate care facility for persons with mental retardation services, and Institutions for Mental Diseases services);

(c) Transportation services;

(d) Vocational services;

(e) School and educational services;

(f) Services rendered by parents or other family members;

(g) Socialization services;

(h) Screening and prevention services (other than those provided under Early and Periodic, Screening Diagnostic Treatment requirements);

(i) Services which are not medically necessary, or included in an approved Individualized Recovery Plan for adults or an Individualized Plan of Care for children and youth;

(j) Services which are not provided and documented in accordance with DBH-established MHRS service-specific standards; and

(k) Services furnished to a person other than the Medicaid client, when those services are not used exclusively for the well-being and benefit of the Medicaid client.

OFFICE OF TAX AND REVENUE

NOTICE OF FINAL RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), pursuant to the authority set forth in D.C. Official Code § 42-1117 and § 47-920; Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2014 Repl.)); and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the adoption of an amendment to Chapter 3 (Real Property Taxes) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR).

The amendment to Section 336 (Fees) clarifies that no recording fee shall be owed on instruments in which the District is a party or for instruments where the District has a beneficial interest in the instrument.

The rules were published as a proposed rulemaking in the *D.C. Register* on November 11, 2016 at 63 DCR 013939. No comments were received concerning the proposed rulemaking, and this final rulemaking is identical to the published text of the proposed rulemaking. OTR adopted these rules as final on December 13, 2016 and they shall become effective upon publication of this notice in the *D.C. Register*.

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

Section 336, FEES, is amended as follows:

Subsection 336.2 [RESERVED], is amended by striking "[RESERVED]" and replacing it with the following:

336.2 Where the District of Columbia is a party to an instrument submitted for recordation, or has a beneficial interest in an instrument submitted for recordation, no recordation fee shall be imposed for the recordation of such instrument; provided, that the instrument is being submitted for recordation by the District of Columbia, and is exempt from the tax imposed by D.C. Official Code § 42-1103 and D.C. Official Code § 47-903, or is otherwise not taxable thereunder.

OFFICE OF TAX AND REVENUE

NOTICE OF FINAL RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia, Office of Tax and Revenue (OTR), of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 47-874 (2015 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub.L. 109-356; D.C. Official Code § 1-204.24d (2014 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the adoption of amendments to Chapter 3 (Real Property Taxes), of Title 9 (Taxation and Assessments), of the District of Columbia Municipal Regulations (DCMR).

This rulemaking amends Section 337 (Eligibility for Senior Citizen Homestead Tax Relief), and Section 338 (Application for Senior Citizen Homestead Tax Relief) by eliminating the present provisions, which are obsolete, and reserves these sections for future use. Entitlement to the reduced real property tax liability for senior citizens is governed by D.C. Official Code § 47-863, which has been amended since the promulgation of Sections 337 and 338 in 1987. As such, Sections 337 and 338 have become obsolete.

The Notice of Proposed Rulemaking was published in the District of Columbia Register on October 21, 2016, at 63 DCR 13159. No comments were received concerning the proposed rulemaking, and this final rulemaking is identical to the published text of the proposed rulemaking. The rules shall become effective upon publication of this notice in the D.C. Register.

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

Section 337, ELIGIBILITY FOR SENIOR CITIZEN HOMESTEAD TAX RELIEF, is amended as follows:

The section title is amended by striking the text following the word "337" and inserting the word "[RESERVED]" in its place. The remainder of the section is repealed.

Section 338, APPLICATION FOR SENIOR CITIZEN HOMESTEAD TAX RELIEF, is amended as follows:

The section title is amended by striking the text following the word "338" and inserting the word "[RESERVED]" in its place. The remainder of the section is repealed.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

Pet Ownership in Public Housing

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the authority set forth in the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), hereby gives notice of the intent to adopt the following amendment to Chapter 62 (Low Rent Housing: Rent and Lease) and proposed addition to Chapter 61 (Public Housing: Admission and Recertification) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the proposed regulations is to allow individuals living in public housing properties designated for the elderly and/or disabled to own common household pets.

Chapter 62, LOW RENT HOUSING: RENT AND LEASE, of Title 14 DCMR, HOUSING, is amended as follows:

Section 6211, PET OWNERSHIP IN PUBLIC HOUSING, is repealed in its entirety.

Chapter 61, PUBLIC HOUSING: ADMISSION AND RECERTIFICATION, is amended as follows:

A new Section 6126 is created to read as follows:

6126 PET OWNERSHIP IN PUBLIC HOUSING

6126.1 Pets Generally Prohibited. Except as provided in § 6126.2 and § 6126.3, pets are generally prohibited at DCHA properties. This policy does not apply to Service or Assistance Animals that reside in public housing units as a reasonable accommodation under 14 DCMR § 7409.

6126.2 Prior Pet Ownership. Residents who own a pet at any DCHA property prior to May 1, 2005, may continue to own a pet that is otherwise not prohibited under § 6126.3, provided the resident complies with the requirements of §§ 6126.3(a), (b) and (c).

6126.3 Elderly-only and Disabled Housing Properties. Residents residing at these properties shall be permitted to own pets in accordance with the following provisions:

(a) Animal Limitations.

(1) Only domesticated animals that are commonly kept as household pets, such as a dogs, cats, birds, rodents, fish, or turtles, are

permitted. The term "common household pet" shall not include reptiles, other than turtles.

(2) A resident is permitted to own a maximum of two (2) pets. A reasonable number of fish or other animals appropriately kept in an aquarium or cage shall be considered one (1) pet. The two (2) pet maximum does not include Service or Assistance Animals that reside in the unit.

(3) Aquariums that do not exceed fifteen (15) gallons will be permitted if properly registered.

(4) Residents with more than one (1) registered aquarium must keep the aquariums in separate rooms.

(5) Residents may not own a dog that is expected to exceed forty (40) pounds and fifteen (15) inches in height at maturity. Dogs expected to exceed this weight and height at maturity are only permitted if they are:

(i) Approved as a Service or Assistance Animal in accordance with Chapter 74 (Reasonable Accommodation Policies and Procedures) of this title as a reasonable accommodation; or

(ii) Otherwise are eligible under the prior ownership provisions of § 6126.2.

(b) Registration Requirements. Residents must comply with and meet the following requirements to qualify for pet ownership:

(1) Maintain good standing with their lease;

(2) Register the animal or the contents of an aquarium or cage with the property manager;

(3) Provide updated registration for the animal annually;

(4) Provide proof that the animal has been inoculated in accordance with applicable local laws;

(5) Provide proof that an animal older than six (6) months has been spayed or neutered unless the resident provides certification from a licensed veterinarian that such procedure would jeopardize the medical well-being of the pet;

(6) Pay a non-refundable pet ownership fee in monthly installments, limited to cats and dogs, as reflected in the DCHA Schedule of Maintenance Charges; and

(7) Execute and abide by the Pet Policy lease addendum providing for the proper care and maintenance of the animal and the unit in accordance with DCHA rules and policies. Failure to abide by the Pet Policy will be considered a violation of the lease.

(c) Ownership Responsibilities. Residents approved for pet ownership must abide by the following conditions, as well as DCHA's Pet Policy:

(1) The resident shall be responsible for paying for services related to any pet-related rodent and/or insect infestation, as well as any pet-related property damage, in their unit. The resident shall keep the apartment in a sanitary condition at all times and is responsible for keeping the surrounding areas free of pet odors, waste, and litter.

(2) The resident shall store all pet food in sealed containers.

(3) The resident shall be responsible for ensuring the rights of other residents to peace and quiet enjoyment, health, and/or safety are not infringed upon or diminished by a pet's noise, odors, waste or other nuisance.

(4) The resident shall continuously provide the proper maintenance and care for the pet.

Interested persons are encouraged to submit comments regarding this Proposed Rulemaking to DCHA's Office of General Counsel. Copies of this Proposed Rulemaking can be obtained at www.dcregs.gov, or by contacting Chelsea Johnson at the Office of the General Counsel, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002-7599 or via telephone at (202) 535-2835. All communications on this subject matter must refer to the above referenced title and must include the phrase "Comment to Proposed Rulemaking" in the subject line. There are two methods of submitting Public Comments:

1. Submission of comments by mail: Comments may be submitted by mail to the Office of the General Counsel, Attn: Chelsea Johnson, Deputy General Counsel, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599.

2. Electronic Submission of comments: Comments may be submitted electronically by submitting comments to Chelsea Johnson at: PublicationComments@dchousing.org.

3. No facsimile will be accepted.

Comments Due Date: January 22, 2017

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The State Superintendent of Education ("State Superintendent"), pursuant to authority set forth in Sections 3(b)(9) and 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(9) and (b)(11) (2012 Repl. & 2016 Supp.)); the Day Care Policy Act of 1979, effective September 19, 1979 (D.C. Law 3-16; D.C. Official Code §§ 4-401 *et seq*. (2012 Repl. & 2016 Supp.)); Mayor's Order 2009-3, dated January 15, 2009; and pursuant to the Social Security Act, approved February 22, 2012 (Pub.L. 112-96; 42 U.S.C. § 618(c)); the Child Care and Development Block Grant Act of 2014 ("CCDBG Act"), approved November 19, 2014 (Pub.L. 113-186; 42 U.S.C. §§ 9858 *et seq.*), and regulations promulgated thereunder at 45 C.F.R. Parts 98 and 99, hereby gives notice of the intent to repeal, on an emergency basis, Section 380 in Chapter 3 (Child Development Facilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations ("DCMR"), and to add a new Chapter 2 (District Subsidized Child Care Services) to Subtitle A (Office of the State Superintendent of Education) of Title 5 DCMR (Education).

The purpose of the emergency and proposed rulemaking is establish the District of Columbia's child care subsidy rates for child care services provided by child development centers, child development homes and expanded homes, and relative and in-home caregivers participating in the subsidized child care program and to move the District of Columbia's child care subsidy program sliding fee schedule for parent co-payments from Section 380 in Chapter 3 of Title DCMR to Chapter 2 of Title 5-A DCMR. The updated child care subsidy rates align the infant and toddler rate with the current licensing ratios to ensure equal access to stable, high quality child care for low-income children in the District. The sliding fee schedule remains based on the "2009 Federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia." There is an immediate need to ensure the health, safety and welfare of infants and toddlers under the care of subsidy providers in the District of Columbia. This emergency rulemaking is necessary to ensure child development facilities who accept subsidies are financially equipped to offer appropriate care to the District's youngest and most vulnerable residents.

This emergency rulemaking was adopted on November 1, 2016 and became effective on that date. The emergency rulemaking will remain in effect for up to one hundred twenty (120) days after the date of adoption, expiring on March 1, 2017, or upon earlier amendment or repeal by the State Superintendent of Education or publication of a final rulemaking in the *D.C. Register*, whichever occurs first.

The State Superintendent of Education also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

A new Chapter 2, DISTRICT SUBSIDIZED CHILD CARE SERVICES, of Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is added to read as follows:

CHAPTER 2 DISTRICT SUBSIDIZED CHILD CARE SERVICES

200 [RESERVED]
201 [RESERVED]
202 [RESERVED]
203 RATES PAID BY DISTICT OF COLUMBIA
204 SCHEDULE OF PAYMENTS BY FAMILIES
299 DEFINITIONS

200 [RESERVED]

201 [RESERVED]

202 [RESERVED]

203 RATES PAID BY DISTICT OF COLUMBIA

203.1 The District of Columbia shall pay the following rates per day for child care services, less the parent fee as required by the parent sliding fee scale, to child development centers and child development homes that meet their respective requirements of the Tiered Rate Reimbursement System, when appropriate and funds are available.

(a) Payment rates for child development centers and child development homes (including satellite homes) for traditional, extended day, and nontraditional hours of care at the Bronze Tier shall be as follows:

Bronze Tier - Child Development Center						
	Full-Time Traditional	**Part-Time Traditional**	**Extended Day Full-Time**	**Extended Day Part-Time**	**Full-Time Nontraditional**	**Part-Time Nontraditional**
Infant and Toddler	$ 46.81	$ 28.08	$ 51.49	$ 32.76	$ 58.49	$ 35.11
Infant and Toddler Special Needs	$ 70.71	$ 42.18	--	--	--	--
Pre-school	$ 29.21	$ 17.53	$ 32.13	$ 20.45	$ 36.51	$ 21.91
Pre-school Before and After	$ 29.21	$ 17.53	--	--	--	--
School-Age Before ***and*** After	$ 19.85	$ 12.25	$ 21.84	$ 13.10	$ 24.59	$ 14.75
School-Age Before ***or*** After	$ 19.85	$ 9.19	--	--	--	--
Pre-school and School-Age Special Needs	$ 61.49	$ 36.68	--	--	--	--

Bronze Tier - Child Development Home

	Full-Time Traditional	**Part-Time Traditional**	**Extended Day Full-Time**	**Extended Day Part-Time**	**Full-Time Nontraditional**	**Part-Time Nontraditional**
Infant and Toddler	$ 32.76	$ 19.65	$ 36.01	$ 22.93	$ 40.95	$ 24.58
Pre-school	$ 22.03	$ 13.22	$ 24.23	$ 15.42	$ 27.53	$ 16.52
Pre-school Before and After	$ 22.03	$ 13.22	--	--	--	--
School-Age Before ***and*** After	$ 20.00	$ 12.00	$ 22.00	$ 13.20	$ 23.66	$ 14.19
School-Age Before ***or*** After	$ 20.00	$ 9.00	--	--	--	--

(b) The payment rates for child development centers and child development homes (including satellite homes) for traditional, extended day, and nontraditional hours of care at the Silver Tier shall be as follows:

Silver Tier - Child Development Center						
	Full-Time Traditional	**Part-Time Traditional**	**Extended Day Full-Time**	**Extended Day Part-Time**	**Full-Time Nontraditional**	**Part-Time Nontraditional**
Infant and Toddler	$ 54.34	$ 32.60	$ 59.78	$ 38.04	$ 67.92	$ 40.76
Infant and Toddler Special Needs	$ 70.71	$ 42.18	--	--	--	--
Pre-school	$ 35.60	$ 21.36	$ 39.16	$ 24.92	$ 44.50	$ 26.70
Pre-school Before and After	$ 35.60	$ 21.36	--	--	--	--
School-Age Before ***and*** After	$ 25.43	$ 15.26	$ 27.97	$ 16.79	$ 30.92	$ 18.55
School-Age Before ***or*** After	$ 25.43	$ 11.45	--	--	--	--
Pre-school and School-Age Special Needs	$ 61.49	$ 36.68	--	--	--	--

Silver Tier - Child Development Home						
	Full-Time Traditional	**Part-Time Traditional**	**Extended Day Full-Time**	**Extended Day Part-Time**	**Full-Time Nontraditional**	**Part-Time Nontraditional**
Infant and Toddler	$ 35.73	$ 21.44	$ 39.31	$ 25.01	$ 44.67	$ 26.80
Pre-school	$ 24.53	$ 14.72	$ 26.98	$ 17.17	$ 30.66	$ 18.40
Pre-school Before and After	$ 24.53	$ 14.72	--	--	--	--
School-Age Before ***and*** After	$ 22.90	$ 13.74	$ 25.19	$ 15.11	$ 27.08	$ 16.25
School-Age Before ***or*** After	$ 22.90	$ 10.31	--	--	--	--

(c) The payment rates for child development centers and child development homes (including satellite homes) for traditional, extended day and nontraditional hours of care at the Gold Tier shall be as follows:

Gold Tier - Child Development Center						
	Full-Time Traditional	**Part-Time Traditional**	**Extended Day Full-Time**	**Extended Day Part-Time**	**Full-Time Nontraditional**	**Part-Time Nontraditional**
Infant and Toddler	$ 62.57	$ 37.55	$ 68.83	$ 43.80	$ 78.21	$ 46.93
Infant and Toddler Special Needs	$ 70.71	$ 42.18	--	--	--	--
Pre-school	$ 42.00	$ 25.20	$ 46.20	$ 29.40	$ 52.50	$ 31.50
Pre-school Before and After	$ 42.00	$ 25.20	--	--	--	--
School-Age Before ***and*** After	$ 32.00	$ 19.20	$ 35.20	$ 21.12	$ 38.91	$ 23.35
School-Age Before ***or*** After	$ 32.00	$ 14.40	--	--	--	--
Pre-school and School-Age Special Needs	$ 61.49	$ 36.68	--	--	--	--

Gold Tier - Child Development Home						
	Full-Time Traditional	**Part-Time Traditional**	**Extended Day Full-Time**	**Extended Day Part-Time**	**Full-Time Nontraditional**	**Part-Time Nontraditional**
Infant and Toddler	$ 40.25	$ 24.15	$ 44.28	$ 28.18	$ 50.31	$ 30.19
Pre-school	$ 28.00	$ 16.80	$ 30.80	$ 19.60	$ 35.00	$ 21.00
Pre-school Before and After	$ 28.00	$ 16.80	--	--	--	--
School-Age Before ***and*** After	$ 25.80	$ 15.48	$ 28.38	$ 17.03	$ 30.51	$ 18.31
School-Age Before ***or*** After	$ 25.80	$ 11.61	--	--	--	--

(d) The payment rates for children in the Quality Improvement Network at a child development centers or child development homes shall be as follows:

(1) Child Development Homes: $ 62.57.

(2) Child Development Centers: $ 83.75.

203.2 The District of Columbia shall pay child care centers in the Level II Provider program the full amount of the payment rate pursuant to Subsection 203.1 and shall allow such centers to collect a parent fee, if applicable.

203.3 The District of Columbia shall pay the following rates per day for child care services to relative and in-home caregivers, when appropriate and funds are available:

(a) The payment rates for relative caregivers for traditional, extended day and nontraditional hours of care shall be as follows:

Relative Child Care Rates						
Age Group	**Full-Time Traditional**	**Part-Time Traditional**	**Extended Day Full-Time**	**Extended Day Part-Time**	**Full-Time Nontraditional**	**Part-Time Nontraditional**
Infant and Toddler	$ 19.34	$ 11.60	$ 21.28	$ 13.54	$ 24.18	$ 14.51
Pre-school Before and After	$ 14.33	$ 8.60	--	--	--	--
School-Age Before ***and*** After	$ 13.92	$ 8.35	$ 15.31	$ 9.74	$ 17.40	$ 10.44
School-Age Before ***or*** After	$ 13.92	$ 4.18	--	--	--	--

(b) The payment rates for in-home caregivers for traditional, extended day and nontraditional hours of care shall be as follows:

In-Home Child Care Rates						
Age Group	**Full-Time Traditional**	**Part-Time Traditional**	**Extended Day Full-Time**	**Extended Day Part-Time**	**Full-Time Nontraditional**	**Part-Time Nontraditional**
Infant and Toddler	$ 11.34	$ 6.81	$ 12.48	$ 7.94	$ 14.18	$ 8.51
Pre-School	$ 8.70	$ 5.22	$ 9.57	$ 6.09	$ 10.88	$ 6.53
Pre-school Before and After	$ 8.70	$ 5.22	--	--	--	--
School-Age Before ***and*** After	$ 7.54	$ 4.52	$ 8.29	$ 5.28	$ 9.43	$ 5.66
School-Age Before ***or*** After	$ 7.54	$ 4.14	--	--	--	--

203.4 Child care programs that are authorized to manage Family Child Care satellite systems or networks shall receive a daily administrative fee of $ 2.53 per child per day for the management of the family child care homes under their systems or networks.

203.5 The District shall pay the regular rate to providers on holidays when providers may be closed. Holidays shall include:

(a) Labor Day

(b) Columbus Day

(c) Veteran's Day

(d) Thanksgiving Day

(e) Christmas Day

(f) New Year’s Day

(g) Martin Luther King, Jr. Day

(h) President's Day

(i) Emancipation Day

(j) Memorial Day

(k) Independence Day

(l) The District shall also consider as a holiday January 20th during years when there is a presidential inauguration.

204 SCHEDULE OF PAYMENTS BY FAMILIES

204.1 A family participating in the child care subsidy program shall pay a co-payment, based on a sliding fee scale as set forth in this chapter, for the child care services.

204.2 [RESERVED]

204.3 A family with a gross annual family income greater than fifty percent (50%), but less than or equal to (250%), of the federal poverty guidelines shall be required to pay the co-payment amount(s) set forth in Subsection 204.10.

204.4 The co-payment requirements in this chapter shall apply only to the two (2) youngest children in a family.

204.5 There shall be no co-payment requirement for a third child or any additional children of a family.

204.6 Parents shall be responsible for paying co-payments directly to the authorized child care provider, including a child care facility, relative care, or in-home care provider.

204.7 A child care provider shall not require parents to pay additional mandatory fees above the established co-payment, set forth in Subsection 204.10.

204.8 The following schedule of co-payments shall apply to services provided by a child

development facility or license-exempt relative or in-home caregiver providing child care services subsidized by the District of Columbia:

SLIDING FEE SCALE 2009						DAILY CO-PAY CHILDREN IN CARE			
	ANNUAL INCOME BY FAMILY SIZE					FULL TIME		PART TIME	
%FPG	1	2	3	4	5	First	Second	First	Second
0-50%	$5,415	$7,285	$9,155	$11,025	$12,895	$0	$0	$0	$0
51-60%	$6,498	$8,742	$10,986	$13,230	$15,474	$0.57	$0.43	$0.29	$0.22
61-70%	$7,581	$10,199	$12,817	$15,435	$18,053	$0.75	$0.57	$0.38	$0.29
71-80%	$8,664	$11,656	$14,648	$17,640	$20,632	$1.01	$0.75	$0.51	$0.38
81-90%	$9,747	$13,113	$16,479	$19,845	$23,211	$1.27	$0.95	$0.64	$0.48
91-100%	$10,830	$14,570	$18,310	$22,050	$25,790	$1.62	$1.22	$0.81	$0.61
101-110%	$11,913	$16,027	$20,141	$24,255	$28,369	$2.02	$1.51	$1.01	$0.76
111-120%	$12,996	$17,484	$21,972	$26,460	$30,948	$2.45	$1.84	$1.23	$0.92
121-130%	$14,079	$18,941	$23,803	$28,665	$33,527	$2.93	$2.20	$1.47	$1.10
131-140%	$15,162	$20,398	$25,634	$30,870	$36,106	$3.46	$2.60	$1.73	$1.30
141-150%	$16,245	$21,855	$27,465	$33,075	$38,685	$4.07	$3.05	$2.04	$1.53
151-160%	$17,328	$23,312	$29,296	$35,280	$41,264	$4.73	$3.55	$2.37	$1.78
161-170%	$18,411	$24,769	$31,127	$37,485	$43,843	$5.43	$4.08	$2.72	$2.04
171-180%	$19,494	$26,226	$32,958	$39,690	$46,422	$6.19	$4.65	$3.10	$2.33
181-190%	$20,577	$27,683	$34,789	$41,895	$49,001	$7.00	$5.25	$3.50	$2.63
191-200%	$21,660	$29,140	$36,620	$44,100	$51,580	$7.91	$5.93	$3.96	$2.97
201-210%	$22,743	$30,597	$38,451	$46,305	$54,159	$8.88	$6.66	$4.44	$3.33
211-220%	$23,826	$32,054	$40,282	$48,510	$56,738	$9.90	$7.43	$4.95	$3.72
221-230%	$24,909	$33,511	$42,113	$50,715	$59,317	$10.91	$8.19	$5.46	$4.10
231-240%	$25,992	$34,968	$43,944	$52,920	$61,896	$11.97	$8.98	$5.99	$4.49
241-250%	$27,075	$36,425	$45,775	$55,125	$64,475	$13.08	$9.81	$6.54	$4.91
251-260%	$28,158	$37,882	$47,606	$57,330	$67,054	$14.24	$10.68	$7.12	$5.34
261-270%	$29,241	$39,339	$49,437	$59,535	$69,633	$15.44	$11.58	$7.72	$5.79
271-280%	$30,324	$40,796	$51,101	$60,835	$70,569	$16.78	$12.58	$8.39	$6.29
281-290%	$31,407	$41,368				$18.08	$13.56	$9.04	$6.78
291-300%	$31,634					$19.44	$14.58	$9.72	$7.29

SLIDING FEE SCALE 2009						DAILY CO-PAY CHILDREN IN CARE			
	ANNUAL INCOME BY FAMILY SIZE					FULL TIME		PART TIME	
%FPG	6	7	8	9	10	First	Second	First	Second
0-50%	$14,765	$16,635	$18,505	$20,375	$22,245	$0	$0	$0	$0
51-60%	$17,718	$19,962	$22,206	$24,450	$26,694	$0.57	$0.43	$0.29	$0.22
61-70%	$20,671	$23,289	$25,907	$28,525	$31,143	$0.75	$0.57	$0.38	$0.29
71-80%	$23,624	$26,616	$29,608	$32,600	$35,592	$1.01	$0.75	$0.51	$0.38
81-90%	$26,577	$29,943	$33,309	$36,675	$40,041	$1.27	$0.95	$0.64	$0.48
91-100%	$29,530	$33,270	$37,010	$40,750	$44,490	$1.62	$1.22	$0.81	$0.61
101-110%	$32,483	$36,597	$40,711	$44,825	$48,939	$2.02	$1.51	$1.01	$0.76
111-120%	$35,436	$39,924	$44,412	$48,900	$53,388	$2.45	$1.84	$1.23	$0.92
121-130%	$38,389	$43,251	$48,113	$52,975	$57,837	$2.93	$2.20	$1.47	$1.10
131-140%	$41,342	$46,578	$51,814	$57,050	$62,286	$3.46	$2.60	$1.73	$1.30
141-150%	$44,295	$49,905	$55,515	$61,125	$66,735	$4.07	$3.05	$2.04	$1.53
151-160%	$47,248	$53,232	$59,216	$65,200	$71,184	$4.73	$3.55	$2.37	$1.78
161-170%	$50,201	$56,559	$62,917	$69,275	$75,633	$5.43	$4.08	$2.72	$2.04
171-180%	$53,154	$59,886	$66,618	$73,350	$80,082	$6.19	$4.65	$3.10	$2.33
181-190%	$56,107	$63,213	$70,319	$77,425	$84,531	$7.00	$5.25	$3.50	$2.63
191-200%	$59,060	$66,540	$74,020	$81,500	$87,602	$7.91	$5.93	$3.96	$2.97
201-210%	$62,013	$69,867	$77,721	$85,575		$8.88	$6.66	$4.44	$3.33
211-220%	$64,966	$73,194	$81,422	$85,777		$9.90	$7.43	$4.95	$3.72
221-230%	$67,919	$76,521	$83,952			$10.91	$8.19	$5.46	$4.10
231-240%	$70,872	$79,848				$11.97	$8.98	$5.99	$4.49
241-250%	$73,825	$82,127				$13.08	$9.81	$6.54	$4.91
251-260%	$76,778					$14.24	$10.68	$7.12	$5.34
261-270%	$79,731					$15.44	$11.58	$7.72	$5.79
271-280%	$80,302					$16.78	$12.58	$8.39	$6.29
281-290%						$18.08	$13.56	$9.04	$6.78
291-300%						$19.44	$14.58	$9.72	$7.29

204.9 The schedule of co-payments may be revised periodically.

299 DEFINITIONS

299.1 For the purposes of this section, the following terms shall have the meaning ascribed:

Child - An individual who is less than thirteen (13) years of age, or under

nineteen (19) years of age with special needs.

Extended day full time – More than eleven (11) hours where at least one (1) hour of care is in the morning before 7:00 a.m. or in the afternoon after 6:00 p.m. and the majority of hours are between 7:00 a.m. and 6:00 p.m., Monday through Friday. If more than fourteen (14) hours of service are provided, an additional service will be authorized.

Extended day part time - Less than six (6) hours where at least one hour of care is in the morning before 7:00 a.m. or in the afternoon after 6:00 p.m. and the majority of hours are between 7:00 a.m. and 6:00 p.m., Monday through Friday.

Family - A unit consisting of one or more adults and children related by blood, marriage, adoption, or legal guardianship who reside in the same household.

Federal poverty guidelines - Means the most current federal "Poverty Guidelines for the 48 Contiguous States and the District of Columbia", as published in the Federal Register.

Full time traditional - Six (6) to eleven (11) hours between 7:00 a.m. and 6:00 p.m., Monday through Friday.

Income – The combined gross countable income of all family members living in the same household who are included for purposes of determining family size. Used to determine income eligibility and co-payments.

Infant and Toddler - A child birth to thirty-six (36) months of age.

Level II Providers – Child development facility authorized to conduct initial eligibility determinations and re-determinations for families seeking child care subsidy under specified eligibility categories.

Nontraditional full time - Six (6) to eleven (11) hours between 6:00 p.m. and 7:00 a.m., Monday through Friday; or six (6) to eleven (11) hours on Saturday or Sunday, regardless of the time of day. If more than eleven (11) hours of service are provided, an additional service will be authorized.

Nontraditional part-time - Less than six (6) hours between 6:00 p.m. and 7:00 a.m., Monday through Friday; or less than six (6) hours on Saturday or Sunday, regardless of the time of day.

Part-time traditional - Less than six (6) hours of care, Monday through Friday.

Preschool - A child thirty-six (36) months of age or older, but less than five (5) years of age on or before September 30th of that year.

Preschool traditional full time - Six (6) eleven (11) hours between 7:00 a.m., Monday through Friday, for three (3) and four (4) year-olds who are not in the public or private pre-Kindergarten programs.

Preschool traditional part-time - Less than (6) hours of care between 7:00 a.m. and 6:00 p.m., Monday through Friday, for three (3) and four (4) year-olds who are not in the public or private pre-Kindergarten programs.

Preschool before and after traditional full time - Service for the three (3) and four (4) year-olds in public or private pre-Kindergarten programs, Monday through Friday, during school holidays.

Preschool before and after traditional part time - Before and after service for the three (3) and four year-olds in public or private pre-Kindergarten programs, Monday through Friday.

Resident or Residence – In absence of the contrary, residence of a child shall be presumed to be the residency of the child's parent(s) or guardian(s). The residence of a parent(s) or guardian(s) is where the person(s) has established a physical presence, the actual occupation and inhabitance of a place of abode with the intent to dwell for a continuous period of time.

School-age child – A child five (5) years of age on or before September 30th of that year through the age of twelve (12) or through the age of nineteen (19) if the child has special needs.

School age before and/or after traditional full time - Six (6) to eleven (11) hours between 7:00 a.m. and 6:00 p.m., Monday through Friday, for school age children when the child is not in school during school holidays.

School age before and after traditional part time - Before and after school-age children, Monday through Friday.

School age before or after traditional part time - Before or after school services for school-age children, Monday through Friday.

Special needs -- Conditions or characteristics of a child under the age of nineteen (19) that reflect a need for particular care, services or treatment, most commonly physical and/or mental disabilities and/or delays and is evidence by IFSP or IEP.

Subsidized Child Care - Child care provided in a licensed child development facility, a relative child care home, or in a child's home for fewer than

twenty-four (24) consecutive hours a day for which the government provides reimbursement to the provider.

Chapter 3, CHILD DEVELOPMENT FACILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 380, DISTRICT SUBSIDIZED CHILD CARE SERVICES, is deleted in its entirety.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register* via email addressed to: ossecomments.proposedregulations@dc.gov; or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: Subsidized Child Care, 810 First Street, N.E., 9th Floor, Washington, DC 20002. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at www.osse.dc.gov.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the authority set forth in the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 83 (Rent and Housing Assistance Payments) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

This amendment increases the Payment Standards, allowing DCHA to authorize and pay higher rent subsidies on behalf of participants of the Housing Choice Voucher Program. Currently, DCHA can only pay up to one hundred thirty percent (130%) of the Fair Market Rent, and participants are responsible for any amount in excess, regardless of their income. This often restricts their rental options to less expensive neighborhoods and can put the most vulnerable D.C. residents at risk for eviction for non-payment of rent. As housing costs in D.C. continue to increase, this change will enable participants in the Housing Choice Voucher Program to more easily find housing that is both safe and affordable.

Per D.C. Official Code § 2-505(c) emergency rulemakings are promulgated when the action is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals. Increasing DCHA's payment standard effective December 14, 2016, will allow DCHA to provide the rental assistance HCVP participants need going into the winter months, when the threat of homelessness can prove especially dangerous.

These emergency regulations were adopted by the Board on December 14, 2016 and became effective immediately. They will remain in effect for up to one hundred twenty (120) days from the date of adoption, until April 13, 2017, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Board of Commissioners of DCHA also gives notice of intent to take rulemaking action to adopt these proposed regulations as final in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 83, RENT AND HOUSING ASSISTANCE PAYMENTS, of Title 14 DCMR, HOUSING, is amended as follows:

Section 8300, PAYMENT STANDARD AMOUNT, Subsection 8300.2(e), is amended to read as follows:

(e) The Payment Standard is up to one hundred seventy-five percent (175%) of the Fair Market Rents for all size units in all areas of the District of Columbia. Any change to the Payment Standard shall be implemented by regulatory action of the Commission and shall apply to all vouchers issued

after the date of the adoption of any regulation modifying the Payment Standard.

Interested persons are encouraged to submit comments regarding this Emergency and Proposed Rulemaking to DCHA's Office of General Counsel. Copies of this Emergency and Proposed Rulemaking can be obtained at www.dcregs.gov, or by contacting Chelsea Johnson at the Office of the General Counsel, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002-7599 or via telephone at (202) 535-2835. All communications on this subject matter must refer to the above referenced title and must include the phrase "Comment to Emergency and Proposed Rulemaking" in the subject line. There are two methods of submitting Public Comments:

1. Submission of comments by mail: Comments may be submitted by mail to the Office of the General Counsel, Attn: Chelsea Johnson, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002-7599.

2. Electronic Submission of comments: Comments may be submitted electronically by submitting comments to Chelsea Johnson at: PublicationComments@dchousing.org.

3. No facsimile will be accepted.

Comments Due Date: January 23, 2017

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 08-06I
(Text Amendment – 11 DCMR)
(Minor Modifications to Zoning Commission Order No. 08-06A)

The Zoning Commission for the District of Columbia (Commission), pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)), and the authority set forth in § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Subtitle Y (Board of Zoning Adjustment Rules of Practice and Procedure) and Subtitle Z (Zoning Commission Rules of Practice and Procedure) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR), to make minor modifications to certain amendments adopted through Z.C. Order No. 08-06A (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted comprehensive amendments to the Zoning Regulations that became effective on September 6, 2016.

The amendments that are the subject to this notice clarify that no comments and documents may be electronically filed for a case after 9:00 a.m. on the day the case is to be heard by the Board of Zoning Adjustment and after 5:00 p.m. on the day the case is to be heard by the Zoning Commission. Such filings may be made on any other day that the case record is open for general submissions.

The Office of Zoning requested these minor modifications through a memorandum to the Commission dated November 9, 2016. The Office of Zoning had become aware that members of the public, who were not in attendance during hearings conducted by the Commission or the Board of Zoning Adjustment (BZA,) were electronically submitting documents and comments into the record of the cases being heard. This meant that parties in contested cases and participants in rulemaking cases had no knowledge that evidence was being added to the record and thus no ability to respond. Further, because such electronic submissions could be made while the Commission or the BZA were deliberating or even voting on a case, the real possibility existed that these bodies could make a decision without knowledge of the full state of the record. Although the Office of Zoning did not request the emergency adoption of this rule, the Commission, at its public meeting held November 14, 2016, determined that these circumstances justified emergency action.

The Commission also gives notice of its intent to adopt the following amendment in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The emergency rule will expire March 4, 2017, which is the one hundred-twentieth (120th) day after the adoption of this rule, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The following amendments to Title 11 DCMR were adopted on an emergency basis and are being proposed for public comment (additions are shown in **bold** underlined):

Chapter 2, PUBLIC PARTICIPATION, of Title 11-Y DCMR, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

Subsections 206.3 and 206.7 of § 206, SUBMITTING COMMENTS OR FILING DOCUMENTS ELECTRONICALLY OR BY E-MAIL, , are amended as follows:

206.3 Comments may be submitted electronically through IZIS or by e-mail**; except that no comments shall be submitted into the record electronically after 9:00 a.m. on the day of the hearing**.

…

206.7 All documents to be filed electronically through IZIS or by e-mail shall be in portable document format (PDF) **and shall not be filed after 9:00 a.m. on the day of the hearing**.

Chapter 2, PUBLIC PARTICIPATION, of Title 11-Z DCMR, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended as follows:

Subsections 206.3 and 206.7 of § 206, SUBMITTING COMMENTS OR FILING DOCUMENTS ELECTRONICALLY OR BY E-MAIL, are amended as follows:

206.3 Comments may be submitted electronically through IZIS or by e-mail**; except that no comments shall be submitted into the record electronically after 5:00 p.m. on the day of the hearing**.

…

206.7 All documents to be filed electronically through IZIS or by e-mail shall be in portable document format (PDF) **and shall not be filed after 5:00 p.m. on the day of the hearing**.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D. C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or electronic submissions may be submitted in PDF format through the Interactive Zoning Information System (IZIS) at http://app.dcoz.dc.gov/Login.aspx or to zcsubmissions@dc.gov. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-195
December 13, 2016

SUBJECT: Reappointments and Appointments — State Advisory Panel on Special Education for the District of Columbia

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl. and 2016 Supp.), and in accordance with Mayor's Order 2012-48, dated April 5, 2012, it is hereby **ORDERED** that:

1. The following persons are reappointed to the State Advisory Panel on Special Education for the District of Columbia ("**Panel**"), as voting members, and shall serve for terms to end September 17, 2018:

   a. **AARON McCORMICK**
   b. **MOLLY WHALEN**
   c. **JULIE CAMERATA**

2. The following persons are appointed to the Panel, as voting members, filling vacant seats, and shall serve for terms to end September 17, 2018:

   a. **KENNETH TAYLOR**
   b. **LATORIA BRENT**

3. **EFFECTIVE DATE:** This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-196
December 13, 2016

SUBJECT: Appointment — District of Columbia Workforce Investment Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) and (11) (2014 Repl. and 2016 Supp.), and in accordance with Mayor's Order 2016-086, dated June 2, 2016, it is hereby **ORDERED** that:

1. **ANTWANYE FORD** is appointed to the District of Columbia Workforce Investment Council, as an information technology sector representative member, filling a vacant seat, for a term to end June 23, 2019.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-197
December 13, 2016

SUBJECT: Appointments — Child Fatality Review Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act of 1973, approved December 24, 1973 (87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl. and 2016 Supp.)), and in accordance with section 4604 of the Child Fatality Review Committee Establishment Act of 2001, effective October 3, 2001, (D.C. Law 14-28, D.C. Official Code § 4-1371.04 (2012 Repl. and 2016 Supp.)), it hereby **ORDERED** that:

1. The following persons are appointed as members of the Child Fatality Review Committee to serve at the pleasure of the Mayor:

   a. **HEATHER STOWE** as a representative of the Child and Family Services Agency, filling a vacant seat.

   b. **LUBNA JAMAL** as a representative of the Department of Housing and Community Development, filling a vacant seat.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-198
December 13, 2016

SUBJECT: Appointment — Director, Office of Communications

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl. and 2016 Supp.), it is hereby **ORDERED** that:

1. **ROB HAWKINS** is appointed Director, Office of Communications, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2016-092, dated June 8, 2016.

3. **EFFECTIVE DATE**: This Order is effective *nunc pro tunc* to July 24, 2016.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order: 2016-199
December 15, 2016

SUBJECT: Delegation of Authority to the Director of the Department of General Services to Execute a Lease Agreement for the Yards Marina

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2014 Repl. and 2016 Supp.), and by section 2 of An Act Relative to the control of wharf property and certain public spaces in the District of Columbia, approved March 3, 1899, 30 Stat. 1377, D.C. Official Code § 10-501.01 (2013 Repl.) ("**Act**"), it is hereby **ORDERED** that:

1. The Director of the Department of General Services is delegated the authority vested in the Mayor pursuant to the Act to execute a lease agreement between the District of Columbia and FC Yards Marina, LLC, for a portion, as shall be specified in the lease agreement, of certain real property located at 1492 14th Street, SE, most commonly known as the Yards Marina and more specifically designated for tax and assessment purposes as Square 771, Lot 802 ("**Property**"), and all other documents necessary to effectuate the lease of the Property, including, but not limited to, a memorandum of ground lease and a real property recordation and tax form.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

CESAR CHAVEZ PUBLIC CHARTER SCHOOL DC

REQUEST FOR PROPOSALS

HVAC and Mechanical Maintenance Services

Chavez Schools Administrative Services will accept bids from interested and qualified DC licensed contractors for normal and on-call HVAC and Mechanical maintenance services, including emergency work and repairs. The successful HVAC and/or Mechanical Contractor(s) shall provide all materials, equipment and labor for HVAC and Mechanical services and repairs as needed in various Chavez Schools locations. The equipment to be maintained includes but is not limited to, chillers, air handlers, evaporative coolers, split systems, exhaust fans, boilers, pumps, gas fired unit heaters, package units and forced air systems. The equipment to be maintained is of various types of manufacturers.

For more information please contact Marjean Sipe at marjean.sipe@chavezschools.org. All response are due to Chavez Schools at 525 Schools Street SW, Washington DC 20024 by January 6th, 2017.

CESAR CHAVEZ PUBLIC CHARTER SCHOOL DC

REQUEST FOR PROPOSALS

Legal Services
(Department of Special Education and Student Services)

Chavez Schools Administrative Services will accept bids from interested and qualified parties for Special Education and Legal Services. Offeror's must have J.D. and experienced background in special education law in the District of Columbia.

Council will provide:

- Provide counsel, direction, and advice for matters involving special education, section 504, and other areas of school expertise;
- Review and provide legal feedback on policies, materials, and school-based documents;
- File relevant or necessary paperwork in accordance with all legal matters for the school;
- Review Due Process Hearing notices, complaints, compensatory education agreements, and related materials at the request of the LEA;
- Defend the LEA in any Due Process or legal case as necessary;
- Participation in IEP and MDT meetings as necessary.

Offeror must submit a written proposal to include the following:

- List of services provided
- Cost options
- Concise summary of Offerors knowledge and experience with a similar school system (limited to 1 page.)

Submissions shall be sent to: Ayana Malone, Sr. Director of Special Education and Student Services, ayana.malone@chavezschools.org by 5pm January 6th, 2017. Faxed proposals or phone calls will NOT be accepted. Only electronic proposals will be accepted via email. Email submissions shall be limited to attachments compatible with Microsoft Office Word and/or files with a .pfd file extension.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT ON DISABILITY SERVICES

NOTICE OF BI-MONTHLY PUBLIC MEETINGS

D.C. State Rehabilitation Council to Hold Bi-Monthly Public Meetings

Department on Disability Services
Rehabilitation Services Administration
One Independence Square
250 E Street, SW
First Floor Conference Room
Washington, DC 20024

The D.C. State Rehabilitation Council (SRC) will hold public meetings regarding the operation of the D.C. State Vocational Rehabilitation Program, as mandated by the Rehabilitation Act of 1973, as amended. The following public meetings are to be conducted from 9:30 am – 12:00 noon.

Dates	Location
Thursday, March 9, 2017	First Floor Conference Room
Thursday, May 11, 2017	First Floor Conference Room
Thursday, July 13, 2017	First Floor Conference Room
Thursday, September 14, 2017	First Floor Conference Room
Thursday, November 9, 2017	First Floor Conference Room

Individuals who wish to attend should RSVP at least seven (7) days prior to the public meeting by contacting Cheryl Bolden by calling at 202-442-8411 or by email at cheryl.bolden@dc.gov.

If you require reasonable accommodations for attendance, please call 202-442-8432 at least two (2) weeks before the public meeting to ensure appropriate accommodations.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT ON DISABILITY SERVICES

NOTICE OF BI-MONTHLY PUBLIC MEETINGS

D.C. Statewide Independent Living Council to Hold Bi-Monthly Public Meetings

D.C. Department on Disability Services
Rehabilitation Services Administration
250 E Street, SW
First Floor Conference Room
Washington, DC 20024

The District of Columbia Statewide Independent Living Council (DCSILC) announces the 2017 General Meeting schedule. DCSILC meetings are open to the public and will take place as scheduled at the Department on Disability Services, Rehabilitation Services Administration, located at 250 E Street, SW, Washington, DC 20024, 1st Floor Conference Room, from 12:00 noon – 2:00 pm. The meeting dates are as follows:

Dates:	Location
Thursday, January 26, 2017*	First Floor Conference Room
Thursday, March 23, 2017	First Floor Conference Room
Thursday, May 25, 2017	First Floor Conference Room
Thursday, July 27, 2017	First Floor Conference Room
Thursday, September 28, 2017	First Floor Conference Room
Thursday, November 16, 2017	First Floor Conference Room

All meetings are open to the public; however, the first meeting of the year* is dedicated to the mandatory DCSILC member training.

Individuals who wish to attend meetings who are in need of accommodations should contact Ms. Dahlia G. Johnson, Administrative Assistant, DCSILC, at least seven (7) days prior to the scheduled meeting date, by phone at 202-442-8748 or by email at dahlia.johnson@dc.gov.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY

Solar Works DC, the District's Low Income Solar Photovoltaic (PV) Systems Installation and Job Training Program

The Department of Energy and Environment (the Department) seeks eligible entities to establish a comprehensive year-round Solar Photovoltaic (PV) Systems job training program for District residents, ages 18 and over. DOEE seeks a qualified applicant to:

- Increase the District's solar capacity by installing solar photovoltaic (PV) systems on approximately 60-100 low-income District homes, which may include multifamily buildings and/or nonprofit buildings, to reduce their energy burden by at least 50%;

- Operate a solar job training program that trains District residents through at least three cohorts annually and includes up to 25 participants per cohort;

- Create pathways to the middle class by preparing District residents to obtain part or full-time jobs in the fields of Solar Photovoltaic (PV) Systems installation, marketing, business operations engineering and sales and community outreach, relevant apprenticeships opportunities, and related fields such as construction and architecture; and

- Provide District residents with comprehensive solar job and life skills training.

The amount available for the project is approximately $950,000.

Beginning 12/23/2016, 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.doee.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 solarworksdc2017@dc.gov with "Request copy of RFA 2017-1712-" 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 Ben Stutz at (202) 481-3839 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Ben Stutz RE:2017-1712-" on the outside of the envelope.

The deadline for application submissions is 1/27/2017, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to solarworksdc2017@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: solarworksdc2017@dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

December ____, 2016

NOTICE OF DRAFT ADVISORY OPINION

The Director of Government Ethics, pursuant to the authority set forth in section 219(a-1)(2) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective February 22, 2014 (D.C. Law 20-75; D.C. Official Code § 1-1162.19(a-1)(2)) (2015 Supp.), hereby gives notice that he intends to issue, on his own initiative, an advisory opinion that provides interpretive guidance regarding the effect of the District of Columbia's Code of Conduct on the use of personal social media accounts. Given the prevalence of social media use by District of Columbia employees, the Director considers this topic to be a general question of law of sufficient public importance concerning the Code of Conduct over which the Ethics Board has primary jurisdiction.

All persons interested in commenting on this draft Advisory Opinion may do so not later than thirty (30) days after publication of this notice in the D.C. Register by sending comments electronically to bega@dc.gov or by filing comments in writing with Brian K. Flowers, General Counsel, Board of Ethics and Government Accountability, 441 4th Street, N.W., 830 South, Washington, D.C. 20001.

Draft Advisory Opinion

Social Media and the Code of Conduct

Purpose of this Advisory Opinion

This advisory opinion is intended to provide interpretive guidance to District government employees ("Employee" or "Employees") regarding the effect of the District's Code of Conduct on the use of personal social media accounts.[1] Insofar as it is impractical to issue an opinion that

[1] D.C. Official Code § 1–1161.01(7) defines the Code of Conduct as being comprised of the following:
(A) For members and employees of the Council, the Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council;
(B) Sections 1-618.01 through 1-618.02;
(C) Chapter 7 of Title 2 [§ 2-701 *et seq*.)];
(D) Section 2-354.16;

addresses each specific instance in which an Employee's use of a personal social media account could violate the Code of Conduct, this advisory opinion will provide general guiding principles that can be applied to different situations that may arise. Additionally, this advisory opinion will provide examples to which the guiding principles can be applied, as well as an explanation of the result of that application.

Background

Social media is an umbrella term that refers to internet based tools, programs, and applications that allow their respective users to share information. A social media account, therefore, is an account created through a social media platform, including, without limitation, Facebook, Twitter, LinkedIn, Instagram, Snapchat, and Google+. The general use of personal social media accounts is not prohibited by the District's Code of Conduct. However, there are certain instances in which an Employee's use of a personal social media account would violate the District Code of Conduct, and, consequently, be prohibited.

Generally, Employees do not purposefully seek to violate the Code of Conduct through their use of their personal social media accounts. Most violations, therefore, occur unwittingly. Furthermore, these unwitting violations usually occur in situations where Employees can be reasonably deemed to be speaking on behalf of the District. Accordingly, Employees should routinely question whether their personal social media presence gives the impression that they are speaking on behalf of the District. If the answer is "Yes," the Employee should refrain from such conduct.

The remainder of this advisory opinion discusses the general principles with which Employees should be concerned and, to the extent possible, provides examples of possible violations of the Code of Conduct by an Employee's use of a personal social media account.[2] With respect to the specific components of the Code of Conduct, this advisory opinion will focus primarily on Chapter 18 of Title 6B of the District of Columbia Municipal Regulations ("DPM"), the Council of the District of Columbia Code of Official Conduct, and the Prohibition on Government Employee Engagement in Political Activity Act ("Local Hatch Act").[3] Nevertheless, the principles expressed herein are applicable throughout the Code of Conduct.

(E) For employees and public officials who are not members or employees of the Council, Chapter 18 of Title 6B of the District of Columbia Municipal Regulations;

(E-i) Chapter 11B of this title [§ 1-1171.01 *et seq*.];

(F) Parts C, D, and E of subchapter II, and part F of subchapter III of this chapter for the purpose of enforcement by the Elections Board of violations of § 1-1163.38 that are subject to the penalty provisions of § 1-1162.21.

(G) Section 1-329.01, concerning gifts to the District of Columbia.

Additionally, the Board of Ethics and Government Accountability is statutorily authorized to enforce the Code of Conduct as to "all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions . . . ." D.C. Official Code §§ 1–1162.01a, 1–1162.02(a)(1).

[2] The examples are intended to be illustrative of the guiding principles enunciated herein. They do not, however, limit the instances in which a Code of Conduct violation can occur.

[3] D.C. Official Code § 1-1171.01 et seq.

Discussion

I. *Inclusion of District Employment Information in the Biographical Information Section of an Employee's Personal Social Media Account*

The DPM provides that Employees are prohibited from using public office for private gain.[4] The DPM provides further that Employees are prohibited from taking actions that give the appearance that the District sanctions or endorses the activities of an Employee or another person or entity affiliated with the Employee.[5] Additionally, the DPM prohibits Employees from engaging in any outside employment, private business activity, or interest in any manner that the Employee capitalizes on his or her official title or position.[6]

Notwithstanding these aforementioned DPM and Council Code provisions, Employees can include their District employment information in the biographical section of their respective social media accounts. The personal social media accounts belong to the Employees, and not the District. Also, it is understood that their personal social media accounts are extensions of their respective self-expressions. Therefore, including information related to District employment in the biographical section of an Employee's personal social media account does not automatically associate the Employee as an official spokesperson for the District. Nevertheless, there are instances in which such an inclusion could violate the Code of Conduct.

In assessing whether an Employee's inclusion of District employment in the biographical section of a personal social media account violates the Code of Conduct, this Office will consider the totality of the circumstances. Specifically, the relevant factors upon which this Office will rely are:

1. Whether the Employee states that he or she is acting on behalf of the government;
2. Whether the Employee refers to his or her connection to the government as support for the Employee's statements;
3. Whether the Employee prominently features his or her agency's name, seal, uniform or similar items on the Employee's social media account or in connection with specific social media activities;
4. Whether the Employee refers to his or her government employment, title, or position in areas other than those designated for biographical information;
5. Whether the Employee holds a highly visible position in the government, such as a senior or political position, or is authorized to speak for the government as part of the Employee's official duties;
6. Whether other circumstances would lead a reasonable person to conclude that the government sanctions or endorses the Employee's social media activities; or

[4] *See* DPM § 1800.3(g). *See also* Council of the District of Columbia Code of Official Conduct ("Council Code") § VI(c)(1).
[5] *See generally* DPM § 1807.1(e). *See also* Council Code Rules II(a)(1), VI(c)(3).
[6] *See* DPM § 1807.1(e). *See also* Council Code Rule II(a)(1).

7. Whether other circumstances would lead a reasonable person to conclude that the government does not sanction or endorse the Employee's social media activities.[7]

Not one of these factors is dispositive when determining whether an Employee would violate the Code of Conduct when using a personal social media account. However, the presence of a number of these factors could support a finding that a violation occurred. Therefore, and to the extent an Employee's District employment information is listed in the biographical section of a personal social media account, a disclaimer that affirmatively disavows government sanction or endorsement of the Employee's posts or a disclaimer that distances the Employee's views from the District's views are beneficial.[8] Please note, however, that the inclusion of such a disclaimer does not automatically provide safe harbor for an Employee from a finding by this Office that the Employee violated the Code of Conduct.

Consider the following examples:

Example 1
Employee A maintains a Facebook account, which lists Employee A's District employment in the biographical section. There is no disclaimer on Employee A's Facebook account. Employee A posts an advertisement for a business owned by Employee A on the Facebook account.

In this instance, Employee A's Facebook post would not violate the Code of Conduct. The inclusion of District employment in the biographical information portion of an Employee's social media account, without more, does not rise to the level of an ethics violation.

Example 2
Employee A maintains a Facebook account, which does not list Employee A's District employment in the biographical section. Employee A is a deputy administrator in Employee A's agency. Due to the higher profile position, Employee A's Facebook account contains a disclaimer. Employee A posts an advertisement for a business owned by Employee A on the Facebook account. The advertisement reads "Please support my business. All of my @(Employee A's Agency) coworkers say it's the best."

In this instance, due to Employee A's high profile position in the District government as well as the inclusion of a link to Employee A's agency, there is a violation of the Code of Conduct as (1) the post gives the impression that the District government supports the business and (2) uses public office for private

[7] *See* Federal Office of Government Ethics Legal Advisory Opinion LA-15-03 (April 9, 2015). While this Office is not bound by the Federal Office of Government Ethics and the manner in which it interprets federal ethics rules, this Office frequently looks to that Office for guidance. In this instance, the factors articulated by the Federal Office of Government Ethics provides a good framework for District employees as well.

[8] For instance, a statement that reads "The views expressed herein are not the views of the District of Columbia government" would be such a disclaimer that an Employee could include in the biographical section of a personal social media account.

gain. The disclaimer would be insufficient to protect this employee under these facts. The result would be no different had the Employee in this example not held a high profile position given the direct reference to his coworkers.[9]

II. *Use of Government Time and Resources*

The DPM states that "an employee has a duty to protect and conserve government property and shall not use such property, or allow its use, for other than authorized purposes."[10] When an Employee is on duty, section 1808.1 of the DPM imposes a duty to protect and conserve government property, which includes government computers, government cellular phones, and the time that the Employee is required to work. An Employee's use of a personal social media account during working hours, therefore, is generally not encouraged, particularly when such use causes an Employee to be unproductive or causes the District to incur costs.

Applying the aforementioned principles, if an Employee's use of a personal social media account on a government computer causes that computer to experience issues, the Employee will likely be found to have violated the Code of Conduct, as there are costs associated with correcting those issues. Moreover, the amount of time spent using a personal social media account while at work can also violate the Code of Conduct. For instance, an Employee who uses a personal social media account fifteen (15) minutes out of the working day may not be found to have violated the Code of Conduct. However, an Employee who uses a personal social media account two (2) hours out of the working day will likely be found to have violated the Code of Conduct. There are other factors to be taken into consideration, such as agency policy regarding personal social media account use, as well as the job duties of the Employee. Nevertheless, Employees must ensure that their conduct does not amount to a misuse of government time and resources, and be wary that personal conduct may amount to such.

III. *Other District Personnel Manual Provisions*

While the DPM provisions regarding using public office for private gain, taking actions that give the appearance that the District supports or endorses activities, and capitalizing on official title for outside activities are the most common DPM provisions that Employees can violate through their use of their personal social media accounts, there are other DPM provisions of which Employees must be mindful. Employees should ensure that they do not use their personal social media accounts to: (1) solicit or accept any gift or other item of monetary value from a prohibited source;[11] (2) engage in outside employment or activities that conflict with official government duties and responsibilities, such as seeking or negotiating for employment;[12] (3) violate local, state, or federal laws; (4) teach, write, consult, and speak in a manner that violates

[9] In the realm of social media, the use of @ followed by text (i.e. @SomeName) creates a link to another account. Additionally, the use of hashtag # followed by text (i.e. #SomeTopic) links a social media post to other similarly themed posts containing hashtag.
[10] DPM § 1808.1. *See also* Council Code Rule VI(a).
[11] *See* DPM § 1800.3(d); DPM § 1803.1 *et seq. See also* Council Code Rule III(a).
[12] *See* DPM § 1800.3(j). *See also* Council Code Rule II(a)(1).

the DPM;[13] (5) violate the District's post-employment prohibitions;[14] (6) disclose non-public information;[15] and take actions giving the appearance that the Employee is violating the Code of Conduct.[16]

Consider the following examples:

> Example 3
> Employee A maintains a Facebook account. Employee A is Facebook friends with the owner of a prohibited source, whom he first met after the owner began working with Employee A's agency. The owner of the prohibited source sends Employee A access to a game hosted on Facebook that costs $60.00. Employee A accesses and plays the game.
>
> In this instance, Employee A has violated the Code of Conduct by accepting a gift from a prohibited source. Access to the game has a monetary value of $60.00, and that access was provided by a prohibited source.
>
> Example 4
> For several years, Employee A operated a popular blog without compensation. The subject matter of the blog post relates directly to Employee A's position with the District. Employee A also learned the subject matter through her District employment. About one month ago, an advertising company contracted with Employee A to pay $3,000.00 per month for ad space on the blog. The contract required that Employee A continue to blog about the same subject matter. While the contract between the company and Employee A is for advertising space, the contract requires that Employee A continue blogging about a subject matter relating directly to her District employment.
>
> This provision, in effect, makes the contract one where Employee A is receiving payment for writing about a subject matter directly related to the District employment, which is prohibited. In this instance, Employee A has violated the Code of Conduct by receiving payment for writing that relates directly to District employment.

IV. *The Local Hatch Act*

The Local Hatch Act limits the political activity of District employees.[17] Political activity is "any activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum."[18]

---

[13] *See* DPM §§ 1807.2 - 1807.5; *see also* BEGA Advisory Opinion #1448-001, Outside Activities: The Meaning of the Phrase "Devoted Substantially" in DPM § 1807.4 (February 4, 2016), available at http://www.bega-dc.gov/sites/default/files/documents/Advisory%20Opinion_0.pdf.
[14] *See* DPM § 1811.1 *et seq. See also* Council Code Rule VIII *et seq.*
[15] *See* DPM § 1800.3(c); DPM § 1807.3. *See also* Council Code Rule VII *et seq.*
[16] *See* DPM § 1800.3(n).
[17] *See generally* D.C. Official Code § 1-1171.01 *et seq*. *See also* Council Code Rule IX.
[18] D.C. Official Code § 1-1171.01(8)(A).

Specifically, the Local Hatch Act prohibits, among other things, Employees from using their official authority or influence to interfere with an election, as well as soliciting, accepting, and/or receiving political contributions.[19] It also imposes additional prohibitions on Employees irrespective of whether the political activity is regulated by the District. [20] In those instances, Employees are prohibited from engaging in all political activity while on duty, in any room or building occupied in the discharge of official duties in the District government, including any agency or instrumentality thereof (i.e. a District owned or occupied room or building), while wearing a uniform or official insignia, or in a District owned vehicle.[21] With respect to social media, an Employee can violate the Local Hatch in two ways depending on (1) the time of the day that the Employee uses a private social media account and (2) the manner in which the Employee uses a private social media account.

As to when an Employee's use of a private social media account violates the Local Hatch Act, Employees are prohibited from engaging in political activity, without regard to jurisdiction, on a personal social media account when they are on duty or official time, in a District occupied room or building, or a District vehicle. Therefore, and with minor limitations, an Employee can engage in political activity on a personal social media account when off duty and outside of a District owned building or room, so long as the Employee is not using his or her official authority or influence to interfere with an election. Thus, a post on a personal social media account shall not reference an Employee's employer, employing agency, or position, when the post includes political activity.

While the definition of political activity is clear, the manner in which it can manifest on social media is not as straightforward. The most obvious example of political activity in the realm of social media is a post that explicitly directs people to vote for or against a candidate. Political activity on social media, however, is not limited to such a post. For instance, linking to a partisan political group's social media account in a post is political activity because it demonstrates support for the group as does posting the picture of a partisan political candidate or a political cartoon. And the same is true for linking to or sharing a link to a partisan political group's website or an article advocating for or against a partisan political candidate. Nevertheless, simply "liking" any of the aforementioned posts or links is not considered political activity.[22]

Consider the following examples:

> Example 5
> Employee A wants to get involved in the management of the political campaign of a candidate for a partisan political office for an election regulated by the District. Employee A creates a website for the candidate. One of the pages on the website created by Employee A is a page to contribute to the campaign.

[19] D.C. Official Code §§ 1-1171.02(a)(1) – 1-1171.02(a)(2). *See also* Council Code Rule IX(a)(1).
[20] *See* D.C. Official Code § 1-1171.03(c). *See also* Council Code Rule IX(a)(1)-(2).
[21] *See* D.C. Official Code § 1-1171.03(a). *See also* Council Code Rule IX(a)(5).
[22] Liking a post is the method by which one shows approval for what has been posted.

In this instance, Employee has violated the Code of Conduct by engaging in fundraising activities. Note that creation of the campaign website without the fundraising page does not violate the Code of Conduct.

Example 6
Employee A maintains a Twitter account. The Twitter account lists Employee A's position with the District in the biographical section. The Twitter account also contains a disclaimer stating that the views expressed on the account are not the views of the District. Employee A spots a co-worker at a political convention on television. Employee A takes a picture of the co-worker and posts the picture on Twitter. Below the picture is the following sentence "So proud of my @Agency colleague. @PartisanPoliticalGroup." The partisan political group supports a partisan political candidate.

In this instance, Employee A's conduct violates the Code of Conduct. The @ sign operates as a link. Therefore, Employee A has linked this post to both the agency and the partisan political group's social media pages. Linking to the partisan political group's social media page is political activity. Also, linking to Employee A's agency's social media page is equivalent to using official authority or influence to interfere with an election.

Example 7
Employee A maintains a Facebook account. One day, during a fifteen minute break, Employee A contributes $2,000.00 to a partisan political candidate's campaign through a Facebook link while located in a District building.

In this instance, Employee A violated the Code of Conduct because donating to a campaign is political activity. Furthermore, the political activity occurred during the tour of duty and in a District occupied building space.

V. Recommendations or Endorsements

Another common area where an Employee's use of a personal social media account can violate the Code of Conduct is in the realm of social media recommendations or endorsements. Social media platforms allow their users to recommend or endorse other users generally or the skills of other users specifically. This Office previously provided guidance pertaining to letters of recommendation.[23] As indicated in that guidance, "anyone who undertakes to provide a letter of recommendation for a contractor or grantee must be certain that he or she has the authority to speak on behalf of the District government or the writer's employing agency or District entity."[24] The Employees who have that authority are the Mayor, Councilmembers, agency heads, and in some instances, high-level executives, managers, and Council staffers.[25] The overwhelming majority of Employees do not have this authority to speak on behalf of the District. As a result of

[23] *See* Office of Government Ethics Legal Advisory Opinion 1040-001 (November 19, 2014).
[24] *Id.* at 5.
[25] *See id.*

this lack of authority, any recommendation or endorsement on a personal social media account must be done in a personal capacity.

As an initial matter, it is not a violation of the Code of Conduct for Employees to provide recommendations or endorsements on their personal social media accounts simply because the account references their District employment.[26] The social media recommendations or endorsements usually take the form of a "like," "thumbs up," or the phrase "Employee endorses skill." Social media recommendations or endorsements, however, usually do not include narratives. Accordingly, there would be no violation of the Code of Conduct during most social media recommendations or endorsements, as there is no impression that a District employee is suggesting the District recommends or endorses someone or some company due to the lack of a narrative accompanying the recommendation or endorsement. However, to the extent an Employee includes a narrative in a recommendation or endorsement, the narrative must not reference the Employee's title, position, or employer, as the Employee would likely be deemed to be speaking on behalf of the agency or District government without permission and, as a result, be in violation of the Code of Conduct.

Consider the following examples:

> Example 8
> Employee A maintains a LinkedIn account that contains Employee A's biographical information. Employee A supervised Volunteer A in a District agency. Employee A is a mid-level manager at the agency. After leaving the agency, Volunteer A requested Employee A endorse Volunteer A's writing and communication skills, and provide a written recommendation of both on LinkedIn. Employee A endorsed Volunteer A's writing and communication skills on LinkedIn. Employee A stated in a narrative "I would strongly recommend Volunteer A for any job that requires intensive writing and communication skill. I became acquainted with Volunteer A's ability to write and communicate when Volunteer A worked at my District agency. I served as the assistant deputy director of my District agency and was directly responsible for supervising Volunteer A's work. Volunteer A's work product was as good as that of full time employees of the District agency. You will not be disappointed in your decision to hire Volunteer A."
>
> Unless Employee A has express authority to speak on behalf of the agency, or otherwise to provide such references for former employees, Employee A's narrative violates the Code of Conduct. The recommendation would have accomplished the same effect without mentioning the District. However, by linking the District to the recommendation, Employee A implicitly suggests that the District as a whole, and the agency in particular, endorses Volunteer A's writing and communication skills.

[26] *See* Section I, *supra.*

Example 9
Employee A maintains a LinkedIn account that contains Employee A's biographical information. Employee A worked in the same District agency as Employee B. They did not work on any projects together. Accordingly, their relationship was personal and not professional. Employee B left the District agency and requested Employee A endorse Employee B's writing and communication skills, and provide a written recommendation of both on LinkedIn. Employee A endorsed Employee B's writing and communication skills on LinkedIn. Employee A stated further in a narrative "I would strongly recommend Employee B for any job that requires intensive writing and communication skill. Based upon reviews from supervisors who managed Employee B, Employee B's work was always top-notch. You will not be disappointed in your decision to hire Employee B."

Employee A's recommendation narrative violates the Code of Conduct. Although it does not mention the District, professional recommendations must be based on a professional relationship and personal knowledge. Here, there was neither a professional relationship nor personal knowledge concerning the skills of Employee B. As stated earlier, this Office's past guidance regarding Employee conduct generally applies in the social media context as well.

Example 10
Employee A maintains a Facebook account that contains Employee A's District employment information in the biographical section of the Facebook page. While browsing Facebook, Employee A noticed the page of Company A, a prohibited source. Employee A liked the prohibited source's Facebook page. Employee A also left the following recommendation on the prohibited source's Facebook page: "I strongly recommend this company for any IT issues you may have. I had an issue in my agency where I was unable to access the internet. My IT department was unable to resolve the issue. My IT department contacted Company A, which resolved the issue immediately."

The recommendation is not a violation of the Code of Conduct. Although Company A is a prohibited source, Employee A's recommendation does not mention the District, is provided in a personal capacity, and based on a professional relationship.

Example 11
Employee A maintains a Facebook account that contains Employee A's District employment information in the biographical section of the Facebook page. While using that account, Employee A "likes" a co-worker's company page. Employee A has no professional relationship with the co-worker's business.

Employee A has not violated the Code of Conduct. Without more, endorsing or recommending a person or business entity with which an employee has no professional relationship is not a Code of Conduct violation.

VI. *Additional Considerations*

A. Use of Official Social Media Accounts

While the crux of this advisory opinion is focused on the use of personal social media accounts, I would be remiss not to mention the use of official social media accounts. To that end, many District agencies have various official agency social media accounts to which some Employees have access. Official agency social media accounts are considered government resources. Insofar as official social media accounts are government resources, Employees must not use official agency social media accounts for other than their authorized purposes.[27] The phrase "authorized purposes" is statutorily defined as "those purposes for which government property is made available to members of the public or those purposes authorized by an agency head in accordance with law or regulation."[28] Accordingly, an official social media account must be used for official agency business only.
Consider the following example:

Example 12
Employee A is an elected official. Employee A's office maintains an official Twitter account. Employee A uses the office's official Twitter account to tweet about an upcoming election involving Employee A. Specifically, Employee A drafts the following tweet "Please vote for me, Employee A, because I have a history of getting the job done."

Employee A's tweet violated the Code of Conduct. Employee A used the agency's official Twitter account for an unauthorized purpose. Additionally, Employee A's tweet violates the Local Hatch Act insofar as employees may not run for partisan political office in the District.

B. Agency Limitations on Use of Personal Social Media Accounts

It bears mentioning that each specific agency may impose additional restrictions on an Employee's use of a personal social media account. As a general rule, these additional restrictions are not part of the Code of Conduct. Therefore, BEGA has no jurisdiction with respect to the enforcement of any additional restrictions. For instance, while this Opinion advised that under certain circumstances, an Employee can provide an endorsement on LinkedIn for another Employee, an agency may limit that conduct and provide that its Employees are not allowed to endorse other Employees. Such restrictions fall within the ambit of personnel related matters. And, as a result, each individual agency would be responsible for ensuring compliance with those restrictions.

[27] *See* DPM § 1808.1. *See also* Council Code Rule VI(a).
[28] DPM § 1808.2.

Conclusion

In sum, Employees should be careful not to give the impression that the District endorses or supports their posts on social media. Employees should also avoid giving the impression that they speak on behalf of the District when there is no authorization to do so. Finally, Employees should not capitalize on their District employment to the benefit of the Employee's outside activities. Adhering to these general principles, as well as understanding that specific provisions of the Code of Conduct apply to activity on social media, should help ensure that Employees do not violate the Code of Conduct through their use of their personal social media accounts.

Please be advised that this advice is provided pursuant to D.C. Official Code § 1-1162.19(a-1)(1), which empowers me to issue, on my own initiative, an advisory opinion on any matter I deem of sufficient public importance concerning a provision of the Code of Conduct over which the Ethics Board has primary jurisdiction.

For further assistance, especially in resolving any questions about whether a social media post and a social media account violates the Code of Conduct, please feel free to contact the staff of this Office at (202) 481-3411.

_____

DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

#1559-001

DEPARTMENT OF HEALTH
HEALTH PROFESSIONAL LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Medicine
December 28, 2016

On December 28, 2016 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

The meeting will be open to the public from 8:30 am to 10:30 am to discuss various agenda items and any comments and/or concerns from the public.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will then move to Closed Session from 10:30 am until 4:45 pm to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website www.doh.dc.gov/bomed and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Frank B. Meyers, J.D.

DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

Judicial Tenure Commission Begins Reviews Of Judges Eric T. Washington, Jeanette Clark, Lee F. Satterfield, Michael W. Farrell, And Linda D. Turner

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of **Judge Eric T. Washington,** of the District of Columbia Court of Appeals, and reviewing the qualifications of **Judges Jeanette Clark and Lee F. Satterfield** of the Superior Court of the District of Columbia. The three Judges are retiring and each has requested a recommendation for an initial appointment as a Senior Judge.

In addition, the Commission is reviewing the qualifications of **Judge Michael W. Farrell** of the District of Columbia Court of Appeals, and reviewing the qualifications of **Judge Linda D. Turner** of the Superior Court of the District of Columbia, who have requested recommendations for reappointment as Senior Judges.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

> "…A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.
>
> (2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.
>
> (3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on the qualifications of Judges Washington, Clark, Satterfield, Farrell, and Turner. The identity of any person submitting materials will be kept confidential unless the commenter authorizes the disclosure of his or her name.

All communications should be mailed, faxed, or e-mailed by **January 27, 2017**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
FAX: (202) 727-9718
E-Mail: dc.cjdt@dc.gov

In addition, comments may be submitted by an online survey, available on the Commission's website, http://www.cjdt.dc.gov, and using the link "Evaluate Candidates".

The members of the Commission are:

Jeannine C. Sanford, Esq., Chairperson
Anthony T. Pierce, Esq., Vice Chairperson
Michael K. Fauntroy, Ph.D.
Hon. Joan L. Goldfrank
Hon. Gladys Kessler
William P. Lightfoot, Esq.
David P. Milzman, M.D.

BY: /s/ Jeannine C. Sanford, Esq.
Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-67

June 10, 2016

VIA E-MAIL

Mr. Michael Slota

RE: FOIA Appeal 2016-67

Dear Mr. Slota:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested pertaining to your application to become an officer with the MPD.

Background

On April 26, 2016, you submitted a FOIA request to the MPD for your "application and background investigation for the position of MPD Police Officer, to include specific information related to the reason and justification for denial." On May 18, 2016, the MPD denied your request, stating that because you were not hired your application material was not retained. Further, the MPD attached the Authorization for Release of Information and Statement of Consent ("Consent Waiver") that you signed, claiming that by signing the Consent Waiver you "waived your rights to obtain information and documentation resulting in denial of an appointment."

On appeal, you challenge the MPD's response that the Consent Waiver prohibits the release of your application materials under FOIA. You assert that the reason you were not offered a position as a police officer was due to your sexual orientation, and your application materials would verify your claim of unlawful discrimination.

The MPD sent this Office a response to your appeal on June 7, 2016.[1] The MPD's response states that despite its initial response to your request claiming otherwise, the MPD had retained application documents responsive to your request; however, the MPD reaffirmed its position that the signed Consent Waiver barred disclosure of the requested documents. Further, the MPD asserts that the records are also appropriately withheld pursuant to the deliberative process privilege, which is incorporated within D.C. Official Code § 2-534(a)(4) ("Exemption 4").[2] The

[1] A copy of the MPD's response is attached to this determination.
[2] Exemption 4 vests public bodies with discretion to withhold "[i]nter-agency or intra-agency memorandums and letters … which would not be available by law to a party other than a public body in litigation with the public body."

MPD's response identifies the categories of documents involved in the application process and asserts that all of the documents are protected from disclosure by the Consent Waiver and Exemption 4.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id*. at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal stature are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The two main issues in this appeal are the effect of the Consent Waiver and the application of Exemption 4. With regard to the Consent Waiver, the relevant portion appears to be the penultimate paragraph, which states that if the application does not result in the applicant's appointment to the MPD, "the sources(s) of confidential information cannot and will not be released and/or revealed" to the applicant, and all of the information and documentation obtained during the application process "will be the sole property of the Metropolitan Police Department." In its response, the MPD explains that the materials compiled during the application process are generally not disclosed in the absence of a court order, because the documents contain sensitive information.

Based on the language of the Consent Waiver, we do not agree that the Consent Waiver acts as a total bar to disclosure under DC FOIA. The only information that the Consent Waiver expressly prohibits releasing is the "source(s) of confidential information." If a source of confidential information is contained within the application materials at issue, the identifying information can be redacted or withheld from disclosure in accordance with the Consent Waiver. The fact that the application materials are the "sole property" of the MPD does not bar disclosure of records under DC FOIA, because DC FOIA requires an agency to make its records available for public inspection. D.C. Official Code § 2-532(a). Here, the sensitivity of the application materials[3] is not an issue because the applicant is requesting his own information. As a result, we find that the Consent Waiver prevents disclosure of information that would identify the source of confidential information; however, the Consent Waiver itself does not prevent disclosure of all application records under DC FOIA.

[3] The MPD identifies employment history, law enforcement information, medical information, prior military history, personal and business references, and financial information as the categories of sensitive information relating to the applicant.

Regarding Exemption 4, the MPD's response provides an accurate description of the deliberative process privilege.[4] In summary, to qualify for protection under the deliberative process privilege the information must be both predecisional and deliberative. A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). The MPD's analysis, however, does not address the threshold requirement of the deliberative process privilege: the document must be an inter or intra agency document. The privilege applies only to documents transmitted within or among government agencies, and generally its source must be a government agency. *See Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 10-11 (U.S. 2001).

Here, the records involving "the reason and justification for denial" of the application, are clearly protected by Exemption 4. Any writing, notes, marginalia, or analysis that the MPD created to assess the application or assist the hiring decision process are intra-agency records, predecisional, and deliberative and disclosure of those records would chill the open and frank discussions regarding hiring decisions. The categories of application records that MPD identified[5] as part of the application process, however, are much broader than those protected by Exemption 4. A large amount of the application materials appear to be created, compiled, or provided by the applicant himself or non-government third parties;[6] these records do not meet the threshold requirement of being an inter or intra agency document. Additionally, several of the records identified are purely factual and not deliberative, and disclosure of those materials to applicants would not impact the MPD's collection and review of those materials.[7] As a result, we find that records created by the MPD to facilitate the hiring decision are protected from disclosure under Exemption 4; however, Exemption 4 does not prevent disclosure of all of the materials compiled in the application process. MPD shall review the application records that do not meet the threshold requirement of being inter or intra agency records or are not deliberative for disclosure subject to the Consent Waiver and other exemptions under DC FOIA.[8]

---

[4] See page two of the MPD's attached response.

[5] The application records identified by the MPD include "initial application; new candidate orientation; online survey, online personal history statement; background investigation; polygraph examination; psychological screening; medical screening; birth certificate; college transcripts; driving record, social security card; citizenship documents, marital status documents; military status documents; unemployment records; welfare payment records; court orders, public assistance records; personal references; residence documents; and criminal history."

[6] Presumably this would at least include the applicant's initial application; online survey, online personal history statement; birth certificate; college transcripts; social security card; citizenship documents; personal references; and residence documents.

[7] These factual records include at a minimum the background investigation, college transcript, driving record, and criminal history. Disclosure of these factual records to the applicant would have no chilling effect on the decisions involved in the hiring process.

[8] For example D.C. Official Code § 2-534 (a)(5) which prevents disclosure of "questions and answers to be used in future license, employment, or academic examinations" may apply to prevent disclosure of the online survey, online personal history statement, polygraph examination, and psychological screening if the questions are not already public and may be used for examinations of future applicants

Conclusion

Based on the forgoing, the MPD's decision is affirmed in part and remanded in part. We affirm MPD's decision to withhold records that would reveal the identity of confidential sources and information protected by the deliberative process privilege in accordance with the Consent Waiver and Exemption 4. With respect to the application records beyond the scope of protection of the Consent Waiver and Exemption 4, the MPD shall, within 5 business days of this decision, review the withheld application records and disclose them in accordance with the guidance in this decision.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-68

June 10, 2016

VIA EMAIL

Phyllis Mayo

RE: FOIA Appeal 2016-68

Dear Ms. Mayo:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Department of Health ("DOH") did not adequately respond to your request for records under the DC FOIA.

Background

On January 4, 2016, you initiated a FOIA request seeking records related to your 1981 licensure as a District psychologist, and specifically your scores on particular exams. DOH informed you on March 1, 2016, that it conducted a search for documents responsive to your request and did not retrieve any responsive records.

Subsequently you appealed to the Mayor stating that you continue to seek your test scores. While not directly stated, you appear to challenge the adequacy of DOH's search on the grounds that you believe responsive documents should exist that have not been provided to you.

DOH provided this Office with a response to your appeal on May 26, 2016.[1] In its response, DOH: (1) clarified its efforts to search for the records you requested, including a search of the Federal Records Warehouse; (2) reaffirmed that its searches were adequate; and (3) restated that while it maintains license renewal records from 2001 to the present, it does not possess the 1981 test scores you are seeking.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public

[1] A copy of DOH's response is attached.

records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issue in this appeal is whether DOH conducted an adequate search for the records at issue. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your appeal, DOH provided a detailed description of the searches it conducted, and affirmed that no responsive records were found. DOH identified the relevant locations for records responsive to your request as being the Board of Psychology's records as well as the off-site Federal Records Warehouse in Suitland, Maryland. DOH's response also affirmed that the relevant locations were searched with the identifying information available (based on what you provided the DOH). Despite the reasonable searches it conducted, DOH concluded that it does not possess the 35-year-old test scores. Further, DOH posited that it would be "highly unlikely that anyone else within the Department of Health" would be in possession of the requested 1981

test score at issue. In light of the description and documentation DOH provided in response to your appeal, we find that the searches conducted were adequate.

Conclusion

Based on the foregoing, we affirm DOH's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-69

June 13, 2016

VIA ELECTRONIC MAIL

Mr. Jimmy Gardner

RE: FOIA Appeal 2016-69

Dear Mr. Gardner:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("D.C. FOIA"). Your appeal is based on the failure of the Office of Advisory Neighborhood Commissions ("OANC") to respond to a request you submitted in February 2016 for records related to a particular liquor license application.

On June 10, 2016, OANC advised us that it responded to your request on June 3, 2016. Since your appeal was based on OANC's failure to respond to your D.C. FOIA request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OANC's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Gottlieb Simon, Executive Director, OANC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-70

June 14, 2016

VIA ELECTRONIC MAIL

Mr. Steven Oster

RE: FOIA Appeal 2016-70

Dear Mr. Oster:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("D.C. FOIA"). Your appeal is based on the failure of the Department of Consumer and Regulatory Affairs ("DCRA") to respond to your May 3, 2016 request for certain noise inspection reports.

On June 1, 2016, this Office asked DCRA to provide us with a response to your appeal. DCRA advised us today that it responded to your request on June 2, 2016. Since your appeal was based on DCRA's failure to respond to your D.C. FOIA request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DCRA's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Brandon Bass, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-71

June 20, 2016

VIA ELECTRONIC MAIL

Mr. David Brooks

RE: FOIA Appeal 2016-71

Dear Mr. Brooks:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly redacted records you requested under the DC FOIA.

Background

On April 20, 2016, you submitted a request to DCRA for copies of certain complaints that were filed against you. DCRA granted your request and released 23 responsive documents; however, the agency redacted portions of the documents pursuant to the privacy exemption under DC FOIA.

Subsequently you appealed DCRA's redactions, contending that the complainant is known to you, that he initiated complaints to DCRA as part of a pattern of "vexatious litigation," and that release of his name would not be an invasion of personal privacy. You further contend that you need an un-redacted copy of the complaint because "it is the only way [you] can get the court to restrain him from continuing to file these things."

In communications to this Office, DCRA reasserted its position that its redactions were proper under D.C. Official Code § 2-534(a)(2).

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The crux of this matter is whether DCRA properly redacted the name of the complainant in the records you requested. D.C. Official Code § 2-534(a)(2) ("Exemption 2") provides an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis involves determining whether a sufficient privacy interest exists. *Id*.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Here, we find that the complainant has more than a *de minimis* privacy interest in his name and contact information.[1] *See*, e.g., *Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994); *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). A complainant does not forfeit his privacy interest if the investigation he initiated concludes, as in this case, without a finding of fault.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

On appeal you argue that you have been harassed by the individual you believed filed the complaint against you and that DCRA should identify the complainant so that you may pursue litigation against this individual. We glean no public interest from these arguments.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id*. "This inquiry . . . should focus not on the general public interest in the

[1] The complainant's address and phone number were not redacted in the records DCRA disclosed to you. This information should not have been disclosed in accordance with Exemption 2.

subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

In this instance, there has been no claim that the complainant's identity would provide insight into the behavior or performance of DCRA or another District agency. Your view that you need this information for a personal litigation matter does not contribute significantly to public understanding of the operations or activities of the government, which is "the only relevant public interest" to be weighed. *Reporters Comm.*, 489 U.S. at 775.

When there is a *de minimis* privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993) ("In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure . . . In this case, however, where we find that the request implicates no public interest at all, 'we need not linger over the balance; something … outweighs nothing every time.'"). *See also, Bartko v. United States Dep't of Justice*, 79 F. Supp. 3d 167, 173 (D.D.C. 2015) ("In an ultimate balancing, something in the privacy bowl outweighs nothing in the public-interest bowl every time.").

Having found no public interest in disclosure of the identity of the complainant at issue here, this Office concludes that DCRA's denial of your request was proper.

Conclusion

Based on the foregoing, we affirm DCRA's decision. This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Brandon Bass, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-72

June 17, 2016

VIA REGULAR MAIL

Raoul Hughes

RE: FOIA Appeal 2016-72

Dear Mr. Hughes:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Department of Motor Vehicles ("DMV") did not adequately respond to your request for records under the DC FOIA.

Background

You submitted a request to the DMV for the history associated with a particular vehicle that was formerly registered in the District, "including new title and registration under this or any other title number issued after July '08 . . . and the voided Virginia title submitted in 2009, when registration was issued to a new owner . . ."

In response to your request, the DMV sent you three documents retrieved from its electronic database reflecting the title information and vehicle history associated with the vehicle you identified in your request.

Subsequently, you appealed to the Mayor contending that the vehicle history the DMV provided you is "incomplete and therefore unresponsive" to your request because it does not contain voided titles from the original registration in the District or an indication of when the title was transferred to a new owner. You further indicated that you know the information you are seeking exists because the vehicle is currently registered in another state to a different owner.

On June 9, 2016, the DMV provided this Office with a declaration in response to your appeal.[1] In its declaration, the DMV explained how the agency maintains vehicle records, how the searches at issue were conducted, and the results of the searches.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who

[1] A copy of DMV's declaration is attached.

represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issue in this appeal is whether the DMV conducted an adequate search for the records at issue. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, the DMV explained in a declaration submitted to this Office that motor vehicle records are maintained in a DMV database known as "Destiny" and are searchable by tag (license plate) number, vehicle information number, and title number. If the same vehicle has been titled multiple times, this information appears in Destiny. When the DMV's FOIA officer searched Destiny based on the information you provided, he found that the agency had titled and registered the vehicle in 2008. He provided you with responsive documentation (with redaction

made based on the personal privacy exemption under DC FOIA). The DMV's FOIA officer also conducted a search of the DMV's ticketing database because you requested information about traffic citations; however, no documents were retrieved. In an email to this Office, the DMV's FOIA officer noted, "I looked [in the DMV's database] and also had another person look. If a vehicle is re-titled in another jurisdiction after being titled in DC, DC would not receive that information." Under D.C. FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

We are satisfied based on the DMV's declaration that DMV identified the relevant locations for records responsive to your request and adequately searched them with the information you provided.

Conclusion

Based on the foregoing, we affirm DMV's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: David M. Glasser, General Counsel, DMV (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-73

June 27, 2016

VIA ELECTRONIC MAIL

Ms. Francisca Recio

RE: FOIA Appeal 2016-73

Dear Ms. Recio:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the District of Columba Public Schools ("DCPS") improperly withheld records you requested pertaining to an injury your son sustained at a DCPS school.

Background

On May 23, 2016, you requested from DCPS all records related to an incident that occurred on May 9, 2016, in which your son was injured at a DCPS school. On June 1, 2016, DCPS responded to your request and provided you with only one document: an incident report from the Office of School Security describing the circumstances surrounding your son's injury. DCPS acknowledged the existence of additional records responsive to your request but asserted that it was withholding documents pursuant to the deliberative process privilege of D.C. Official Code § 2-534(a)(4)[1] ("Exemption 4"),[2] and video footage as part of an investigatory record exempt from disclosure under D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)").[3]
In your appeal you challenge DCPS's use of both claimed exemptions.[4] You assert that DCPS did not properly justify its use of Exemption 4, and that Exemption 4 does not specifically

[1] DCPS cites this exemption as D.C. Official Code § 2-534(a)(4)(e), which appears to be a hybrid citation of D.C. Official Code § 2-534(a)(4), which includes the deliberative process privilege and D.C. Official Code § 2-534(e) which states that the deliberative process privilege is included in Exemption 4.
[2] Exemption 4 allows withholding of "[i]nter-agency or intra-agency memorandums and letters … which would not be available by law to a party other than a public body in litigation with the public body."
[3] Exemption 3(C) allows the withholding of "[i]nvestigatory records compiled for law-enforcement purposes … to the extent that the production of such records would… [c]onstitute an unwarranted invasion of personal privacy."
[4] You also assert that DCPS's response is legally defective for lacking a sufficient explanation of its denial; however, the jurisdiction of this Office is limited to reviewing a District agency's denial of the right to inspect public records. *See* D.C. Official Code §2-537. Based on the citation

reference the deliberative process privilege. Regarding Exemption 3(C), you assert that the video footage is not an investigatory record because it was not created pursuant to an investigation. You also assert that privacy concerns do not justify withholding the footage because you waive the privacy rights of your son, and the privacy rights of other children in the footage can be preserved by obscuring their images. You also assert that you have a strong personal interest in viewing the footage, as you are the parent of the child whose injury is captured on the recording.

DCPS sent this Office a response to your appeal and a *Vaughn* index, on June 20, 2016.[5] In its response, DCPS reaffirmed its position to withhold the contested records and provided additional explanation of its application of Exemptions 4 and 3(C). With its response, DCPS provided this Office with 28 pages of documents withheld pursuant to Exemption 4 for our *in camera* review. On June 21, 2016, DCPS submitted to us the video footage withheld pursuant to Exemption 3(C). Regarding the documents withheld pursuant to Exemption 4, DCPS asserts that they constitute a draft of the agency's investigative report, which has not been finalized; therefore, the documents are properly withheld under the deliberative process privilege. As for the video withheld pursuant to Exemption 3(C), DCPS asserts that it is an investigatory record because it is being used in a law enforcement investigation, and because it contains the images of other minor children whose privacy interests should be protected.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id*. at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal stature are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The issues that will be addressed in this decision are the application of Exemptions 4 and 3(C) to the withheld documents and video footage.

The Withheld Documents

DCPS asserts that all 28 pages of documents it withheld are protected under Exemption 4. To be properly withheld under Exemption 4, a record must be contained in an inter- or intra-agency document. Therefore, Exemption 4 is typically limited to documents transmitted within or among government agencies. *See Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S.

---

you provided, it appears that DCPS's response does meet the minimum requirement under the DC FOIA.

[5] Copies of DCPS's response and *Vaughn* index are attached.

1, 10-11 (U.S. 2001). One of the litigation privileges that Exemption 4 is commonly invoked to protect is the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). To qualify for protection under the deliberative process privilege, information must be predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy,* 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy, and it is deliberative if it "reflects the give-and-take of the consultative process." *Id.*

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

While the ability to pinpoint a final decision or policy may bolster the claim that an earlier document is predecisional, courts have found that an agency does not necessarily have to point specifically to an agency's final decision to demonstrate that a document is predecisional. *See e.g., Gold Anti-Trust Action Comm. Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 762 F. Supp. 2d 123, 136 (D.D.C. 2011) (rejecting plaintiff's contention that "the Board must identify a specific decision corresponding to each [withheld] communication"); *Techserve Alliance v. Napolitano*, 803 F. Supp. 2d 16, 26-27 (D.D.C. 2011).

DCPS asserts that the 28 pages of the documents withheld here are in draft form and will be used to create the agency's final investigative report on the incident involving your son. After reviewing the withheld documents, we do not agree with DCPS's representation. None of the withheld records appears to be a draft version of a document, and the fact that portions of the documents may be used to create a final report does not make the underlying records drafts themselves. We find that the 28 pages include three categories of records: (1) four handwritten, signed statements by individuals who were involved with or responded to the incident in which your son was injured; (2) personnel notices and documents; and (3) emails discussing the incident and its potential ramifications.

The first two categories of records, handwritten statements and personnel documents, are not deliberative; rather, these records express factual statements rather than opinions, proposals, or suggestions. As a result, we find that the deliberative process privilege under Exemption 4 is not applicable to these categories of records. These records, however, were created as a part of DCPS's investigation of the incident in which your son was injured. As a result, we will analyze these records for protection under Exemption 3(C) at a later point in this decision.[6]

[6] D.C. Official Code § 2-534(a)(3)(A)(i) which allows an agency to withhold "[i]nvestigatory

Application of Exemption 4 to Emails

The deliberative process privilege is applicable to portions of the third category of records, the emails. Some of the emails, however, are to or from the parents of the injured child; therefore, these emails do not meet the threshold requirement of Exemption 4 of being an inter- or intra-agency document. With respect to withheld emails that exclusively involve District personnel, these emails contain a mixture of information that is and is not protected under Exemption 4. Information that is not protected includes factual statements, descriptions, and determinations. For information to be protected it must be both predecisional and deliberative. For example, statements that a response will be provide later are factual rather than predecisional or deliberative; however, statements that express opinions or propose options for potential responses are protected under the deliberative process privilege. As a result, DCPS must review the documents withheld in their entirety under the deliberative process privilege of Exemption 4 and determine which portions of the emails are both predecisional and deliberative.

Under D.C. Official Code § 2-534(b), even when an agency establishes that an exemption is applicable, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). "To demonstrate that it has disclosed all reasonably segregable material, 'the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)). In *Judicial Watch*, the court held that "[a]lthough purely factual information is generally not protected under the deliberative process privilege, such information can be withheld when 'the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations.'" *Id*. at 28. (quoting *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)). In these instances, factual information is protected when disclosing the information would reveal an agency's decision-making process in a way that would have a chilling effect on discussion within the agency and inhibit the agency's ability to perform its functions. *Id*.

We glean from our *in camera* review of the withheld documents that DCPS did not consider whether they were reasonably segregable. For example, the email sent on May 19, 2016 at 7:47 a.m. from Ms. Dawn contains two introductory sentences, followed by two sentences of Ms. Dawn's opinions, and concludes with more factual statements and a request for advice. Only the two sentences involving Ms. Dawn's opinions are protected under the deliberative process privilege; the remainder of the email is not protected under Exemption 4 and should be disclosed under DC FOIA absent the application of other valid exemptions.

---

records compiled for law-enforcement purposes … to the extent that the production of such records would … [i]nterfere with … [e]nforcement proceedings" may also apply, but DCPS has not supplied sufficient information regarding its enforcement procedures for us to conduct this analysis.

Application of Exemption 3(C) to Handwritten Statements and Personnel Documents

The purpose of Exemption 3(C) is to protect personal privacy interests.[7] To qualify for protection under Exemption 3(C), the analysis turns on the existence of a sufficient privacy interest and a balancing of this individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). On the issue of privacy interests, the D.C. Circuit has held:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[8]. "The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators."

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

Here, we find that there is a sufficient privacy interest associated with the investigation into wrongdoing regarding the incident in which your son was injured. An agency is justified in not disclosing documents that allege wrongdoing even if the accused individual was not prosecuted for the wrongdoing, because the agency's purpose in compiling the documents determines whether the documents fall within the exemption, not the ultimate use of the documents. *Bast*, 665 F.2d at 1254.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the public interest in disclosure is outweighed by the individual privacy interest at issue. The public interest in the disclosure of a public employee's disciplinary files was addressed by the court in *Beck v. Department of Justice, et al*., 997 F.2d 1489 (D.C. Cir. 1993). In *Beck*, the court held:

> The public's interest in disclosure of personnel files derives from the purpose of the [FOIA]--the preservation of "the citizens' right to be informed about what their government is up to." *Reporters Committee*, 489 U.S. at 773 (internal quotation marks omitted); *see also Ray*, 112 S. Ct. at 549; *Rose*, 425 U.S. at 361. This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that

[7] Two provisions of DC FOIA provide exemptions relating to personal privacy, Exemption 3(C) and D.C. Official Code § 2-534(a)(2) ("Exemption 2"). While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption 2. *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

[8] Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.

> "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee,* 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.

Id. at 1492-93.

We recognize, as you assert on appeal, that you have strong personal interest in understanding the circumstances of your son's injury. Nevertheless, the public interest to be considered in the context of FOIA is whether the information sheds light on an agency's performance of its duties. Here, the information focuses on the alleged misconduct of non-managerial DCPS employees. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993) ("In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure . . . In this case, however, where we find that the request implicates no public interest at all, 'we need not linger over the balance; something … outweighs nothing every time.'"). *See also, Bartko v. United States Dep't of Justice*, 79 F. Supp. 3d 167, 173 (D.D.C. 2015) ("In an ultimate balancing, something in the privacy bowl outweighs nothing in the public-interest bowl every time."). As a result, the handwritten statements and personnel documents are properly withheld under Exemption 3(C).

Withheld Video Footage

The standard of analysis for Exemption 3(C) as described in the previous section applies here as well. For the video footage, we note that in addition to the privacy interest of certain DCPS staff there is also a privacy interest of the minor children shown in the footage. Regarding the assertion that Exemption 3(C) is not applicable because the video was not originally created for a law enforcement purpose, the Supreme Court has held that information not initially obtained or generated for law enforcement purposes may still qualify if it is subsequently compiled for a valid law enforcement purpose at any time prior to "when the Government invokes the Exemption." *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989); *see also Lion Raisins v. USDA*, 354 F.3d 1072, 1082 (9th Cir. 2004) ("Information need not have been originally compiled for law enforcement purposes in order to qualify for the 'law enforcement' exemption, so long as it was compiled for law enforcement at the time the FOIA request was made."); *KTVY-TV v. United States*, 919 F.2d 1465, 1469 (10th Cir. 1990).

According to the email exchanges reviewed *in camera*, the video at issue became a part of the investigatory record at least by May 19, 2016; therefore, the video footage was part of the investigatory record before your FOIA request was submitted on May 23, 2016. As a result, Exemption 3(C) provides protection to the video footage.

As previously discussed, D.C. Official Code § 2-534(b) requires an agency to produce reasonably segregable portions of public records after redacting portions that are exempt from disclosure; however, cases have held that records may be withheld in their entirety if an agency

lacks the technological capacity to remove exempt portions of a record.[9] Additionally, previous District FOIA appeal decisions have held that records may be withheld in their entirety when an agency lacks the technical capacity to redact the record.[10] DCPS did not indicate in its response to your appeal whether it currently has the technical capacity to redact the video recording at issue. If DCPS has this capability, it should disclose to you the video recording of the incident, with redactions made to personally identifiable information (i.e., blurring the images of individuals other than your son). If DCPS lacks the technical capacity to redact the recording, the recording is exempt from disclosure in its entirety pursuant to Exemption 3(C).

[9] *Milton v. United States DOJ*, 842 F. Supp. 2d 257, 259-61 (D.D.C. 2012) (explaining that segregability analysis focuses on "the agency's current technological capacity" and holding that responsive telephone conversations were not reasonably segregable because an agency did not possess technological capacity to segregate non-exempt portions of requested records); *see also Mingo v. United States DOJ*, 793 F. Supp. 2d. 447, 454-55 (D.D.C. 2011) (concluding that nonexempt portions of recorded telephone calls are inextricably intertwined with exempt portions because an agency "lacks the technical capability" to segregate information that is digitally recorded); *Antonelli v. BOP*, 591 F. Supp. 2d 15, 27 (D.D.C. 2008) (same); *Swope v. United States DOJ*, 439 F. Supp. 2d 1, 7 (D.D.C. 2006) (same).

[10] *See, e.g.*, FOIA Appeal 2010-08 finding OUC lacked the technical capacity to redact audio recordings.

Conclusion

Based on the foregoing, we uphold DCPS's decision in part and remand it in part. Within seven (7) business days from the date of this decision, DCPS shall disclose redacted versions of the email documents in accordance with the guidance provided in this determination. In addition, if DCPS has the technical capacity, it shall disclose appropriately redacted video recordings in accordance with the guidance provided in this determination.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Eboni Govan, Attorney Advisor/FOIA Officer, DCPS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-74

June 28, 2016

VIA ELECTRONIC MAIL

Mr. Fritz Mulhauser

RE: FOIA Appeal 2016-74

Dear Mr. Mulhauser:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the Metropolitan Police Department ("MPD") failed to respond to a request you submitted on August 21, 2015, for records pertaining to the creation of a video shown during the MPD's testimony before the Council of the District of Columbia on public access to body worn camera videos.

Prior to submitting your appeal, you communicated with the MPD to focus your request. After several months with no response, you appealed the MPD's failure to disclose responsive records. This Office notified the MPD of your FOIA appeal on June 15, 2016. The MPD responded that it has provided responsive documents to you today, June 28, 2016, via e-mail.

Based on the foregoing, we consider your appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the MPD's substantive response.

Sincerely,

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-75

June 27, 2016

VIA ELECTRONIC MAIL

Mr. Mary Wellbank

RE: FOIA Appeal 2016-75

Dear Ms. Wellbank:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Office of Contract Procurement ("OCP") improperly withheld records you requested under the DC FOIA.

Background

On June 25, 2015, you submitted a request to OCP for portions of enumerated contracts. OCP granted your request and released 4 pages of responsive documents; however, the agency redacted tax identification number ("TINs") pursuant to the privacy exemption under DC FOIA.

Subsequently, you appealed OCP's response on the grounds that: (1) you believe other responsive contracts exist but were not provided to you; and (2) you disagree that "the information [sought] is confidential in any way . . ."

In preparing its response to your appeal, OCP conducted an additional search that yielded additional documents responsive to your request, including the contracts referenced in your appeal. OCP provided you with these documents on June 22, 2016, with redactions made to the companies' TINs.

On June 22, 2016, OCP responded to your appeal, in which it reasserted to this Office its position that redactions made to TINs were proper under D.C. Official Code § 2-534(a)(2).

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

We find that the aspect of your appeal challenging the absence of two contracts in OCP's original production is moot by virtue of OCP's subsequent release of those documents.
The crux of the remainder of this matter is whether OCP properly redacted the TINs of corporations found in the contracts you requested.

D.C. Official Code § 2-534(a)(2) ("Exemption 2") provides an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

The Supreme Court in a unanimous decision has determined that under federal FOIA corporations do not have "personal privacy" that is protected by the privacy exemptions. *FCC v. AT&T Inc.*, 562 U.S. 397, 409-410 (2011). The Court reached this conclusion despite the fact that the definition of "person" in the federal FOIA includes a corporation. *Id.*[1] Although corporations are entitled to certain protections under FOIA through the trade secrets and commercial information exemption, they do not have a personal privacy interest as it is contemplated in the associated FOIA exemption. *Id.* at 408-409 ("[W]e far more readily think of corporations as having "privileged or confidential" documents than personally private ones."). OCP has not raised an Exemption 1, trade secrets, argument in this matter. Because of the particular nature of the trade secrets exemption, this Office will not speculate as to potential competitive harm absent further briefing.

Conclusion

Based on the foregoing, we deem part of your appeal moot because OCP has provided you with the records you were seeking. With respect to the TINs that OCP redacted, we reverse OCP's decision on the grounds that this information cannot be withheld under Exemption 2. Within 7 business days of the date of this decision, OCP shall either release to you the previously redacted TINs, or supplement the response it previously submitted to this Office with a different justification for the redaction of TINs.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

[1] A corporation is also a "person" as defined in D.C. FOIA. *See* D.C. Official Code §§ 2-539, 2-502

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Nancy Hapeman, General Counsel and FOIA Officer, OCP (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-76

June 30, 2016

VIA E-MAIL

Ms. Channing Cooper

RE: FOIA Request 2016-76

Dear Ms. Cooper:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Office of the State Superintendent of Education ("OSSE") improperly withheld data you requested on behalf of your client, the American Federation of Teachers.

Background

On January 11, 2016, you sent a request to OSSE for documents related to administrative teacher-level datasets of demographic information from 2002-2015 for charter and public school teachers. You requested that teachers be assigned unique identifiers for the purposes of a longitudinal study.

On March 1, 2106, OSSE denied your request. OSSE's response indicated that it did not possessive responsive records and that to respond to the request it would have to generate new records.

On June 15, 2016, you appealed OSSE's denial, arguing that even though requested information may be scattered among different databases, an agency must extract and compile the data in order to adequately respond to a request. In support of this, you cite to two unpublished District Court opinions. Additionally, you argue that OSSE has not demonstrated that it lacks the data you requested.

We advised OSSE of your appeal and asked the agency to respond. We received a response on June 27, 2016, in which OSSE reiterated its positions that: (1) "[the data you requested] is beyond the readily reproducible standard set forth in the FOIA"; and (2) OSSE is not obligated under DC FOIA to create new records. After receiving OSSE's response, this Office communicated with OSSE's FOIA officer to inquire about the agency's capacity to fulfill your request. During this conversation, OSSE clarified that it maintains some of the data requested, and that OSSE responded to a similar FOIA request as recently as last year.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is whether compiling the requested data would constitute the creation of a new record. Generally, an agency has no duty either to answer questions unrelated to document requests or to create documents. *See Forsham v. Harris*, 445 U.S. 169, 186 (1980) (citing *NLRB v. Sears, Roebuck & Co*., 421 U.S. 132, 161-62 (1975)); *accord Yeager v. DEA*, 678 F.2d 315, 321, (D.C. Cir. 1982) ("It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request.").

You have cited two cases in your appeal that suggest that compiling requested data would not constitute the creation of a new record but instead amounts to a search. One of the cases you cite states, in relevant part:

> Because [agency] has conceded that it possesses in its databases the discrete pieces of information which [requester] seeks, extracting and compiling that data does not amount to the creation of a new record. Rather, [requester] has requested [agency] to conduct an electronic search of its databases. The programming necessary to conduct the search is a search tool and not the creation of a new record.

Schladetsch v. United States HUD, 2000 U.S. Dist. LEXIS 22895 (D.D.C. Apri. 4, 2000).

This Office interprets *Schladetsch* and others like it as standing for the proposition that extracting certain rows of information from a dataset does not constitute the creation of a new record in the same way that photocopying certain pages from a paper report would not constitute the creation of a new record. *See Disabled Officer's Asso. v. Rumsfeld*, 428 F. Supp. 454, 456-57 (D.D.C. 1977) ("The fact that defendants may have to search numerous records to comply with the request and that the net result of complying with the request will be a document the agency did not previously possess is not unusual in FOIA cases nor does this preclude the applicability of the Act. Indeed, in at least two recent FOIA actions involving requests for names and addresses which were not previously compiled into a single document but were contained in numerous separate documents, this fact was not seen as a bar to the applicability of the Act.").

In its response to your appeal, OSSE cites to the holding in *Krohn v. DOJ*, 628 F.2d 195, 197-198 (D.C. Cir. 1980), as to why it is not obligated to create new records. In *Krohn* the request was for statistics related to every criminal plea deal entered into by United States Attorneys. This data was not maintained by any U.S. Attorney's Office, but instead could have been produced only by creating transcripts for the purposes of the request and then reading and analyzing them. This process of transcribing, reading, analyzing, and creating a document amounted to the creation of a new record according to the court, and the Department of Justice could not be compelled to take these actions under FOIA. *Krohn*, 628 F.2d at 198 ("The agency cannot be compelled to create the transcripts necessary to produce the data, information and statistics that appellant requested.").

In light of this Office's communication with OSSE, in which OSSE indicated that it does maintain some of the data requested, and given that OSSE has responded to a similar FOIA request as recently as last year, this Office finds this matter to be factually closer to *Disabled Officer's Assoc.* than to *Krohn*, in that fulfilling the request would not constitute the creation of a new record. Therefore, to the extent that extracting and compiling the data you seek does not involve creating new information, OSSE must search and disclose such data. To the extent that OSSE does not maintain the data, it is not obligated to create or solicit new data to fulfill this request. If OSSE does not maintain certain requested data, or believes that the data is so embedded that extracting it would amount to creating a new record, OSSE's data staff must provide an affidavit to you explaining these beliefs. Further, OSSE is not obligated to create a "unique identifier" as contemplated by the request, if one does not already exist. This would amount to the creation of a record which OSSE is not obligated to do.

Conclusion

Based on the foregoing, we remand this matter to the OSSE to, within 10 business days from the date of this decision, provide you with the data you requested or an affidavit from a technology officer articulating the reason the data cannot be provided without creating a new record. Further, OSSE shall provide you with a declaration explaining which portions of the requested information, if any, are not maintained by OSSE.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Mona Patel, FOIA Officer, OSSE (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-77

July 1, 2016

VIA ELECTRONIC MAIL

Ms. Veronica Ogunsula

RE: FOIA Appeal 2016-77

Dear Ms. Ogunsula:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Public Library ("DCPL") improperly withheld records you requested under the DC FOIA.

Background

On April 4, 2016, you submitted a FOIA request to DCPL for footage from surveillance cameras and login information for identified computers on December 16th and 17th of 2015. On April 13, 2016, DCPL responded to the request by producing a redacted version of your personal login information; however, DCPL stated that the security camera footage and login information of third parties were both being withheld entirely pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2"),[1] Title 1 DCMR § 406.2(a),[2] and D.C. Official Code § 39-108(a).[3]

On appeal you assert that: (1) withholding the video recordings on the basis of personal privacy is improper because library patrons have no expectation of personal privacy in a public library that openly informs its patrons of its operation of surveillance cameras; (2) the recordings were not created for an investigation; and (3) there is a public interest in releasing the recordings because the video would demonstrate how DCPL handles the safety of patrons' property and privacy. Regarding the computer login information, you assert that DCPL's response was insufficient because based on your personal experience and the surveillance video at the library there should be more responsive login information than DCPL provided. The appeal appears contradictory regarding the login information because you state that you appeal DCPL's decision

[1] Exemption 2 protects "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."
[2] This regulation does not appear to be applicable; DCPL probably intended to cite Title 1 DCMR § 406.2(b) which is the corresponding regulation to Exemption 2.
[3] The purpose of D.C. Official Code § 39-108 is to protect the confidentiality of circulation records which can be used to identify a library patron and the specific material that patron has requested, used, or borrowed from the public library.

to withhold the information, but also state that "[you] relinqui[sh] [your] request for the login information of [other] users." For the purposes of this determination, we will consider the appeal of the decision to withhold login information preserved.

On June 23, 2016, DCPL provided this Office with a twenty-six page response to the appeal, in which it reaffirms its decision to withhold certain records under Exemption 2 and D.C. Official Code § 39-108.[4] Regarding the surveillance footage, DCPL asserts that patrons have a privacy interest in such footage because it shows their use of circulation records, and under D.C. Official Code § 39-108 DCPL must maintain the confidentiality of circulation records if they can be used to identify a library patron and the specific material used by the library patron. DCPL contests the public interest argument raised on appeal. DCPL asserts that it does not have the technical capacity to redact its surveillance video.[5] Regarding the login information, DCPL maintains that you, as the requestor, received all of your available login information; however, the login records of other users were withheld in their entirety because absent consent or a court order the circulation records of library patrons are protected from disclosure under D.C. Official Code § 39-108. DCPL provided a description its search methods and a potential explanation for the reason its search results in fewer records than you expected.[6]

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

This appeal involves DCPL adequacy of search regarding computer login information and the application of Exemption 2 and D.C. Official Code § 39-108 to surveillance footage and computer login information. D.C. Official Code § 39-108 is applicable to DC FOIA under § 2-534(a)(6) ("Exemption 6")[7] (hereinafter D.C. Official Code § 39-108 will be referred to as Exemption 6).

[4] A copy of DCPL's response is attached.
[5] *See* DCPL's response at page 10.
[6] *See* DCPL's response at page 23.
[7] Exemption 6 protects information from disclosure that is specifically protected from disclosure by other statutes.

Withheld Video Footage

Here, Exemption 6 requires DCPL to maintain the confidentiality of records that can be used to identify a library patron and the specific material used by the library patron. DCPL maintains that the footage depicts patrons and their use of library resources. DCPL did not provide the footage for *in camera* review, but we accept its representation. As a result, the portions of the video that show patrons using specific materials are protected from disclosure under Exemption 6. Ordinarily, D.C. Official Code § 2-534(b) requires an agency to produce reasonably segregable portions of public records after redacting portions that are exempt from disclosure; however, cases have held that records may be withheld in their entirety if an agency lacks the technological capacity to remove exempt portions of a record.[8] Additionally, previous District FOIA appeal decisions have held that records may be withheld in their entirety when an agency lacks the technical capacity to redact the record.[9] DCPL states in its response to your appeal that it lacks the technical capacity to redact the video recording at issue. As a result, the video recordings are exempt from disclosure in their entirety pursuant to Exemption 6.

Unlike Exemption 2, Exemption 6 does not involve a balancing of the interest in personal privacy and public disclosure. Having found the video recordings properly withheld under Exemption 6, we need not address Exemption 2 and its balancing test.

Withheld Login Information

You assert that because you engaged in multiple computer logins and DCPL only provided you with one responsive record that DCPL's response was not sufficient; therefore, we will address whether or not DCPL conducted an adequate search for your login records. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

---

[8] *Milton v. United States DOJ*, 842 F. Supp. 2d 257, 259-61 (D.D.C. 2012) (explaining that segregability analysis focuses on "the agency's current technological capacity" and holding that responsive telephone conversations were not reasonably segregable because an agency did not possess technological capacity to segregate non-exempt portions of requested records); *see also Mingo v. United States DOJ*, 793 F. Supp. 2d. 447, 454-55 (D.D.C. 2011) (concluding that nonexempt portions of recorded telephone calls are inextricably intertwined with exempt portions because an agency "lacks the technical capability" to segregate information that is digitally recorded); *Antonelli v. BOP*, 591 F. Supp. 2d 15, 27 (D.D.C. 2008) (same); *Swope v. United States DOJ*, 439 F. Supp. 2d 1, 7 (D.D.C. 2006) (same).

[9] *See, e.g.*, FOIA Appeal 2010-08 finding OUC lacked the technical capacity to redact audio recordings.

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, DCPL explains in an affidavit submitted with its response to your appeal that login records are maintained in its Pharos database server. A DCPL information technology specialist searched the server for login information on the computers you specified for the timeframes you specified. The affidavit explains that the Pharos database continually overwrites the login information it stores, and that the information retrievable from a search may decrease based on the activity the computers.

Although you present compelling evidence that additional records should exist, under DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18). DCPL cannot produce documents that it did not retain at the time of your request due to its database's retention capacity. We are satisfied based on the DCPL's description that DCPL identified the relevant locations for records responsive to your request and adequately searched them based on the information you provided. As a result, we find that DCPL conducted an adequate search.

Regarding the withheld login of other users, DCPL asserts that these records must be withheld in their entirety pursuant to Exemption 6. Exemption 6, however, only requires confidentiality of circulation records that can identify both a library patron and the specific material that patron has requested, used, or borrowed from the public library. As a result, DCPL can be in compliance with Exemption 6 by disclosing circulation records that redact either identifying information or the specific material that was requested, used, or borrowed; however, DCPL must also comply with Exemption 2.

The purpose of Exemption 2 is to protect personal privacy interests. To qualify for protection under Exemption 2, the analysis turns on the existence of a sufficient privacy interest and a balancing of this individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). A privacy

interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994).

Here, there is a sufficient privacy interest in the names and identifying information of library patrons. *See id* at 500. The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. You have not raised a public interest in the disclosure of library patrons' names or identifying information. As a result, identifying information in the login records is properly subject to redaction under Exemption 2. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993) ("In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure . . . In this case, however, where we find that the request implicates no public interest at all, 'we need not linger over the balance; something … outweighs nothing every time."). We find that DCPL's withholding of other user's login information in its entirety was overbroad. Login information can be disclosed in compliance with Exemptions 2 and 6 with redactions to all identifying information.

Conclusion

Based on the foregoing, DCPL's decision is affirmed in part and remanded in part. Within seven (7) business days from the date of this decision, DCPL shall contact the requester to determine if redacted versions of the login information are still sought,[10] and if the records are still sought, DCPL shall disclose redacted versions of the login information in accordance with the guidance provided in this determination.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s John A. Marsh

John A. Marsh
Staff Attorney

cc: Grace Parry-Gaiter, General Counsel & FOIA Officer, DCPL (via email)

[10] We are recommending this action because it is unclear from the appeal if this portion of the request was withdrawn or not.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-78

July 1, 2016

VIA ELECTRONIC MAIL

Mr. Tom Frank

RE: FOIA Appeal 2016-78

Dear Mr. Frank:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("D.C. FOIA"). Your appeal is based on the failure of the Metropolitan Police Department ("MPD") to respond to a request you submitted to MPD for records pertaining to a particular vehicle pursuit and crash.

MPD advised us that it responded to your request on June 30, 2016. In an email message sent to me today, you confirmed receipt of MPD's production. Since your appeal was based on MPD's failure to respond to your D.C. FOIA request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to MPD's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-79

June 30, 2016

VIA EMAIL

Ms. Laila Miller

RE: FOIA Appeal 2016-79

Dear Ms. Miller:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you appear to challenge the adequacy of the Metropolitan Police Department's ("MPD") response to your request for records under the DC FOIA.

Background

On April 22, 2016, you submitted a request to MPD for records related to surveillance and an investigation you believe the MPD is conducting of you. MPD granted your request in part and denied it in part. In specific, MPD provided you with some records that were responsive to your request[1] and redacted an additional 8 pages of email messages under the deliberative process privilege.

On appeal, you reassert your belief that you are "under surveillance 24/7 even inside my home." MPD provided this Office with a response to your appeal on June 28, 2016.[2] In its response, MPD: (1) clarified its efforts to search for the records you requested; (2) reaffirmed that its searches were adequate; and (3) restated that it does not possess additional responsive records.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

[1] The responsive records are email conversations you initiated with various MPD employees; MPD found no responsive records pertaining to surveillance or an investigation.
[2] You requested and received a copy of MPD's response in person on June 29, 2016.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issue in this appeal is whether MPD conducted an adequate search for the records you requested. FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your appeal, MPD provided a description of the searches it conducted and affirmed that no responsive records were found. MPD identified the relevant locations for documents responsive to your request as: (1) email records; (2) MPD's electronic records system; and (3) records maintained by MPD's seven districts. MPD's response also affirmed that the relevant locations were searched with the identifying information you provided, and no responsive documents were located other than those identified in its response to you. Based on the description MPD provided in response to your appeal, we find that the search it conducted was adequate.

Conclusion

Based on the foregoing, we affirm MPD's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C 20004

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-80

July 7, 2016

VIA ELECTRONIC MAIL

Mr. Scott Michelman

RE: FOIA Appeal 2016-80

Dear Mr. Michelman:

This letter responds to the administrative appeal that you filed on behalf of the American Civil Liberties Union ("ACLU") with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Public Schools ("DCPS") improperly withheld records the ACLU requested under the DC FOIA.

Background

On March 28, 2016, the ACLU submitted an eight-part request to DCPS seeking information related to the Empowering Males of Color initiative. On May 4, 2016, DCPS responded to the request, providing responsive records for several parts of the request but denying parts 6 and 7. For its denial of part 6, DCPS asserted the deliberative process privilege pursuant to D.C. Official Code §2-534(a)(4) ("Exemption 4")[1] and D.C. Official Code § 2-534(a)(2) ("Exemption 2"),[2] claiming that the information included drafts and personally identifiable information. For its denial of part 7 of the request, DCPS asserted Exemption 2 and D.C. Official Code § 2-534(a)(6) ("Exemption 6"),[3] claiming that the information included personally identifiable student information protected under DC FOIA and the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.

You appealed DCPS's denial of parts 6 and 7, contending that Exemption 4 is not applicable to the requested information and the application of Exemptions 2 and 6 may be used to redact certain information but not to withhold responsive records in their entirety.

[1] Exemption 4 allows withholding of "[i]nter-agency or intra-agency memorandums and letters … which would not be available by law to a party other than a public body in litigation with the public body." D.C. Official Code § 2-534(e) states that the deliberative process privilege is included in Exemption 4.
[2] Exemption 2 protects "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."
[3] Exemption 6 protects information from disclosure that is specifically protected from disclosure by other statutes.

On June 30, 2016, DCPS provided you with a supplemental response to the request and provided this Office with a response to your appeal, a *Vaughn* index, and copies of withheld records for our *in camera* review.[4] In its response, DCPS decided to release certain records responsive to parts 6 and 7 of the request that it had previously withheld. In specific, DCPS released budget documents and aggregate de-identified student data that it previously withheld in its entirety. DCPS reaffirmed its decision to withhold resumes and personal biographical information pursuant to Exemption 2 and a draft grant proposal pursuant to Exemption 4.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Due to DCPS's revised decision to disclose documents related to part 7 of the request that were previously withheld, we consider the appeal with respect to part 7 to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DCPS's substantive response. There are two remaining issues in this appeal: the application of Exemption 4 to the withheld draft grant proposal and the application of Exemption 2 to the withheld resumes and biographical information.

Withheld Grant Proposal

DCPS withheld one document pursuant to the deliberative process privilege of Exemption 4, a six-page grant application from the Frank Ballou Senior High School. The primary purposes of the deliberative process privilege under Exemption 4 are to "assure that subordinates within an agency will feel free to provide the decision maker with their uninhibited opinions and recommendations …; to protect against premature disclosure of proposed policies before they have been finally formulated or adopted; and to protect against confusing the issues and misleading the public by dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for the agency's action." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). To be properly

[4] Copies of DCPS's response and *Vaughn* index are attached.

withheld under Exemption 4, a record must be contained in an inter- or intra-agency document. Therefore, Exemption 4 is typically limited to documents transmitted within or among government agencies. *See Dep't of Interior v. Klamath Water Users Protective Ass'n,* 532 U.S. 1, 10-11 (U.S. 2001). One of the litigation privileges that Exemption 4 is commonly invoked to protect is the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). To qualify for protection under the deliberative process privilege, information must be predecisional and deliberative. *Coastal States Gas* 617 F.2d at 866. A document is predecisional if it was generated before the adoption of an agency policy, and it is deliberative if it "reflects the give-and-take of the consultative process." *Id*. Documents can be deliberative either by either by assessing the merits of a particular viewpoint, or by articulating the process used by the agency to formulate a decision. *Id*. at 867.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id. at 866.

The threshold requirement, that Exemption 4 applies only to inter- or intra-agency documents, is met here because the grant application was transmitted between government entities, from a DCPS public school to the DCPS administration.[5] DCPS asserts that the document was withheld because it is a draft and that ACLU has been provided with the final version of the grant application. After reviewing the withheld grant application, it is not clear on its face that the document is a draft; however, we accept DCPS's representation that it is a draft and that DCPS has provided the ACLU with the final version of the document in response to its FOIA request.[6] The fact that DCPS provided ACLU with a final version of the document is significant because it demonstrates that the draft is predecisional and deliberative. The draft is clearly predecisional because it is not the final version of the grant application. The draft is deliberative because differences between the draft version and final version reveal the decision making process. *See*

[5] On appeal you assert that Exemption 4 should not be applicable when one government entity is seeking a benefit from another. This position is the opposite of the consultant corollary exception, which allows Exemption 4 to apply to documents exchanged with non-governmental entities when the non-governmental entities are acting on behalf or in the interest of the government. *See Klamath*, 532 U.S. at 11. We are not aware of any precedent finding the inverse that documents exchanged between government entities are excluded from Exemption 4 protection when their interests are not aligned. As a result, the exchange between the DCPS public school and the DCPS administration meets the threshold requirement of Exemption 4.

[6] DCPS did not provide this Office with a final version of the grant application that was disclosed for comparison.

e.g., *Viropharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193-94 (D.D.C. 2012) (deciding what to include in a report would reveal decisions of the drafter); *Hamilton Sec. Group Inc. v. HUD*, 106 F. Supp. 2d 23, 33 (D.D.C. 2000) (protecting facts in a draft report to prevent chilling or future deliberations). As a result of DCPS's disclosure of the final version of the grant application, this portion of the appeal is largely moot, and the draft grant application is properly withheld pursuant to the deliberative process privilege of Exemption 4.

Under D.C. Official Code § 2-534(b), even when an agency establishes that an exemption is applicable, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). "To demonstrate that it has disclosed all reasonably segregable material, 'the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)). In *Judicial Watch*, the court held that "[a]lthough purely factual information is generally not protected under the deliberative process privilege, such information can be withheld when 'the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations.'" *Id*. at 28. (quoting *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)). In these instances, factual information is protected when disclosing the information would reveal an agency's decision making process in a way that would have a chilling effect on discussion within the agency and inhibit the agency's ability to perform its functions. *Id*.

Here, the analysis is substantially affected by the fact that DCPS has already provided the final version of the grant application. To protect the decision making process DCPS would have to redact all portions of the draft that differed from the final version; however, the redactions themselves would indicate which portions of the final version were altered, articulating the decision making process. As a result the draft is not reasonably segregable, and the draft is properly withheld in its entirety.

Withheld Resumes and Biographical Information

DCPS withheld resumes and biographical information pursuant to Exemption 2. The purpose of Exemption 2 is to protect personal privacy interests. To qualify for protection under Exemption 2, the analysis turns on the existence of a sufficient privacy interest and a balancing of this individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether a sufficient privacy interest exists. *Id*.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Further, employees have a privacy interest in their employment history and the "diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the

employee's personnel file." *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984). In light of applicable case law, we find that more than a *de minimis* privacy interest exists in an individuals and resume and biographical information.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

The public interest inquiry for the purposes of DC FOIA "should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

Courts have held that the public interest in resume and background information hinges on whether or not the individual supplying the information was accepted for the position or role for which the information was provided. *Core v. United States Postal Serv.*, 730 F.2d 946, 948 (4th Cir. 1984) (finding that there is sufficient public interest in the qualifications of successful applicants to require disclosure of resume information; however, disclosing resume information of unsuccessful applicants would be a clearly unwarranted invasion of personal privacy); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1017 (D. Kan. 1996) (upholding an agency's decision to release redacted application information of successful applicants and deny release of information of unsuccessful applicants). It has been well established that there is a public interest in the disclosure of certain information about successful government job applicants: the individual's name, present and past job titles, present and past grades, present and past salary, present and past duty stations, and present and past salary.[7]

[7] *See also Habeas Corpus Resource Ctr. v. DOJ*, No. 08-2649, 2008 WL 5000224, at *4 (N.D. Cal. Nov. 21, 2008); *Cowdery, Ecker & Murphy, LLC v. Dep't of Interior*, 511 F. Supp. 2d 215, 219 (D. Conn. 2007; *Samble v. U.S. Dep't of Commerce*, No. 1:92-225, slip op. at 11 (S.D. Ga. Sept. 22, 1994); *Associated Gen. Contractors, Inc. v. EPA*, 488 F. Supp. 861, 863 (D. Nev. 1980). *See also* FOIA Appeals 2011-36, 2011-56, 2012-75, 2014-06, 2014-11, 2014-27.

It is not entirely clear from DCPS's response whether the withheld resumes and background information are associated with successful or unsuccessful applicants.[8] Resumes and background information may be withheld entirely for unsuccessful applicants. On the other hand, there is an overriding public interest in disclosure of elements of the documents that indicate the qualifications of successful applicants. Accordingly, this Office concludes that DCPS's denial of the request regarding the resumes and background information of successful applicants was improper. DCPS's assertion that similar information may have been disclosed in other contexts is not a valid justification to withhold the information. DCPS must disclose the resumes and background information of successful applications with redactions made to background information or interests that do not relate to qualifications for the position and personally identifiable information such as an individual's telephone number, address, email address, and social security number. *See Barvick*, 941 F. Supp. at 1017; *see also* 2012-75. Information related to past employment and information involving relevant qualifications may not be redacted.

Conclusion

Based on the foregoing, DCPS's revised decision is affirmed in part and remanded in part. Within 7 business days from the date of this decision, DCPS shall disclose redacted versions of background information and resumes in accordance with the guidance provided in this determination.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

//s John A. Marsh

John A. Marsh
Staff Attorney

cc: Eboni Govan, Attorney Advisor/FOIA Officer, DCPS (via email)

[8] The information appears to pertain to successful applicants because DCPS's response states that information belongs to "individuals who will play key roles in the implementation of the grants."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-81

July 6, 2016

VIA ELECTRONIC MAIL

Mr. Keith Preddie

RE: FOIA Appeal 2016-81

Dear Mr. Preddie:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records you requested under the DC FOIA.

Background

On April 14, 2016, you submitted a request to DCRA seeking the resume and application of a named DCRA employee. DCRA denied your request, asserting privacy exemptions under DC FOIA related to personal privacy.

You appealed DCRA's denial, contending that the employee in question told you that you were able to obtain a copy of her application and resume. On June 22, 2016, DCRA sent its response to your appeal to this Office.[1] Therein, DCRA reasserted D.C. Official Code §§ 2-534(a)(2), arguing that the presence of responsive documents in an employee's personnel file exempts the documents from disclosure.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The crux of this matter is whether the resumes and application materials you requested are exempt from disclosure under DC FOIA because releasing them would constitute an invasion of privacy.

D.C. Official Code § 2-534(a)(2) ("Exemption 2") provides an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis determining whether a sufficient privacy interest exists. *Id*.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Further, employees have a privacy interest in their employment history and the "diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file." *Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984}. In light of applicable case law, we find that a successful job applicant has more than a *de minimis* privacy interest in his or her job application and resume.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id*. "This inquiry . . . should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

It has been well established that there is a public interest in the disclosure of certain information about successful government job applicants: the individual's name, present and past job titles,

[1] DCRA's response is attached to this decision.

present and past grades, present and past salary, present and past duty stations, and present and past salary. *Core v. United States Postal Serv.*, 730 F.2d 946, 948 (4th Cir. 1984) ("Having balanced the privacy interests of the five successful applicants against the public's interest, we conclude that disclosure would not 'constitute a clearly unwarranted invasion of personal privacy.' Exemption 6, therefore, does not bar disclosure of the information Core seeks about the successful applicants."); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1017 (D. Kan. 1996) ("[Requester] received from [Agency] a redacted . . . job application of the successful applicant for the . . . position, rating worksheets, and the selection roster. Citing Exemption 6 of the FOIA, 5 U.S.C. § 522(b)(6), [Agency] informed [Requester] that it would release redacted [applications] for successful candidates but not resumes or [applications] for unsuccessful applicants."); FOIA Appeals 2011-36, 2011-56, 2012-75, 2014-06, 2014-11, 2014-27[2].

Although we find that a successful District government job applicant has a privacy interest in his or her resume and job application, we also find that there is an overriding public interest in disclosure of many elements of these documents. Accordingly, this Office concludes that DCRA's denial of your request was improper. As held in FOIA Appeal 2012-75, the only items that may be permissibly redacted from a resume are an individual's home telephone number, address, and email address. Information related to past employment may not be redacted from the resume. A job application submitted by a successful applicant must also be released; the only portions of an application that may be redacted are section 2 (Personal Data), section 10 (Background Information) (and only to the extent that it does not relate to qualifications for the position), and an applicant's signature.

Conclusion

[2] *See also Habeas Corpus Resource Ctr. v. DOJ*, No. 08-2649, 2008 WL 5000224, at *4 (N.D. Cal. Nov. 21, 2008); *Cowdery, Ecker & Murphy, LLC v. Dep't of Interior*, 511 F. Supp. 2d 215, 219 (D. Conn. 2007; *Samble v. U.S. Dep't of Commerce*, No. 1:92-225, slip op. at 11 (S.D. Ga. Sept. 22, 1994); *Associated Gen. Contractors, Inc. v. EPA*, 488 F. Supp. 861, 863 (D. Nev. 1980).

Based on the foregoing, we reverse and remand DCRA's decision. DCRA shall provide you with the requested application and resume, subject to appropriate redaction, within 10 business days of this decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Brandon Bass, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-82

June 29, 2016

VIA ELECTRONIC MAIL

Mr. Frederic W. Schwartz, Jr.

RE: FOIA Appeal 2016-82

Dear Mr. Schwartz:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("D.C. FOIA") on June 21, 2016. Your appeal is based on the failure of the Office of Employee Appeals ("OEA") to respond to your request for a particular order issued by the OEA.

On June 21, 2016, this Office asked OEA to provide us with a response to your appeal. OEA responded that it disclosed responsive documents to you on June 20, 2016. Since your appeal was based on OEA's failure to respond to your D.C. FOIA request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OEA's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Sheila G. Barfield, Executive Director, OEA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-83

July 6, 2016

VIA ELECTRONIC MAIL

Mr. Mark Eckenwiler

RE: FOIA Appeal 2016-83

Dear Mr. Eckenwiler:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the failure of the Department of Consumer and Regulatory Affairs ("DCRA") to respond to a request you submitted for copies of all DCRA responses to FOIA requests during a specified timeframe.

DCRA advised us that it responded to your request on July 1, 2016. Since your appeal was based on DCRA's failure to respond to your request, we consider it to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DCRA's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Brandon Bass, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-84

July 13, 2016

VIA ELECTRONIC MAIL

Mr. Jose A. Cuesta Leiva

RE: FOIA Appeal 2016-84

Dear Mr. Leiva:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

You submitted a request to MPD seeking any reports, declarations, and recordings relating to the investigation of the death of your child. MPD partially granted and partially denied your request. For the records MPD withheld, MPD asserted exemptions under DC FOIA related to personal privacy.

You appealed MPD's denial, contending that you need the records being withheld in order to provide them to the Honduran government to assist in its investigation. Further, you argue that there is an overriding public interest in the release of the records in order to know if "the department has acted improperly (or properly)." On July 7, 2016, MPD sent its response to your appeal to this Office.[1] Therein, MPD reasserted D.C. Official Code §§ 2-534(a)(2), (3)(C) arguing that the release of recorded witness statements would amount to an unwarranted invasion of privacy. MPD also raised D.C. Official Code § 2-534(a)(4) for two groups of records being withheld: one set of records under the deliberative process privilege and one email under the attorney-client privilege.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public

[1] MPD's response is attached to this decision.

body . . .” *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

This decision will analyze each of MPD’s asserted exemptions in turn: the privacy exemptions, the attorney-client privilege, and the deliberative process privilege.

Exemptions 2 & 3 - Witness Recordings

The crux of the privacy exemptions is whether the witness recordings you requested are exempt from disclosure under DC FOIA because releasing them would constitute an invasion of privacy.

D.C. Official Code § 2-534(a)(2) (“Exemption 2”) provides an exemption from disclosure for “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis determining whether a sufficient privacy interest exists. *Id.*

D.C. Official Code § 2-534(a)(3)(C) (“Exemption 3”) goes further than Exemption 2, and protects from public disclosure information contained in an investigatory file that would constitute an “unwarranted invasion of privacy.” Exemption 3 lacks the key-word “clearly” which Exemption 2 has, and therefore is a broader privacy privilege. Here, the broader standard of Exemption 3 applies because the records being withheld are located in an investigatory file.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep’t. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Moreover, there is a sufficient privacy interest in recorded witness statements. *See Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990) (finding a “‘strong interest’ of individuals, whether they be suspects, witnesses, or investigators, ‘in not being associated unwarrantedly with alleged criminal activity.’”). As a result, this Office finds that there is a substantial privacy interest in the two video recorded witness statements.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is

> ‘to open agency action to the light of public scrutiny.’” *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of ‘full agency disclosure unless

> information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id*. "This inquiry . . . should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

Here, you have argued that release of withheld documents could aid in evaluating whether "the department has acted improperly (or properly)." However, this Office does not find this argument persuasive, as these isolated witnesses' statements would reveal very little into the manner in which MPD conducts itself. As a result, MPD acted properly in withholding these recorded witnesses' statements pursuant to Exemption 3.

Exemption 4 - Attorney-Client Privilege

The next issue in this matter concerns the document MPD is withholding under the attorney-client privilege pursuant to D.C. Official Code § 2-534(a)(4) ("Exemption 4"). Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandum[a] and letters which would not be available by law to a party other than an agency in litigation with the agency." This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Privileges in the civil discovery context include the attorney-client privilege to protect open and frank communication between counsel and client. *See Harrison v. BOP*, 681 F. Supp. 2d 76, 82 (D.D.C. 2010).

The attorney-client privilege protects "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." *Mead Data Cent. Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977); *see also Rein v. U.S. Patent and Trademark Office*, 553 F. 3d 353, 377 (4th Cir. 2009). The privilege also applies to facts divulged by a client to an attorney. *Vento v. IRS*, 714 F. Supp. 2d 137, 151 (D.D.C. 2010). In addition, it "also encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts." *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005).

Here, MPD has characterized the withheld document as an "email" that is a "communication between the investigator and an Assistant United States Attorney . . . . [in which the] attorney is providing a legal opinion . . . ." Upon review, it appears that the document is not in fact an email or a communication to or from an attorney, but is instead an entry made by an investigator in the running resume that memorializes a conversation between an attorney and the investigator.

Here, MPD is the client and the USAO is the lawyer. *See In re Lindsey*, 158 F.3d 1263, 1268 (D.C. Cir. 1998); *Tax Analysts v. IRS*, 117 F.3d 607, 618 (D.C. Cir. 1997) ("In the governmental context, the 'client' may be the agency and the attorney may be an agency lawyer."). The withheld document involves legal advice given by the USAO to the MPD and is therefore protected under the attorney-client privilege pursuant to Exemption 4. This document may be withheld in its entirety, as the legal advice contained within is not reasonably segregable under D.C. Official Code § 2-534(b).

Exemption 4 - Deliberative Process Privilege

The final issue in this matter concerns those documents MPD is withholding under the deliberative process privilege pursuant to Exemption 4. Privileges in the civil discovery context include the deliberative process privilege. *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

While the ability to pinpoint a final decision or policy may bolster the claim that an earlier document is predecisional, courts have found that an agency does not necessarily have to point specifically to an agency's final decision to demonstrate that a document is predecisional. *See e.g., Gold Anti-Trust Action Comm. Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 762 F. Supp. 2d 123, 136 (D.D.C. 2011) (rejecting plaintiff's contention that "the Board must identify a specific decision corresponding to each [withheld] communication"); *Techserve Alliance v. Napolitano*, 803 F. Supp. 2d 16, 26-27 (D.D.C. 2011).

Under DC FOIA, even when an agency establishes that it has properly withheld a document under an exemption, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). "To demonstrate that it has disclosed all reasonably segregable material, 'the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)). In *Judicial Watch*, the court held that "[a]lthough purely factual information is generally not protected under the deliberative process privilege, such information can be withheld when 'the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations.'" *Id.* at 28. (quoting *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)). In these instances, factual information is protected when disclosing the information would reveal an agency's decision-making process in a way that would have a chilling effect on discussion within the agency and inhibit the agency's ability to perform its functions. *Id.*

Having reviewed the documents being withheld by MPD *in camera*, this Office disagrees with MPD's assertion that the deliberative process privilege justifies withholding the records in their entirety. There are two categories of documents being withheld under the deliberative process privilege, the running resume and an unapproved investigation report. While both categories of documents are intra-agency communications, and are both arguably predecisional, neither category of documents appears to contain sufficient deliberation. *See FOP, Metro. Labor Comm. v. District of Columbia*, 82 A.3d 803, 818-19 (D.C. 2014) ("The description of the documents as 'draft calibration and accuracy checklist' does not 'pinpoint an [MPD] decision or policy to which these [forms] contributed,' nor is one able to infer from the Vaughn Index that the forms were part of a consultative process").

MPD in its response characterized the documents as being such that their release would "hamper discussions between investigators and their superiors for fear that their comments would be released." However, this Office has been unable to locate any discussion or any comment within the documents; the withheld documents are almost entirely factual narratives without opinion, candor, evaluation, or anything that could be described as "consultative." *See Abtew v. United States Dep't of Homeland Sec.*, 47 F. Supp. 3d 98, 112 n.14 (D.D.C. 2014) ("The notes a person takes during an interview do not necessarily include the interviewer's analysis or subjective opinion about the veracity or consistency of what the interviewee is saying. The Assessment, on the other hand, includes that type of subjective analysis, which is why the Court found it protected by the deliberative process privilege."). Documents that contain no deliberation may not be withheld under the deliberative process privilege.

Moreover, the facts assembled in the withheld documents are not so selective that their release would reveal the decision making process of MPD. *But see ViroPharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193-94 (D.D.C. 2012) ("where factual material is 'assembled through an exercise of judgment in extracting pertinent material from a vast number of documents for the benefit of an official called upon to take discretionary action[,]' the information may be withheld."). This matter is dissimilar from *Goodrich Corp. v. United States EPA*, in which purely factual material

was withheld because revealing the data would reveal the assumptions of the underlying draft statistical model. 593 F. Supp. 2d 184, 189 (D.D.C. 2009) ("even if the data plugged into the model is itself purely factual, the selection and calibration of data is part of the deliberative process"). It is difficult to see how one could glean MPD's decision making process from the factual material, in the withheld documents, in the same manner one could derive the draft groundwater flow model at issue in *Goodrich Corp*. The factual material in the withheld documents does not appear to reveal information regarding the decision making process to justify withholding under the deliberative process privilege.

As a result, it was inappropriate for MPD to withhold these documents in their entirety. MPD shall release these documents after making reasonable redactions of personally identifiable information. To the extent that MPD believes portions of these documents to be deliberative, they may redact those portions.

Conclusion

Based on the foregoing, we affirm in part and remand in part MPD's decision. Records withheld by MPD under Exemptions 3 and the attorney-client privilege are affirmed as exempt from disclosure. MPD shall provide you with the documents withheld in their entirety under the deliberative process privilege, subject to appropriate redaction, within 10 business days of this decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C 20004

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-86

July 20, 2016

VIA ELECTRONIC MAIL

Mr. Benoit Brookens

RE: FOIA Appeal 2016-86

Dear Mr. Brookens:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal,[1] you assert that the Office of Administrative Hearings ("OAH") denied requests you have made for various OAH administrative filings[2].

This Office notified the OAH of your FOIA appeal on July 12, 2016. On July 15, 2016, OAH responded, asserting that: (1) your requests were not labeled as FOIA requests;[3] (2) all responsive documents in OAH's possession have been provided to you; and (3) OAH has not denied your request. We accept OAH's representations that it has provided you with all responsive documents it possesses and find your appeal to be moot.

Finally, attached to one of your cover letters is a Laffey Matrix requesting $3,787.50 for the 7.5 hours you allege to have spent working on a FOIA request in 2013. A Laffey Matrix is a fee schedule used to determine the reasonable hourly rate in the District of Columbia for attorneys' fee awards. You do not appear to be a member of the District of Columbia Bar,[4] but regardless,

[1] Your appeal contains two cover letters, one pertaining to requests made in March 2016, and one to a request from November of 2013. As a matter of efficiency, this Office will reach the merits of both letters in this decision.
[2] Regardless of DC FOIA, these documents are available for public inspection pursuant to D.C. Code § 2-1831.13.
[3] This Office will note, having reviewed the requests attached to your appeal, that your requests do not appear to meet the requirements of 1 DCMR § 402.3, such that they were never technically received by OAH, pursuant to 1 DCMR § 405.6. As a result, it appears that this matter could be dismissed as unripe for adjudication; however, given OAH's representation that it has provided you with the requested documents in its possession, this Office will consider the matter moot instead of unripe.
[4] *E.g. Brookens v. United States*, 981 F. Supp. 2d 55, 58 (D.D.C. 2013) ("not a member of the District of Columbia Bar"). *See also Brookens v. Comm. on Unauthorized Practice of Law*, 538 A.2d 1120, 1125 (D.C. 1988) ("Brookens is not a member of the District of Columbia Bar").

there is no statutory support in the D.C. FOIA for your position that you are entitled to legal fees in connection with your submission of a FOIA request to a District agency.

Based on the foregoing, we consider your appeal to be moot and it is dismissed.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C 20004

cc: Marya Torrez, Assistant General Counsel, OAH (via email)

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

Great Streets Small Business Grants – Bladensburg/Benning (H Street NE)

The Deputy Mayor for Planning and Economic Development (DMPED) is soliciting applications for the **Great Streets Retail Small Business Grant- Bladensburg/Benning (H Street NE)** DMPED will award individual grants of up to a maximum of $50,000.00 each. The application deadline is **Friday, January 13, 2017**at 12:00p.m.

The purpose of Great Streets Small Business Grant is to support existing small businesses, attract new businesses, increase the District's tax base, create new job opportunities for District residents and transform emerging commercial corridors into thriving neighborhood centers.

Eligible applicants: Eligible applicants for the grants are owners of small retail and service-oriented businesses or up to 3 business owners connected. Eligible retail development project shall not include following types of businesses are ***ineligible*** to receive this grant funding: ***adult entertainment, auto body shops, bank, bar, construction/general contracting/architecture/design-build, financial services, home-based business, hotel, liquor store, nightclub, phone store, professional services*,*** and ***real estate development/property management/realtor.***
****Professional services is defined as the following businesses: accountant, actuary, architect, dentist, engineer, evaluator, financial planner, IT consultant, lawyer, pharmacist, physician, registered nurse, training and development***

For additional eligibility requirements and exclusions, please review the Request for Applications (RFA) which will be posted at http://www.greatstreets.dc.gov by **Tuesday, December 27, 2016.**

Eligible Use of Funds: Funds may be used for

- Build out of new improvements
- Renovations of existing improvements
- Façade improvements
- Equipment upgrades
- Soft costs*

*Up to 50% of funding can be used for marketing, purchase of moveable equipment, point-of-sale inventory management hardware and software, and business consultation services Funds can be used for expenses incurred during the Period of Performance. For additional examples of eligible uses of funds and exclusions, please review the RFA.

Application Process: Interested applicants must complete an online application by **Friday, January 13, 2017** at 12:00 p.m. DMPED will not accept applications submitted via hand delivery, mail or courier service. Late submissions applications will not be forwarded to the review panel. Instructions and guidance regarding application preparation can be found in the RFA, which will be available at http://greatstreets.dc.gov on **Tuesday, December 27, 2016.**

Selection Process: DMPED will select grant recipients through a competitive application process. All applications will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria listed below.

1. Capacity and Experience of the Applicant
2. Strength of the Project Implementation Plan
3. Financial Viability of Applicant Organization
4. Creativity, Innovation, and sustainable energy/environmental practices

The DMPED Great Streets program team will review the panel reviewers' recommendations and the Deputy Mayor for Planning and Economic Development will make the final determination of grant awards.

Award of Grants: DMPED will award individual grants of up to a maximum of $50,000. Buildings with two (2) eligible businesses are eligible for grant award up to $75,000 and buildings with three (3) eligible businesses are eligible for awards up to $100,000.

For More Information: Check our website at www.greatstreets.dc.gov for signup details to attend the Pre-Application Information Session.

Questions may be sent to LaToyia Hampton, Grants Administrator at the Deputy Mayor for Planning and Economic Development at latoyia.hampton@dc.gov or 202-724-7648.

Reservations: DMPED reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

2017 SCHEDULE OF COMMISSION OPEN MEETINGS

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Official Code Section 2-576, of the Commission's 2017 Schedule of Open Meetings to consider formal case matters and other applications that require the Commission's action. The proposed agenda and time for each meeting will be posted on the Commission's website (www.dcpsc.org) and in the Commission Secretary's office not less than 48 hours before each meeting. The meetings are scheduled to convene at 11:00 A.M. and will be held in the Commission's hearing room, 1325 "G" Street, NW, Suite 800, Washington, D.C. 20005:

January 25, 2017

February 1, 2017

March 1, 2017
March 15, 2017
March 29, 2017

April 12, 2017

May 10, 2017
May 24, 2017

June 7, 2017
June 21, 2017

July 5, 2017

August 2, 2017

September 6, 2017
September 20, 2017 (2:00 PM)

October 18, 2017

November 1, 2017
November 29, 2017

December 13, 2017

DISTRICT OF COLUMBIA OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS

NOTICE OF INTENT TO HOST SMART LIGHTING PROJECT INDUSTRY FORUM – JANUARY 24-25, 2017

The District of Columbia Office of Public-Private Partnerships ("DC OP3"), in coordination with the District Department of Transportation ("DDOT") and the Office of the Chief Technology Officer ("OCTO"), hereby gives notice of its intent to host an Industry Forum ("Forum") regarding the Smart Lighting Project ("Project") on **January 24-25, 2017** at **One Judiciary Square, 441 4th Street NW, Washington, DC 20001**. The Project will modernize the District's more than 70,000 streetlights by converting them to LED technology, installing a remote monitoring system, and deploying Smart City technology to expand broadband coverage and install sensors to better serve residents. The Forum will be an opportunity for potential bidders of all sizes and types to learn about the goals and process of an upcoming procurement for this Project and share their feedback.

Interested parties should visit http://op3.dc.gov/streetlights for more information and to register to attend the Forum.

For additional information, please contact Judah Gluckman, Deputy Director and Counsel of DC OP3, at StreetlightP3@dc.gov or (202) 724-2128.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after February 1, 2017.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on December 30, 2016. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: February 1, 2017**
Recommendations for appointment as DC Notaries Public **Page 2**

Alexander	Bethany K.	Independent Server Company 440 Taylor Street, NE, #E-31	20017
Allen	Porcia	United Food and Commercial Workers International Union 1775 K Street, NW	20006
Alston	Cheryl E.	Services Employees International Union 1800 Massachusetts Avenue, NW	20036
Amaya	Freddy Balmore	Champion Title and Settlements, Inc. 1050 Connecticut Avenue, NW, 5th Floor	20036
Apps	Jodi	Horton's Kids, Inc 100 Maryland Avenue, NE, Suite 520	20002
Arnold	Joshua	Sinofsky, Chambers, Sachsen, Anderson & Perry, LLP 1425 K Street, NW, Suite 600	20005
Babcock	Chelsea	Northfield Construction and Development 1156 15th Street, NW, Suite 1000	20005
Barringer	Lori A.	National Association of Housing & Redevelopment Officials (NAHRO) 630 Eye Street, NW	20001
Bergwin-Rand	Jane W.	Resources for the Future, Inc 1616 P Street, NW	20036
Best- Schneidmill	Debbie R.	Goodwin Procter, LLP 901 New York Avenue, NW	20001
Bissell	Joanna Lucia	Latin American Youth Center 1419 Columbia Road, NW	20009
Borjas	Mirna	Branch Banking and Trust 3101 14th Street, NW	20010
Burr	Timothy A.	Yarmouth Management 309 7th Street, SE	20003
Clark	Charlesetta C.	BP America Inc. 1101 New York Avenue, NW, Suite 700	20005

D.C. Office of the Secretary **Effective: February 1, 2017**
Recommendations for appointment as DC Notaries Public **Page 3**

Cummins	Kenneth V.	Capitol Inquiry, Inc. 1325 G Street, NW, Suite 534	20005
Dancy	Tywan L.	Industrial Bank 125 45th Street, NE	20019
Davis	Robert L.	J B Davis Company 1713 Newton Street, NW	20010
Duran	Evelin	TD Bank, NA 1489 P Street, NW	20005
Eticha	Getachew	Ultimate Business and Financial Solutions, LLC 1936 11th Street, NW, Suite 201	20001
Evans	Lisa	DOJ - Federal Bureau of Prisons 500 1st Street, NW	20534
Floyd	Nicole	Wells Fargo 1934 14th Street, NW	20009
Gaunt	Katelyn K.	The Glover Park Group 1025 F Street, NW	20004
Gilliam	Darryl	The Stratus Group 1410 14th Street, NW, #B	20005
Harris	Julie M.	Overseas Private Investment Corporation 1100 New York Avenue, NW	20527
Harwell	Jennifer L.	Personal Care Products 1620 L Street, NW	20036
Heifferon	Christina M.	United States Department of State 600 19th Street, NW, Suite 5.600	20522
Henson	Deloris D.	National Law Enforcement Officers Memorial Fund 901 E Street, NW	20004
Hershberger	Julia	Sustainable Forestry Initiative, Inc 2121 K Street, NW, Suite 750	20037

D.C. Office of the Secretary **Effective: February 1, 2017**
Recommendations for appointment as DC Notaries Public **Page 4**

Holmes	Jonathan Glen	Untied States Department of Agriculture Rural Development Rural Utilities Services 1400 Independence Avenue, NW	20250
Kirkland	Margot Paulette	Voices for a Second Chance 1422 Massachusetts Avenue, SE	20003
Mahoney	Matthew	Self 3516 A Street, SE, Apartment 301	20019
Mathis	Debra L.	DC Water and Sewer Authority 5000 Overlook Avenue, SW	20032
Mattingly	Sheila M.	Ratner Prestia, LLP 1090 Vermont Avenue, NW	20005
McCathran	William	The White House Washington, DC	20502
McPherson-Mcrae	Teresita	State Department Federal Credit Union 301 4th Street, SW	20547
Micka	Ann B.	LeClairRyan 815 Connecticut Avenue, NW, Suite 620	20006
Mickens	Ashley Nyia	Eagle Bank 2001 K Street, NW	20006
Morgan	Stephanie	George Washington University Graduate Medical Education 2300 Eye Street, NW- Ross Hall #718	20037
Moses	LaKia	Public Defender Service Washington DC 633 Indiana Avenue, NW	20001
Nguyen	Twee	American Postal Workers Union, AFL-CIO 1300 L Street, NW	20005
Olin	Johanna	Heller Huron Chertkof & Salzman, PLLC 1730 M Street, NW, Suite 412	20036
Ortiz	Emilie	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006

Reid	John E.	Law Offices of John E. Reid, PLLC 5335 Wisconsin Avenue, NW, Suite 700	20015
Scatliffe	Lionel	White House Communications Agency 2743 Defense Boulevard, SW	22305
Spence	Heather Seich	Trammell Crow Company 1055 Thomas Jefferson Street, NW, Suite 600	20007
Spencer	Wanda	Bank of Labor 815 Connecticut Avenue, NW, Suite L004	20006
Steiman	Rachel P.	Allen & Overy, LLP 1101 New York Avenue, NW	20005
Stephan	Kathleen E.	Bread for the City 1525 7th Street, NW	20001
Suthar	Kalpesh	Physicians Committee for Responsible Medicine (PCRM) 5100 Wisconsin Avenue, NW, Suite 400	20016
Tilghman	Deidra	Absolute Solutions and Associates, LLC 2636 12th Street, NE	20018
Washington	Dewanna	John Hancock Life Insurance Company (USA) 1100 New York Avenue, NW, Suite 270W	20005
Waters	Hazel A.	Medstar Georgetown University Hospital 3800 Reservoir Road, NW	20007
Williams	Debora A.	American Association for Justice 777 6th Street, NW, Suite 200	20001
Windley	Patricia L.	Smith, Currie & Hancock LLP 1025 Connecticut Avenue, NW, Suite 600	20036
Young	Fannie L.	Akin Gump Strauss Hauer & Feld, LLP 1333 New Hampshire Avenue, NW	20036

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

REQUEST FOR PROPOSALS

Caterer for Gala

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—seeks a vendor to cater its annual fundraising gala.

The **full RFP** is available on the **Employment Opportunities** page under the About tab of **www.thurgoodmarshallacademy.org**. Alternatively, e-mail a request for the full RFP to **kjackson@tmapchs.org** no later than Noon on Tuesday, January 17, 2017 (bidders are advised that email will be checked only occasionally between Dec. 19, 2016, and Jan. 2, 2017).

Amendments to or extension of the RFP, if any, will be posted exclusively on the web page described above.

Contact: For further information regarding the RFP contact **Kristin Jackson, 202-563-6862 x146, kjackson@tmapchs.org**. Further information about Thurgood Marshall Academy—including our nondiscrimination policy—may be found at www.thurgoodmarshallacademy.org.

Deadline & Submission: Submit bids responsive to the full RFP no later than **Noon EST on Wednesday, January 18, 2017,** via e-mail to **kjackson@tmapchs.org.**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18315-A of Evermay Georgetown, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the R-use requirements of Subtitle U § 203.1(n), to allow the continued operation of a non-profit use in the R-19 Zone at premises 1623 28th Street, N.W. (Square 1285, Lot 815).

HEARING DATE: December 7, 2016
DECISION DATE: December 7, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The ANC submitted a report dated November 29, 2016 recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 28, 2016, at which a quorum was present, the ANC voted 5-0-0 to support the application with the conditions as proposed in the renewed application, including those related to the following topics: hours of operation, valet and staff regulations, number of events listed per year, parking guidelines, and amplified music.
(Exhibit 33.)

The Office of Planning ("OP") submitted a timely report dated November 23, 2016, recommending approval of the application with conditions. (Exhibit 32.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 30.)

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the R-use requirements of Subtitle U § 203.1(n), to allow the continued operation of a non-profit use in the R-19 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 203.1(n), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. This approval shall be for a term of **TEN (10) YEARS**, beginning on the final date of this order.

2. The subject property shall not be used as a rental venue for social or other events.

3. A maximum of nine nonprofit employees may work on-site.

4. The hours of operation shall be:

    a. **Nonprofit Offices:**
    Monday through Friday, 7:00 a.m. to 8:00 p.m.; and Saturday and Sunday (occasionally), 7:00 a.m. to 5:00 p.m.

    b. **Fellows Meetings:**
    Monday through Friday, 7:00 a.m. to 9:00 p.m.

    c. **Music concerts for invited guests only during the following hours:**
    Monday through Thursday, 2:00 p.m. to 4:00 p.m., and 7:00 p.m. to 10:00 p.m. Friday and Saturday, 1:00 p.m. to 10:00 p.m.; and Sunday, 1:00 p.m. to 9:00 p.m.

d. **Exhibitions for invited guests only during the following hours:**
Monday through Thursday, 10:00 a.m. to 4:00 p.m. Friday and Saturday, 1:00 p.m. to 10:00 p.m.; and Sunday, 1:00 p.m. to 9:00 p.m.

e. **Civic/Fundraising for invited guests during the following hours:**
Monday through Thursday, 7:00 p.m. to 10:00 p.m. Friday and Saturday, 1:00 p.m. to 10:00 p.m.; and Sunday, 1:00 p.m. to 9:00 p.m.

f. **Valet and other staff, including cooks, caterers and janitors** associated with music concerts, exhibits and civic/fundraising events shall leave the subject property within one hour after the conclusion of the event.

g. **Noisy vendor breakdowns and loading** shall occur before 10:00 p.m., or shall take place on the following business day between the hours of 8:00 a.m. and 5:00 p.m. Trucks associated with noisy vendor breakdown and loading shall depart the subject property before 10:00 p.m.

5. The maximum number of events per year shall be as follows:

Type of Event	Number of Guests (per event)	Maximum Number per Year
Artists Resident Respite	1-10	12 visitors one-to-fourteen day stays
Fellows Meetings (large)	0	0
Non-Profit Meetings (Kuno Foundation)	1-50	12 two-day meetings, Monday-Friday
Foundation Concerts & Exhibits	51-90	21
	91-120	5
Kuno/Ueno Foundations Fund-raising Events	50-100	0
	Up to 200	2
Total		40

6. The Applicant shall minimize traffic and noise impacts by employing the following measures:

a. All guests and vendors shall be informed in advance to park on-site and to pick up or drop off passengers on-site.

b. The Applicant shall direct on-site parking for any event with fifty (50) or fewer guests. For any events with more than fifty guests, the applicant shall provide on-site valet parking.

c. Valet parking providers shall be instructed in advance to unload, load and park all vehicles on-site.

d. Passenger vans used for Fellows Meetings shall arrive before 7:30 a.m. or after 9:00 a.m., and shall depart before 5:15 p.m. or after 6:15 p.m.

e. Nonprofit employees shall park on-site.

7. Passenger vans used in connection with an event shall be no larger than approximately twenty feet in length. Vehicles used in connection with an event shall load, unload, park and wait on-site, not on the street.

8. Attendees at Fellows Meetings may reside on-site for the duration of the meeting. Fellows housed off-site shall arrive on-site by passenger van.

9. No amplified music shall be permitted on the outside grounds of the subject property.

10. The Applicant shall establish a neighborhood liaison to address concerns and provide information about events and activities to property owners within 200 feet of Evermay. The Applicant shall maintain a website that shall include a neighbors' section to provide notice of upcoming scheduled events.

VOTE: **4-0-1** (Anita Butani D'Souza, Robert E. Miller, Frederick L. Hill, and Carlton Hart 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: December 14, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF

ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19103 of TPC 5th & I Partners LLC, as amended, pursuant to 11 DCMR §§ 3103.2[1] for variances from the rear yard requirements under § 774.1, the closed court requirements under §§ 776.1 and 776.2, the off-street parking requirements under § 2101.1, and the parking access requirements under § 2117.4; and pursuant to § 3104.1 for special exception relief from the penthouse regulations under §§ 411.18, and 411.9[2], and the penthouse use requirements under § 411.4(c)[3], to allow a new mixed-use development in the DD/C-2-C zone, at premises located at 901 5th Street, N.W. (Square 0516, Lot 0059).

HEARING DATES: November 10, 2015 and December 15, 2015
DECISION DATES: December 15, 2015 and January 12, 2016

DECISION AND ORDER

On July 31, 2015, the Applicant filed an application with the Board of Zoning Adjustment ("Board" or "BZA") requesting variance and special exception relief to allow a new mixed-use building containing hotel and apartment house uses. The Applicant later amended its application to request that a portion of the proposed penthouse be devoted to a nightclub, bar, cocktail lounge, and/or restaurant use. Following a public hearing on December 15, 2015, the Applicant also made several modifications to its proposed roof plans, resulting in a reduction in the extent of requested penthouse setback relief, but adding a request for relief from the penthouse height requirements to allow enclosing walls to have unequal heights. At a decision meeting on January 12, 2016, the Board voted to approve the amended application, subject to various conditions.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this case, as amended, was self-certified pursuant to 11 DCMR §3114.2. (Exhibits 12, 14, and 15.)

Notice of Public Hearing Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent by the Office of Zoning to the Applicant, all owners of property within 200 feet of the subject site,

[1] This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment ("the 1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text ("the 2016 Regulations"). Also all zone districts described in this Order were renamed as of that date. The repeal and replacement of the 1958 Regulations and the renaming of the zone districts has no effect on the validity of the Board's decision or the validity of this Order.

[2] Relief under this provision was requested after the initial hearing on December 15, 2015. (Exhibit 38.)

[3] Relief under this provision was requested in an amendment to the initial application. (Exhibits 14 and 15.)

Advisory Neighborhood Commission ("ANC") 6E, and the District of Columbia Office of Planning ("OP"). The Applicant posted placards at the property regarding the application and public hearing in accordance with 11 DCMR §§ 3113.4 through 3113.20. (Exhibit 32.)

ANC 6E Report

The property is located within the area served by ANC 6E, which is automatically a party to this application. ANC filed two reports in this case. The first report, dated October 9, 2015, indicated that, at a properly noticed meeting on September 1, 2015, with a quorum present, the ANC voted 4-1-2 to oppose the application due to its opposition to the parking reduction variance that was requested. (Exhibit 33.) In its report, the ANC stated that a minimum of 127 parking spaces was required at the project and that only 86 spaces were proposed. The ANC noted concerns that the proposed uses would "generate additional parking burdens in an area [that] has a demonstrated parking deficit", and that the Applicant had not proposed any off-site parking to offset the proposed parking reduction.

The initial ANC report did not address the request for special exception relief from the penthouse use requirements. Thus, the Board requested that the ANC also consider this relief, and the ANC submitted a second report. This undated report was submitted on January 11, 2016 and indicated that, at a properly noticed meeting on January 5, 2016, with a quorum present, the ANC voted unanimously (7-0) to support the Applicant's request for a special exception to allow a restaurant, bar, and/or cocktail lounge use within the habitable portion of the proposed penthouse, but that no portion of the space be devoted to a nightclub use. (Exhibit 40.)

Requests for Party Status There were no requests for party status, either in opposition or in support.

Persons in Support/Opposition No persons appeared at the hearing to testify in opposition or in support to the application. Nor were any letters received from persons in support of, or in opposition to, the application.

Government Reports

Office of Planning ("OP") Report

OP reviewed the application and submitted a report recommending approval of the requested relief, including the request for amended relief under the penthouse use requirements. (Exhibit 30.) OP's representative, Stephen Cochran, discussed OP's position during testimony at the public hearing on December 15, 2015.

Department of Transportation ("DDOT") Report

DDOT reviewed the application and submitted a report[4] stating that it had no objection to the

[4] DDOT acknowledged that its report, which was filed on November 6, 2015, was not filed seven days before the initial public hearing (as required) on November 10, 2015. However, because the Board continued the initial hearing to December 15, 2015, the parties and the Board had ample time to consider the report.

approval of the requested relief, subject to specific conditions designed to mitigate any potential vehicle traffic impacts. (Exhibit 37.) DDOT's representative, Evelyn Israel, appeared during the public hearing to confirm DDOT's position. (Hearing Transcript of December 15, 2015, ("Tr."), p. 326-329.)

DDOT recommended, and the Applicant agreed to the following conditions: (1) The Applicant will appoint a Transportation Demand Management Coordinator to work with residents, hotel guests, and employees to distribute and market various transportation alternatives and options; (2) The Applicant will provide a public transportation screen, showing real-time information on nearby transit services, in the residential and hotel lobbies; (3) The Applicant will provide all hotel guests free Capital Bikeshare passes upon request for the life of the hotel project and actively promote this incentive through the marketing plan outlined by the Applicant; and (4) The Applicant will provide a one-year bike share membership, car share membership, or $100 SmarTrip card to all lessees on a yearly basis for a total of 10 years or a three-year membership at the initial sale of the units.

FINDINGS OF FACT

The Subject Property

1. The property that is the subject of this Application (the "subject property") is owned by the District of Columbia and is being used by a private entity as a surface parking lot.

2. The Applicant was selected by the District as the developer of the subject property after demonstrating, among other things, that it would develop a "transit oriented development that reflects the project's adjacency to multiple metro stations". (Exhibit 29.) The subject property will either be ground leased or sold to the Applicant. (Exhibit 29 Tab A.)

3. The subject property is located at 901 5th Street, N.W., Square 516, Lot 59, in the Downtown Development Overlay (DD) /C-2-C zone district.

4. The subject property is part of the Mount Vernon Triangle Historic District and any demolition, alteration, or new construction on or subdivision of the property is subject to review by Mayor's Agent for Historic Preservation ("Mayor's Agent"), who is required to consider the advice of the Historic Preservation Review Board ("HPRB").

5. The subject property consists of an irregular L-shaped, 20,614 square foot ("sf") lot that is on the northeast corner of the intersection of 5th and I Streets, N.W.

6. The size of the lot is relatively small for a downtown location. (OP Report, Exhibit 30.)

7. The Square in which the subject property is located is served by an alley system. The subject property has very limited alley access at the northeast corner.

8. The subject property has approximately 110 feet of frontage along 5th Street, which is 80 feet wide, and approximately 170 feet of frontage along I Street, which is 90 feet wide.

9. The Applicant has selected 5th Street (to the west of the site) as the "front" of the building. Subsection 199.1 defines "Street frontage".[5] As a result, the lot line east of the subject property would be designated as the "rear" lot line. The rear lot line is adjacent to a building.

10. The lot's northern lot line includes a six-foot deep by four-foot wide "bumpout" from that lot line into the neighboring property. The northern lot line also has several odd jogs along the portion adjacent to the alley.

11. Prior use of the site has led to some soil contamination that will require remediation.

The Surrounding Area

12. The area surrounding the subject property consists of a high-density, mixed-use neighborhood comprised of commercial, residential, and retail and service uses.

13. A surface parking lot is located to the northwest of the subject property.

14. A one-story commercial property is located to the east of the subject property on a site that has been assembled for larger-scale development under previous Mayor's Agent and Board approvals.

15. The subject property confronts a park reservation to the south, adjacent to Massachusetts Avenue.

16. A 12-story apartment-hotel building is located to the west of the subject property.

17. The nearby area contains several 12- and 13-story apartment buildings and some similarly sized office buildings.

18. The Gallery Place metro station is three blocks to the southwest of the subject property.

19. The subject property is also accessible by several Metrobus routes, as well as the DC Circulator which operates along Massachusetts Avenue and 7th Street.

20. A Capital Bikeshare station is located to the south along Massachusetts Avenue.

The Proposed Project

[5] The definition of "street frontage is as follows:

> **Street frontage** - the property line where a lot abuts upon a street. When a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.

21. The Applicant proposes to construct a 130-foot-high, 12-story building containing hotel and apartment house uses.

22. No rear yard will be provided.

23. Because the subject property's north lot line follows an irregular path with several odd jogs, there is a small area of the lot that is too small to build on. The north wall of the proposed building does not encompass this area, which will result in a closed court being formed, as defined under the Zoning Regulations. (*See,* 11 DCMR § 199.1 Definition of "Court, closed"[6].) The closed court will be four feet wide and approximately 24 square feet in area.

24. The hotel use will occupy floors two - eight of the proposed building and will contain approximately 175 guest rooms.

25. The apartment house use will occupy floors nine - 12 of the proposed building and will contain approximately 48 dwelling units.

26. The proposed hotel will contain approximately 108,810 square feet of gross floor area ("GFA"), and the residential component of the project will consist of approximately 65,093 square feet of GFA.

27. The ground floor of the proposed building will contain lobby space for the hotel and residential uses, as well as a restaurant, a fire control room, and loading facilities.

28. There will be one level of the building, plus a mezzanine, that will be located immediately below the ground floor. The below grade level will contain, among other things, a 5,500 square foot ballroom.

29. The Applicant proposes to provide 92 parking spaces located on one level, located below the ballroom.

30. The parking spaces will be accessed through a vehicular elevator system.

31. The Applicant proposes to provide 28 long term bicycle spaces.

32. The roof level of the building will contain residential and hotel outdoor terraces, a pool, and two roof structures.

[6] The definition of a closed court is as follows:

> **Court, closed** - a court surrounded on all sides by the exterior walls of a building, or by exterior walls of a building and side or rear lot lines, or by alley lines where the alley is less than ten feet (10 ft.) in width.

33. The main roof structure contains the elevator cores for the hotel and apartment house uses, mechanical equipment, and residential amenity space.

34. As revised, only a small portion of the elevator core enclosure will not be set back from the exterior wall at a ratio of one foot of setback from an exterior wall, for each one foot of the enclosure height. (Exhibits 38 and Revised Plans, Exhibit 39, p.26.)

35. The revised rooftop plan results in multiple mechanical penthouse heights and multiple habitable penthouse heights. (Exhibit 38 and Revised Plans, Exhibit 39.)

36. The Applicant proposes that a portion of the proposed penthouse be devoted to a bar, cocktail lounge, and/or restaurant use.

The Zoning Relief

37. Subsection 774.1 of the Zoning Regulations requires that a minimum rear yard of 15 feet be provided in the C-2-C zone. Because no rear yard is proposed, relief is required under this provision.

38. Subsection 776.1 of the Zoning Regulations requires a minimum closed court width of 21 feet for a closed court at a non-residential building. Because the closed court width for the proposed building is only four feet, relief is required under this provision.

39. Subsection 776.2 of the Zoning Regulations provides that the area of the closed court for a non-residential building be two times the square of the required width (i.e. 21 ft. squared times two), or 882 square feet. Because the area of the proposed closed court is only 24.3 square feet, relief is required under this provision.

40. Subsection 2201.1 of the Zoning Regulations provides that the proposal will include one parking space for each four dwelling units (12 spaces for 48 dwelling units), one parking space for each two sleeping rooms (88 spaces for 175 sleeping rooms), and one parking space for each 150 square feet of floor area in the largest function room (37 spaces for 5,500 sf ballroom), for a total of 127 parking spaces. Because the Applicant proposes to provide 92 parking spaces, relief is required under this provision.

41. Section 2117 of the Zoning Regulations provides that access to parking spaces be provided with a continuous driveway from a street or alley. Because the Applicant proposes to provide access with a vehicle lift system, and no ramp or driveway will be provided, relief is required under this provision.

42. Subsection 770.6(b) requires that roof structures be setback at a 1:1 ratio from the nearest exterior building wall. As revised by the Applicant, a small portion of the elevator core will be set back at less than a 1:1 ratio from the nearest building wall. However, §§ 411.11 and 411.18 of the Zoning Regulations allows for special exception relief from the setback requirements, subject to specified criteria. The Applicant seeks relief under these provisions.

43. Subsection 411.9 allows special exception relief to allow penthouse enclosure walls of unequal heights. As the Applicant's revised rooftop plans provide for unequal heights of the penthouse enclosures, the Applicant seeks relief under this provision.

44. Subsection 411.4(c) allows a portion of a rooftop penthouse to be used as a bar/cocktail lounge/restaurant[7]. The Applicant seeks approval for this use.

Constraints of the Subject Property

45. If the Applicant were to provide a rear yard to the east, there would be a 15-foot wide and 130-foot tall gap in the streetwall on I Street. Such a gap would be inconsistent with the traditional building pattern in the Mount Vernon Triangle historic district. (OP Report, Exhibit 30.)

46. It is impractical to fill in the noncompliant 24-square foot closed court area to the building's height of 130 feet, as the result would be either a solid block of construction material or an unusable interior space that would be approximately two feet wide, five feet deep, and 130 feet high. Alternatively, were the Applicant to provide an 884 square foot compliant open court, an unusable and difficult to maintain exterior space would be created.

47. The geotechnical engineering and groundwater investigation reports submitted by the Applicant (Pre-Hearing Statement, Exhibit 29, Tabs I and J) demonstrate the presence of below-grade soil contaminants and infiltrating groundwater at the prospective third below-grade level, with such infiltration increasing at a fourth below-grade level. The combination of the two would disproportionately result in greater construction-mitigation and operating expenses for each below-grade level, were the Applicant to provide additional levels of underground parking.

48. The Historic Preservation Office ("HPO") prepared a staff report noting that a prior archeological investigation at the site yielded a high concentration of artifacts and remnants of former structures. The existence of these artifacts will impact the cost of the project and the construction timing, due to the additional steps that are required in carrying out the excavation, as well as additional documentation and reporting that is required.

49. Were the Applicant to provide a conforming ramping system to provide continuous access to the parking spaces, the required ramp and aisle widths would significantly reduce the number of vehicles that could be parked on any below-grade level.

50. A zoning compliant penthouse setback for the elevator core enclosure would require the relocation of the elevator core. This would negatively impact the corridor widths and

[7] Subsection 411.1(c) also allows a nightclub use, if approved by the Board as a special exception. However, the Applicant states it will not seek to operate a nightclub.

parking aisle widths on the western side of the building, and, in turn, would reduce the number of hotel rooms and parking spaces that could be provided.

The Impact of the Proposed Project

51. HPRB conducted a concept review[8] of the project and found that its scale and massing was compatible with the Mount Vernon Triangle Historic District.

52. The final revised plans submitted by the Applicant reflect refinements made to the building façade to address comments made by HPRB. (Exhibit 38.)

53. The Mount Vernon Triangle's design principles stress the importance of continuous ground floor frontages on 5th Street. (11 DCMR § 1722.)

54. The lack of a rear yard will not significantly affect available light and air, given the subject property's corner location and the large open court that is provided on the alley side of the building.

55. Because no hotel guest rooms or dwelling units will face the court area, the noncompliant closed court will not result in a lack of light and air being provided to interior spaces that face or open onto the court.

56. Should there be a need to provide more than the 92 parking spaces that are proposed, the Applicant has worked with nearby parking garage operators to confirm the availability of both daily and monthly parking spaces. Paradigm Management Limited Partnership and LAZ Parking have confirmed their ability to accommodate any potential parking demand with nearby garages. (Exhibit 35.)

57. The light and air available to adjacent buildings would not be impacted by the minimal penthouse setback relief that is requested. The side property line of the nearest building to the north will be at least 37 feet from the edge of the proposed roof structure.

CONCLUSIONS OF LAW

The Requested Variances

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g)(3) (2008) to grant variance relief from the strict application of the Zoning Regulations. As noted by the Court of Appeals, the Applicant must meet a three-prong test for the Board to grant relief:

[8] D.C. Official Code § 6-1108(b) permits prospective building permit applicants to apply to the Historic Preservation Review Board for conceptual review of a project for compliance with the historic preservation law.

> An applicant must show, first, that the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan.

Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 941 (D.C. 1987).

An applicant for a use variance must show that strict compliance with the applicable regulation will result in an undue hardship, while an applicant for an area variance must meet the less stringent standard that compliance will result in exceptional practical difficulties. (11 DCMR § 3103.7.)

As noted, the Applicant is seeking area variances from the rear yard requirements under § 774.1, the closed court requirements under §§ 776.1 and 776.2, the parking requirements under § 2101, and the parking access requirements under § 2117.4. Therefore, the "practical difficult[y]" standard will be applied.

As discussed below, the Board finds that the Applicant has met its burden of proof for the requested area variances in this case.

Rear Yard Variance

The Board concludes that an exceptional circumstance exists at the subject property. The site is relatively small for a downtown location (Finding of Fact 6) and has a very irregular northern boundary line (Finding of Fact 10.) Particularly given the core-factor requirement for the proposed mixed use development, it would be practically difficult to provide a rear yard to the east of the lot. Furthermore, were the Applicant to provide a rear yard to the east, there would be a 15-foot wide and 130-foot tall gap in the streetwall on I Street. This gap would be inconsistent with the building pattern in the Mount Vernon Triangle historic district (Finding of Fact 45.) As such, granting the requested variance will not harm the public good or the zone plan, and, in fact, furthers both.

Closed Court Width and Area Variances

The noncompliant closed court on the northern boundary stems from an exceptional condition. As explained in the Findings of Fact, a four-foot wide section of the northern lot line jogs six feet deep into the lot to the north. (Finding of Fact 10.) The northern lot line also has several odd jogs along the portion adjacent to the alley. (Finding of Fact 10.) The unusual shape of the northern lot line would lead to a practical difficulty were the closed court regulations strictly applied. It would be impractical to fill in this closed court area, a 24-square-foot area built to the building's height of 130 square feet, consisting of either a solid block of construction material or an unusable interior space that would be two feet wide, five feet deep, and 130 feet high. (Finding of Fact 46.) Because no hotel guest rooms or interior dwelling units will face the proposed court, the noncompliant court will not result in a lack of light and air being provided to

interior spaces that face or open onto the court. (Finding of Fact 55.) Thus, granting the requested variances would not harm the public good or the zone plan.

Parking Reduction Variance

As explained, the Applicant proposes 92 parking spaces (of the required 127 spaces). (Finding of Fact 40.) All of the proposed spaces will be located on one level, located below the ballroom. (Finding of Fact 29.) Given the small size of the site, the only way additional parking could be provided would be to provide additional levels of underground parking. However, the Applicant has demonstrated the practical difficulty of providing additional underground levels. Geotechnical engineering reports and groundwater investigation reports show the presence of below-grade soil contaminants and infiltrating groundwater, with such infiltration increasing at each additional below grade level. (Finding of Fact 47.) Furthermore, archeological investigation at the site indicates a high concentration of artifacts at the site. (Finding of Fact 48.) These factors would necessitate greater construction-mitigation and increased operating expenses for any additional below grade levels constructed, which the Board concludes would be unduly burdensome.

The Board concludes that granting the requested parking reduction variance will not harm the public good or the zone plan. As noted previously, the Gallery Place metro station is near the proposed project, as are several Metrobus routes, the DC Circulator, and a Capitol Bikeshare station. (Findings of Fact 18-20.) In addition, information submitted by the Applicant shows that any additional parking demand could be satisfied using off-site parking garages. (Finding of Fact 56.) Finally, DDOT reviewed the application and stated that it had no objection to the project, provided the Applicant adheres to specific conditions that will mitigate any potential vehicle traffic impacts. Because the Board is imposing the conditions recommended by DDOT as part of its approval, the Board concludes that, as conditioned, the requested parking variance will not result in adverse transportation impacts.

Parking Access Variance

As explained previously, the Applicant proposes that the parking spaces will be accessed through a vehicular elevator, and not a ramp or driveway. Therefore, the Applicant seeks relief from § 2117 of the Regulations, which requires that access to parking spaces be provided by a continuous driveway from a street or alley. However, the subject property has only limited alley access at its northeast corner. (Finding of Fact 7.) Given the location of the alley access, the turning radii required for vehicles, and the required ramp and aisle widths, it would be difficult to provide the continuous access that is required by the Zoning Regulations. (OP Report, Exhibit 30.) In fact, the Board credits OP's finding that, if a conforming ramping system were provided, it would significantly reduce the amount of space available for parking vehicles. (Finding of Fact 49.)

The Board also concludes that the lack of continuous access to the spaces will not be against the zone plan or the public good. The Applicant proposes to utilize a combination of valet parking, two vehicular elevators and a parking space lift. (Pre-Hearing Statement, Exhibit 29, Tabs K and L.) The Board credits OP's finding that more parking spaces will be provided than with a zoning

compliant ramping, and that vehicle entry and exiting will be achieved during peak hour operations. (Exhibit 30.) Thus, it is not likely that granting the requested relief will result in adverse impacts.

Requested Special Exceptions

As revised, the Applicant is also seeking special exceptions from the penthouse setback regulations of § 411.18, the penthouse height regulations of § 411.9, and the penthouse use regulations of § 411.4(c).

As stated in § 3104.1 of the Zoning Regulations (Title 11 DCMR), the Board "is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) … to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title." In this case, the "special conditions" are those specified in § 411.11 with respect to the setback and height relief. Subsection 411.4(c) authorizes the Board to grant a special exception for penthouse use without regard to "special conditions".

As noted by the Court of Appeals:

> In evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought. "The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, the Board ordinarily must grant the application." *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n. 1 (D.C.2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C.1995)).

Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment, 802 A.2d 359, 363 (D.C. 2002).

Special exceptions for Penthouse Setbacks, Penthouse Height

In this case, the Board concludes that the Applicant has satisfied the two general tests stated in § 3104.1 and the specific conditions contained in § 411.11.

As to the general test, the Board concludes that the requested special exceptions will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." (11 DCMR § 3104.1.) The proposed penthouse design will not change the nature of the mixed use development, and will be in harmony with the existing neighborhood, which is a high density, mixed-use neighborhood comprised of commercial, residential, and retail service uses. (Finding of Fact 12.) With respect to whether the special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, the

Board concludes that this standard is satisfied because, as discussed below, the specific conditions of § 411.11 are met.

The "special conditions" for § 411.11

The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10 and 411.18 upon a showing that:

(a) Operating difficulties such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly, or unreasonable;

Subsection 411.18 requires that penthouses and screening around unenclosed mechanical equipment be set back from the edge of the roof at a 1:1 ratio from the wall of the top story of the building. The Applicant substantially reduced the extent of the setback relief it initially requested, following direction from the Board on December 15, 2015. The only area of the penthouse now requiring setback relief is a relatively small portion of the elevator core, which cannot be set back further due to operational constraints if the elevator core were shifted. (Exhibit 38.) As OP concluded, providing a 1:1 setback would require relocation of the elevator core, which would negatively impact corridor widths on the western side of the building and reduce the number of hotel room and parking spaces that could be provided.

Relief is also required from § 411.9 to allow enclosing walls to have unequal heights. The Applicant only was able to reduce the extent of setback relief required, through a combination of increased setbacks and unequal penthouse heights. (Exhibit 38.)

(b) The intent and purpose of this chapter and this title will not be materially impaired by the structure;

The penthouse setback relief and the penthouse height relief is minimal.

(c) The light and air of adjacent buildings will not be affected adversely.

Granting the special exceptions will not impact the light and air of adjacent properties. The side property line of the nearest building to the north would be at least 37 feet from the edge of the proposed roof structures. (Exhibit 30.)

Special Exception for Penthouse Use

Subsection 411.4(c) of the Zoning Regulations allows the Board to approve a special exception permitting a portion of a penthouse to be used as a "nightclub, bar, cocktail lounge, or restaurant. The Applicant has indicated that it will not establish a nightclub use and there is nothing in the record to suggest that either a cocktail lounge or restaurant would result in adverse impacts. The uses are otherwise permitted in the zone district and there is no reason to believe that having

these uses on the roof of this building would prove more impactful than if the uses were on the ground floor.

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)(3)(B) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC.

In this case ANC 6E initially recommended denial of the application. However, the issues and concerns raised by the ANC relate to the variance to reduce the required minimum parking, and not the other relief requested by the Applicant. Indeed, the ANC submitted a supplemental report indicating that it recommended approval of the special exception requesting use of the penthouse.

The concerns raised by the ANC relating to the parking variance pertain to the third prong of the variance test discussed above; i.e., whether the proposal will result in a substantial detriment to the public good. The ANC raised two specific concerns. First, the ANC stated that the Applicant was proposing to provide 86 of the 127 required parking spaces, in an area which it states already has a "parking deficit". Second, the ANC states that the Applicant did not propose "the use of any offsite parking to offset the lack of sufficient parking on site for the proposed uses." (Exhibit 33.) While each of these concerns may have had some merit at the time the report was written, the Applicant later modified its proposal to address these concerns. First, regarding the number of proposed parking spaces, the Applicant increased the number of proposed spaces from 86 to 92. (Exhibit 29, Applicant's Pre-Hearing Statement, p. 10.) Second, after the Applicant presented the project to the ANC and heard the ANC's concerns relating to parking, the Applicant worked with nearby parking garage operators to confirm the availability of both daily and monthly parking spaces, should there be a need for more than the 92 spaces provided on-site. (Exhibit 35, Finding of Fact 56.) The Board finds that by increasing the number of proposed spaces and by confirming that additional off-site spaces would be available if necessary, the Applicant has established that granting the variance will not result in a substantial detriment to the public good.

OP

The Board is also required under D.C. Official Code §6-623.04(2001) to give "great weight" to OP recommendations. For reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application, as amended, is hereby **GRANTED,** to allow variance relief from the rear yard requirements under § 774, the closed court requirements under §§ 776.1 and 776.2, the off-street parking requirements under § 2101.1, and the parking access requirements under § 2117, and special exception relief from the roof structure requirements under §§ 770.6, 411.3, and 411,9, and the penthouse use requirements under § 411.3(c), **AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT**

TO THE APPROVED PLANS AT EXHIBIT 39 AND WITH THE FOLLOWING CONDITIONS:

1. The Applicant shall appoint a Transportation Demand Management Coordinator to work with residents, hotel guests, and employees to distribute and market various transportation alternatives and options;

2. The Applicant shall provide a public transportation screen, showing real-time information on nearby transit services, in the residential and hotel lobbies;

3. The Applicant shall provide all hotel guests free Capital Bikeshare passes upon request for the life of the hotel project and actively promote this incentive through the marketing plan outlined by the Applicant; and

4. The Applicant shall provide a one-year bike share membership, car share membership, or $100 SmarTrip card to all lessees on a yearly basis for a total of 10 years, or a three-year membership at the initial sale of the units.

5. The penthouse shall not be used as a nightclub.

Vote taken on December 15, 2016:

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May to APPROVE the variance relief; one Board seat vacant).

Vote taken on January 12, 2016:

VOTE: **4-0-1** (Marnique Y. Heath, Peter G. May, Frederick L. Hill, and Jeffrey L. Hinkle to APPROVE the special exception relief; 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: December 14, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19353 of 770 Park LLC, as amended,[1] pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF use requirements of Subtitle U § 320.3, and pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the use requirements of Subtitle U § 301.1, to convert a non-residential building into a nine-unit apartment building with ground floor commercial uses in the RF-1 Zone at premises 770 Park Road N.W. (Square 2894, Lot 915).

HEARING DATES: October 25, 2016 and November 30, 2016
DECISION DATE: November 30, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a report dated September 14, 2016, recommending approval of the application. The ANC's report indicated that at a properly noticed public meeting on September 14, 2016, at which a quorum was present, the ANC voted 11-0-0 to support the application. (Exhibit 31.)

The Office of Planning ("OP") submitted a timely report dated October 14, 2016, stating that it could not make a recommendation on the special exception relief because more information was needed from the Applicant in terms of graphical representations to demonstrate the relationship of the conversion and any associated addition to adjacent buildings and views from public ways as required by Subsection U § 320.3(c). However, OP stated that it could recommend approval of the use variance relief if it is subject to the newly adopted Corner Store relevant conditions found in Subtitle U, §§ 254.8 – 254.12. (Exhibit 37.)

[1] The original application sought and was advertised for eight units, however nine units are referenced in the Applicant's Statement (Exhibit 9) and in the Revised Plans submitted by the Applicant (Exhibit 49). The caption was revised to reflect the correct number of units as nine.

In the additional information submitted into the record (Exhibit 39), the Applicant stated that it does not agree with two of OP's five proposed conditions, and the Applicant proposed some conditions of their own to address the potential impacts of the project.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application (Exhibit 36) with the proposed conditions for the Applicant to:

1. Provide three long term bicycle parking spaces on site.
2. Remove or reconfigure the two angled parking spaces in the rear so that cars do not back down the alley.
3. Roll trash containers to the curb so no backing up maneuvers will occur from the driveway.

At the end of the proceedings on October 25, 2016, the Board continued the matter to a limited public hearing on November 30, 2016 and requested supplemental information, including revised plans. The Board also requested that the Applicant work with OP to revise the proposed conditions and to obtain confirmation from the ANC that it understands the possible uses proposed by the Applicant.

The Applicant, OP, and ANC submitted post-hearing documents requested by the Board. (See Exhibits 48, 49, 50, and 47.) In its supplemental report dated November 18, 2016, OP recommended approval of both the special exception and variance relief with conditions. (Exhibit 50.)

ANC 1A also filed a supplemental report dated October 31, 2016, in which it stated that the ANC's opinion was sought on the prospect that a business that serves alcohol could locate at the site. The ANC stated that it was not in opposition to such a business simply because of the service of alcohol, and the ANC noted that in such a case, it would review the ABRA application related to the business. (Exhibit 47.)

At the hearing of November 30, 2016, the Board considered the additional filings, and received testimony from the Applicant addressing the supplemental material, and confirming that both the ANC and OP agree with its proffered conditions. OP testified that it recommends approval of both areas of relief with conditions. ANC 1A did not testify at either of the hearings before the Board.

One letter in support of the application was filed in the record from Gemma Antoine Belton who resides immediately adjacent to the east of the property at 766 Park Road, N.W. (Exhibit 43.)

One anonymous letter in opposition was filed in the record. (Exhibit 42.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for a variance from the use requirements under Subtitle U § 301.1, to convert a non-residential building into a nine-unit apartment building with ground floor commercial uses in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle U § 301.1, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 320.3 the RF use requirements. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 320.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 49 – ARCHITECTURAL PLANS - AND WITH THE FOLLOWING CONDITIONS:**

1. Any commercial use(s) shall operate no later than 12:00 midnight on Fridays and Saturdays and no later than 11:00 pm Sundays through Thursdays.

2. Amplified sound outside of the building for the commercial use(s) shall not be permitted.

3. Seating outside of the building for the commercial use(s) shall not be permitted.

4. All storage for the commercial use(s) shall be contained within the commercial space(s).

5. All trash for the commercial use(s) shall be stored inside the building as shown on the plan included in the record at Exhibit 49. No trash collection shall occur before 7:00 am or after 7:00 pm. Trash containers shall be rolled to the curb for trash collection so no backing up maneuvers shall occur from the driveway.

6. There shall be no on-site use or storage of dry cleaning chemicals.

7. No more than one sign shall be permitted for each commercial use, and no signage shall be lighted.

8. Three secured and covered bicycle spaces shall be provided in the parking area between the automobile parking spaces and the building.

9. The two parking spaces at the southeast corner of the site shall not be angled and shall be perpendicular to the driveway as shown on the site plan in Exhibit 49 of the record.

10. All deliveries and loading shall be limited to between 7:00 am and 7:00 pm.

11. The Applicant shall install security cameras on the exterior of the building to monitor the security of the commercial space.

12. The Applicant shall implement regular rodent and pest control measures, including, but not limited to routine visits by exterminators and installation of pest-resistant storage.

VOTE: **4-0-1** (Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Anthony J. Hood 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: December 7, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19381 of District of Columbia Public Schools, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9 and Subtitle C § 1504.1, for a special exception under the penthouse structure requirements of Subtitle C § 1500.6, to install rooftop equipment to an existing public school in the R-1-B Zone at premises 7800 14th Street, N.W. (Square 2740, Lot 810).

HEARING DATE: December 7, 2016
DECISION DATE: December 7, 2016

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4A, which is automatically a party to this application. The ANC submitted a resolution dated December 7, 2016, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 6, 2016, at which a quorum was present, the ANC voted 4-0-0 to support the application. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report dated November 23, 2016 (Exhibit 25),

[1] The Applicant, in its original request (Exhibit 1), sought relief from § 411.11 – the penthouse regulations. The application was later converted by Office of Zoning staff to request relief under the 2016 Zoning Regulations ("ZR16") which became effective September 6, 2016. The Office of Planning (OP), in its report to the Board, stated that the proper relief for the project is "Special Exception Relief from Subtitle C § 1500.6, pursuant to Subtitle C § 1504.1." (Exhibit 25.) At the public hearing, the Board approved the revision of the relief requested per the OP report and on the advice of counsel from the Office of the Attorney General. The caption has been amended accordingly.

and testified at the hearing in support of the application. The District Department of Transportation ("DDOT") submitted a timely report, dated November 21, 2016, expressing no objection to the approval of the application. (Exhibit 24.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the penthouse structure requirements of Subtitle C §§ 1504.1 and 1500.6, to install rooftop equipment to an existing public school in the R-1-B Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C §§ 1504.1 and 1500.6, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 3 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **3-0-2** (Frederick L. Hill, Carlton E. Hart, and Robert E. Miller to APPROVE; Anita Butani D'Souza recused; 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.

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y

§ 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-19
Z.C. Case No. 15-19
411 New York Avenue Holdings, LLC
(Consolidated PUD and Related Map Amendment @ Square 3594, Lot 800)
July 25, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on February 1, February 23, April 21, and April 25, 2016, to consider an application by 411 New York Avenue Holdings, LLC ("Applicant") for approval of a consolidated planned unit development ("PUD") and related map amendment ("Application") for the property located at 411 New York Avenue, N.E. (Square 3594, Lot 800) and the 1,000-square-foot portion of the public alley in Square 3594 to be closed (collectively, the "Property"). The Commission considered the Application pursuant to Chapters 1, 24, and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR")[1]. The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the Application.

FINDINGS OF FACT

The Application, Parties, Hearings, and Supplemental Filings

1. On August 10, 2015, the Applicant filed an application with the Commission for the consolidated review and approval of a PUD on the Property and related map amendment to rezone the Property from C-M-1 to the C-3-C Zone District. The Application proposes the development of an 11-story hotel with space dedicated to the arts, including exhibition, outdoor sculpture terrace, studio space, and classroom areas.

2. The Property is located within the boundaries of Advisory Neighborhood Commission ("ANC") 5D and includes approximately 15,000 square feet of land area.[2] The Property is currently improved with a four-story industrial building that is leased to various tenants, some who are artists and makers.

3. By report dated September 11, 2015, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the Application. (Exhibit ["Ex."] 11.)

[1] Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016. Chapter 24 was replaced by Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing and decided prior to that date, the Commission's approval was based upon the standards set forth in Chapter 24.

[2] The Property size is 14,000 s.f. The Applicant filed a partial alley closure application, Application No. S.O. 16-25309 ("Alley Closing") to close a 1,000-square-foot portion of the rear alley directly behind the Property ("Closure Area") and provide a full public access easement for the Closure Area back to the District. Pursuant to 11 DCMR § 2401.1, the lot area for the purposes of this Application includes the 1,000-square-foot Closure Area. The Commission has no objection to including this land area in the Application and permitted the Applicant to revise the Application to include the Closure Area, and to submit revised tabulations reflecting the revised land area after it took proposed action to approve the Application.

4. At a public meeting on September 21, 2015, the Commission voted unanimously to set the Application down for public hearing. In its discussion of the Application, the Commission requested additional information regarding the following: the timing for developing a boutique hotel on the Property; the existing agreement for parking at the Baywood Hotel; whether patrons of the proposed hotel would have balcony access on the 11th floor; whether the west elevation of the Project could be improved; the pricing for the proposed art studio spaces; requested revisions to the plans for the proposed roof and penthouse; relocation of the sign proposed for the top of the Project; the need for penthouse setback relief at the front of the building; potential waiver of the minimum lot size requirements to avoid the need for alley closing legislation; the Project's benefits and amenities including the proposed internship programs and outreach to the building's existing resident artists; and the Project's circulation plans.

5. On November 9, 2015, the Applicant submitted a Prehearing Statement addressing the issues and comments raised by the Commission at the September 21, 2015 set down meeting and indicating that additional information would be provided in subsequent submissions. The Prehearing Statement included the information required pursuant to § 3013 of the Zoning Regulations and revised plans. (Ex. 14-14J.)

6. ANC 5D recommended approval of the Application at its November 10, 2015 meeting, and submitted a resolution in support of the Application into the record. (Ex. 19.)

7. Notice of the public hearing was published in the *D.C. Register* on December 4, 2015, at 62 DCR 15673. (Ex. 17.)

8. On January 12, 2016, the Applicant filed a Supplemental Submission, which provided additional information about revisions to the plans, clarified the flexibility sought through the Application, discussed the transportation and circulation plan; provided a summary of public benefits, including the proposed arts program as well as a discussion of community outreach. The Supplemental Submission included an updated set of architectural plans and elevations, loading circulation plans, a form First Source Employment Agreement, a letter from a retail real estate brokerage firm providing an estimate of market rental rates for the neighborhood surrounding the Property, a letter in support of the Project, and resumes for some of the experts the Applicant proposed to testify at the public hearing. (Ex. 22-22G.)

9. On January 14, 2016, the Applicant also submitted a Transportation Impact Study. (Ex. 23A1-23A2.)

10. On January 15, a request for party status was submitted by the 411 Artists Union, which represents artists that work in the Property's existing building. (Ex. 24.)

11. On January 21, 2016, the Applicant submitted a letter requesting additional flexibility for the Project with respect to the rear setback requirements. (Ex. 26.)

12. On January 21, 2016, DDOT filed a summary report indicating that it needed additional time to complete its review because the timing of the Applicant's submission of the Comprehensive Transportation Report ("CTR") to DDOT was not consistent with the typical timeline for DDOT review. (Ex. 25.)

13. On January 22, 2016, OP submitted its hearing report, thoroughly reviewing the Application materials in the record and recommending approval of the Application. (Ex. 28.)

14. On January 29, 2016, DDOT filed its supplemental report stating that it had no objection to the Application with certain conditions that were set out in that report. (Ex. 62.) DDOT also required the Applicant to commit to the following conditions associated with the Alley Closing, including: provide a full public access easement for the closed section of alley; assume full maintenance responsibilities for the entire alley from 4th Street to the Baywood Hotel; and return the closed section of alley to DDOT's right-of-way inventory when the subject building ceases to exist.

15. On January 29, 2016, the Applicant filed a second supplemental submission providing updates to the record, a summary of outreach conducted with the tenants of the existing building, additional information requested by OP, and updated traffic information as provided to DDOT. (Ex. 82-82I.) The second supplemental submission also provided resumes of additional expert witnesses, as well as an additional letter of support. The Applicant also requested a waiver of the filing deadline to accept the second supplemental submission. (Ex. 83.)

16. On February 1, 2016, a letter was filed by members of the 411 Artists Union authorizing Chris Otten, of DC for Reasonable Development, to serve as the 411 Artists Union's agent and authorized representative for the proceedings. (Ex. 84.)

February 1, 2016 Hearing and Supplemental Filings

17. At the February 1, 2016 public hearing on the Application, the Commission granted party status in opposition to the 411 Artists Union.[3] Additionally, the Commission waived the filing deadline for all late submissions for the hearing. (Feb. 1, 2016 Transcript ("Tr.") 7:2-9:15.)

18. At the hearing, the Commission recognized David Delcher of BBGM as an expert in architecture. (Feb. 1 Tr. 9:16-12:3.) The Commission then heard testimony on behalf of

[3] This representation was confirmed both in a letter of authorization submitted by the 411 Artists Unions and a letter submitted by Chris Otten, c/o DC for Reasonable Development, which acknowledged that Mr. Otten would be participating in the proceedings on behalf of the 411 Artists Union. (Ex. 84, 151.) As addressed below, the 411 Artists Union subsequently rescinded its party status after reaching a settlement agreement with the Applicant. (Ex. 310.) Chris Otten and the building's artist tenants and subtenants also signed the settlement agreement. (Ex. 312.)

the Applicant from: Dennis Lee and Brook Rose, the managing members of the Applicant; Mr. Delcher, the architect for the project and an expert in architecture; Jeff Lee of Lee and Associates, Inc., the project's landscape architect, as an expert in landscape architecture; Erwin Andres of Gorove/Slade Associates, Inc., the transportation engineer for the project, as an expert in transportation and analysis; and Vikki Tobak and Tanya Hilton of Cultural District Corporation ("CulturalDC"), an experienced arts-management organization that will partner with the Applicant to design the artist space proposed for the project and manage that space for a period of five years. (Feb. 1 Tr. 16:6-148:6.) This testimony included responses to cross-examination by Chris Otten, the authorized representative for the 411 Artists Union.

19. In its discussions of the project, the Commission requested the following: a rendering of the street perspective with respect to the lack of a rear setback; that the Applicant meet with the District Department of Energy and Environment ("DOEE") and consider raising its Leadership in Energy and Environmental Design ("LEED") accreditation goal from Silver to Gold; a written summary of how rent is derived for the art studio space; more information regarding the relocation of artists currently working at the Property; more information on the selection process for the studio space; that the Applicant consider a greater subsidy for the studios; additional information regarding free memberships for the arts program that are to be given to ANC 5D; additional information regarding the proposed alley closure and potential relocation assistance requirements; and more information regarding CulturalDC's project at the Monroe Street Arts Walk. These issues were addressed by the Applicant. (Ex. 188, 188A-188E.)

20. The following individuals testified in opposition to the Application at the public hearing:

a. Aaron Martin;
b. Jenna Henderson;
c. Susan Hostetler;
d. Raye Leith;
e. Katie Greer;
f. Chris Naoum;
g. Joshua Levi;
h. Christopher Smith;
i. Warren Crudup;
j. Andreas Fekete;
k. Shannon Lewthwaite;
l. G.L. Jaguar;
m. Amanda Huron;
n. Akin El Bass; and
o. Katie McDermott.

21. In their testimony, the above individuals expressed concerns regarding the relocation of the artists currently working at the Property, as well as generalized concerns about the challenges that artists face in the District of Columbia and the need for more resources to

be allocated to support the artist community. The testimony did not raise substantive objections regarding whether the project meets the standards for approval of a PUD or related Zoning Map amendment.

22. At the February 1, 2016 public hearing, the Commission determined that an additional hearing was necessary to hear further testimony from individuals, as well as testimony from the 411 Artists Union, OP, and DDOT, rebuttal testimony from the Applicant, and a closing statement. Accordingly, the Commission scheduled a second hearing for February 23, 2016.

23. On February 19, 2016, the Applicant filed a third supplemental submission providing information in response to the questions the Commission asked at the February 1, 2016 hearing and updated plans. (Ex. 188-188E.) Additionally, the Applicant provided information regarding two meetings held with the representatives of the 411 Artists Union following the February 1, 2016 public hearing. In those discussions, the Applicant proposed to expand the project's total arts component by approximately 2,000 square feet, as detailed in the submission, as well as an alternative option that would permit the 411 Artists Union to lease the third floor in lieu of hotel rooms.

February 23, 2016 Hearing

24. At the February 23, 2016 public hearing on the Application, the Commission heard additional testimony in opposition from individuals and representatives of the 411 Artists Union.

25. The following persons testified in opposition to the Application at the public hearing:

a. Sara Stevenson;
b. Christopher Lenyon;
c. Tony Walker;
d. Sheldon Scott;
e. Kelvin Chambers;
f. Niko Summaripa;
g. Claire Jaffe, on her on behalf and reading a statement on behalf of Rose Jaffee;
h. Lindsay Johnson;
i. Victoria Reis;
j. Ian Elder;
k. Safa Selassie;
l. Natasha Hall;
m. Jessica Senada;
n. Haley McKey;
o. Jane Pomeroy, reading a statement on behalf of Carolyn Reece Tomlin;
p. Adriel Luis;
q. Amal Mimish;
r. Matthew Nem;

s. Geena Vontress;
t. Julia Bloom;
u. Alonzo Jackson;
v. Christopher Ridler;
w. Jane Leppin;
x. Cory Castle;
y. Gaje Jones;
z. Jalila;
aa. Ralhel Visrael;
bb. Dior-Brown
cc. James Mazzaferro; and
dd. Jamal Jones.

26. Witness Amal Mimish testified on behalf of DC for Reasonable Development. (Feb. 23 Tr. 151:18-20.) Upon questioning by the Commission, Ms. Mimish stated that DC for Reasonable Development has "a co-facilitator and that's Chris Otten." (Feb. 23 Tr. 152:5-6.)

27. As with the testimony in opposition at the February 1, 2016 public hearing, the testimony of the above individuals expressed general concerns regarding the relocation of the artists currently working at the Property and generalized concerns about the challenges artists face in the District of Columbia. The additional testimony did not raise substantive objections regarding whether the project meets the standards for approval of a PUD or related Zoning Map amendment.

28. The Commission also heard testimony in support of the Application from Mike Abrams.

29. At the conclusion of the hearing, the Commission scheduled a further public hearing on March 16, 2016, to hear additional testimony.

30. On March 8, 2016, the Applicant filed a letter providing the resumes of additional rebuttal witnesses: Ms. Ellen McCarthy, as an expert in zoning, planning and land use, as well as Mr. Andrew McAllister, as an expert in commercial brokerage. (Ex. 236.)

31. On March 15, 2015, the Applicant filed with the Commission a copy of the Applicant's proposed relocation package presented to the 411 Artists Union and artists leasing space in the Property, as well as a summary of the Application's public benefits. (Ex. 237-237B.)

32. On April 21, 2016, the Applicant filed a summary of the tenant outreach and relocation package negotiation process. (Ex. 283.)

33. On April 21, 2016, Mr. Otten filed a Motion to Postpone the April 21 hearing. (Ex. 286.)

April 21, 2016 Hearing

34. At a duly noticed, rescheduled public hearing on April 21, 2016, the Commission denied the motion filed by the 411 Artists Union to postpone the hearing, finding that the issues raised in the motion are not relevant to the Application, and the Commission heard further testimony regarding the Project.[4]

35. OP and DDOT representatives testified, reiterating their support for the project. This testimony established that OP and DDOT followed all appropriate and required procedures in reviewing the Application. OP indicated that it requested comments from all DC agencies and had direct contact with representatives of DOEE, DDOT, Department of Housing and Community Development, and D.C. Water about the Application. (April 21 Tr. 39:2-6.) OP testified that only DDOT submitted written comments and the fact that certain agencies did not provide written comments to the record was not "unusual" for OP's review of PUD applications. (April 21 Tr. 44:6.) The OP representative testified that as "with every project" certain details of the project, including those regarding environmental impacts, gentrification impacts, real affordability analysis, light and air impacts, noise, air quality, infrastructure (water, gas, electric), etc. are "reviewed in obviously in much more detail at the building permit phase, including by DOEE and D.C. Water for infrastructure issues. And an applicant is required to address those issues that haven't been previously addressed." (April 21 Tr. 46:7-12.) Furthermore, the OP representatives testified that "the building permit process is part of the development review process" and accordingly, review of infrastructure issues, and those relating to DDOE and DC Water at that time is consistent with the Comprehensive Plan's direction in Chapter 25. (April 21 Tr. 47: 2-3.) Also, the OP representative testified that OP reviews the Comprehensive Plan, Small Area Plans, future land use maps and generalized policy maps "holistically" and that it does not "pluck" out sections for review. (April 21 Tr. 24: 19-25; Tr. 25: 1; Tr. 26: 6-11.) And that upon such a "holistic" review, the Application is not inconsistent with the Comprehensive Plan and should be supported. (April 21 Tr. 25: 4-7.)

36. The 411 Artists Union presented testimony in opposition to the project from the following individuals:

    a. Michelene Klagsburn;
    b. Luke Stewart;
    c. Desiree Venn Frederic;

[4] A continued hearing was initially scheduled for March 16, 2016. However, on March 15, 2016, the Washington Metropolitan Area Transit Authority announced that all of its Metrorail services would be suspended all day on March 16 in order to conduct an emergency inspection. Based on this closure, the Commission determined that the continued hearing should be rescheduled in order to ensure that all interested parties and individuals would be able to attend. Accordingly, the Commission notified the parties and posted the rescheduled hearing date of April 21, 2016 on the Office of Zoning's website. Notice of the new hearing date was published in the *D.C. Register* at 63 DCR 4445. (Ex. 241-242.)

d. Graham Boyle; and
e. Chris Otten.[5]

37. Witnesses for the 411 Artists Union acknowledged that they were aware of the efforts to sell and redevelop the building and "officially met [the Applicant] in June of 2015" to discuss the building's sale and the process for the Application going forward. (April 21 Tr. 150:8-11.)

38. One of the witnesses for the 411 Artists Union, Ms. Desiree Venn-Frederick testified that she had personally met with the Applicant during the week of April 18th and "we went on a tour of several sites throughout the city. I provided him with a list of 40 properties; vacant properties that are available for lease of comparable size. We in fact visited, I believe, a total of six or seven sites throughout the city that could accommodate groups of artists and of commercial entity as my own." (April 21 Tr. 182:14-20.)

39. At the conclusion of the hearing, the Commission scheduled a further public hearing to allow the Applicant to complete cross-examination of the witnesses testifying on behalf of the 411 Artists Union, to offer rebuttal testimony, and to make closing statements. At the close of the hearing, the Commission's staff advised Mr. Otten that "you need to make sure all your witnesses come back Monday" so the Applicant could complete its cross-examination questions. (April 21 Tr. 198:5-6.)

April 25, 2016 Hearing

40. At a public hearing on April 25, 2016, the Commission heard additional testimony on the Application.

41. Two of Mr. Otten's witnesses, Luke Stewart and Desiree Venn Frederic did not appear at the continued hearing for additional cross-examination. (April 25 Tr. 5:7-14.) However, the Applicant was able to complete its cross-examination through questioning of Michelene Klagsburn, Graham Boyle, and Chris Otten.

42. Upon cross-examination, the representatives of the 411 Artists Union who attended testified that they had neither conducted, nor retained any consultant to conduct air quality impact and/or traffic studies. (April 25 Tr. 9-10.)

43. Additionally, the Applicant offered rebuttal testimony from the following:

a. Brook Rose, on behalf of the Applicant. Mr. Rose summarized the importance of the project's promotion of the arts in the District and reiterated the Applicant's proposal to provide the current artist tenants with relocation assistance, as well as the Applicant's efforts to help the current tenants find new locations, including but not limited to visiting alternative locations with a current tenant;

[5] In addition to representing the 411 Artists Union, Mr. Otten testified as a member of that group.

b. Dennis Lee, on behalf of the Applicant. Mr. Lee testified that in November 2015, Ms. Desiree Venn-Frederick, one of the current tenants of the building and one of the members of the 411 Artists Union, posted an Instagram message stating knowledge of the PUD application and that "she would not be moved." (April 25 Tr. 29:5-9.) In response to that comment, the Applicant tried to get a meeting with her to discuss the PUD application, but the Applicant was "never afforded a meeting." (April 25 Tr. 29 9-11.) Mr. Lee then testified about the need for the project based on the unsustainable nature of the Property's existing use, and he outlined the extensive outreach efforts the Applicant has conducted with the current tenants in advising them about the PUD process and in helping the current tenants identify new rental locations, including as many as 21 meetings. (April 25 Tr. 29:18-19.) In his oral and written testimony submitted into the record, Mr. Lee also outlined the relocation assistance offered to the current tenants; (Ex. 304.)

c. Tanya Hilton, the Acting Executive Director of Cultural DC. In her oral and written testimony, Ms. Hilton testified to the significance of the arts program proposed by the project, Cultural DC's unique qualifications for administering the program, and Cultural DC's efforts to make the program's benefits available to the building's current tenants; and (Ex. 303.)

d. Ellen McCarthy, who was recognized as an expert in land use and planning, provided a complete analysis of how the project satisfies the PUD standards, particularly with respect to how the project is not inconsistent with, and indeed furthers, the goals and policies of the Comprehensive Plan. (Ex. 305, 306.)

44. At the conclusion of the rebuttal testimony, these witnesses were cross-examined by Mr. Otten. Then the Applicant made closing statements, after which the Commission concluded the hearing on the Application.

45. After concluding the hearing, the Commission asked the Applicant for information about the timeline for selection of current artist tenants at 411 New York Avenue for art studio space in the hotel's Arts Benefits program and follow up information about the comparison of District rental rates for arts spaces to establish that the proposed $20 per square foot of studio space is consistent with the rental rates charged for similarly appointed studio space.

46. The Commission closed the record that included all of the submissions, testimony and letters in opposition and support for the Application. One such letter was submitted on behalf of DC for Reasonable Development, raised issues and has been reviewed and addressed by the Applicant, OP, and/or DDOT as necessary in the record. (Ex. 292.) The Commission stated the record would be open on April 29, 2016 for the Applicant to respond to the Commission's questions at the April 25, 2016 hearing, May 9, 2016 for Mr. Otten to submit additional questions about the Applicant's rebuttal testimony on

behalf of 411 Artists Union, May 13, 2016 for the Applicant to submit responses to Mr. Otten's questions, and on May 31, 2016 for the filing of the proposed order. The Applicant submitted its responses to the Commissions questions on April 29, 2016 and submitted the proposed order on May 31, 2016. (Ex. 308, 314.)

Rescission of Party Status

47. On May 12, 2016, the 411 Artists Union submitted a letter rescinding its status as a party in opposition to the application based on a settlement agreement reached between the 411 Artists Union and the Applicant. (Ex. 310.)

48. On May 18, 2016, the Applicant filed a Motion to Reopen the Record to accept a copy of the settlement agreement reached between the Applicant, the 411 Artists Union and the other artist tenants in the building undersigned to the agreement. (Ex. 311.) That motion was approved by the Commission, and the Applicant submitted a copy of this Agreement into the record. (Ex. 312.)

Proposed Action, Final Proffer, and Final Action

49. At its public meeting held on June 13, 2016, the Commission took proposed action to approve the Application.

50. On June 14, 2016, the Application was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. (Ex. 315.) The Executive Director of NCPC, by delegated action dated July 1, 2016, found that the proposed action is not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 321A.)

51. On June 20, 2016, the Applicant submitted its revised Proposed Findings of Fact and Conclusions of Law and a list of proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR § 2403.16. On July 5, 2016, the Applicant submitted its final list of proffered public benefits and draft conditions pursuant to 11 DCMR § 2403.20.

52. At a public meeting on July 25, 2016, the Commission deliberated on the Application and voted to take final action to approve the Application subject to the conditions enumerated in this Order.

MERITS OF THE APPLICATION

The Property and Surrounding Area

53. The Property is located within the boundaries of ANC 5D and includes 15,000 square feet of land area. The Property is currently improved with a four-story industrial building that is currently leased to various tenants, including artists and makers. A tenant roll is

included in the record. (Ex. 188C.) Those tenants will have to move when construction begins, but the Applicant has identified several alternate locations for the artists and will continue to do so according to the Settlement Agreement, but any artist tenant who is interested in applying to rent studio space in the Applicant's arts program, could apply to do so. The Applicant and CulturalDC have established a special selection process for current artist tenants at 411 New York Avenue who wish to apply to rent art studio space in the project. (Ex. 188B, Ex. 308.)

54. The building occupies 100 feet of linear frontage along New York Avenue, N.E. The remaining 40 feet of frontage is currently an asphalt parking lot. The Property abuts a 20-foot-wide alley in the rear. An existing curb cut to the east of the building leads to a small parking lot on the Property. (Ex. 2, p. 6.)

55. The Union Market and Florida Avenue Market area surrounding the Property are experiencing an interest in development, as recommended by the District in the Florida Avenue Market Study Small Area Plan adopted in 2009. Adjacent to the Property, 501 New York Avenue, N.E. was the subject of Z.C. Case No. 11-25, a consolidated PUD and related map amendment authorizing the construction of the Baywood Hotel which is currently under construction, and rezoning that property from C-M-1 to C-3-C. To the southwest, at 1270 4th Street, is a property, recently approved through a consolidated PUD and related map amendment, which will be developed as a mixed-use retail and residential project. Immediately south of the Property is the Maurice Electrical Supply building, next to which Angelika Pop-Up, a compact arthouse cinema and lounge, operates. (*Id*.)

56. Across New York Avenue to the northeast of the Property is a Howard Johnson Inn. Also north of the Property, across New York Avenue, are a number of rail lines and offices for the Washington Metropolitan Area Transit Authority. Gallaudet University is located one block south of the Property. The NoMa-Gallaudet University Metro Station on the Metrorail Red Line is approximately one-half mile from the Property. (*Id*.)

57. The Application includes an analysis of "Estimated Quantities of Potable Water/Sanitary Sewage Use." (Ex. 2L.)

Existing and Proposed Zoning

58. The Property is currently zoned C-M-1. In connection with the PUD approval, the Applicant seeks to rezone the Property to C-3-C.

Description of the Project

59. The Applicant proposes the development of an 11-story hotel with space dedicated to the arts, including exhibition, outdoor sculpture terrace, studio space, and classroom areas. The project proposes approximately 111,672 square feet of gross floor area

(approximately 7.44 FAR), and a parking garage containing 43 parking spaces, as shown on the Plans.

60. The hotel will have up to 178 guestrooms, approximately 4,300 square feet of art studios, music room and classroom, a ground-floor restaurant, and a combined restaurant/gallery space on the 11th floor, as well as a roof terrace and roof lounge with a bar and a pool. (Ex. 2, p. 5; 82A1-A16, 188A1-A2.)

61. The Applicant has also provided an option to convert up to 15 rooms on the 10th floor to approximately 5,200 square feet of ballroom/function space that would reduce the total number of proposed hotel rooms to 163. (Ex. 22, 22B2, 82A7.)

62. The Application also proposes landscaping, streetscaping, on-site circulation, and parking and loading. (Ex. 82A11-A16.)

63. The Applicant engaged its own architectural historian and met with Historic Preservation Staff and the District of Columbia Preservation League ("DCPL") to discuss the historic significance of the existing building. (Ex. 2, p. 19.). The Applicant and DCPL have concluded that the building does not meet the criteria for an individual historic landmark. (Ex. 2, p. 19.) OP concurred. (Ex. 28.)

64. However, despite the conclusion that the building is not eligible to be considered a historic landmark, the Applicant has elected to retain the historic façade of the building, and the design of the new building will be appropriately off-set to maintain the existing building line. The Applicant has obtained the support of DCPL in this approach. (Ex. 2, p. 19.)

65. The Applicant has designed the project with attention to urban design and architectural quality. The project will also improve the pedestrian and bicycle access to this development corridor, while providing adequate vehicular parking and required truck and service loading on site. (*Id*., p. 8.)

66. The project combines the following components:

a. Hotel. The project incorporates many of the original elements of the existing building and the essence of its surrounding industrial neighbors that make up what is essentially Washington's "meat packing district." The project will create a boutique that promotes the area's arts and culture. (*Id.*, pp. 8-9.) The Hotel will also provide hearing impaired design considerations throughout the building; (Ex. 22, Ex. 237B.)

b. Art. As discussed throughout the record, and as discussed in the Applicant's case in chief on February 1, 2016 and on rebuttal on April 25, 2016, the project proposes to commit to providing for a period of 20 years following the issuance of the certificate of occupancy a robust arts program that includes approximately 11

below-market studios for local artists/makers, an art classroom, an approximately 740-square-foot music room in the basement; an approximately 2,580-square-foot gallery on the second floor, an outdoor sculpture garden and additional rooftop gallery spaces accessible to hotel guests and available for openings and other events. (Ex. 1, 22, 82, 82G, 120A4, 188, 188A1-A2, 188B, 237, 237B, 303, 308.) The Applicant will be working with CulturalDC, or similar arts programming and management organization, to develop, operate, and lease the proposed artist/maker spaces within the Project. CulturalDC currently serves over 1,000 artists and art groups and 30,000 audience members each year through the activation of art space and presentation of contemporary visual and performing arts. CulturalDC's experience in the realm of creating and managing spaces for artists of all kinds will enable this unique experience to operate smoothly, while providing a needed benefit to the city's artists and makers. Individual galleries and art and maker spaces will complement the theatre, film, and food art uses already found in Union Market and elsewhere in the Florida Avenue Market area, and will fulfill the goals of the District of Columbia Ward 5 Land Transformation Study of August 2014 ("Ward 5 Works Plan") by revitalizing one of the city's former industrial spaces; and (Ex. 2, p. 9.)

c. Employment and Job Training. The hotel, restaurant, café, and art gallery at the Property could create approximately 75-110 new jobs. (Ex. 2, p. 9; 237B.) The Applicant plans to enter into a First Source Agreement to ensure that at least 50% of these jobs are allocated to District residents. The Applicant also plans to provide internships to students interested in art or the hospitality industry. (*Id.*)

67. The main vehicular ingress to the Property will come from the northbound direction of New York Avenue. This ingress access will be limited to right-turns only from northbound New York Avenue. No access will be possible from southbound New York Avenue, and the Applicant proposes to work with DDOT to install a "No Left-Hand Turn" sign going southbound on New York Avenue, coming into the District from Maryland. (Ex. 22, pp. 11-12; 23A1-23A2, 25.)

68. No egress, either northbound or southbound, will be permitted on to New York Avenue. The project's north curb onto New York Avenue will be squared off to prohibit the egress of cars from this entrance, and "Do Not Enter" signs will be installed at the intersection of the driveway and New York Avenue. As vehicles exit the parking garage, "No Left-Hand Turn" signs will direct all egress from the Property via the alley, and the Applicant proposes to install a "Right Turn Only" sign at the garage entrance. Accordingly, all vehicles will egress from the site via the rear alley to 4th Street and Penn Street. (Ex. 22, pp. 11-12; 23A1-23A2, 25.)

69. In order to improve circulation via the rear alley to 4th and Penn Streets, the Applicant will proffer to reestablish the curb, stop bar, and stop sign at the southeast corner of intersection on Penn Street. The Applicant will also install a new stop sign and stop bar

at the northeast quadrant of that intersection existing in the alley. (Ex. 22, pp. 11-12; 23A1-23A2, 25.)

70. The project will provide two loading spaces on-site, one berth at 30 feet and one service delivery berth at 20 feet on site. Access to those loading spaces will be through the rear alley and will allow loading access as required by DDOT's standards. Therefore, 30-foot trucks and 20-foot delivery trucks will only access the Property through the rear alley from 4th and Penn Streets. No trucks will access the site from New York Avenue. Truck loading will be managed on site through a loading management agreement. (Ex. 22, pp. 11-12; 22C, 23A1-23A2, 25.)

71. As to the mechanical penthouse, the Applicant proposes a 10-foot height at the front and stepping back the northwest corner 21 feet, seven inches from the roof edge. The penthouse is set back appropriately from the front roof line. As to the guardrails and ramping on the pool deck, the Applicant steps back the guardrails on the front, side and rear of the pool deck at a one-to-one ratio, and rotates the pool ramping to the east. (Ex. 188, 188A1-188A2.)

72. As designed, the penthouse and roof plans, fully address the Commission's comments made at the February 1, 2016 hearing and provide for a functional penthouse/roof level that complies with the penthouse regulations and will have negligible visual impacts on the street views from New York Avenue or the rear alley. (Ex. 188, 188A1-188A2.)

Zoning Map Amendment Application

73. The Property is located in the C-M-1 Zone District. The properties to the east, south, and west of the Property are zoned C-M-1. The area to the north of the Property was rezoned to the C-3-C Zone District pursuant to Z.C. Order No. 11-25. The C-M-1 Zone District permits "low bulk commercial and light manufacturing uses" with a maximum density of 3.0 FAR, maximum height of 40 feet, a maximum of three stories, and no lot occupancy limit.

74. The Applicant requested a PUD-related Zoning Map amendment to the C-3-C Zone District for the Property to permit the structures to reach the requested height and density. Under the PUD guidelines, the maximum permitted height of the C-3-C Zone District is 130 feet and the maximum permitted density is 8.0 FAR. (Ex. 2, p. 11.)

75. The Property is designated in the District of Columbia Comprehensive Plan Future Land Use Map as Mixed-Use/High-Density Commercial/High-Density Residential/Production, Distribution, and Repair. The proposed C-3-C Zone District is considered to be a "corresponding" zone district to the High-Density Commercial designation. (10A DCMR § 225.11.)

76. The Florida Avenue Market Study Small Area Plan was adopted in 2009 and designates the Property in the "High-Density" zone in that Plan's "Zoning and Intensity Plan" (Figure 6.01). (Ex. 305.)

77. This Land Use Map designation for the Property was specifically adopted by the Council in the first set of Comprehensive Plan amendments in 2010. Previously, the designation was solely for PDR uses. In 2010, the Council changed the designation to include Mixed-Use/High-Density Commercial/High-Density Residential as well as Production, Distribution, and Repair in order to evidence a clear intent by the Mayor, OP, and the Council that the site should be redeveloped for higher intensive uses, consistent with the Florida Avenue Market Plan. (Ex. 305, 306.)

78. The Commission finds that the Applicant's proposal to rezone the Property from the C-M-1 Zone District to the C-3-C Zone District to construct a boutique hotel with an active arts component is consistent with the Comprehensive Plan designation of the Property. The proposed C-3-C Zone District is specifically identified as a corresponding zone district to the High-Density Commercial designation in the Future Land Use Map. The proposed development will be built to a maximum density of approximately 7.44 FAR, which is consistent with the amount of density permitted in a high-density commercial zone. The building will be constructed to a maximum height of 110 feet, which is 20 feet lower than the maximum height for a PUD in the C-3-C Zone District.

79. The District of Columbia Comprehensive Plan Generalized Policy Map designates the Property as Multi-Neighborhood Center. Multi-Neighborhood Centers contain many of the same activities as neighborhood centers but in greater depth and variety. Their service area is typically one to three miles. These centers are generally found at major intersections and along key transit routes. These centers might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include office space for small businesses, although their primary function remains retail trade. Mixed-use in fill development at these centers should be encouraged to provide new retail and service uses, and additional housing and job opportunities. Transit improvements to these centers are also desirable.

80. The Commission finds that the Application is consistent with this designation. The Applicant proposes to redevelop the currently underutilized site through construction of a boutique hotel with space dedicated to the arts as well as restaurant and retail space. The project is anticipated to create approximately 75-110 new jobs. The proposed project includes significant enhancements to both the New York Avenue and the rear alley streetscapes that will enliven these areas and enhance the pedestrian connections between New York Avenue and the rest of Union Market to the south through the construction of street side restaurant and retail. In conjunction with the Baywood Hotel to the east, the project will continue to improve this block of New York Avenue and bring additional hotel patrons as well as artists and makers to the area, enhancing the entire Union Market area.

Flexibility Requested

81. The Applicant requests flexibility from the requirements of the Zoning Regulations as follows:

82. Rear Penthouse Setback. The penthouse, as revised, satisfies the front and side-yard setback requirements. However, the Applicant still requests flexibility from the penthouse rear setback requirement that all penthouses be set back from the rear building wall of the roof upon which it is located a distance equal to the height of the penthouse. (11 DCMR § 411.18(b).) The Applicant requests flexibility from this requirement in order to accommodate the mechanical equipment in a single penthouse and to minimize the bulk of the building below so that the project is in scale with the neighboring hotel building and the surrounding area. The penthouse is set back sufficiently to provide at least a one-to-one setback from the public alley. However, only a two-foot, six-inch setback from the floor below is provided on the south (rear) side. (Ex. 22, p. 7; 188, 188A1-188A2.) For these reasons, the Commission finds that the requested flexibility from the rear setback requirements will not adversely impact the light and air of adjacent buildings to the rear. Further, the Commission commends the Applicant for designing the penthouse to minimize its visibility from New York Avenue. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

83. Parking. The Applicant requests flexibility from the off-street parking requirements of § 2101.1. A minimum of 43 parking spaces is provided whereas a total of 59 spaces is required, based on the number of rooms and the meeting space for the Project. (Ex. 22, p. 10; 120A4, p. 1.) The Applicant is working with the adjacent Baywood Hotel to share the shuttle to and from the nearby NoMa/New York Avenue/Gallaudet Metrorail Station that is a requirement of Baywood's PUD approval. (Ex. 22, p. 10.) The Applicant also proposes transportation demand management ("TDM") measures and has agreed to the additional TDM measures requested by DDOT. (Ex. 82, p. 6; 25, 120A4.) The Commission also acknowledges that the Applicant initially proposed 47 parking spaces, but then reduced that number to 43 parking spaces so it could accommodate a music/recording studio room in the garage at the request of certain individuals who testified regarding the Application during the public hearing. (Ex. 188, 188A1.) The Commission credits the statements by Applicant's traffic consultant that under the District's new zoning regulations (Zoning Regulations of 2016) that will become effective in September 2016, the required number of parking spaces for this project would decrease to 28 spaces. In light of the fact that most hotel users do not have their own vehicles and the Applicant's proposed TDM measures and agreement to construct off-site sidewalk connections, the Commission believes the requested flexibility will not have any adverse impacts.

84. Partial Rear Yard. Applicant requests flexibility from the rear yard requirements of §§ 774.1 and 774.9(a) for a portion of the building. The Zoning Regulations require a

rear yard of 18 feet, nine inches measured from the centerline of the rear alley starting at 20 feet above grade. For 36 linear feet, the project provides a compliant rear yard. However, for approximately 64 linear feet, the provided rear yard is 13 feet, six inches. Accordingly, for the 64-foot portion of the rear, the Applicant requires flexibility of five feet, three inches. The total rear yard required would have an area of 1,225 square feet. However, the Project will provide more than twice the required open area along the rear alley. Specifically, the west portion of the rear façade is set back substantially to allow for a 1,562-square-foot compliant court, and the east portion of the rear façade is open to allow vehicular access to the site from the rear alley. Combined, these two areas provide approximately 2,660 square feet of open area along the rear property line. (Ex. 26, pp. 1-2; 188A2.) The Commission has reviewed the "Alley Way Perspective" prepared and filed by the Applicant and finds that the requested flexibility will not have any adverse impacts on the surrounding buildings. (Ex. 188A2.) The Commission finds that because the requested flexibility of five feet, three inches is only requested for 64 linear feet of the rear property line, and the two conforming courts to the east and west provide in excess of the required rear open space, this flexibility is warranted.

85. Additional Areas of Flexibility. The Applicant has made every effort to provide a level of detail in the drawings that conveys the significance and appropriateness of the Project's design for this location. Nonetheless, some flexibility is necessary that cannot be anticipated at this time. Thus, the Applicant also requests flexibility in the following areas:

a. To be able to provide a range in the number of hotel units up to 178;

b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided the variations do not change the exterior configuration of the building;

c. To vary the number, location, and arrangement of parking spaces for the project, provided that the total parking is not reduced below the minimum level required by this Order;

d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;

e. To vary the specific programming on the 10th floor, specifically, to have the option to convert up to 15 rooms on this floor to approximately 5,256 square feet of ballroom/function space. This would reduce the number of guestrooms from 178; and (Ex. 22, pp. 8, 10.)

f. If deemed necessary, to employ a different curator for the arts component of the Project upon expiration of Cultural DC's, or the alternative arts programming and management organization's, five-year contract.

Project Benefits and Amenities

86. Urban Design, Architecture and Open Space (11 DCMR § 2403.9(a), (b), (i), and (h)). The project will revitalize a light industrial area on property that is recognized as a prominent gateway site, but currently is underutilized because the existing structure is a low-scale, outdated, commercial warehouse. The building features exemplary architecture design and high-quality materials that will enhance and celebrate the industrial characteristics of the existing structure and the surrounding Union Market District:

a. Innovative Design. The project includes high quality and innovative design;

b. Hearing-Impaired Design. The project will incorporate hearing-impaired design considerations throughout the building. This includes the interior and exterior spaces to maximize the interrelationship between the senses by including clear sightlines, adjusted window shades, lighting, and seating to minimize eye strain. Other aspects of this design include visual alarm and notification devices and telephones with TTY compatibility, as well as increased uses of signage and wayfinding to assist hearing-impaired individuals in circulating throughout the hotel;

c. Sustainable Design. The Applicant will design and construct the project to LEED-Silver. As designed, the project will be similar to other recent hotel projects, and the Applicant proposes green building initiatives. In particular, the Project proposes a green roof on the penthouse that will be planted with sedum. In addition, the Applicant anticipates that portions of the roof and the other terraces could be developed as urban gardens that could supply fruits and vegetables to the hotel's restaurants and kitchens; and

d. Adaptive Reuse. The project will adaptively reuse a portion of the Property's original warehouse façade.

87. Transportation Benefits (11 DCMR § 2403.9(a) and (c)). The Applicant incorporated a number of elements designed to promote effective and safe vehicular and pedestrian access to the Property, convenient connections to public transit, and onsite amenities such as bicycle parking and sufficient loading. At the request of DDOT, the Applicant will make street improvements to the surrounding pedestrian network and proposes to upgrade the New York Avenue and rear alley streetscapes as referenced below:

i. Street-engaging Retail. The project will include a restaurant on New York Avenue with an outdoor café and rear alley studio/retail;

ii. New York Avenue Improvements. The project will enlarge the existing tree pits to better protect the existing trees along the street, and will also maintain a six-foot-wide sidewalk delineated by special paving and cultivate an approximately seven-foot, two-inch foundational planting area; and

iii. Alley Improvements. The project will activate the alley similar to Cady's Alley or Blagden Alley by installing special paving near the rear property line and cobblestone paving across the width of the alley. The alley façade could also include artistic commissions, such as a stairway mural to the second-floor sculpture garden. The Applicant will also agree to maintain the alley on an ongoing basis.

88. Employment Benefits (11 DCMR § 2403.9(j)). The Applicant will submit to the Department of Consumer and Regulatory Affairs ("DCRA") a First Source Employment Agreement executed by the Applicant, consistent with the First Source Employment Agreement Act of 1984 as amended and the Apprenticeship Requirements Amendment Act of 2004, and in substantially the same form as the First Source Employment Agreement. (Ex. 22D.)

89. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole – the Hotel Arts Program - (11 DCMR § 2403.9 (i) and (j)). For a period of 20 years following issuance of the Certificate of Occupancy, the Applicant commits to providing an arts program ("Arts Program") that includes below-market art studio space, exhibition space, classroom, classes, and lectures. Details of the Arts Program benefits are outlined extensively and summarized in the record. (Ex. 237B.) The Arts Program includes the following components:

a. Area of the Project devoted to the arts and the Arts Program. Approximately 19,000 square feet of the building will be devoted to the arts and the Arts Program. This includes approximately 4,300 square feet on the ground and first floors devoted to art studio, exhibit, and classroom space, approximately 14,700 square feet of exhibition space located throughout the hotel, in second and 11th floor outside terraces, in the restaurants, along the hallways, and in the proposed 10th floor ballroom space, and an approximately 740-square-foot music room in the first level of the garage. In addition, art will be located and exhibited in guest rooms, and there are more than 30 locations for potential artwork commissions throughout the hotel. These areas range from the alley frontage staircase to sculptural bicycle racks;

b. Curator. CulturalDC, or a similar arts-programming and management organization, has agreed to partnering with the Applicant to design the program

and to manage it for the five years provided under its contract, with the option to continue thereafter;

c. Design of studio and exhibit space. The proposed arts studio and exhibit space will be reliable, secure, and well-designed. These studios will be fully heated and air conditioned, designed with modern AV systems and arts capabilities. The studios will be accessible 24 hours a day and have been redesigned to provide additional privacy to the artists. All exhibit, programming, and classroom spaces will be ADA-accessible and designed to incorporate hearing-impaired design;

d. Public access to the arts program. The arts program will be open to the surrounding public, hotel guests, and/or restaurant/function patrons. The residents in the surrounding Ward 5 area, as well as across the District, will be invited to attend exhibitions, take classes, become members and generally participate in the hotel's artistic community;

e. Free and Reduced Program Memberships. Memberships: 40% of memberships to the hotel's arts programming will be offered for free or at a reduced price to Ward 5 residents. The memberships will allow access to programming and classes offered at the hotel:

i. There will be a total of 300 memberships annually;

ii. Twenty percent of the memberships (60 memberships) will be free and will be distributed to community partners and residents by members of ANC 5D at its discretion;

iii. Twenty percent of the memberships (60 memberships) will be sold at a reduced price to residents of Ward 5 and community partners, at a 40% discount ($60 per annual membership);

iv. The remaining 60% will be sold at the full price membership cost of $100 per year; and

f. Below-Market Studio Space:

i. The project will include approximately 2,600 square feet of artist studio space (as many as seven studios) on the second floor, to be rented at $20 per square foot This rental rate was shown to be at least a 60% reduction from the 2016 market rate for renting this space as hotel rooms:

A. Studios are intended to be shared by up to three artists, with a per-artist square foot rental rate of $6.67; and

B. The studios can accommodate approximately 24 artists;

ii. The project will also include approximately 800 square feet of artist studio/retail space (approximately four studios) along the rear alley to be rented at $40 per square foot, which is a 20% reduction from the 2016 market rate for renting retail space in the Union Market area:

A. These studios will be directly located off the rear alley, which will be improved by the Applicant and is anticipated to be a highly trafficked pedestrian corridor between Union Market and the project and adjacent Baywood Hotel;

B. These studios can also be shared, reducing the rental rate to $13.33 per artist per square foot; and

C. These studios could accommodate 12 artists, who will be selected by the same panel;

iii. Artists who lease studio space in the hotel will be able to utilize the second floor's common gallery/seating area as an extension of their studio spaces, as well as enjoy the other aspects of the hotel's arts program, including a dedicated program administrator who can assist with scheduling of exhibitions and grant applications, commission-free art sales, classroom space, and visibility by the building's hotel and restaurant patrons. Artists will be required to agree to and comply with the terms of the program; and

iv. Artists will apply to lease space in the studios. However, currently the Applicant and CulturalDC have created a selection process that offers priority to current 411 New York Avenue artists who wish to apply to rent studio space in the project. Also, if requested, a current 411 artist representative can be appointed to the review panel for studio selection.

Compliance with PUD Standards

90. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." (11 DCMR § 2403.8.) The Commission finds that the development incentives for the height, density, flexibility, and related rezoning to C-3-C are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant's statement and the OP report.

91. The Commission credits the testimony of the Applicant and its experts in architecture, landscape architecture, transportation planning and land use, and planning; its witnesses

from CulturalDC; and OP, DDOT, and ANC 5D, and finds that the arts program, superior design, site planning, streetscape, and all of the items detailed above constitute significant and sufficient project amenities and public benefits. The Commission commends the Applicant for working with the current tenants of the building and for its extensive outreach with members of the community.

92. The Commission finds that the character, scale, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural expert and transportation engineer that the PUD represents an efficient and economical redevelopment.

Consistency with the Comprehensive Plan

93. The project is consistent with the following policies of the Upper Northeast Area Element of the Comprehensive Plan (10A DCMR Ch. 24):

a. Policy UNE-1.1.8: Untapped Economic Development Potential (10A DCMR § 2408.9). The project taps the potential of the New York Avenue corridor, enhancing existing businesses and promoting the vitality and economic well-being of the Upper Northeast community;

b. Policy UNE-1.2.4: Linking Residents to Jobs (10A DCMR § 2409.4). The project improves linkages between residents and jobs within the Upper Northeast by creating at least 90 jobs of varying skill levels, from custodial and cleaning staff to clerical, restaurant, and bar staff, and all levels of managerial positions. Prior to the issuance of the first certificate of occupancy, the Applicant will enter into a First Source Employment Agreement with DOES. The project will also offer internships to students interested in the hospitality industry or art;

c. Policy UNE-1.2.5: Increasing Economic Opportunity (10A DCMR § 2409.5). The project creates new opportunities for small, local and minority businesses within the Planning Area, and additional community equity investment opportunities;

d. Policy UNE-2.1.4: Northeast Gateway Urban Design Improvements (10A DCMR § 2411.8). The project will improve the image and appearance of the Northeast Gateway area by creating landscaped gateways into the community. The project exhibits all of the characteristics of exemplary urban design and architecture and has been carefully designed to be visually stimulating and suitable for an entry way into the city. The design is inspired by the surrounding industrial neighborhood, filled with warehouses and art studios. It also complements recently approved projects south of the Property, while providing something the other lodgings in the vicinity lack — boutique style and public gathering space.

The project uniquely complements and brings something new to this rapidly developing corridor;

e. Policy UNE-2.3.1: New York Avenue Corridor (10A DCMR § 2413.5). The project will improve the appearance of New York Avenue as a gateway to the District of Columbia. The Project will also improve traffic flow and enhance the road's operations as a multi-modal corridor that meets both regional and local needs. The project will include a detailed TDM Plan, as detailed above; and (Ex. 22, p. 12.)

f. Policy UNE-2.3.3: Infill Development (10A DCMR § 2413.7): Support infill development and redevelopment on underutilized commercial sites along New York Avenue. Particularly encourage large-format destination retail development that would provide better access to goods and services for residents, and sales tax dollars for the District.

94. The project is consistent with the following policies of the Urban Design Element of the Comprehensive Plan (10A DCMR § Ch. 9):

a. Policy UD-1.4.1: Avenues/Boulevards and Urban Form (10A DCMR § 906.4). Use Washington's major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city;

b. Policy UD-2.2.5: Creating Attractive Facades (10A DCMR § 910.12). The project will create visual interest through a well-designed building and attractive signage and lighting. The Applicant has elected to retain the historic façade of the building and to maintain the industrial feeling of the New York Avenue corridor. The design includes an exterior clad in materials that are similar to the existing building, further expanding the industrial aesthetic. Dark-colored curtain walls systems, flat metal panels, copper cladding, ceramic tiles similar to masonry, glass rails, and corrugated metal are used in various combinations to highlight features of the design;

c. Policy UD-2.2.5: Creating Attractive Facades (10A DCMR § 910.12). Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms or long blank walls which detract from the human quality of the street;

d. Policy UD-2.2.13: Urban Design Priorities (10A DCMR § 910.24). The project will further the District's goal of focusing urban design assistance efforts on neighborhoods where original design character has been damaged by, e.g.,

disinvestment. Specifically, the project will revitalize one of the city's former industrial spaces;

e. Policy UD-3.1.7: Improving the Street Environment (10A DCMR § 913.14). The project will create an attractive and interesting commercial streetscape by promoting desirable street activities. The site's vehicular access has been carefully designed to minimize the potential for pedestrian and vehicular conflicts, and the pedestrian experience will be enhanced with new and improved alley lighting, sidewalks, and a well-maintained public space.

95. The project is consistent with the following policies of the Land Use Element of the Comprehensive Plan (10A DCMR Ch. 3):

a. Policy LU-1.3: Transit-Oriented and Corridor Development (10A DCMR § 306.9). To avoid adverse effects on low- and moderate-density neighborhoods, most transit-oriented development should be accommodated on commercially zoned land. Possible rezoning of such land in a manner that is consistent with the Future Land Use Map and related corridor plans should be considered;

b. Policy LU-2.1.4: Rehabilitation Before Demolition (10A DCMR § 309.9). In redeveloping the Property's underutilized older building, the project furthers the District's preference for rehabilitation and adaptive reuse rather than demolition. The project will retain the original industrial façade of the existing building and incorporate it into a visually stimulating development suitable for a gateway to the city;

c. Policy LU-2.2.4: Neighborhood Beautification (10A DCMR § 310.5). The project will improve the visual quality of the New York Avenue corridor with exceptional landscaping, façade improvement, and public space improvement, including new and improved alley lighting and sidewalks;

d. Policy LU-3.1.4: Rezoning of Industrial Areas (10A DCMR § 314.10). "Allow the rezoning of industrial land for non-industrial purposes only when the land can no longer viably support industrial or PDR activities or is located such that industry cannot co-exist adequately with adjacent existing uses. Examples include land in the immediate vicinity of Metrorail stations, sites within historic districts, and small sites in the midst of stable residential neighborhoods. In the event such rezoning results in the displacement of active uses, assist these uses in relocating to designated PDR uses."

The proposed rezoning is not inconsistent with this policy when considered together with the following: the project is fully consistent with the Future Land Use Map designation of the Property, which shows a combination of PDR, commercial, and residential uses as appropriate for the Property. This combination could only be achieved through a rezoning of the Site to a new zone

that permits residential uses, which are not permitted under the current zoning. The proposed PUD-related rezoning does not in fact effectuate a change to the permanent zoning of the property, which will remain PDR (as CM zones are now called). Further, because this is a PUD-related rezoning, the project must provide the arts production and creative uses required by the PUD and such uses are consistent with PDR zoning. The property immediately to the east is developed with a hotel. Finally, the rezoning will not result in the displacement of active industrial or PDR uses. Although the displacement guidance refers to the displacement of "active uses," it is only active industrial or PDR uses, which are permitted nowhere else, that would need assistance in "in relocating to designated PDR uses." The current arts related uses on the site are not industrial uses but are also permitted in mixed-use zones, so it is not necessary to relocate them to a PDR zone. Nevertheless, through the aforementioned settlement agreement the Applicant is voluntarily providing relocation assistance; and

e. Policy LU-3.1.2: Redevelopment of Obsolete Industrial Uses (10A DCMR § 314.8). Encourage the redevelopment of outmoded and non-productive industrial sites, such as vacant warehouses and open storage yards, with higher value production, distribution, and repair uses and other activities which support the core sectors of the District economy (federal government, hospitality, higher education, etc.).

96. The project is consistent with the following policies of the Economic Element of the Comprehensive Plan: (10A DCMR Ch. 7.)

a. Policy ED-1.1.1: Core Industries (10A DCMR § 703.9). Continue to support and grow the District's core industries, particularly the federal government, professional and technical services, membership associations, education, hospitality, health care, and administrative support services;

b. Policy ED-2.3.1: Growing the Hospitality Industry (10A DCMR § 709.5). The project will contribute to the development of a robust tourism and convention industry, underpinned by a broad base of arts, entertainment, restaurant, lodging, cultural, and government amenities. The project's unique mix of hotel and artistic uses will further this goal;

c. Policy ED-2.3.4: Lodging and Accommodation (10A DCMR § 709.8). The project will contribute to the development of a diverse range of hotel types by creating something the other lodgings in the vicinity lack — boutique style and public gathering space, including the galleries and restaurants;

d. Policy ED-2.3.9: Hospitality Workforce Development (10A DCMR § 709.13). The project will build the District's hospitality sector and will generate entry level jobs and opportunities for upward mobility for District residents;

e. Policy ED-3.1.1 Neighborhood Commercial Vitality (10A DCMR § 713.5). Promote the vitality and diversity of Washington's neighborhood commercial areas by retaining existing businesses, attracting new businesses, and improving the mix of goods and services available to residents;

f. Policy ED-4.2.2: Linking Job Training to Growth Occupations (10A DCMR § 717.10). The Project will further the goal of targeting job training, placement, and vocational programs towards the hospitality sector, specified as a core and growth sector in this provision of Comprehensive Plan; and

g. Policy ED-4.2.3: Focus on Economically Disadvantaged Populations (10A DCMR § 717.11). The Project will further the goal of focusing workforce development efforts on economically disadvantaged communities by bringing job opportunities to the underserved adjacent neighborhoods of Ivy City, Trinidad, and the Atlas District.

97. The project is consistent with and furthers the goals of Arts and Culture Element of the Citywide Element of the Comprehensive Plan (10A DCMR § 14). On April 8, 2011, The Comprehensive Plan Amendment Act of 2010 (DC Law 18-0361) became effective. In this Law, the District Council made specific recommendations for the policies in the Arts and Cultural element that this Project specifically addresses:

a. Policy AC-1: Creating and Enhancing Arts and Cultural Facilities (10A DCMR **§** 402.1)**.** The ability of arts organizations and artists to thrive in our city is dependent on having suitable production, performance, and exhibition space. The required facilities include studios, rehearsal halls, theaters and concert halls, dance rehearsal and performance spaces, exhibition spaces and galleries, multipurpose centers, classrooms, administrative offices, and art storage facilities, among others. Many of these facilities are completely absent in large parts of the city, especially in East of the River neighborhoods. Where they do exist, they may be threatened by rising rents and redevelopment pressure;

b. Policy AC-1.1: Expanding Neighborhood Arts and Cultural Facilities (10A DCMR § 1403.1). The city faces a persistent need for the retention and further development of affordable neighborhood arts facilities. A directed program of facility development, maintenance, and expansion is needed to foster a more stable arts community;

c. Policy AC-1.1.2: Development of New Cultural Facilities (10A DCMR § 1403.3). Develop new neighborhood cultural facilities across the District, providing affordable space for grass roots and community arts organizations;

d. Policy AC-1.1.3: Distribution of Facilities (10A DCMR § 1403.4). Promote improved geographic distribution of arts and cultural facilities, including

development of arts facilities and venues east of the Anacostia River and in other parts of the city where they are in short supply today;

e. Policy AC-1.1.6: Performance and Events in Non-Traditional Settings (10A DCMR § 1403.7). Encourage the provision of spaces for performances and art events in neighborhood parks, community centers, schools, transit stations, residential developments and public areas in private development. This can help reach new audiences and increase access to the arts for people in all parts of the city;

f. Policy AC-3.2.1: Promoting Cultural Amenities (10A DCMR § 1410.4). Promote the development of cultural amenities "beyond the Mall" in an effort to more fully capitalize on the economic benefits of tourism for District residents, businesses, and neighborhoods;

g. Policy AC-4.2.1: Private Sector Partnerships (10A DCMR § 1413.4). Develop partnerships with the private sector to encourage monetary and non-monetary support for the arts, as well as sponsorships of arts organizations and events; and

h. Policy AC-4.4: Increasing Arts Awareness and Education (10A DCMR § 1415). The arts play a crucial role in improving students' ability to learn and can have a significant effect on a child's overall success in school. Experiencing art can be especially beneficial for students from economically disadvantaged neighborhoods and can provide intellectual, personal, and social development benefits. The need for arts education is not confined to school children — art is critical at all levels of human development. Ongoing access to the arts—through classes, museum programs, tours, discussions, and other means—can enrich one's quality of life.

Consistency with the Florida Avenue Market Study Small Area Plan

98. The Application is consistent with the Florida Avenue Market Study Small Area Plan that was prepared by OP through extensive outreach and a collaborative process with a wide range of stakeholders and adopted by the Council in 2009:

a. The Conceptual Plan portion specifically recommends the Property for "Office/ Hotel" use in Figure c. 20;

b. Zoning and Intensity Plan (Figure 6.01) designates the Property as "High-Density," which corresponds to the C-3-C zone, with 90 feet in height and an FAR of 6.5 as a matter of right; or 130' in height and an 8.0 FAR in a PUD scenario; (p. 57.)

c. The Plan notes: "The high density sub-area encourages the development of larger scale projects adjacent to the rail line and along New York Avenue, which is

considered one of the "gateways" to the city. The width and traffic volumes of New York Avenue support this level of building height and density. It is also consistent with the density approved for the Washington Gateway Project PUD. High density development at these locations is in accordance with the goals of the Northeast Gateway Revitalization Strategy and the New York Avenue Corridor studies"; (p. 56.)

d. The Plan states, "Provide opportunities for additional density and associated building height, especially in areas designated as "High-Density" or "Medium-High Density"; and (p. 55.)

e. The Plan states, "Public Realm: Create a pedestrian-friendly environment with clear pathways throughout the market…Improve sidewalk conditions…encourage active ground-floor uses (such as restaurants and retail) along expected pedestrian routes to increase visual interest and safety…." (p. 59.)

Consistency with the Ward 5 Works Ward 5 Industrial Land Transformation Study

99. The Property is located within the 1,030-acre "Ward 5 Works Ward 5 Industrial Land Transformation Study." The Ward 5 Works study, was adopted by the Council in 2014, and provides specific recommendations that are consistent with the Application:

a. Action 2.3: Enhance the New York Avenue Gateway. The project will contribute to the goal of making the New York Avenue corridor a gateway to the District, with hotel and commercial uses along the New York Avenue frontage and an eclectic mix of artistic and maker uses; (p. 92.)

b. Action 7.3: Enhance New York Avenue. The project will contribute to the broader goal of investing in streetscape improvements and public art along New York Avenue, making the area more pedestrian-friendly and sustainable; (p. 99.)

c. Action 9.5: Provide Space for Arts Uses and Makers. The project will rehabilitate the existing building for arts uses and makers with rent-subsidized space that will be affordable for artists and makers, as called for in this initiative; p. 109.)

d. Action 12.1: Invest in New Community Amenities. The project will improve the public space and streetscape, as well as providing two new restaurants, in furtherance of this initiative, which will improve the quality of life in the area and support local businesses and residents; and (p. 115.)

e. Attract Additional Hotels to Serve Overflow from Downtown and Enhance Density on the Corridor. The project will directly advance this goal by creating a unique boutique hotel that contributes to the other developments in the surrounding area. (p. 118.)

Consistency with the Future Land Use Map

100. The Comprehensive Plan's Future Land Use Map designates the Property as Mixed-Use/High-Density Commercial/High-Density Residential/Production, Distribution, and Repair. The Property is within an area with properties to the north designated for Production, Distribution, and Repair, and properties to the east, south, and west designated for a mix of uses similar to the Property. The Property's designation as a mixture of uses allows for a development that relates to the mixed uses surrounding the Property. The Comprehensive Plan designates High-Density Commercial uses to correspond to the C-3-C Zone District, among others. (10A DCMR § 225.11.) Thus, a PUD-related map amendment to zone the Property C-3-C would not be inconsistent with the Future Land Use Map's designation for the Property.

Consistency with the Generalized Policy Map

101. On the Generalized Policy Map, the Property is located within an area designated as Multi-Neighborhood Center. The guidance provided under the Comprehensive Plan for such areas is as follows:

> Multi-neighborhood centers contain many of the same activities as neighborhood centers but in greater depth and variety. Their service area is typically one to three miles. These centers are generally found at major intersections and along key transit routes. These centers might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include office space for small businesses, although their primary function remains retail trade. Mixed-use in fill development at these centers should be encouraged to provide new retail and service uses, and additional housing and job opportunities. Transit improvements to these centers are also desirable.

(10A DCMR § 223.17-18.) The project will include a boutique hotel, restaurants and artist and maker uses and retailers. Further, it will create many job opportunities at all levels of employment, from internships up to managerial positions, which is part of the guiding philosophy for Multi-Neighborhood Centers. (*Id.* § 223.18.) Accordingly, the Project is not inconsistent with the designation as a Multi-Neighborhood Center.

Agency and Government Reports and Correspondence

Office of Planning Reports and Testimony

102. In its setdown report, OP supported the redevelopment of the Property, finding that the zoning and PUD would not be inconsistent with the Comprehensive Plan and Florida Avenue Market Study Small Area Plan and recommended that the Application be set

down for a public hearing. (Ex. 11.) OP requested that the Applicant address the following issues prior to the hearing:

a. The current status of the alley closing that would render the PUD site 15,000 square feet as required by 11 DCMR § 2401.1(c);

b. More information regarding whether the Project meets the rear yard setback requirement for the part of the building above 20 feet, measured from the centerline of the alley;

c. A detailed roof structure plan with dimensions to enable evaluation of the necessary roof structure relief;

d. More information regarding how the studios, gallery, and classroom spaces will be used in terms of management by CulturalDC, term of use, leasing, affordability/rates, hours of operation, types of artists/tenants, parking and general intensity of uses, as well as how artist uses and spaces interface with hotel guests;

e. Information regarding hotel employee shifts and parking during hours that Metro is not operational;

f. Additional information regarding the public benefits and amenities, including the number of accessible hotel rooms designed for the hearing-impaired community, how other design guidelines for the hearing impaired have been incorporated into the design, the subsidization of the art spaces to ensure affordability, and the art and culinary internship programs proposed;

g. Work with DDOT with regard to appropriate clear sidewalk widths along New York Avenue; and

h. Provide improvement to the facades at east and west.

103. In its hearing report dated January 22, 2016, OP recommended approval of the Application and requested additional information from the Applicant described below. (Ex. 28.) In this report, OP included a chart to detail how the Applicant had responded to OP's prior requests for information. OP indicated that the proposed project would not be inconsistent with the Comprehensive Plan, the Florida Avenue Market Study Small Area Plan, and the Ward 5 Works: Ward 5 Industrial Land Transformation Study. OP also indicated that it supports the Applicant's requested flexibility, and that the Application includes substantial public benefits and amenities, and that OP is supportive of the proffer of the arts benefits package. OP also provided comments as follows:

a. OP requested additional information regarding the Arts Program, specifically:

i. Evidence of CulturalDC's concurrence as an initial partner for a five-year term;

ii. Confirmation that the subsidized artist studio rents are on an annual basis and that the subsidy be reduced for a portion of the studios so that the rents correlate with the cited $16 per square feet for studio space;

iii. Confirmation that the studio subsidy will be provided for the 20-year life of the Arts Benefit, with consideration that rental rates will be adjusted for inflation; and

iv. Confirmation whether the general, non-member public can access the hotel, view the art located in the gallery and transitory spaces, and whether the public may interact with artists by viewing their work within the studio;

b. OP requested that the Applicant confirm that the proposed alley closing had been submitted and was under review;

c. OP requested that the Applicant agree to not extend the proposed sign beyond the roof line in the future and to maintain the signs as backlit;

d. OP requested more information regarding whether the Project meets the rear yard setback requirement for the part of the building above 20 feet; and

e. OP requested that the Applicant confirm that the guardrails at the sketching terrace and other areas of the roof will be set back at a height-to-setback ratio of one-to-one.

104. At the April 21, 2016 public hearing on the Application, OP stated that it continued to support the project in light of the Applicant's supplemental submissions. (April 25 Tr. 17:6-18:14.)

Department of Transportation Reports and Testimony

105. In a report dated January 21, 2016, DDOT stated that the Applicant had filed its CTR for the project later than is typical for DDOT review. DDOT further stated that it was coordinating with the Applicant for additional information, particularly regarding vehicular circulation internal to the site. (Ex. 25.)

106. On January 29, 2016, DDOT filed a Supplemental Report. (Ex. 62.) In the report, DDOT stated that it has no objection to the Project, with the following conditions:

a. That the Applicant commit to the following conditions associated with the alley closing:

i. Provide a full public access easement for the closed section of the alley;

ii. Assume full maintenance responsibilities for the entire alley from 4th Street to the Baywood Hotel; and

iii. Return the closed section of the alley to DDOT's right-of-way inventory when the subject building ceases to exist;

b. Make improvements to address deficient pedestrian facilities adjacent to the alley, including:

i. Install a DDOT-standard sidewalk south of the alley to connect to the existing sidewalk on the north side of Penn Street. The existing gap in the sidewalk measures approximately 80 feet from the edge of the alley to the edge of the curb cut to the southeast; and

ii. Install a DDOT-standard ramp and crosswalk adjacent to the alley across Penn Street;

c. Provide the Capital Bikeshare element of the TDM plan in perpetuity; and

d. Reinforce the circulation plan for freight, valet, taxi, and motorcoach through the public space permitting process by designing the signage plan, curb cut, and entry drive such that unpermitted movements are prevented or discouraged.

107. At the April 21, 2016 public hearing, DDOT indicated support for the project and that the Applicant had agreed to the transportation impact mitigation measures DDOT had requested. (April 21 Tr. 18:16-21:1.)

Advisory Neighborhood Commission 5D

108. ANC 5D submitted a resolution dated December 21, 2015, in support of the project. (Ex. 19.) The ANC stated that, at a duly noticed public meeting on November 10, 2015, the ANC, with a quorum present, voted 7-0 to support of the project.

Contested Issues

109. The 411 Artist Union, DC for Reasonable Development, and various individuals expressed concerns about the relocation of the artists currently working at the Property, as well as generalized concerns about the challenges that artists face in the District of Columbia and the need for more resources to be allocated to support the artist

community. Some of the witnesses testified that they understood that many of the artist tenants of 411 New York would be "displaced" by the Application.

110. The authority of the Commission to review and decide a PUD is found in Chapter 24 of the Zoning Regulations. The Commission's PUD evaluation standards are set forth in § 2403 of the Zoning Regulations. There are two principal findings that must be met.

111. First, pursuant to § 2403.3, the Commission must find that "[t]he impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project." Second, pursuant to § 2403.4, the Commission must find the PUD project is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. No other considerations are relevant to deciding a PUD application.

112. As to the first test established by § 2403.3, the Commission believes the phrase "impact on the surrounding area and the operation of the city services and facilities" refers only to the impact of the PUD project, once it is operating, on the surrounding area and the operation of city services and facilities. The standard does not mean that a PUD must redress larger societal issues, such as the challenges faced by artists. However, in the context of public benefits, a PUD applicant may proffer assistance in this area and indeed this Applicant has done so. The PUD will include the Arts Program described in Finding of Fact No. 89. The Applicant and CulturalDC have established a special selection process for current artist tenants at 411 New York Avenue who wish to apply to rent art studio space in the Project. (Ex. 188B, 308.) In addition, the Applicant has identified several alternate locations for the current artist tenants according to the Settlement Agreement, and any artist tenant who is interested in applying to rent studio space in the Applicant's Arts Program, could apply to do so.

113. As to the second test, established by § 2403.4, as discussed in Findings of Fact Nos. 93 through 101, the Commission found that the project is not inconsistent with the Comprehensive Plan, and in the context of the Plan, discussed the project's impact upon the existing non-industrial uses.

114. As to the issue of displacement, because the Commission's analysis focuses only on the impact of the PUD use once operational, and then only with respect to the surrounding area, the impact of the demolition of existing improvements and the displacement of existing uses is not relevant to the Commission's decision. Almost every PUD involves demolitions and displacement. Adding the impact of such displacement to the PUD evaluation standards would represent a fundamental change to the PUD process that this Commission will not infer from the current PUD evaluation standards.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (*Id.* § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this Application as a consolidated PUD. (*Id.* § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (*Id.* § 2405.7.)

3. The development of this project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building uses and types with more attractive and efficient overall planning and design not achievable under matter-of-right development.

4. The Commission concludes that the project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide.

5. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause significant adverse effect on any nearby properties. The hotel and arts uses for the Project are appropriate for the Property's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.

6. The Commission finds that compliance with all notice provisions and appropriate notice for all hearings, continuances and rescheduled hearings, etc. was provided in this case.

7. The Commission finds that approval of the Application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map.

8. Approval of this PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP in this case and finds that the project is consistent with and fosters numerous policies and elements of the Comprehensive Plan. Specifically, the Commission believes that the project furthers the Upper Northeast Area Element, the Urban Design Element, the Land Use Element, the Economic Element, and the Arts and Culture Element.

9. The Commission believes that the proposed rezoning of the Property from C-M-1 to C-3-C to construct a mixed-use development on the Property is appropriate given the Comprehensive Plan designation for the Property, its location, the superior features of the PUD project, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. The rezoning is consistent with the Property's designation on the Future Land Use Map and Generalized Policy Map, and is also consistent with the Ward 5 Works Plan.

10. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated. This Order contains the transportation mitigation conditions recommended by DDOT in its Supplemental Report.

11. The Commission concludes the project amenities and public benefits of the Application are a reasonable tradeoff for the zoning flexibility. In evaluating the public benefits proffered pursuant to § 2403.10, the Commission concludes that the project is acceptable in all proffered categories and superior in many.

12. The Commission acknowledges the issues and concerns raised by the 411 Artists Union and the various individuals who testified in opposition to the Application, including DC for Reasonable Development, regarding generalized concerns about the challenges that artists face in the District of Columbia and the need for more resources to be allocated to support the artist community, the relocation of the artists currently working at the Property, and that many of the artist tenants of 411 New York would be "displaced" by the Application. The Commission concludes these concerns are not relevant to the standards applicable to the Commission's review of a PUD, except in connection with a specific Comprehensive Plan policy that applies to the rezoning of industrial land. The Commission concludes that the project is not inconsistent with the Comprehensive Plan, taking into account that policy.

Great Weight

13. The Commission is required under § 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)), to give great weight to issues and concerns raised in the affected ANC's written recommendations. Great weight requires the acknowledgement of the ANC as the source of the recommendation and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. (D.C. Official Code § 1-309.10(d)(3)(A) and (B).) In this case, ANC 5D submitted a resolution in support of the project. (Ex. 19.) The Commission carefully considered the ANC's position supporting approval of the Application, and the Commission finds that recommendation persuasive and concurred in

its recommendation of approval. In so doing, the Commission has fulfilled its obligation to afford the ANC's views great weight.

14. The Commission is also required to give great weight to OP's recommendations under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)). The Commission carefully considered the OP's reports and testimony at the Hearings. The Commission found OP's reports and testimony to be complete, and concurs with OP's statement that the consideration of issues regarding environmental impacts, gentrification impacts, real affordability analysis, light and air impacts, noise, air quality, infrastructure (water, gas, electric), etc. are normally reviewed in much more detail at the building permit phase, instead of the PUD application phase. Further, the Commission agrees that OP appropriately requested comment from DDOT, DOEE, DC Water, the Department of Housing and Community Development, and the Commission concurs with OP that it is not "unusual" for DDOT to be the only agency that submits written comments in a PUD application process. Furthermore, the Commission concurs that the requirement of the Comprehensive Plan regarding infrastructure and implementation can appropriately be addressed at the time of building permit. Furthermore, the Commission concurs with OP's finding that the Application is not inconsistent with the Comprehensive Plan, the small area plan known as the Florida Avenue Market Study, and the Ward 5 Works plan, read "holistically" as required, and accordingly approval of the PUD and Zoning Map amendment should be granted.

15. Notice of the public hearing was published in the *D.C. Register* on December 4, 2015, at 62 DCR 15673.

16. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this Application for consolidated review of a planned unit development and related zoning map amendment from the C-M-1 to the C-3-C Zone District for property located at 411 New York Avenue, N.E. (Square 3594, Lot 800 and the 1,000-square-foot portion of the public alley in Square 3594 to be closed).

The approval of this PUD is subject to the following guidelines, conditions, and standards set forth below:

A. Project Development

1. The PUD shall be developed in accordance with the Architectural Plans and Elevations dated February 1, 2016 (Exhibits 82A1-82A16) as modified by the

revised plans submitted as Exhibits 188A1-188A2 (the "Plans") as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the Plans, the project proposes an 11-story hotel with space dedicated to the arts, including exhibition, outdoor sculpture terrace, studio space, and classroom areas. The project proposes approximately 111,672 square feet of gross floor area (approximately 7.44 FAR), and a parking garage containing 43 parking spaces, as shown on the Plans. The Applicant shall incorporate the existing building façade into the Project as shown on the Plans.

3. The Property shall be rezoned from the C-M-1 Zone District to the C-3-C Zone District. Pursuant to 11 DCMR § 32028.9, the change of zoning shall be effective upon the recordation of the covenant discussed in Condition No. D2 below.

4. The Applicant shall have flexibility from the penthouse rear setback (§ 411.18(b)), parking (§ 2101.1), and rear yard requirements (§§ 774.1, 774.9) as shown on the Plans.

5. The Applicant shall have flexibility with the design of the project in the following areas:

   a. To provide a range in the number of hotel units up to 178;

   b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided the variations do not change the exterior configuration of the building;

   c. To vary the number, location, and arrangement of parking spaces for the project, provided that the total parking is not reduced below the minimum level required by this Order;

   d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtain wall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and

   e. To vary the specific programming on the 10th floor, specifically, to have the option to convert up to 15 rooms on this floor to approximately 5,256 square feet of ballroom/function space, reducing the number of guestrooms.

B. Project Benefits and Amenities

1. **Prior to the issuance of a Certificate of Occupancy and for the life of project,** the Applicant shall provide the following hearing-impaired design features: interior and exterior spaces designed to maximize the inter-relationship of the senses by including clear sightlines, adjusted window shades, lighting and seating to minimize eye strain, visual alarm and notification devices, telephones with TTY compatibility, and signage and wayfinding to assist hearing-impaired individuals circulate throughout the hotel.

2. **Prior to the issuance of a Certificate of Occupancy and for the life of the project,** the Applicant shall adaptively reuse a portion of the Property's original warehouse façade as shown on Ex. 188A-1, Sheets PG A01; PG A03.

3. **Prior to the issuance of a building permit,** the Applicant shall register the project with USGBC to commence the LEED certification process. **Within 12 months after the issuance of the Certificate of Occupancy**, the Applicant shall submit a completed certification application to USGBC for review for LEED-Silver certification by the Green Building Certification Institute or similar organization.

4. **Prior to the issuance of a Certificate of Occupancy for the building and for the life of the project,** the Applicant shall reserve no fewer than 2,034 square feet for use by a restaurant on New York Avenue, and shall reserve no fewer than 792 square feet for retail/studio use, as shown on Ex. 22B-2, Sheet PG A07.

5. **Prior to the issuance of the Certificate of Occupancy for the building,** the Applicant will obtain the necessary permits, as necessary, to upgrade the New York Avenue and rear alley streetscapes by enlarging the existing tree pits and maintaining a six-foot-wide sidewalk delineated by special paving and cultivate an approximately seven-foot, two-inch foundational planting area, as shown on Ex. 82A-11, Sheets PG L02 and PG L03, and activate the rear alley with special paving near the rear property line and cobblestone paving across the rear of the alley, as shown in Ex. 82A-12, Sheets PG L06 and PG L07.

6. **Prior to the issuance of the Certificate of Occupancy for the building,** the Applicant will grant a full public access easement for the closed portions of the alley to DDOT.

7. **For the life of the project,** the Applicant will maintain the entire rear alley from 4th Street to the Baywood Hotel.

8. **When the building ceases to exist,** the Applicant will return the closed portion of the alley to DDOT's right-of-way inventory.

9. **Prior to the issuance of the Certificate of Occupancy for the building,** the Applicant shall submit to DCRA evidence that the Applicant executed and submitted a First Source Employment Agreement to DOES, consistent with the First Source Employment Agreement Act of 1984 as amended, and in substantially the same form as the First Source Employment Agreement included in the record at Ex. 22D.

10. **Following the issuance of the Certificate of Occupancy for the building for a period of no less than 20 years,** the Applicant shall provide the following Arts Program:

a. The Applicant shall devote approximately 19,000 square feet to the Arts Program. The location of the arts materials and spaces may be shifted throughout the building during the course of the 20-year period as determined by the Applicant at that time;

b. The Applicant shall enter into an agreement with CulturalDC, or a similar arts programming and management organization, to design the Arts Program and manage it for five years, with the option to continue thereafter;

c. The residents in the surrounding Ward 5 area, as well as across the District, shall be invited to attend exhibitions, take classes, become members and generally participate in the hotel's artistic community in the areas of the hotel that are open to the public, which will be the ground, second, and 11th Floors;

d. The studios and exhibition spaces are ADA accessible, designed with hearing-impaired design, are fully heated and air conditioned and contain necessary AV systems and arts capabilities. The studios will be accessible 24-hours per day;

e. The arts programing on the ground floor, second floor, and 11th floor will be open to the public, hotel guests and/or restaurant/function rooms as designed. Access to arts spaces located on the guest-room floors will be limited to hotel guests for security reasons;

f. Forty percent of the Arts Program's annual memberships will be provided free or for a reduced rate to Ward 5 residents. Twenty percent of the memberships will be free and will be distributed to community partners and residents by members of ANC 5D at its discretion. Another 20% of the memberships will be sold at a 40% reduced price to residents of Ward 5 and community partners. The cost of the annual membership will be determined by the Curator or the Applicant;

g. The approximately 2,600 square feet of second-floor artist studio space (as many as seven studios) will be rented at $20 per square foot. This rental rate will increase annually based on the cost of living increases and inflation, but the price of the second-floor studios will consistently remain at least a 60% reduction from the market rate for renting this space as hotel rooms, as determined by the Applicant. Each studio could be shared up to three artists;

h. The approximately 800 square feet of rear alley artist studio/retail space (approximately four studios) will be rented at $40 per square foot. This rental rate will increase annually based on the cost of living increases and inflation, but the price of the rear alley artist study/retail space will consistently remain at least a 20% reduction from the market rate for retail space in Union Market, as determined by the Applicant. Each studio could be shared up to three artists; and

i. Artists who lease studio space in the hotel will be able to utilize the second floor's common gallery/seating area as an extension of their studio spaces, as well as enjoy the other aspects of the hotel's arts program, including a dedicated program administrator who can assist with scheduling of exhibitions and grant applications, commission-free art sales, classroom space, and visibility by the building's hotel and restaurant patrons.

C. TRANSPORTATION MITIGATION

1. **Prior to the issuance of the Certificate of Occupancy for the building and for the life of the project,** the Applicant shall square off the east curb along New York Avenue to physically prohibit egress and post "no turn" warning signs, as shown in Ex. 82A-15, Sheets PG T02 and PG T03; Ex. 82I.

2. **Prior to the issuance of the Certificate of Occupancy for the building,** the Applicant will make the following street improvements to the surrounding pedestrian network as identified in Ex. 62, Figure 4:

   a. The Applicant will install a DDOT-standard sidewalk south of the alley to connect to the existing sidewalk on the north side of Penn Street. This gap of the distance measures approximately 80 feet from the edge of the alley ROW to the edge of the curb cut to the southeast; and

   b. The Applicant will install a DDOT-standard ramp and crosswalk adjacent to the alley across Penn Street.

3. **Prior to the issuance of the Certificate of Occupancy for the building and for the life of the project,** the Applicant shall implement a circulation and loading management plan that includes the following:

   a. Assign a coordinator to oversee and manage freight, valet, and taxis;

   b. Schedule truck deliveries during off-peak periods to the extent possible;

   c. Select a trash service with vehicles with a 30-foot wheelbase or smaller to navigate trash pickup without back-in maneuvers through public space;

   d. Provide valet parking only;

   e. Actively manage the entry drive to ensure that the circulation plan is followed;

   f. Entry drive should be staffed with the coordinator and at least two assistants; and

   g. Schedule and closely monitor motor coach activity.

4. **Prior to the issuance of the Certificate of Occupancy for the building and for the life of the project,** the Applicant shall provide the following TDM strategies:

   a. Either an agreement with the Baywood Hotel to provide a free shuttle between the site and the NoMa-Gallaudet Metro Station in coordination with Baywood, or plans to employ/rent its own shuttle;

   b. Documentation that the Applicant has purchased 1,500 single day passes and 750 three-day passes for Capital Bikeshare for the first year of operation and documentation that the number of passes will increase to a cap of 3,000 per year should such demand occur. The Applicant commits to this condition "in perpetuity", as it pertains to the life of the Project and the existence of Capital Bikeshare;

   c. Display a real-time transit screen in the lobby;

   d. Documentation of the location of the electric car-charging station; and

   e. All guests, visitors, and employees shall be required to pay for parking. Price all on-site parking at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the Property.

D. MISCELLANEOUS

1. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction must commence within three years of the effective date of this Order.

2. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

4. 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.

On June 13, 2016, upon the motion of commissioner Miller, as seconded by Vice Chairperson Cohen, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On July 25, 2016, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting, by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*, that is on December 23, 2016.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-28
Z.C. Case No. 15-28
Foulger-Pratt Development, LLC
(Consolidated Planned Unit Development and Related Zoning Map Amendment
@ Square 772, Lots 20-23 & 800)
September 12, 2016

Pursuant to proper notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 20, 2016 to consider an application by Foulger-Pratt Development, LLC ("Applicant") for consolidated review and approval of a planned unit development ("PUD") and related Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District for Square 772, Lots 20-23 and 800 ("Application"). The Commission considered the Application pursuant to Chapters 1, 24, and Chapter 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").[1] The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. The Commission approves the Application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The project site consists of Square 772, Lots 20-23 and 800 ("Property") with the addresses of 301-331 N Street, N.E.

2. On October 30, 2015, the Applicant filed an application for consolidated review and approval of a PUD and related Zoning Map Amendment from the C-M-1 Zone District to the C-3-C Zone District. (Exhibit ("Ex.") 1-1H.)

3. On January 29, 2016, the Office of Planning ("OP") filed a report recommending that the Application be set down for a public hearing. (Ex. 11.)

4. During its public meeting on February 8, 2016, the Commission voted to set down the Application for a public hearing. Notice of the public hearing was published in the *D.C. Register* on April 29, 2016 and was mailed to Advisory Neighborhood Commission ("ANC") 6C and to owners of property within 200 feet of the Property. (Ex.15, 16; 2/8/2016 Transcript ["Tr."] at p. 89.)

5. The Application was further updated by pre-hearing submissions that the Applicant filed on March 29, 2016 and May 31, 2016. (Ex. 13-13D6, 21-21C.)

6. The Commission held a public hearing on the Application on June 20, 2016. The Commission accepted Aldo Andreoli as an expert in the field of architecture and Erwin

[1] Chapter 24 and all other provisions of Title 11 DCMR were repealed September 6, 2016. Chapter 24 was replaced by Chapter 3 of Subtitle II-X. However, because this application was setdown for hearing prior to that date, the Commission's approval was based upon the standards set forth in Chapter 24.

Andres as an expert in the field of traffic engineering. (Ex. 21B, 26A.) The Applicant provided testimony from these experts as well as from Adam Davis, who is a representative of the Applicant. (6/20/2016 Tr. at pp. 9-10.)

7. In addition to the Applicant, ANC 6C was automatically a party in this proceeding and submitted a report in support of the Application. (Ex. 27.)

8. Union Market Neighbors ("UMN") submitted a request for party status in opposition and a statement in opposition. (Ex. 22, 30.) At the public hearing, the Commission denied UMN's party status request because they failed to satisfy the criteria for party status, including how UMN would be more significantly, distinctively, or uniquely affected by the proposed project. (6/20/2016 Tr. at pp. 6-8.).

9. At the public hearing, the Commission heard testimony and received reports from OP and the District Department of Transportation ("DDOT") in support of the Application. (Ex. 23, 24.) No one testified in either support of or opposition to the Application. (6/20/2016 Tr. at p. 86.)

10. At the close of the public hearing, the Commission requested that the Applicant respond to some outstanding comments and questions. (6/20/2016 Tr. at pp. 91-92.)

11. The Applicant responded to the Commission's comments and questions in a post-hearing filing that it submitted on July 5, 2016. (Ex. 33-33A.)

12. On July 18, 2016, ANC 6C submitted a written report, the contents of which are described below. (Ex. 35.)

13. On July 19, 2016, the Applicant submitted a response to ANC 6C's report, the contents of which are also described below. (Ex. 36.)

14. The Commission took proposed action to approve the Application at a public meeting on July 25, 2016.

15. On August 1, 2016, the Applicant submitted its list of proffers and proposed conditions. (Ex. 38.)

16. On August 31, 2016, The Applicant submitted its final list of proffers and proposed conditions. (Ex. 39.)

17. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. NCPC did not submit any comments within 30 days after the Commission's referral, and the Commission proceeded to approve the application, as authorized by § 492 of the Home Rule Act.

18. The Commission took final action to approve the Application at a public meeting on September 12, 2016.

THE MERITS OF THE APPLICATION

Overview of the Property

19. The Property contains approximately 69,240 square feet of land area. It is bound by N Street, N.E. and Florida Avenue, N.E. to the north, a public alley to the south, 4th Street, N.E. to the east, and 3rd Street, N.E. to the west. The Property is rectangular in shape. (Ex. 1.)

20. The northwest portion of the Property is improved with a three-story self-storage building. This structure was built in 1931 for National Capital Press. The front of the three-story concrete and brick building faces N Street. The 3rd Street elevation is defined by loading docks at the first floor and generally regular industrial windows and brick infill within the concrete structure of the building. Both elevations are defined by brick piers with some decorative brickwork. The building has five monitors that are unusual within the city's stock of industrial buildings. Additions to the building were constructed in 1947, 1949, and around 1963. The Applicant will file an application with the Historic Preservation Review Board to designate the original building as a landmark. (Ex. 1, 1A.)

21. The eastern portion of the Property is improved with a one story retail building and associated large surface parking lot in front of the building. Four curb cuts serve the Property from N Street, and three curb cuts serve the Property from 4th Street. (Ex 1, 1A.)

22. The surrounding area is mostly a mix of industrial, commercial, and institutional uses. To the north across Florida Avenue is the Florida Avenue Market, which is largely industrial, but multiple mixed-use residential projects are planned and/or approved for the area. Directly north across N Street, a mixed-use residential and retail building is planned. Across 3rd Street to the west is an industrial building, but a mixed-use development is planned for its replacement. To the east across 4th Street is the Two Rivers Public Charter School. To the south across the alley is a parcel used for parking but slated for redevelopment as a mixed-use residential project and another building for the Two Rivers School. (Ex. 1, 1A.)

23. The immediately surrounding blocks contain primarily a mix of industrial and commercial uses, but new developments are planned throughout, particularly in the Florida Avenue Market area, where at least five new projects are planned. To the west across the train tracks are high-rise office buildings, high-rise apartment buildings, a hotel, and the NoMA-Gallaudet Metro station. Further to the east, the neighborhood is primarily residential with two- and three-story townhouses and flats, with Gallaudet University across Florida Avenue. Another large project is planned for the area just west of Gallaudet University near the Florida Avenue Market. Further to the south and southeast of the Property, the neighborhood is primarily residential with two- and three-story townhouses and flats. Further to the southwest, the properties are used primarily for industrial purposes, although the Uline Arena is being redeveloped for commercial use. Further to the south, properties were recently redeveloped for residential buildings. (Ex. 1, 1A.)

24. The Property is zoned C-M-1. Most properties immediately surrounding the Property are zoned C-M-1 or C-M-3, though most of the new projects have been rezoned to C-3-C as parts of PUD applications. Also, most of the NoMA area west of the train tracks is zoned C-3-C. Residential properties further from the Property are zoned primarily R-4. (Ex. 1A, 1B.)

25. The Future Land Use Map ("FLUM") of the Comprehensive Plan designates most of the Property for mixed-use Medium-Density Commercial/Medium-Density Residential/Production, Distribution and Repair use. A smaller portion of the Property is designated for mixed-use Medium-Density Commercial/Medium-Density Residential use on the FLUM. The Generalized Policy Map ("GPM") includes the Property in the Land Use Change Area category. (Ex. 1C1, 1C2).

The Project

26. The Applicant proposes to redevelop the Property as a mixed-use residential and commercial project with underground parking and ground-floor retail ("Project"). The Project will contain two residential components, a hotel, office/retail space, and ground floor retail. The Project will contain a density of approximately 6.67 floor area ratio ("FAR"), or approximately 461,721 gross square feet, and it will have maximum heights of approximately 110 and 120 feet. (Ex. 1, 13D, 21C.)

27. The Project will consist of four buildings even though they will all be integrated as one project. The easternmost building (331 N Street) will be an 11-story residential building with approximately 276 residential units and ground-floor retail. The three-story historic National Capital Press building at the northwest corner of the Property will be retained and rehabilitated to contain ground-floor retail and two floors of office and/or retail above. At the southeast corner of the site, an 11-story hotel with approximately 175 rooms (or residential condominium) will be adjacent to the alley. Finally, a smaller 11-story residential building with approximately 96 residential units and ground-floor retail will front on N Street and will be located between the historic building and the other residential building at 331 N Street. The historic building, the hotel, and the smaller residential building will comprise 301 N Street. (Ex 1, 13D, 21C.)

28. The Project will be comprised of two buildings for zoning purposes, but the entire Project will be integrated as if it were one. The west building (301 N Street) will have a maximum gross floor area of approximately 201,629 square feet (6.09 FAR) and a maximum height of 110 feet. The east building (331 N Street) will have a maximum gross floor area of approximately 260,092 square feet (7.2 FAR) and a maximum height of 120 feet. Combined, the Project will contain approximately 137,787 square feet (1.99 FAR) of commercial use and approximately 323,748 square feet (4.68 FAR) of residential use. The west building (301 N Street) will have a maximum lot occupancy of 83%, and the east building (331 N Street) will have a maximum lot occupancy of 74%. (Ex. 1, 13D, 21C.)

29. The Project will be oriented around two large courts. One court will be in the center of the 301 N building, and a second larger court will be surrounded on the north, east, and

south by the 331 N building. To the west, the second court will be bounded by the 301 N residential building. These courts will be extensively landscaped and will provide areas for passive and active recreation. (Ex. 1, 13D, 21C.)

30. The Project will eliminate the all of the many existing curb cuts on 3rd, 4th, and N Streets, which will reduce automobile-pedestrian conflicts in the neighborhood. All vehicular traffic entering the Project will be directed to the rear alley accessible from 3rd and 4th Streets. Access to the underground parking from the alley will be via a ramp at the rear center of the Property. Loading will also be accessed from the alley at the rear of the Property. (Ex. 1, 13D, 21C.)

31. The underground parking garage will span across the entire Property to serve all of the buildings, and it will contain approximately 240 parking spaces. In addition, the Project will provide ample bike parking. Approximately 230 secure bike parking spaces will be available, with approximately 50% of those in a dedicated bike storage room at grade accessed directly from the alley, and the remainder will be located in the below-grade garage. Additionally, two 30-foot loading berths and one 20-foot delivery space will be located at grade at the center rear of the Project off the alley. These loading facilities will be shared by the entire Project. (Ex. 1, 13D, 21C.)

32. The Project will be designed so as to satisfy the standards for at least LEED-Gold certification.

33. The ground-floor retail will be located primarily at the corners of 3rd and N Streets and 4th and N Streets. In addition, the retail will extend down 3rd and 4th Streets. The upper two stories of the National Capital Press building will offer office space and/or more retail space, depending on the market demand. (Ex. 1).

34. The upper stories of the Project, except for the hotel and the office, will be residential. Both residential buildings will share one lobby at the ground floor entered from N Street. Residential amenities will be located on the ground floor of the 331 N building and the ground floor of the 301 N building and in the penthouse. A pool will be on the roof of the 331 N building. (Ex. 1, 13D.)

35. Open space and green features will be incorporated throughout the Project. In addition to the two at-grade courts, two upper terraces and the roofs (hotel and 331 N) will include landscaped green space and outdoor recreation space. Further, the southeast corner of the Project will include green wall extending from ground to the top story, plus plantings will be incorporated on the south elevation of the 331 N building. Approximately 20,000 square feet of green space will be provided in the Project. (Ex. 1, 13D, 33A.)

36. The Project will include significant public space enhancements on N Street. Subject to approval from the District Department of Transportation ("DDOT"), the Applicant will alter and beautify N Street to make it more pedestrian-friendly and oriented toward recreation and gathering. Changes will include landscaping, outdoor furniture, and installation of a playable art feature. (Ex. 33, 33A.)

Zoning Map Amendment

37. The Property is located in the C-M-1 Zone District. As a matter of right, the maximum height allowed in the C-M-1 Zone District is 40 feet, and the maximum density is 3.0 FAR.

38. The Applicant requested a PUD-related Zoning Map amendment to the C-3-C Zone District to permit the Project to achieve the requested mix of uses, height, and density. The maximum height permitted in the C-3-C Zone District under the PUD guidelines is 130 feet, and the maximum density permitted is 8.0 FAR.

PUD Flexibility Requested

39. The Applicant requested flexibility from the penthouse setback, rear yard, court width and area, and loading requirements in order to accommodate the proposed design of the Project, as detailed in the Applicant's written submission and the OP final report. The penthouse setback flexibility is necessary because of the design considerations for the Project and because the penthouse mostly will not be seen from the public rights-of-way. The rear yard flexibility is necessary and justified because of the reoriented density on the site and the wide alley to the rear. The court flexibility is necessary and justified to accommodate the design of the multiple buildings in the Project and to provide ample open space. The loading flexibility is justified by the fact that the provided berths will accommodate the demand for loading in the Project. (Ex. 1, 13D, 21C.)

40. With respect to the design of the Project, the Applicant requested flexibility to make minor adjustments to the court-facing façades of the residential buildings to accommodate final unit layout. (Ex. 21.)

41. With respect to the uses in the Project, the Applicant requested flexibility for the upper two floors of the National Capital Press building to be either office or retail. The Applicant also requested flexibility to change the hotel building to a residential condominium. (Ex. 1, 21.)

42. With respect to construction of the Project, the Applicant requested flexibility to phase construction of the Project. Phase one would be the rehabilitation of the National Capital Press building, phase two would be the two residential buildings, and phase three would be the hotel building. (Ex. 1.)

Project Amenities and Public Benefits

43. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits:

    a. Exemplary urban design, architecture, and landscaping, including high-quality materials, superior architecture, streetscape improvements, and sustainable features; (Ex. 1, 13D, 21, 33.)

b. Site planning and efficient land utilization, through the redevelopment of an underutilized parcel into a mixed-use development on an underutilized site in a transit-oriented location specifically targeted for such uses; (Ex. 1, 13D, 21, 33.)

c. Historic preservation, through the retention and rehabilitation of the National Capital Press building. This includes an Applicant-filed historic landmark application; (Ex. 1, 13D, 21, 33.)

d. Effective and safe vehicular and pedestrian access and transportation management measures. Specific features include:

i. A transportation demand management ("TDM") plan as set forth in the Applicant's Comprehensive Transportation Review ("CTR"); (Ex. 21A.)

ii. Approximately 230 bicycle parking spaces, and shower and changing facilities as well as a 2,000 square foot dedicated bike storage room at grade accessed directly from the alley; and (Ex. 13D, 21C.)

iii. Reduction in Curb Cuts: Elimination of curb cuts on 3rd, 4th, and N Streets to reduce pedestrian-automobile conflicts; (Ex. 1, 13D, 21C.)

e. Transportation and streetscape infrastructure improvements, including:

i. Improved Alley System: The Applicant will devote a 10-foot-wide strip of the Property along the rear alley to effectively widen the alley; (Ex. 13D, 21C.)

ii. Installation of signs to prohibit trucks servicing the Project from using 4th Street; and (Ex. 13D, 21C.)

iii. Improvements to the N Street streetscape, including a playable art piece; (Ex. 33, 33A.)

(6/20/2016 Tr. at pp. 22, 24, 60.)

f. Housing and affordable housing, through the creation of approximately 372 residential units, including approximately 26,361 square feet of gross floor area set aside for affordable units. The Applicant shall set aside a minimum of eight percent of the floor area of the penthouse habitable space devoted to dwelling units (approximately 461 square feet) for Inclusionary Units ("IZ") reserved for households with incomes not exceeding 50% of the area median income ("AMI"). The Applicant shall set aside a minimum of eight percent of the residential gross floor area as IZ units for the life of the project. Of the affordable units, a minimum of 13,411 square feet shall be reserved for households with incomes not exceeding 50% of the AMI. A minimum of 12,950 square feet shall be reserved for households with incomes not exceeding 80% of the AMI. All of the units reserved for households with incomes not exceeding 50% of the AMI shall be two-bedroom units, except for the IZ floor area resulting from the habitable

penthouse, which may be other unit types. This represents a significant increase in amount of affordable housing over both a matter-of-right project in the underlying C-M-1 Zone District and over the base requirements of the C-3-C Zone District sought through the PUD; (Ex. 39.)

g. Environmental benefits, including a commitment to design the Project to achieve sufficient points to attain at least LEED-Gold certification. The Project will also include specific sustainable design features such as extensive green roof and courtyard and two electric car-charging stations; and (Ex. 39.)

h. Uses of special value, including:

i. The design and installation, at a minimum cost of approximately $100,000, a piece of interactive art in the public space adjacent to the Project along N Street;

ii. Contribution of $100,000 to Two Rivers Public Charter School for improvements to its building and/or property, as determined by the school;

iii. Contribution of $50,000 to the NoMA BID for the study of a new eastern entrance to the NoMA – Gallaudet Metrorail station; and

iv. Reservation of 3000 square feet of the Project's retail space (more than 10% of the total retail space) for "maker" uses.

(Ex. 39.)

Transportation

44. The Applicant's traffic expert submitted a detailed CTR that concluded that the proposed Project would not have a detrimental impact on the surrounding transportation network. The CTR also concluded that additional delay at five nearby intersections can be successfully mitigated. The CTR further concluded that the public transportation network has sufficient capacity to accommodate the additional trips from the Project and that the provided parking and loading will be sufficient for demand. The CTR included a TDM plan to mitigate any potential adverse impacts on the transportation infrastructure. (Ex. 21A.)

45. DDOT submitted a report stating that it had no objection to the Project, with conditions. DDOT concurred with the scope, methodology, and findings of the Applicant's transportation study, and agreed that the Project would have minimal impact on the surrounding roadway network. (Ex. 24.)

46. The Applicant agreed to all of DDOT's conditions, including installing traffic management cameras, providing showers and changing facilities to commercial tenant employees, and an enhanced TDM plan. (Ex. 28A3; 6/20/2016 Tr. at p. 22.)

47. The Commission finds that the Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant's traffic expert and DDOT:

    a. The Commission finds that the Project will not impose adverse impacts on the surrounding transportation network, with the Applicant's adoption of DDOT's conditions. The Commission credits the findings of the Applicant's traffic expert as verified by DDOT that the Project will not create any adverse impacts when compared with future background conditions;

    b. The Commission finds that the loading management plan and the enhanced TDM plan will sufficiently minimize any potential for adverse impacts from loading or vehicular traffic at the Project; and

    c. The Commission finds that the Project will not impose adverse impacts on the surrounding pedestrian and bicycle network, and will in fact create significant public benefits as described above. The Commission also credits DDOT's acceptance of the Applicant's proffered streetscape improvements, subject to final public space approval. The Commission recognizes that the Applicant will coordinate with DDOT to determine the final improvements to be installed in public space through the public space approval process.

Project Height and Relationship to Other Buildings

48. Although supportive of the overall Project, the ANC stated some concern about the relationship of the Project's southeast corner to the lower-scale buildings on 4th Street, N.E. The ANC requested that the Applicant "soften" the Project to transition to lower-scale buildings. In response, the Applicant changed the design of the southeast corner of the Project. (Ex. 27, 33, 33A; 6/20/2016 Tr. at p. 75.)

49. The Commission finds that the PUD's height, bulk, and relationship to the other buildings on 4th Street are appropriate given the Project's surrounding context, which includes many approved and planned high-density developments. In particular, the Commission finds that the chamfer at the top southeast corner of the Project and the installation of a green wall plus additional greenery along the south elevation will soften its transition to the lower buildings along 4th Street and will therefore will be appropriate for the context. The greenery on the southeast corner of the Project will sufficiently moderate the height difference between the Project and other buildings on 4th Street so that there will not be an adverse aesthetic impact from the Project.

Project Impact on City Services

50. The Applicant's consultants determined that the neighborhood infrastructure is sufficient to accommodate the Project. The Applicant stated that it met with DC Water, which indicated that capacity is adequate to serve the Project. In addition, the Applicant filed a letter from Pepco (addressed to the Applicant) confirming that it will provide new service to the Project. (Ex. 1, 13, 13A.)

Agency Reports

51. By report dated June 10, 2016 and by testimony at the public hearing, OP recommended approval of the application with recommendations for additions to the benefits and amenities package. OP also noted a few items to be addressed at the hearing: more information about the interactive art and more explanation of the roof plan. The Applicant addressed these items and enhanced its benefits and amenities package at the hearing and in its post-hearing submission. OP concluded that the PUD and related rezoning was not inconsistent with the Comprehensive Plan. OP evaluated the PUD and related rezoning under the evaluation standards set forth in Chapter 24 of the Zoning Regulations and concluded that the Project's benefits and amenities was appropriate given the size and nature of the PUD and related requests for rezoning and flexibility. (Ex. 23; 6/20/2016 Tr. at pp. 69-70.)

52. By report dated June 10, 2016 and by testimony at the public hearing, DDOT expressed no objection to the PUD, with conditions. DDOT concurred with the scope, methodology, and findings of the Applicant's transportation study, and agreed that the Project would have minimal impact on the surrounding roadway network. DDOT supported the Project's proposed vehicle parking, bicycle parking, and loading. DDOT also stated that continued coordination is necessary for the Application's proposed public space improvements. (Ex. 24; 6/20/2016 Tr. at pp. 70-72.)

53. OP referred the Application to other District agencies for assessment and comment regarding the Project's impact. No other agencies provided written or oral testimony about the Project. (Ex. 11, 23.)

ANC 6B Report

54. At a regularly scheduled and duly noted public meeting on June 8, 2016, with a quorum present, ANC 6C voted to support the proposed PUD and related rezoning, with some recommendations. (Ex. 27.)

55. At the June 20, 2016 public hearing, a representative of the ANC testified in support of the application and reiterated the recommendations, particularly the softening of the southeast corner of the building to transition to lower buildings on 4th Street. (6/20/2016 Tr. at pp.74-75.)

56. On July 18, 2016, ANC 6C submitted a report in support of the project. ANC 6C expressed the following issues and concerns: (a) it "would prefer a step down in height along 4th Street, but does agree the 'green screen' is an improvement over the previous plans for the Southeast corner of the [P]roperty"; (b) it supported the increases in affordability and LEED rating and the other enhancements the Applicant made to the amenities package after the hearing; (c) it believes the amenities package is "meager" and requested that the developer include $100,000 for an expanded Bikeshare station near the project; and (d) it requested that the ground-floor retail spaces be visible a minimum of 15 feet into the spaces along 50% of the street façades to ensure an active streetscape. (Ex. 35.) The Applicant submitted a response on July 19, 2016. (Ex. 36.)

57. In response to the issues and concerns expressed by ANC 6C, the Commission finds as follows:

a. Step down and green screen. In response to ANC 6C's concern about the relationship of the project's southeast corner to the buildings along 4th Street, the Applicant revised its design so that it includes a green wall and additional greenery along the south elevation, which softens its transition to the lower buildings along 4th Street. The Commission finds this is adequate to address the ANC's concern;

b. Enhancements to amenities package, including affordable housing and LEED. In response to ANC 6C's concern, the Applicant enhanced its amenities package to: increase the amount and depth of affordable housing; make a greater commitment to achieve LEED-Gold; increase the funding for the study of a new entrance to the NoMA-Gallaudet Metrorail station; reserve a larger amount of "maker" retail space; and dedicate two electric car-charging spaces. The Commission finds this is adequate to address the ANC's concern;

c. "Meager" amenities package and Bikeshare. ANC 6C stated that it believed the amenities package was still "meager" and stated that it believed the Applicant should enhance the amenities package by including approximately $100,000 for a new Capital Bikeshare station to be located nearby. The Commission must judge the amenities package as it is proffered by the Applicant, and believes in this case that it is adequate; and

d. Ground-floor retail street façades. The Applicant agreed to this recommendation, and the plans reflect ground-level retail spaces with sufficient glazing to address this concern.

Testimony in Opposition

58. The Commission received one statement in opposition to the Application. The statement asserted that the Project is inconsistent with the Comprehensive Plan and that OP, DDOT, and other District agencies did not adequately assess the impacts of the Project. No one testified in opposition at the public hearing. (Ex. 30.)

Compliance with the Comprehensive Plan

59. The Commission finds that the PUD advances the goals and policies in the Land Use, Transportation, Housing, Urban Design, Historic Preservation, and Central Washington Area (NoMA and Northwest One Policy Focus Area) Elements of the District of Columbia Comprehensive Plan ("Plan").

60. The Land Use Element of the Plan includes the following policies advanced by the Project:

- **Policy LU-1.1.6: Central Employment Area Historic Resources** – Preserve the scale and character of the Central Employment Area's historic resources, including the streets, vistas, and public spaces of the L'Enfant and McMillan Plans as well as individual historic structures and sites. Future development must be sensitive to the area's historic character and should enhance important reminders of the city's past;

- **Policy LU-1.3.1: Station Areas as Neighborhood Centers** – Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area;

- **Policy LU-1.3.2: Development Around Metrorail Stations** – Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas;

- **Policy LU-1.3.3: Housing Around Metrorail Stations** – Recognize the opportunity to build senior housing and more affordable "starter" housing for first-time homebuyers adjacent to Metrorail stations, given the reduced necessity of auto ownership (and related reduction in household expenses) in such locations;

- **Policy LU-1.4.1: Infill Development** – Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern;

- **Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods** – Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to "create successful neighborhoods" in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others;

- **Policy LU-2.1.4: Rehabilitation Before Demolition** – In redeveloping areas characterized by vacant, abandoned, and underutilized older buildings, generally encourage rehabilitation and adaptive reuse of existing buildings rather than demolition;

- **Policy LU-2.2.4: Neighborhood Beautification** – Encourage projects which improve the visual quality of the District's neighborhoods, including landscaping and tree planting, facade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements;

- **Policy LU-2.4.1: Promotion of Commercial Centers** – Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents;

- **Policy LU-2.4.5: Encouraging Nodal Development** – Discourage auto-oriented commercial "strip" development and instead encourage pedestrian-oriented "nodes" of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them; and

- **Policy LU-3.1.4: Rezoning of Industrial Areas –** Allow the rezoning of industrial land for non-industrial purposes only when the land can no longer viably support industrial or PDR activities or is located such that industry cannot co-exist adequately with adjacent existing uses. Examples include land in the immediate vicinity of Metrorail stations, sites within historic districts, and small sites in the midst of stable residential neighborhoods. In the event such rezoning results in the displacement of active uses, assist these uses in relocating to designated PDR areas.

The Commission finds that the PUD will advance the Land Use element of the Comprehensive Plan. The Project will advance the above referenced land use policies by creating a mix of uses while preserving and rehabilitating a historic building and rezoning the industrial land where such uses are no longer viable. The Project will

support transit-oriented development and provide more housing near a Metro station. The Project will promote the policy of infill development by concentrating more density, including residences, on a largely underutilized site. This Property's location, in particular, will allow the Project to balance the goals of conserving and revitalizing the neighborhood through beautification and the promotion of nodal commercial development. (Ex. 1, 11, 13A, 13D, 21, 21C.)

61. The Project will advance the following policies of the Transportation Element of the Plan:

- **Policy T-1.1.4: Transit-Oriented Development** – Support transit-oriented development by investing in pedestrian-oriented transportation improvements at or around transit stations, major bus corridors, and transfer points; and

- **Policy T-1.2.3: Discouraging Auto-Oriented Uses** – Discourage certain uses, like "drive-through" businesses or stores with large surface parking lots, along key boulevards and pedestrian streets, and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas.

The Commission finds that the Project will promote the Transportation element of the Comprehensive Plan. The Project will embody transit-oriented development since it will contribute multiple new housing units, new retail, a new hotel, and a possible new office in a central part of the city close to a Metrorail station. The Property's central location and proximity to transit and bicycle facilities makes it a prime location for additional density and new uses. Also, in support of the applicable policies, the Project will eliminate the auto-oriented retail uses, surface parking, and multiple curb cuts currently on the Property and replace them with street-facing, pedestrian-focused uses. (Ex. 1, 11, 13A, 13D, 21, 21C.)

62. The Urban Design Element of the Plan includes the following policies that the Project will advance:

- **Policy UD-2.2.1: Neighborhood Character and Identity** – Strengthen the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context;

- **Policy UD-2.2.3: Neighborhood Centers** – Undertake strategic and coordinated efforts to create neighborhood centers, civic buildings, and shopping places that reinforce community identity;

- **Policy UD-2.2.5: Creating Attractive Facades** – Create visual interest through well-designed building facades, storefront windows, and attractive signage and

lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street; and

- **Policy UD-3.1.7: Improving the Street Environment** – Create attractive and interesting commercial streetscapes by promoting ground level retail and desirable street activities, making walking more comfortable and convenient, ensuring that sidewalks are wide enough to accommodate pedestrian traffic, minimizing curb cuts and driveways, and avoiding windowless facades and gaps in the street wall.

The Commission finds that the Project will have a unique urban design that will create a pedestrian-friendly experience through the use of materials and design. The innovative and appealing façade design will make the Project one that draws pedestrians because of the large glass display windows, retail entrances, and streetscape improvements. The Project will help define the neighborhood as a mixed-use center with a distinct architectural style. (Ex. 1, 11, 13A, 13D, 21, 21C.)

63. The PUD will advance the following goals and policies from the Housing Element of the Plan:

- **H-1.1 Expanding Housing Supply –** Expanding the housing supply is a key part of the District's vision to create successful neighborhoods. Along with improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city's fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building, and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs;

- **Policy H-1.1.1: Private Sector Support –** Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives;

- **Policy H-1.1.3: Balanced Growth** – Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing;

- **Policy H-1.1.4: Mixed Use Development** – Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations; and

- **Policy H-1.1.6: Housing in the Central City** – Absorb a substantial component of the demand for new high-density housing in Central Washington and along the Anacostia River. Absorbing the demand for higher density units within these areas is an effective way to meet housing demands, create mixed-use areas, and conserve single-family residential neighborhoods throughout the city. Mixed income, higher density downtown housing also provides the opportunity to create vibrant street life, and to support the restaurants, retail, entertainment, and other amenities that are desired and needed in the heart of the city.

The Commission finds that the Project will expand the District's housing supply in a neighborhood well-suited to accommodate significantly more housing. The Project will embody the policy of mixed-use development by providing four new use types with the residents to support the commercial uses. By providing approximately 372 new housing units, with a significant affordability component, the Project will promote housing, working, and shopping in the Central Employment Area. (Ex. 1, 11, 13A, 13D, 21, 21C.)

64. The PUD will advance the following policies from the Historic Preservation Element of the Plan:

- **Policy HP-1.3.1: Designation of Historic Properties** – Recognize and protect significant historic properties through official designation as historic landmarks and districts under both District and federal law, maintaining consistency between District and federal listings whenever possible;

- **Policy HP-2.4.2: Adaptation of Historic Properties for Current Use** – Maintain historic properties in their original use to the greatest extent possible. If this is no longer feasible, encourage appropriate adaptive uses consistent with the character of the property;

- **Policy HP-2.4.3: Compatible Development –** Preserve the important historic features of the District while permitting compatible new infill development. Within historic districts, preserve the established form of development as evidenced by lot coverage limitations, yard requirements open space, and other standards that contribute to the character and attractiveness of those areas. Ensure

that new construction, repair, maintenance, and improvements are in scale with and respect historic context through sensitive siting and design and the appropriate use of materials and architectural detail; and

- **Policy HP-2.4.5: Protecting Historic Building Integrity –** Protect historic buildings from demolition whenever possible, and protect the integrity of whole buildings. Discourage treatments like facadism or relocation of historic buildings, allowing them only when there is no feasible alternative for preservation, and only after a finding that the treatment is necessary in the public interest. Waivers or administrative flexibility should be provided in the application of building and related codes to permit maximum preservation and protection of historic resources while ensuring the health and safety of the public

The Commission finds that by preserving and adaptively reusing a historic industrial building, the Project will retain some of the industrial character of the neighborhood and will generally promote historic preservation. The Applicant will apply to the HPRB to designate the National Capital Press building as a historic landmark, and it designed the eastern residential building and hotel, in particular to be compatible with the historic building. The Project design will not only be compatible with the historic building, but it will also protect the integrity of the entire original building. (Ex. 1, 11, 13A, 13D, 21, 21C.)

65. The PUD will promote the following policies from the Central Washington Area Element (NoMA and Northwest One Policy Focus Area) of the Plan:

- **Policy CW-1.1.1: Promoting Mixed Use Development –** Expand the mix of land uses in Central Washington to attract a broader variety of activities and sustain the area as the hub of the metropolitan area. Central Washington should be strengthened as a dynamic employment center, a high-quality regional retail center, an internationally-renowned cultural center, a world-class visitor and convention destination, a vibrant urban neighborhood, and the focus of the regional transportation network. New office and retail space, hotels, arts and entertainment uses, housing, and open space should be encouraged through strategic incentives so that the area remains attractive, exciting, and economically productive;

- **Policy CW-1.1.4: New Housing Development in Central Washington** – Encourage the development of new high-density housing in Central Washington, particularly in the area north of Massachusetts Avenue and east of Mount Vernon Square, and the L'Enfant Plaza/Near Southwest. This area includes Mount Vernon Triangle, Northwest One, and NoMA, and the L'Enfant Plaza/Near Southwest. Ground floor retail space and similar uses should be strongly encouraged within these areas to create street-life and provide neighborhood services for residents. A strong Downtown residential community can create pedestrian traffic, meet local housing needs, support local businesses in the evenings and on weekends, and increase neighborhood safety and security;

- **Policy CW-1.1.10: Central Washington Hotels and Hospitality Services –** Encourage the development of additional hotels in Central Washington, especially in the areas around the new Convention Center and Gallery Place, along Pennsylvania Avenue NW and Massachusetts Avenue NW, in the Thomas Circle area, and in the area east of Third Street NW. A range of hotel types, including moderately priced hotels, and hotels oriented to family travelers as well as business travelers, should be encouraged. Hotels generate jobs for District residents and revenues for the general fund and should be granted incentives when necessary. Retain existing hotel uses by allowing and encouraging the expansion of those uses, including the addition of one floor, approximately 16 feet in height subject to coordination with federal security needs, to the Hay-Adams Hotel;

- **Policy CW-1.2.2: Preservation of Central Washington's Historic Resources –** Protect and enhance Central Washington's historic resources by continuing the current practices of: a. Preserving the area's historic buildings and districts; b. Requiring that renovation and new construction is sensitive to the character of historic buildings and districts; c. Applying design incentives and requirements to encourage preservation, adaptive reuse, and appropriate relationships between historic development and new construction; d. Encouraging the adaptive reuse of historic and architecturally significant buildings; and e. Preserving the original L'Enfant Plan pattern of streets and alleys, especially alleys that provide for off-street loading, deliveries, and garage access. Historic resources should be recognized as essential to Downtown's economic vitality and competitive edge, particularly for retail, tourist, and entertainment activities;

- **Policy CW-2.8.1: NoMA Land Use Mix** – Promote NoMA's development as an active mixed use neighborhood that includes residential, office, hotel, commercial, and ground floor retail uses. A diverse mix of housing, serving a range of household types and incomes, should be accommodated;

- **Policy CW-2.8.2: East of the Tracks and Eckington Place Transition Areas –** Create a production/arts and live-work, mixed-use area east of the CSX railroad tracks between H Street NE and Florida Avenue NE, and in the area east of Eckington Place and north of New York Avenue. Some of this area is shown as "Mixed Use Production Distribution Repair/Residential" areas on the Future Land Use Map. The intent of this designation is not to blend industrial uses with housing, but rather to retain viable industrial activities until market conditions support their conversion to live-/work space, housing, artists' studios, and similar uses. Mixed use squares in the NoMA area have unique characteristics that allow for a balance of industrial, residential, and office uses. The industrial striping on the Future Land Use Map anticipates some office use. These two areas should generally not be developed as large-scale commercial office buildings areas. Mixed use development, including housing, should be encouraged in both locations; and

- **Policy CW-2.8.5: NoMA Architectural Design –** Establish a unique architectural and design identity for NoMA, based in part on the area's heritage as an industrial area. This identity should preserve, renovate, and adaptively reuse NoMA's important historic buildings.

The Commission finds that the Project will advance seven important policies of the Central Washington Area Element by creating a mixed-use project with new housing and hotel that will preserve a historically important building. The Project will balance multiple uses, including housing, hotel and "maker" uses, which are goals for this location. The Project's design will reflect the industrial character of the area and will contribute new retail options. (Ex. 1, 11, 13A, 13D, 21, 21C.)

66. The Commission also finds that the Project will advance numerous policies and objectives of the NoMA Vision Plan and Development Strategy ("NoMA Plan"), which the Comprehensive Plan identifies for implementation:

- **Provide a diverse mix of uses that creates a variety of options for living, working, shopping, recreation, and culture** – For NoMA to become a mixed-use, active neighborhood, this plan aims for a 50-50 mix of commercial and residential uses west of the railroad tracks, and primarily residential uses east of the tracks. It envisions a lively work environment; a distinctive "Creative Industries, Mixed-Use" area, focused on Uline Arena; hotel development that takes advantage of NoMA's proximity to the New York Avenue Metrorail Station and Union Station, major transportation corridors, and the Capitol complex; a coordinated retail strategy with ground floor retail in key locations; and a diversity of housing products and household types;

- **Design to a new standard of architecture and urban design to create a lasting, competitive identity** – Identity and market strength can be created through innovative contemporary architecture and distinct product types. The Plan calls for highlighting NoMA's historic resources through a combination of preservation, renovation, adaptive re-use, and taking advantage of the area's warehouse and transportation-related history. Emphasis is placed on the ground-floors and sidewalk-level pedestrian experience, ensuring a high-quality public realm; and

- **Mixed Use District with Creative Industries** – By building on the area's unique character, comprised of existing alleys and industrial buildings, and adding new infill construction; a distinctive, creative enclave can be created. New mixed-use buildings that change the area to a live-work district with residents and workers in flexible arrangements is envisioned. Through the use of Planned Unit Developments (PUDs), this area could include diverse uses such as residences, non-profit offices, studios, arts, technology, production, media, film, graphics, etc., and community and recreation uses, to achieve the density that takes advantage of proximity to the Metrorail Station. Building form can reinforce the goal for transit-oriented development by locating higher density near the rail

tracks and Florida Avenue, then stepping down and limiting office uses closer to nearby rowhouse blocks.

The Commission finds that, in addition to the goals and recommendations identified above, the Project will advance or fulfill many other specific goals and recommendations. The NoMA Plan recommends a mix of uses near the Uline Arena and for some hotel and integrated office uses near the railroad tracks, with density and height concentrated closer to the tracks and Florida Avenue. In addition, the NoMA Plan recommends accessible, integrated office buildings/uses and hotels close to Metro stations. The Project will satisfy these recommendations. Further, the NoMA Plan identifies innovative and contemporary architecture as a goal for creating neighborhood identity, including responding to the industrial past and preserving historic resources. The architecture of the Project embodies the unique and modern style that reflects the industrial past while incorporating a historic building that will mark the identity of the Project and the NoMA neighborhood. (Ex. 1, 11, 13A, 13D, 21, 21C.)

Compliance with PUD Standards

67. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." The Commission finds that the development incentives for the height, density, flexibility and related rezoning to C-3-C are appropriate and fully justified by the public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines as set forth in the Applicant's evidence and testimony and the OP report. (Ex. 1, 13, 13D, 21, 21C, 33, 33A.)

68. The Commission credits the testimony of the Applicant and its architectural expert as well as OP, DDOT, and ANC 6C, and finds that the superior design, site planning, streetscape improvements, sustainable design features, historic preservation, housing and affordable housing, mix of uses, and uses of special value of the Project all constitute acceptable project amenities and public benefits.

69. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to housing and affordable housing, historic preservation, urban design and architecture, site planning, effective and safe vehicular and pedestrian access, environmental benefits, and uses of special value to the neighborhood and the District as a whole.

70. The Commission credits the testimony of the Applicant regarding the community-based planning effort that guided the development of the Project, and finds that the process resulted in amenities that reflect community preferences and priorities. The Commission credits the testimony of OP and ANC 6C that the PUD provides significant and sufficient public benefits and project amenities.

71. The Commission finds that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the Project is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits.

72. The Commission credits the testimony of OP and ANC 6C that the Project will provide benefits and amenities of value to the community and the District commensurate with the additional density and height sought through the PUD.

73. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area will not be unacceptable and are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.

74. The Commission credits the testimony of OP and the Applicant that the Project is not inconsistent with the Plan and promotes multiple policies and goals in the citywide and area elements of the Plan.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this Application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)

3. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations.

5. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate, and the proposed construction of an attractive mixed-

use building that capitalizes on the Property's transit-oriented and redevelopment-appropriate location is compatible with the citywide and area plans of the District of Columbia.

6. The Applicant seeks a PUD-related zoning map amendment to the C-3-C Zone District, and flexibility from the penthouse, rear yard, courts, and loading requirements in the Zoning Regulations. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.

7. The Commission finds that the Project is not inconsistent with and advances the goals and policies in the citywide and area elements of the Comprehensive Plan, including:

   a. Land Use Element policies promoting redevelopment around Metrorail stations, strengthening of residential neighborhoods, nodal development, neighborhood beautification, and rezoning of industrial land when appropriate;

   b. Housing Element policies promoting the construction of new housing across the city and the provision of dedicated new affordable housing;

   c. Historic Preservation Element policies promoting the retention and rehabilitation of historically-important buildings;

   d. Policies in the Transportation and Urban Design Elements related to transit-oriented development, the creation of neighborhood character, and streetscape improvements;

   e. Central Washington Area Element policies for mixed-use projects, particularly residential and hotel; and

   f. NoMA Plan policies and goals for innovative architecture responding to the industrial past as well as height and density concentrated near the train/Metro tracks.

8. The Commission concludes that approval of the PUD and related rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the Project is not inconsistent with the Property's Medium-Density Commercial/Medium-Density Residential/Production, Distribution and Repair ("PDR") designation on the FLUM and with the Property's designation as a Land Use Change Area on the GPM as follows:

   a. The Interpretation Guidelines for the FLUM state that it is not a zoning map and is not parcel specific; it does not specify allowable uses or dimensional standards. The Guidelines also indicate that the typical building heights and densities included in the land use category simply describe the "general character" of the area, and state that the "granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges [for the FLUM designation]." Thus, the

height and density of the Project is allowable under the Property's FLUM designation since it is a PUD;

b. Furthermore, the Interpretation Guidelines for the FLUM indicate that it should be considered in conjunction with the policies, goals, and guidelines in the text of the Comprehensive Plan. The location and uses of the PUD will advance many policies in the text of the Comprehensive Plan, such as transit-oriented development and redevelopment of underutilized land in an immediate area largely characterized by mixed-use projects with greater height and density. Within this context, the height, density, and mix of uses in the Project are not inconsistent with medium-density commercial (and medium-density residential and PDR) development;

c. Furthermore, the design of the Project incorporates multiple elements to minimize the appearance of height and massing with respect to the lower-scale buildings along 4th Street. The green wall at the southeast corner, the plantings on the south elevation, and the chamfer at the upper northeast corner soften the Project's transition to lower-scale buildings on 4th Street in such a manner that that it is not inconsistent with medium-density development;

d. The Project incorporates multiple design and use elements such that it is not inconsistent with the Property's partial PDR designation on the FLUM. The Project will retain and rehabilitate the industrial National Capital Press building, and it will reserve a portion of its retail space for "maker" uses; and

e. The rezoning from the C-M-1 Zone District to the C-3-C Zone District is not inconsistent with the Comprehensive Plan or the character of the surrounding area. The Commission notes that the proposed zoning is consistent with the Property's location near a Metrorail station and in an area identified by the District for medium- and high-density development, much of which has already been constructed or approved. The rezoning is necessary to permit the mix of uses and density appropriate for this prominent, underutilized, and transit-oriented site. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested rezoning. In this case, the C-3-C zone is not inconsistent with the FLUM since the Comprehensive Plan states that "other districts may apply" to medium-density commercial development. Thus, the C-3-C zone applies given the neighborhood context, superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.

9. The PUD will be within the applicable height and bulk standards of the Zoning Regulations. The proposed height and density will not cause an adverse effect on nearby properties, are consistent with the height and density of surrounding and nearby properties, and will create a more appropriate and efficient utilization of a prominent, transit-oriented site. The mix of uses also will be appropriate for the Project's location.

10. The Project will provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe traffic circulation, improved streetscape, environmental sustainability, historic preservation, housing and affordable housing, mix of uses, and uses of special value all are significant public benefits. The impact of the Project will be acceptable given the quality of the public benefits of the Project.

11. The impact of the Project on the surrounding area and the operation of city services will not be unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed project will not create adverse traffic, parking, or pedestrian impacts on the surrounding community, and that any potential for such impacts can be successfully mitigated. The Commission agrees with the Applicant that water and electric service to the Project can be provided without adverse impact on such infrastructure and that there are unlikely to be any adverse impacts on other city services from the Project. In addition, the absence of comments from other District agencies concerning the impact of the Project on city services implies an absence of concern about the Project's impacts on other such city services and infrastructure. Furthermore, the Application will be approved with conditions to ensure that any potential adverse effects on the surrounding area for the Project will be mitigated.

12. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. OP recommended approval with conditions to which the Applicant sufficiently agreed. Accordingly, the Commission concludes that approval of the consolidated PUD and related rezoning should be granted in accordance with OP's recommendation.

14. In accordance with § 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)), the Commission must give great weight to the written issues and concerns of the affected ANC. The Commission accorded the issues and concerns raised by ANC 6C the "great weight" to which they are entitled, and in so doing fully credited the unique vantage point that ANC 6C holds with respect to the impact of the proposed application on the ANC's constituents. ANC 6C recommended approval, provided that the Applicant adequately respond to certain concerns. The Commission concludes that the Applicant has addressed these concerns and, accordingly, the PUD and related rezoning should be approved.

15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Application for a consolidated PUD and related rezoning to the C-3-C Zone District for the Property. This approval is subject to the following guidelines, conditions, and standards of this Order:

PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with the plans marked as Exhibits 13D, 21C, and 33A of the record, as modified by guidelines, conditions, and standards herein (collectively, the "Plans").

2. The Property shall be rezoned from the C-M-1 to the C-3-C Zone District. Pursuant to 11 DCMR § 3028.9, the change of zoning shall be effective upon the recordation of the covenant discussed in Condition No. 12.

3. The Applicant shall have flexibility with the design of the PUD in the following areas:

    a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

    b. To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction;

    c. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;

    d. To vary the final streetscape design and materials, including the final design and materials, in response to direction received from District public space permitting authorities;

    e. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, trim, louvers, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems;

    f. To make minor adjustments to the court-facing façades of the residential buildings to accommodate final unit layout;

g. To vary the number of residential units between 354-391 and to accordingly adjust the final unit type mix of the Project;

h. To use the second and third stories of the National Capital Press building for retail or office; and

i. To change the use of the hotel building to a residential condominium.

PUBLIC BENEFITS

4. **For the life of the Project**, the Applicant shall provide the following housing and affordable housing:

a. The Project shall provide a total of approximately 329,509 square feet of residential Gross Floor Area ("GFA") of housing, including approximately 5,761 square feet of residential gross floor area of habitable penthouse space. Approximately 297,858 square feet of GFA of this total will be market rate housing, and approximately 26,361 square feet will be affordable housing as described in (b);

b. The Applicant shall set aside a minimum of eight percent of 329,509 square feet of residential gross floor area as Inclusionary Zoning ("IZ") units for the life of the project. Of the IZ units, a minimum of 13,411 square feet shall be reserved for households with incomes not exceeding 50% of the AMI. A minimum of 12,950 square feet shall be reserved for households with incomes not exceeding 80% of the AMI. All of the units reserved for households with incomes not exceeding 50% of the AMI shall be two-bedroom units except for the IZ Unit(s) resulting from the 461 square feet of gross floor area required to be set aside as a result of the habitable penthouse, which may be other unit types; and

c. The distribution of the affordable housing units shall be in substantial accordance with the matrix and plans marked as Exhibit 33A of the record, and substantially in accordance with the following chart:

Residential Unit Type	GFA/Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	329,509 sf/100%	372	NA	NA	NA
Market Rate	303,148 sf/92%	TBD	Market Rate	NA	NA
50% AMI	13,411 sf/4% (includes PH)	TBD	50% AMI	For the life of the project	2 bedrooms, except IZ floor area resulting from PH may be any

					type
80% AMI	12,950 sf/4%	TBD	80% AMI	For the life of the project	All

5. The Project shall be designed to attain LEED-Gold certification. The Applicant shall not be required to obtain LEED certification from the U.S. Green Building Council. **Prior to the issuance of a certificate of occupancy**, the Applicant shall submit to the Zoning Administrator a LEED scorecard showing that the Project will receive a sufficient amount of points to achieve LEED-Gold.

6. **Prior to the issuance of an above-grade building permit for the Project**, the Applicant shall contribute $100,000 to Two Rivers Public Charter School for improvements to its building and/or property, as determined by the school. **The Applicant shall provide evidence to the Zoning Administrator that the improvements for which the funds have been provided have been designed prior to the issuance of a certificate of occupancy**.

7. **Prior to the issuance of a certificate of occupancy for the Project**, the Applicant shall complete or provide the following:

   a. The Applicant shall design and install, to a minimum cost of approximately $100,000, a piece of interactive art in the public space adjacent to the Project. The art piece and its location shall be subject to all applicable public space approvals and permits;

   b. In conjunction with the developer of the property to the north across N Street, the Applicant shall install improvements to the south side of the N Street streetscape, between 3rd and 4th Streets, consistent with the plan in Exhibit 33A. The final design of the streetscape improvements shall be subject to all applicable public space approvals and permits; and

   c. The Applicant shall contribute $50,000 to the NoMA BID for the study of a new eastern entrance to the NoMA – Gallaudet Metrorail station. **The Applicant shall provide evidence to the Zoning Administrator that the study for which the funds have been provided have been completed prior to the issuance of a certificate of occupancy**.

8. **For the life of the project**, the Applicant shall reserve 3,000 square feet of the Project's retail space for "maker" uses. Maker uses shall be defined as the following:

   • Production, distribution, or repair of goods, including accessory sale of related product;

- Uses encompassed within the Arts, Design, and Creation Use Category as currently defined in 11 DCMR Subtitle B § 200.2, including an Art Incubator, as currently defined in 11 DCMR Subtitle B § 100.2, but not including a museum, theatre, or gallery as a principal use;

- Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage; and

- Design related uses, including Media/Communications, Computer system and software design; Fashion design; Graphic design; or Product and industrial design.

The reserved retail space shall receive a certificate of occupancy only for uses that satisfy this definition.

9. **For the life of the project**, the Applicant shall devote two parking spaces for electric car-charging spaces in the Project's parking garage.

MITIGATION

10. The Applicant shall implement the following transportation demand management ("TDM") measures **for the life of the project, unless otherwise specified**:

a. The Applicant will exceed Zoning requirements to provide bicycle parking/storage facilities at the proposed development. This includes secure parking located onsite, short-term bicycle parking around the perimeter of the site, as well as a bike service area;

b. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase;

c. The Applicant will price the residential parking at no less than the rate of the least expensive parking garage within one-quarter mile of the Property;

d. The Applicant will identify TDM Leaders (for planning, construction, and operations). The TDM Leaders will work with residents in the building to distribute and market various transportation alternatives and options;

e. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials;

f. The Applicant will install Transportation Information Center Displays (electronic screens) within the residential, hotel, and office lobbies, containing real-time information related to local transportation alternatives;

g. The Applicant will offer each resident of the Project an annual car-share or bike-share membership for the first three years that the residential portion of the Project is open;

h. The Applicant will install traffic management cameras at the following intersections: North Capitol Street, N.E./M Street, N.E. and Florida Avenue, N.E./3rd Street, N.E.;

i. The Applicant will provide showers and changing facilities for hotel, office, and retail employees;

j. The Project will offer a direct connection between the long-term bicycle parking and each land use component in the Project; and

k. The Applicant will dedicate two parking spaces in the Project's parking garage for use by a car-sharing service, provided that a car-sharing service is interested in the spaces.

11. The Applicant will implement the following measures to prohibit trucks that service the Project from using 4th Street:

a. The Applicant will install signage on private property for the widened alley area that states, "All retail truck traffic is prohibited from using 4th Street." One sign will be placed in the private property alley widening (rear yard of Project) near 3rd Street such that it can be viewed when entering the site. Another sign will be placed in the private property alley widening (rear yard of Project) near 4th Street such that it can be viewed by trucks exiting the Property; and

b. The Applicant will include in all retail leases language that prohibits the retail tenants' delivery trucks from using 4th Street to enter or exit the alley system at the rear of the Project.

MISCELLANEOUS

12. No building permit shall be issued for this project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.

13. The Application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1.

14. The Project may be constructed in up to three phases, such that (1) the renovation of the National Capital Press building may be completed before (2) construction of the two residential buildings begins, and construction of the two residential buildings may be completed before (3) construction of the hotel building begins.

15. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

16. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 25, 2016, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot).

On September 12, 2016, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Third Mayoral Appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on December 23, 2016.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 16-28
(ANC 4A – Map Amendment @ Square 2954)
December 13, 2016

THIS CASE IS OF INTEREST TO ANC 4A

On December 8, 2016, the Office of Zoning received a petition from the Advisory Neighborhood Commission ("ANC") 4A (the "Petitioner") for approval of a map amendment for the above-referenced property.

The property that is the subject of this petition consists of Lots 60, 61, 816, and 817 in northwest Washington, D.C. (Ward 4), on properties located at 1101, 1103, 1107, and 1109 Fern Street, N.W. The property is currently zoned RA-2. The Petitioner is proposing a map amendment to rezone the property to R-2.

The R-2 zone is intended to provide for areas predominantly development with semi-detached houses on moderately-sized lots that also contain some detached dwellings and allows for a maximum height of 40 feet (three stories) and a maximum lot occupancy of 40%. The R-2 zone is intended to protect these areas from invasion by denser types of residential development.

The RA-2 zone provides for areas developed with predominantly moderate-density residential development and allows for a maximum density of 1.8 floor area ratio ("FAR"), a maximum height of 50 feet, and a maximum lot occupancy of 60%. The RA-2 zone permits all types of urban residential development that conforms to the bulk and height limits and also permits the construction of compatible institutional and semi-public buildings.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETINGS

TIME AND PLACE: **Each Monday @ 6:00 P.M. that a Public Meeting is Scheduled to be Held for Calendar Year 2017**
Office of Zoning Conference Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

The Zoning Commission, in accordance with § 406 of the District of Columbia Administrative Procedure Act ("Act")(D.C. Official Code § 2-576), hereby provides notice it will hold closed meetings, either in person or by telephone conference call, at the time and place noted above, regarding cases noted on the agendas for meetings to be held for calendar year 2017 in order to receive legal advice from its counsel, per § 405(b)(4), and to deliberate, but not voting, on the contested cases, per § 405(b)(13) of the Act (D.C. Official Code § 2-575(b)(4) and (13)).

ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, 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.