

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council passes Law 21-36, Fiscal Year 2016 Budget Support Act of 2015
- D.C. Council enacts Act 21-284, Higher Education Licensure Commission Congressional Review Emergency Amendment Act of 2016
- D.C. Council schedules a public oversight roundtable on “Snowzilla: The District’s Response to the Winter Storm of January 2016”
- Alcoholic Beverage Regulation Administration schedules a public hearing on the Georgetown Moratorium Zone
- Department of Energy and Environment announces funding availability for developing the Well and Boring Regulation Guidance Document
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for the Historic Martin Luther King Jr. Avenue Commercial Corridor Grant
- Office of the State Superintendent of Education establishes rules to enhance and expand high quality Pre-K programs across the District

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 §§2-501 *et seq.* (2012 Repl.).

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DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-28

"Ruby Whitfield Way Designation Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-9 on first and second readings June 30, 2015, and July 14, 2015, respectively. Following the signature of the Mayor on July 31, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-140 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10882). Act 21-140 was transmitted to Congress on September 8, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-140 is now D.C. Law 21-28, effective October 21, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30
October 1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19, 20

COUNCIL OF THE DISTRICT OF COLUMBIA

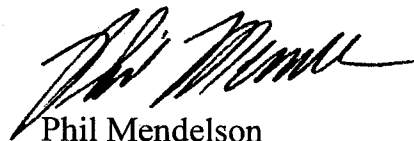
NOTICE

D.C. LAW 21-29

"Title IX Athletic Equity Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-31 on first and second readings June 30, 2015, and July 14, 2015, respectively. Following the signature of the Mayor on July 31, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-141 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10884). Act 21-141 was transmitted to Congress on September 8, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-141 is now D.C. Law 21-29, effective October 21, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30
October 1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19, 20

COUNCIL OF THE DISTRICT OF COLUMBIA

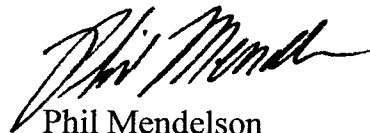
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D.C. LAW 21-30

**"Naval Lodge Building, Inc. Real Property
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As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-86 on first and second readings June 30, 2015, and July 14, 2015, respectively. Following the signature of the Mayor on July 31, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-142 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10890). Act 21-142 was transmitted to Congress on September 8, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-142 is now D.C. Law 21-30, effective October 21, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30
October 1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19, 20

COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW 21-31

**"Margaret Peters and Roumania Peters Walker
Tennis Courts Designation Act of 2015"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-174 on first and second readings June 30, 2015, and July 14, 2015, respectively. Following the signature of the Mayor on July 31, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-143 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10892). Act 21-143 was transmitted to Congress on September 8, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-143 is now D.C. Law 21-31, effective October 21, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September	8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30
October	1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19, 20

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-32

"Closing of Public Streets adjacent to Squares 603S, 605, 607, 661, 661N, and 665, and in U.S. Reservations 243 and 244, S.O. 13-14605, Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-200 on first and second readings June 30, 2015, and July 14, 2015, respectively. Following the signature of the Mayor on July 31, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-144 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10894). Act 21-144 was transmitted to Congress on September 8, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-144 is now D.C. Law 21-32, effective October 21, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30

October 1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19, 20

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-33

**"Medical Marijuana Cultivation Center Expansion
Temporary Amendment Act of 2015"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-256 on first and second readings June 30, 2015, and July 14, 2015, respectively. Following the signature of the Mayor on July 31, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-145 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10896). Act 21-145 was transmitted to Congress on September 8, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-145 is now D.C. Law 21-33, effective October 21, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30
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COUNCIL OF THE DISTRICT OF COLUMBIA

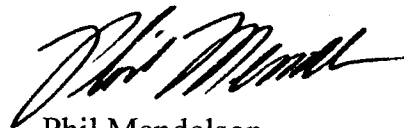
NOTICE

D.C. LAW 21-34

**"Sale of Synthetic Drugs Temporary Amendment
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As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-260 on first and second readings June 30, 2015, and July 14, 2015, respectively. Following the signature of the Mayor on July 31, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-146 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10898). Act 21-146 was transmitted to Congress on September 8, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-146 is now D.C. Law 21-34, effective October 21, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30

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COUNCIL OF THE DISTRICT OF COLUMBIA

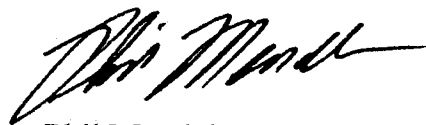
NOTICE

D.C. LAW 21-35

**"Ward 5 Paint Spray Booth Moratorium
Temporary Act of 2015"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-282 on first and second readings June 30, 2015, and July 14, 2015, respectively. The legislation was deemed approved without the signature of the Mayor on August 4, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-147 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10903). Act 21-147 was transmitted to Congress on September 8, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-147 is now D.C. Law 21-35, effective October 21, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30
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COUNCIL OF THE DISTRICT OF COLUMBIA

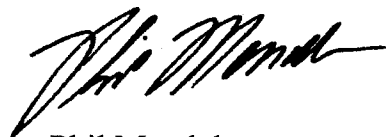
NOTICE

D.C. LAW 21-36

"Fiscal Year 2016 Budget Support Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-158 on first and second readings May 27, 2015, and June 30, 2015, respectively. Following the signature of the Mayor on August 11, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-148 and was published in the August 14, 2015 edition of the D.C. Register (Vol. 62, page 10905). Act 21-148 was transmitted to Congress on September 9, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-148 is now D.C. Law 21-36, effective October 22, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

September	9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30
October	1, 2, 5, 6, 7, 8, 9, 13, 14, 15, 16, 19, 20, 21

COUNCIL OF THE DISTRICT OF COLUMBIA

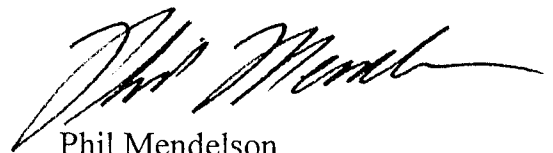
NOTICE

D.C. LAW 21-37

"Behavioral Health Coordination of Care Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-7 on first and second readings July 14, 2015, and September 22, 2015, respectively. Following the signature of the Mayor on October 16, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-165 and was published in the October 23, 2015 edition of the D.C. Register (Vol. 62, page 13739). Act 21-165 was transmitted to Congress on October 23, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-165 is now D.C. Law 21-37, effective December 15, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	23, 26, 27, 28, 29, 30
November	2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 30
December	1, 2, 3, 4, 7, 8, 9, 10, 11, 14

COUNCIL OF THE DISTRICT OF COLUMBIA

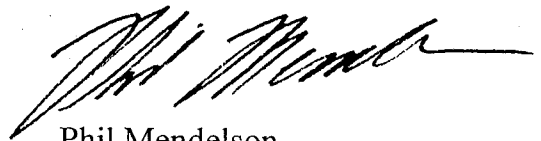
NOTICE

D.C. LAW 21-38

"Unemployment Profile Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-17 on first and second readings July 14, 2015, and September 22, 2015, respectively. Following the signature of the Mayor on October 16, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-166 and was published in the October 23, 2015 edition of the D.C. Register (Vol. 62, page 13742). Act 21-166 was transmitted to Congress on October 23, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-166 is now D.C. Law 21-38, effective December 15, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	23, 26, 27, 28, 29, 30
November	2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 30
December	1, 2, 3, 4, 7, 8, 9, 10, 11, 14

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-39

"Injured Worker Fair Pay Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-30 on first and second readings July 14, 2015, and September 22, 2015, respectively. Following the signature of the Mayor on October 16, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-167 and was published in the October 23, 2015 edition of the D.C. Register (Vol. 62, page 13744). Act 21-167 was transmitted to Congress on October 23, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-167 is now D.C. Law 21-39, effective December 15, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	23, 26, 27, 28, 29, 30
November	2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 30
December	1, 2, 3, 4, 7, 8, 9, 10, 11, 14

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 21-40

**"Grandparent Caregivers Program Subsidy Transfer
Amendment Act of 2015"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-75 on first and second readings July 14, 2015, and September 22, 2015, respectively. Following the signature of the Mayor on October 16, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-168 and was published in the October 23, 2015 edition of the D.C. Register (Vol. 62, page 13746). Act 21-168 was transmitted to Congress on October 23, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-168 is now D.C. Law 21-40, effective December 15, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	23, 26, 27, 28, 29, 30
November	2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 30
December	1, 2, 3, 4, 7, 8, 9, 10, 11, 14

COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW 21-41

**"1351 Nicholson Street, N.W., Old Brightwood School
Lease Amendment Act of 2015"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-201 on first and second readings July 14, 2015, and September 22, 2015, respectively. Following the signature of the Mayor on October 16, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-169 and was published in the October 23, 2015 edition of the D.C. Register (Vol. 62, page 13750). Act 21-169 was transmitted to Congress on October 23, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-169 is now D.C. Law 21-41, effective December 15, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	23, 26, 27, 28, 29, 30
November	2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 30
December	1, 2, 3, 4, 7, 8, 9, 10, 11, 14

COUNCIL OF THE DISTRICT OF COLUMBIA

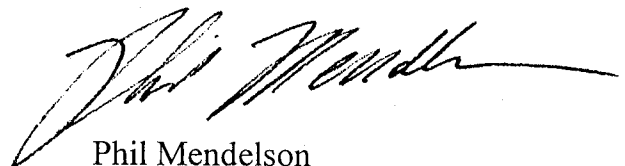
NOTICE

D.C. LAW 21-42

**"4095 Minnesota Avenue, N.E., Woodson School Lease
Amendment Act of 2015"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-204 on first and second readings July 14, 2015, and September 22, 2015, respectively. Following the signature of the Mayor on October 16, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-170 and was published in the October 23, 2015 edition of the D.C. Register (Vol. 62, page 13752). Act 21-170 was transmitted to Congress on October 23, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-170 is now D.C. Law 21-42, effective December 15, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

October	23, 26, 27, 28, 29, 30
November	2, 3, 4, 5, 6, 9, 10, 12, 13, 16, 17, 18, 19, 30
December	1, 2, 3, 4, 7, 8, 9, 10, 11, 14

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-278

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

To approve, on an emergency basis, the extension of Contract No. CFOPD-11-C-024 with Wells Fargo Bank, N.A. to continue to provide a wide variety of general banking services to the District of Columbia, and to authorize payment for the services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Contract No. CFOPD-11-C-024 Extension 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 the extension of Contract No. CFOPD-11-C-024 with Wells Fargo Bank, N.A. to continue to provide a wide variety of general banking services to the District of Columbia and authorizes payment in the not-to-exceed amount of \$12,408,397 for services received and to be received from December 16, 2015, through December 15, 2020.

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.

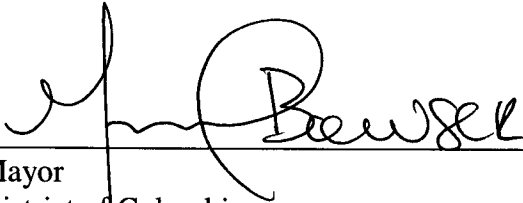
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-279

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "ABLE Program Trust Establishment Congressional Review Emergency Act of 2016".

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

(a) The table of contents is amended by adding a new chapter designation to read as follows:

"49. ABLE Program."

(b) A new Chapter 49 is added to read as follows:

"CHAPTER 49. ABLE PROGRAM.

"Sec.

"47-4901. Definitions.

"47-4902. ABLE Program Trust.

"§ 47-4901. Definitions.

"For the purposes of this chapter, the term:

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

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

"(3) "ABLE Program Trust" or "Trust" means the trust established in § 47-4902.

ENROLLED ORIGINAL

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

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

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

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

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

“(A) Education;

“(B) Housing;

“(C) Transportation;

“(D) Employment training and support;

“(E) Assistive technology and personal support services;

“(F) Health, prevention and wellness;

“(G) Financial management and administrative services;

“(H) Legal fees;

“(I) Expenses for oversight and monitoring;

“(J) Funeral and burial expenses; and

“(K) Other expenses that are consistent with the purposes of § 47-4902 and the Federal ABLE Act and approved by the CFO.

“§ 47-4902. ABLE Program Trust.

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

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

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

“(i) Gifts;

“(ii) Bequests;

“(iii) Endowments;

“(iv) Federal and local grants; and

ENROLLED ORIGINAL

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

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

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

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

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

Sec. 3. Applicability.

This act shall apply as of January 17, 2016.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the ABLE Program Trust Establishment Act of 2015, enacted on November 23, 2015 (D.C. Act 21-203; 62 DCR 15281), as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

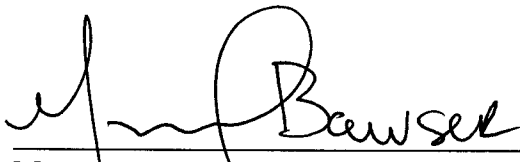
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-280

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 29, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Gas Station Advisory Board Congressional Review Emergency Amendment Act of 2016”.

Sec. 2. Section 5-301(b) of the Retail Services Station Act of 1976, effective April 19, 1977 (D.C. Law 1-123; D.C. Official Code § 36-304.01(b)), is amended as follows:

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

(b) The newly designated paragraph (1) is amended by striking the phrase “No retail station” and inserting the phrase “Except as provided in paragraph (2) of this subsection, no retail station” in its place.

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

“(2) This subsection shall not apply to any retail service station for which an application was on file with the Zoning Commission between the effective date of the New Columbia Statehood Initiative and Omnibus Boards and Commissions Reform Act of 2014, effective May 2, 2015 (D.C. Law 20-271; 62 DCR 1884), and August 1, 2015.”.

Sec. 3. Fiscal impact statement.

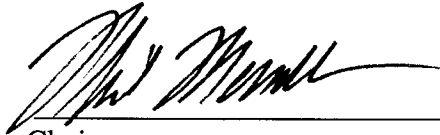
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

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

UNSIGNED

Mayor
District of Columbia
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-281

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

To amend, on an emergency basis, due to congressional review, section 47-1096 of the District of Columbia Official Code to clarify the exemption from the tenant opportunity to purchase requirements of the property owned by N Street Village, Inc., located at 1301 14th Street, N.W.; and to amend the N Street Village, Inc. Tax and TOPA Exemption Act of 2014 to make a conforming amendment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “N Street Village, Inc. Tax and TOPA Exemption Clarification Congressional Review Emergency Amendment Act of 2016”.

Sec. 2. Section 47-1096 of the District of Columbia Official Code is amended as follows:

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

(1) Subparagraph (A) is amended by adding the word “and” at the end.

(2) Subparagraph (B) is amended by striking the phrase “; and” and inserting a period in its place.

(3) Subparagraph (C) is repealed.

(b) A new subsection (c) is added to read as follows:

“(c) So long as N Street Village, Inc., Lot 93, or any lots created out of Lot 93, Square 242 located at 1301 14th Street, N.W. (“Property”), continues to be used for affordable housing as described in § 47-1005.02(a)(1), for supportive services for tenants of the affordable housing and other people of low income, and for offices and parking on the Property, and is not used for commercial purposes, the conveyance of the Property by a deed to an owner that meets the foregoing requirements shall be exempt from Chapter 34 of Title 42.”.

Sec. 3. Section 3(a) of the N Street Village, Inc. Tax and TOPA Exemption Act of 2014, effective March 11, 2015 (D.C. Law 20-229; 62 DCR 276), is amended by striking the phrase “This act” and inserting the phrase “The amendatory subsections (a) and (b) of section 2(b)” in its place.

Sec. 4. Applicability.

This act shall apply as of January 25, 2016.

ENROLLED ORIGINAL

Sec. 5. 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. 6. Effective date.

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



Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-282

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Emergency Medical Services Contract Authority Congressional Review Emergency Amendment Act of 2016".

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

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

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

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

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

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

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

ENROLLED ORIGINAL

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

“(1) The number of transports performed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(1) The impact on the Department’s unit availability;

“(2) The impact on the Department’s fleet, including the ability to conduct preventative maintenance and the number of operational and reserve units available;

ENROLLED ORIGINAL

“(3) The impact on the Department’s training schedule;

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

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

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

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

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

Sec. 3. Applicability.

This act shall apply as of January 14, 2016.

Sec. 4. Fiscal impact statement.

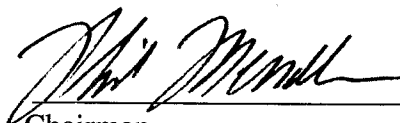
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

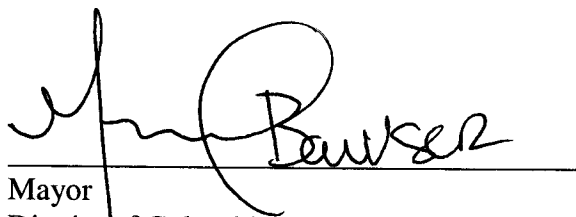
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-283

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Early Learning Quality Improvement Network Congressional Review Emergency Amendment Act of 2016”.

Sec. 2. The Day Care Policy Act of 1979, effective September 19, 1979 (D.C. Law 3-16; D.C. Official Code § 4-401 *et seq.*), is amended by adding a new section 15a to read as follows:

“Sec. 15a. Comprehensive child development programs.

“(a) Notwithstanding sections 3 through 11, the Office of the State Superintendent of Education (“OSSE”) shall establish a pilot, community-based Quality Improvement Network (“QIN”) composed of:

“(1) Child development hubs, selected through a competitive process, that will provide quality improvement technical assistance and comprehensive services to licensed child development centers and licensed child development homes selected by OSSE to be partners and that agree to meet federal Early Head Start Program Performance Standards for program participation; and

“(2) Child development centers and child development homes, selected through a competitive process, to provide low-income infants and toddlers high-quality, full-day, full-year comprehensive early learning and development services and continuum of care.

“(b) Child development centers and child development homes within the QIN shall receive technical assistance from child development hubs to achieve the following within 18 months of being selected by OSSE to participate in the QIN:

“(1) Child development centers and child development homes within the QIN shall have adult-to-child ratios and group sizes that meet or exceed federal Early Head Start standards for all children from birth to 3 years of age in child development centers, or as otherwise approved by OSSE.

ENROLLED ORIGINAL

“(2) Child development centers and child development homes within the QIN shall have a comprehensive curriculum or program that is aligned with federal Head Start Program Performance Standards and the District’s early learning and development standards for serving infants, toddlers, and their families.

“(3) Staff who have direct supervision of infants and toddlers at child development centers and child development homes within the QIN shall, at a minimum, meet or exceed Early Head Start Standards for staff qualifications or credentials.

“(4) Child development centers and child development homes within the QIN shall partner with child development hubs to develop and implement a quality improvement plan, including aligning program policies and procedures to support on-site coaching, professional development, and teacher planning time.

“(5) Child development centers and child development homes within the QIN shall provide child-, family-, and program-level data to OSSE and the child development hubs as requested.

“(6) Child development centers and child development homes within the QIN shall participate in ongoing, on-site and desktop monitoring activities to ensure compliance with program requirements and Head Start Program Performance Standards required to remain in good standing with OSSE, the child development hubs, and the U.S. Department of Health and Human Services, Office of Head Start, if applicable.

“(7) Child development centers and child development homes within the QIN shall support comprehensive services for children and families by the child development hubs, including implementation of individualized family service plans.

“(8) Child development centers and child development homes within the QIN shall participate in the Child and Adult Care Food Program.

“(9) Child development centers and child development homes within the QIN shall facilitate children’s and families’ transitions to Pre-K or Head Start programs.

“(c) OSSE shall have authority to set payment rates and to develop policies and procedures for high-quality early learning and development services set under the authority of this section.

“(d) To be eligible for infant and toddler child development services provided by child-care partners in the QIN, a child shall be a resident of the District of Columbia and between birth and 3 years of age; provided, that a child who turns 3 years old during a program year may continue to receive services for the duration of the program year before transitioning into a pre-kindergarten or Head Start preschool program.

“(e) To the extent possible, priority enrollment shall be given to children between birth and 3 years of age whose families are living at or below the federal poverty level, who are homeless or in the foster care system, or who live with a grandparent, godparent, or relative who is receiving a grandparent caregiver subsidy pursuant to Title I of the Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.01 *et seq.*).

“(f) OSSE shall monitor the child development hubs and partner participants in the QIN for adherence to policies and procedures set under the authority of this act.

ENROLLED ORIGINAL

“(g) OSSE may, in whole or in part, terminate the grant provided to a hub or partner participant at any time if OSSE determines that a hub or partner participant has:

“(1) Substantially failed to comply with, or meet the objectives and terms of, the grant award; or

“(2) Failed to comply with applicable federal or District laws or regulations.

“(h) OSSE shall continue on-site monitoring for health and safety licensing compliance of child-care partners participating in the QIN; provided, that OSSE may delegate to the child development hubs on-site monitoring of the compliance of participating child development centers and homes with federal Head Start Program Performance Standards; provided, that relevant data collected by child development hubs is regularly reported to OSSE.”.

Sec. 3. Applicability.

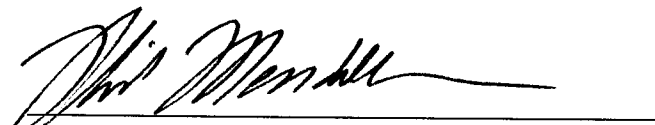
This act shall apply as of January 26, 2016.

Sec. 4. 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. 5. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-284

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Higher Education Licensure Commission Congressional Review Emergency Amendment Act of 2016”.

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

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

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

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

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

“(15)(A) “Online instruction” means education, whether known as virtual class, correspondence course, distance learning, or other like term, where the learner and instructor are

ENROLLED ORIGINAL

not physically in the same place at the same time, that is delivered through an electronic medium such as the Internet, Web-based form, or real time or recorded video or digital form, and that is offered or provided by an educational institution to District residents who are physically present in the District.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(6) Have the authority to enter into agreements with degree-granting educational institutions operating in the District that are otherwise conditionally exempt pursuant to section

ENROLLED ORIGINAL

10 for the purpose of ensuring consistent consumer protection in interstate distance education delivery of higher education.”.

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

(1) Subsection (a)(2) is amended by striking the phrase “pursuant to section 99 of the District of Columbia Business Corporation Act, approved June 8, 1954 (68 Stat. 219; D.C. Official Code § 29-101.99), or section 64 of the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 290; D.C. Official Code § 29-301.64),” and inserting the phrase “pursuant to Chapter 1 of Title 29 of the District of Columbia Official Code” in its place.

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

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

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

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

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

(B) Paragraph (2) is repealed.

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

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

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

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

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

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

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

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

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

Sec. 3. Section 1108(c-2)(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.08(c-2)(2)), is amended as follows:

ENROLLED ORIGINAL

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

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

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

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

“(6) Oversee the functions and activities of the Higher Education Licensure Commission, established by section 3 of the Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; D.C. Official Code § 38-1303), including acting as the state portal agency for the purposes of state authorization reciprocity;”.

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

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

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

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

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

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

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

Sec. 6. Applicability.

This act shall apply as of January 14, 2016.

Sec. 7. 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. 8. Effective date.

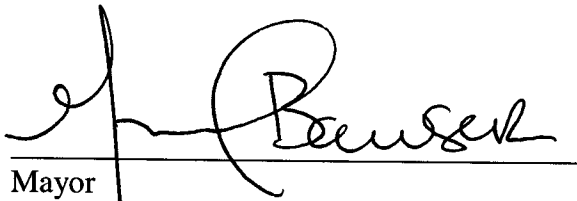
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

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
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-285

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Truancy Referral Congressional Review Emergency Amendment Act of 2016".

Sec. 2. Section 7(c)(1)(B) of Article II of An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, effective September 19, 2013 (D.C. Law 20-17; D.C. Official Code § 38-208(c)(1)(B)), is amended by striking the period and inserting the phrase ". For purposes of this subparagraph, for School Year 2015-2016, an educational institution may construe the term unexcused absences to mean unexcused full school day absences." in its place.

Sec. 3. Applicability.

This act shall apply as of January 20, 2016.

Sec. 4. 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).

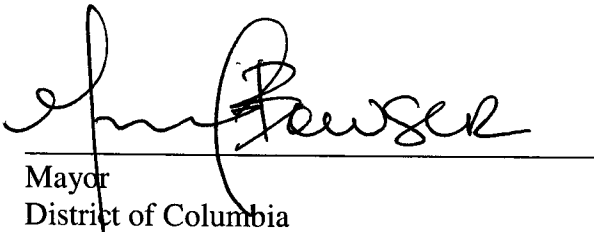
ENROLLED ORIGINAL

Sec. 5. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-286

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Extension of Time to Dispose of Property Located at Sixth and E Streets, S.W., Congressional Review Emergency Amendment Act of 2016”.

Sec. 2. Section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801), is amended by adding a new subsection (d-7) to read as follows:

“(d-7) Notwithstanding subsection (d) of this section, the time period within which the Mayor may dispose of District-owned real property located at the northeast corner of Sixth and E Streets, S.W., known for tax and assessment purposes as Lot 0036 in Square 0494, for the construction of a mixed-use development, which was approved by the Council pursuant to the Fourth/Sixth and E Streets, S.W., Property Disposition Approval Resolution of 2009, effective November 3, 2009 (Res. 18-290; 56 DCR 8799), as extended by the Fourth/Sixth and E Streets, S.W., Property Disposition Extension Approval Resolution of 2011, effective July 12, 2011 (Res. 19-170; 58 DCR 6589), is extended to November 3, 2017.”.

Sec. 3. Section 3(a) of the Fourth/Sixth and E Streets, S.W., Property Disposition Approval Resolution of 2009, effective November 3, 2009 (Res. 18-290; 56 DCR 8799), is amended by adding a new paragraph (4) to read as follows:

“(4) The Lessee will comply with the requirements of section 1(a-3) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(a-3)).”.

ENROLLED ORIGINAL

Sec. 4. Applicability.

This act shall apply as of January 25, 2016.

Sec. 5. Fiscal impact statement.

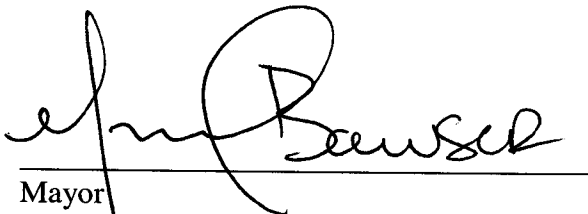
The Council adopts the fiscal impact statement in the committee report for the Extension of Time to Dispose of Property Located at Sixth and E Streets, S.W., Amendment Act of 2015, enacted on November 30, 2015 (D.C. Act 21-213; 62 DCR 15612), as the fiscal impact statement required by section 4a of the 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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-287

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

To establish, on an emergency basis, due to congressional review, a moratorium on the issuance of permits for the construction or operation of automobile paint spray booths in Ward 5; provided, that the moratorium shall not apply to permits for automobile paint spray booths that meet certain conditions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Ward 5 Paint Spray Booth Conditional Moratorium Congressional Review Emergency Act of 2016”.

Sec. 2. Paint spray booth moratorium.

(a) The Mayor shall not issue a permit for the construction or operation of an automobile paint spray booth in Ward 5.

(b) The Mayor shall not issue a renewal permit for the operation of an automobile paint spray booth in Ward 5.

(c) For the purposes of this act, the term “automobile paint spray booth” means a facility related to an auto body paint shop for which the applicant must obtain a minor source air pollutant permit from the District Department of the Environment.

Sec. 3. Scope.

(a) Section 2 shall not apply to a permit for the construction of or the operation of, or a renewal permit for the operation of, an automobile paint spray booth that contains conditions at least as restrictive as the following:

(1) Automobile coating for motor vehicle and mobile equipment non-assembly line refinishing and recoating, as applied, shall not contain volatile organic compounds in excess of the specified limit for each of the following coating types:

(A) Adhesion promoters: 540 grams per liter (4.5 pounds per gallon);

(B) Automotive pretreatment coating: 660 grams per liter (5.5 pounds per gallon);

(C) Automotive primer: 250 grams per liter (2.1 pounds per gallon);

(D) Clear coating: 250 grams per liter (2.1 pounds per gallon);

(E) Color coating, including metallic/iridescent color coating: 420 grams per liter (3.5 pounds per gallon);

ENROLLED ORIGINAL

- (F) Multicolor coating: 680 grams per liter (5.7 pounds per gallon);
- (G) Other automotive coating type: 250 grams per liter (2.1 pounds per gallon);
- (H) Single-stage coating, including single-stage metallic/iridescent coating: 340 grams per liter (2.8 pounds per gallon);
- (I) Temporary protective coating: 60 grams per liter (0.50 pounds per gallon);
- (J) Truck bed liner coating: 200 grams per liter (1.7 pounds per gallon);
- (K) Underbody coating: 430 grams per liter (3.6 pounds per gallon); and
- (2) Cleaning solvent used shall not exceed a volatile organic compound content of 25 grams per liter (0.21 pounds per gallon) except for:
- (A) Cleaning solvent used as a bug and tar remover; provided, that the volatile organic compound content of the cleaning solvent shall not exceed 350 grams per liter (2.9 pounds per gallon), and usage shall be limited as follows:
- (i) No more than 20 gallons in any consecutive 12-month period for facilities and operations using 400 gallons or more of coating during the 12-month period ending at the end of the previous calendar month;
- (ii) No more than 15 gallons in any consecutive 12-month period for facilities and operations using 150 gallons or more, but less than 400 gallons, of coating during the 12-month period ending at the end of the previous calendar month; or
- (iii) No more than 10 gallons in any consecutive 12-month period for facilities and operations using less than 150 gallons of coating during the 12-month period ending at the end of the previous calendar month.
- (B) Cleaning solvent used to clean plastic parts immediately before coating or for the removal of wax and grease; provided, that
- (i) Non-aerosol, hand-held spray bottles are used to apply the cleaning solvent;
- (ii) The volatile organic compound content of the cleaning solvent shall not exceed 780 grams per liter (6.51 pounds per gallon); and
- (iii) No more than 20 gallons of the cleaning solvent are used in any consecutive 12-month period in any one business location;
- (C) Aerosol cleaning solvent; provided, that 160 ounces or less are used per day per business location; or
- (D) Cleaning solvent with a volatile organic compound content no greater than 350 grams per liter (2.92 pounds per gallon), used at a volume equal to or less than 2.5% of the preceding calendar year's annual coating usage, up to a maximum of 15 gallons per calendar year.
- (b) The limits in subsection (a)(1) of this section shall represent the weight of volatile organic compound per volume of coating, prepared to the manufacturer's recommended maximum volatile organic compound content, exclusive of water and non-volatile organic compound solvents.

ENROLLED ORIGINAL

(c) The Mayor shall refer to the Ozone Transport Commission's "Model Rule 2009-12-Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations Alternate Technical Revisions" for calculation methodologies and definitions.

Sec. 4. Repealer.

The Ward 5 Paint Spray Booth Moratorium Temporary Act of 2015, effective October 21, 2015 (D.C. Law 21-35; 62 DCR 10903), is repealed.

Sec. 5. Sunset.

This act shall expire upon the promulgation of rules by the Mayor that revise section 718 of Chapter 20 of the District of Columbia Municipal Regulations (20 DCMR § 718).

Sec. 6. Applicability.

This act shall apply as of January 25, 2016.

Sec. 7. Fiscal impact statement.

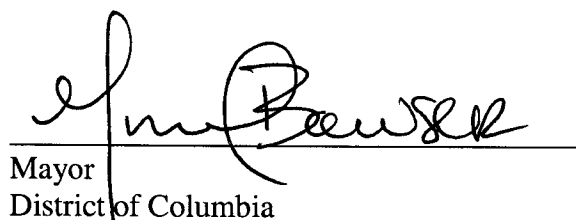
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 8. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-288

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Grocery Store Restrictive Covenant Prohibition Congressional Review Emergency Act of 2016".

Sec. 2. (a) It shall be unlawful for the owner or operator of a grocery store to impose a restrictive land covenant or use restriction in a contract for the sale, or other transfer, or lease of real property being used as a grocery store that prohibits the subsequent use of the real property as a grocery store.

(b) Any contract, including a private agreement, that includes a restrictive land covenant or use restriction on real property as described in subsection (a) of this section shall be void and unenforceable.

(c) The prohibition imposed by this section shall not apply to an owner or operator of a grocery store or food retail store that terminates operations at a site for purposes of relocating the grocery or food retail store into a comparable or larger store located within the District of Columbia within one-half mile of the site where the prior operation was terminated; provided, that relocation and commencement of the operation of the new grocery store or food retail store at the new site occurs within 2 years of the sale, transfer, or lease of the prior site, and the restrictive covenant imposed on the prior site does not have a term in excess of 3 years. If the new grocery store or food retail store is not relocated within the District within one-half mile of the prior site within 2 years, the restrictive land covenant or use restriction shall not be enforceable.

(d) For the purposes of this act, the term:

(1) "Grocery store" means a retail establishment with a primary business of selling grocery products and includes a selling area that is used for a general line of food and nonfood grocery products.

(2) "Private agreement" means a mutually agreed upon and entered into exchange of promises.

ENROLLED ORIGINAL

Sec. 3. Applicability.

This act shall apply as of January 16, 2016.

Sec. 4. Fiscal impact statement.

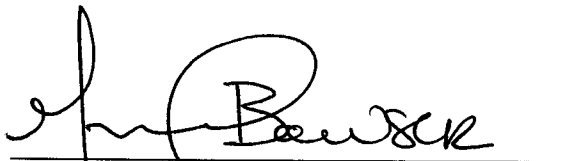
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-289

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

To amend, on an emergency basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to clarify that a District government attorney, hearing officer, or administrative law judge who is required to be a member of the District of Columbia Bar as a prerequisite of employment shall file a Certificate of Good Standing from the Committee on Admissions of the District of Columbia Court of Appeals with the Department of Human Resources by December 15 of each year, to allow an attorney employed by the Council of the District of Columbia to file a Certificate of Good Standing with the Office of the Secretary to the Council of the District of Columbia, to allow the Director of the Department of Human Resources or the Secretary to the Council of the District of Columbia to verify good standing through electronic means, to clarify that the Director of the Department of Human Resources and the Secretary to the Council of the District of Columbia shall publish in the District of Columbia Register, on an annual basis, a list of all attorneys, hearing officers, and administrative law judges who have not met the Certificate of Good Standing filing requirement, and to authorize the Secretary to the Council of the District of Columbia to issue policy directives regarding timing, waiver, and notice of the Certificate of Good Standing filing requirement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Certificate of Good Standing Filing Requirement Emergency Amendment Act of 2016".

Sec. 2. Section 881 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective July 25, 2002 (D.C. Law 14-182; D.C. Official Code § 1-608.81), is amended as follows:

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

"(a) Except as provided by the rules for temporary waiver of this requirement, each attorney, hearing officer, or administrative law judge who is required to be a member of the District of Columbia Bar as a prerequisite of employment, employed by the Mayor, the Office of the Attorney General, the Office of the Chief Financial Officer, or by any independent agency, shall file with the Department of Human Resources a Certificate of Good Standing from the Committee on Admissions of the District of Columbia Court of Appeals by December 15 of each year; provided, that an attorney employed by the Council of the District of Columbia who is

ENROLLED ORIGINAL

required to be a member of the District of Columbia Bar as a prerequisite of employment shall file a Certificate of Good Standing with the Office of the Secretary to the Council of the District of Columbia by December 15 of each year.”.

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

“(a-1) The Director of the Department of Human Resources or the Secretary to the Council of the District of Columbia may verify the good standing of an attorney, hearing officer, or administrative law judge subject to the requirement in subsection (a) of this section through electronic means with the Committee on Admissions of the District of Columbia Court of Appeals.”.

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

“(b) The Director of the Department of Human Resources and the Secretary to the Council of the District of Columbia shall publish in the District of Columbia Register, on an annual basis, a list of all attorneys, hearing officers, and administrative law judges who have not met the filing requirement of subsection (a) of this section.”.

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

(1) The lead-in language is amended by striking the phrase “Director of Personnel” and inserting the phrase “Director of the Department of Human Resources” in its place.

(2) Paragraph (3) is amended by striking the word “attorneys” and inserting the phrase “attorneys, hearing officers, or administrative law judges” in its place.

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

“(c-1) The Secretary to the Council of the District of Columbia may issue policy directives concerning:

“(1) The timing for filing the Certificate of Good Standing and associated procedures;

“(2) The standards governing when a temporary waiver of the filing requirement may be granted by the personnel authority for the Council of the District of Columbia attorney; and

“(3) The procedures by which attorneys shall be notified of the filing requirement and whether they are in compliance with the requirement.”.

(f) Subsection (e) is amended by striking the phrase “an attorney” and inserting the phrase “an attorney, a hearing officer, or an administrative law judge” 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.

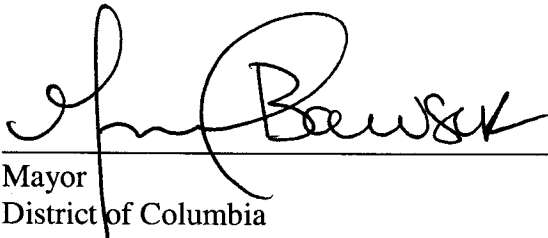
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-290

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

To amend, on an emergency basis, the District of Columbia Election Code of 1955 to change the procedures for the presidential primary ballot access.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Presidential Primary Ballot Access Emergency Amendment Act of 2016”.

Sec. 2. Section 5(b)(2) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 700; D.C. Official Code § 1-1001.05(b)(2)), is amended to read as follows:

“(2) No person shall be listed on the ballot as a candidate for nomination for President in such primary unless:

“(A) No later than March 16 of each presidential election year, there shall have been filed with the Board a petition on behalf of the person signed by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who are registered under section 7, and are of the same political party as the nominee; or

“(B) The person has complied with the rules of the political party to be listed on the ballot, and if the party rules provide for candidate qualification by means other than gathering petition signatures as described in subparagraph (A) of this paragraph, the political party shall certify to the Board no later than March 16 of each presidential election year the names of candidates for nomination who have qualified by such means.”.

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
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-291

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

To amend, on an emergency basis, the Accrued Sick and Safe Leave Act of 2008 to clarify that employees in the building and construction industry covered by a bona fide collective bargaining agreement shall be exempted from the paid leave requirements of the act only if the agreement expressly waives those requirements; to amend the Minimum Wage Act Revision Act of 1992 to exempt an employer from keeping precise time records for bona fide executive, administrative, and professional, as well as certain other, employees, to require an employer or a temporary staffing firm to provide notice regarding payment to an employee in a second language if the Mayor has made available a translation of the sample notice template in that second language and the employer knows that second language to be the employee's primary language or the employee requests notice in that second language, and to require the Mayor to make available, in any language required for a vital document under the Language Access Act of 2004, a translation of the sample template to be used by an employer or a temporary staffing firm when providing notice to an employee regarding payment; and to amend An Act To provide for the payment and collection of wages in the District of Columbia to continue to exempt an employer from paying wages to bona fide executive, administrative, and professional employees at least twice during each calendar month; provided, that the employer pays wages to such employees at least once per month.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Wage Theft Prevention Clarification Emergency Amendment Act of 2016".

Sec. 2. Section 7(b) of the Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.06(b)) is amended by striking the phrase "agreement." and inserting the phrase "agreement that expressly waives the requirements in clear and unambiguous terms." in its place.

Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*), is amended as follows:

(a) Section 9 (D.C. Official Code § 32-1008) is amended as follows:

(1) Subsection (a)(1)(D) is amended to read as follows:

ENROLLED ORIGINAL

“(D) The precise time worked each day and each workweek by each employee, except for employees who are exempt from the minimum wage and overtime requirements under section 5(a); and”.

(2) Subsection (c) is amended by striking the phrase “shall furnish to each employee at the time of hiring a written notice, both in English and in the employee’s primary language, containing the following information:” and inserting the phrase “shall furnish to each employee at the time of hiring a written notice in English in the form made available by the Mayor pursuant to subsection (e) of this section. If, pursuant to subsection (e) of this section, the Mayor has made available a translation of the sample template in a second language that is known by the employer to be the employee’s primary language or that the employee requests, the employer also shall furnish written notice to the employee in that second language. The notice shall contain the following information:” in its place.

(3) Subsection (e) is amended to read as follows:

“(e) The Mayor shall make available for employers a sample template of the notice required by subsection (c) of this section within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 62 DCR 3603). The Mayor also shall make available for employers a translation of the sample template in any language required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933).”.

(b) Section 9a is amended as follows:

(1) Subsection (a)(1) is amended by striking the phrase “containing the information required by section 9(c)” and inserting the phrase “containing the information required by section 9(c) and in the form of the sample template made available by the Mayor pursuant to section 9(e). The notice shall be provided in English and if, pursuant to section 9(e), the Mayor has made available a translation of the sample template in a second language that is known by the employer to be the employee’s primary language or that the employee requests, the employer also shall furnish written notice to that employee in that second language.” in its place.

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

“(b)(1) When a temporary staffing firm assigns an employee to perform work at, or provide services for, another organization, the temporary staffing firm shall furnish the employee a written notice in English, in the form of the sample template made available by the Mayor pursuant to subsection (c) of this section, of:

“(A) The specific designated payday for the particular assignment;

“(B) The actual rate of pay for the assignment and the benefits, if any, to be provided;

“(C) The overtime rate of pay the employee will receive or, if applicable, inform the employee that the position is exempt from additional overtime compensation and the basis for the overtime exemption;

“(D) The location and name of the client employer and the temporary staffing firm;

“(E) The anticipated length of the assignment;

ENROLLED ORIGINAL

“(F) Whether training or safety equipment is required and who is obligated to provide and pay for the equipment;

“(G) The legal entity responsible for workers’ compensation should the employee be injured on the job; and

“(H) Information about how to contact the designated enforcement agency for concerns about safety, wage and hour, or discrimination.

“(2) If, pursuant to subsection (c) of this section, the Mayor has made available a translation of the sample template in a second language that is known by the employer to be the employee’s primary language or that the employee requests, the employer also shall furnish written notice to that employee in the second language.”.

(3) Subsection (c) is amended to read as follows:

“(c) The Mayor shall make available for temporary staffing firms a sample template of the notice required by subsection (b) of this section within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 62 DCR 3603). The Mayor also shall make available for employers a translation of the sample template in any language required for vital documents pursuant to section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933).”.

Sec. 4. Section 2 of An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code § 32-1302), is amended by striking the phrase “Every employer shall pay all wages earned to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer;” and inserting the phrase “Every employer shall pay all wages earned to his employees on regular paydays designated in advance by the employer and at least twice during each calendar month, except that all bona fide administrative, executive, and professional employees (those employees employed in a bona fide administrative, executive, or professional capacity, as defined in 7 DCMR § 999.1) shall be paid at least once per month;” in its place.

Sec. 5. 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. 6. Effective date.

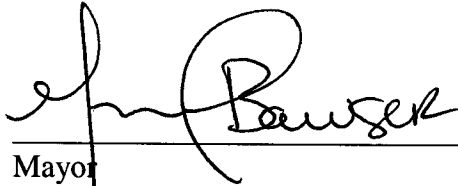
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

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
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-292

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

To amend, on an emergency basis, the Fiscal Year 2016 Budget Support Act of 2015, various other acts, and Title 47 of the District of Columbia Official Code to clarify provisions supporting the Fiscal Year 2016 budget.

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

Sec. 2. Section 7024(d) of the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), is repealed.

Sec. 3. Section 7154 of the IPW Fund, Destination DC Marketing Fund, and WMATA Momentum Support Fund Establishment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-325.311), is amended to read as follows:

“Sec. 7154. WMATA Operations Support Fund.

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

“(b) Upon affirmance of the trial court’s summary-judgment rulings by the District of Columbia Court of Appeals in *District of Columbia v. Expedia, Inc., et al.*, Nos. 14-CV-308, 14-CV-309, the full amount the District obtains pursuant to the consent judgments entered by the trial court, to include any additional amounts in taxes and interest paid by defendants or accrued during the pendency of that litigation, minus the amounts designated for other purposes in sections 7152 and 7153 and in the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Emergency Act of 2015, effective October 6, 2015 (D.C. Act 21-153; 62 DCR 13178), and the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Temporary Act of 2015, enacted on October 22, 2015 (D.C. Act 21-171; 62 DCR 13979), shall be deposited in the Fund.

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

ENROLLED ORIGINAL

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

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

Sec. 4. Section 401 of the Sustainable Solid Waste Management Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-154; 62 DCR 3600), is repealed.

Sec. 5. Section 308(d)(1) of the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1160; D.C. Official Code § 10-1103.07(d)(1)), is amended by striking the phrase “For periods beginning after June 30, 2015, interest on unpaid vault rent” and inserting the phrase “Beginning September 15, 2015, interest on any unpaid vault rent for any vault year” in its place.

Sec. 6. Section 2 of the Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01), is amended as follows:

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

(1) Subparagraph (E) is amended by striking the word “or”.

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

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

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

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

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

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

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

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

Sec. 8. Section 2(g) of the Youth Employment Act of 1979, effective January 5, 1980 (D.C. Law 3-46; D.C. Official Code § 32-241(g)), is amended as follows:

ENROLLED ORIGINAL

(a) Paragraph (4) is amended by striking the word “outcomes” and inserting the phrase “outcomes as of December 31, 2015,” in its place.

(b) A new paragraph (5) is added to read as follows:

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

Sec. 9. Section 2(h)(2)(A) of the School Transit Subsidy Act of 1978, effective March 6, 1979 (D.C. Law 2-152; D.C. Official Code § 35-233(h)(2)(A)), is amended by striking the phrase “Under 22 years of age” and inserting the phrase “A resident of the District of Columbia under 22 years of age” in its place.

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

(a) Chapter 13A is amended as follows:

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

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

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

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

(b) Section 47-1807.02(a)(6) is amended by striking the phrase “9%” and inserting the phrase “9.2%, 9%” in its place.

(c) Section 47-1808.03(a)(6) is amended by striking the phrase “9%” and inserting the phrase “9.2%, 9%” in its place.

Sec. 11. Section 6(b) of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; 62 DCR 3820), is amended to read as follows:

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

Sec. 12. Applicability.

This act shall apply as of December 31, 2015.

Sec. 13. 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).


ENROLLED ORIGINAL

Sec. 14. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 27, 2016

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-293

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2016

To amend, on an emergency basis, due to congressional review, An Act To provide for the payment and collection of wages in the District of Columbia to clarify who may bring an action on behalf of an employee and when a general contractor and subcontractor or a general contractor and temporary staffing firm will be jointly and severally liable for violations, to revise criminal penalties for violations of the act, and to authorize the Mayor to issue rules to implement the provisions of the act; to amend the Minimum Wage Act Revision Act of 1992 to clarify the time period for retention of payroll records, when a general contractor and subcontractor or a general contractor and temporary staffing firm will be jointly and severally liable for violations, and how the Mayor shall make certain information available to employers; and to amend the Wage Theft Prevention Amendment Act of 2014 to repeal a retroactive applicability provision.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Wage Theft Prevention Correction and Clarification Congressional Review Emergency Amendment Act of 2016”.

Sec. 2. An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code § 32-1301 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code § 32-1303) is amended as follows:

(1) Paragraph (5) is amended as follows:

(A) Strike the word “alleged” and insert the word “found” in its place.

(B) Strike the phrase “Act.” and insert the phrase “Act, except as otherwise provided in a contract between the contractor and subcontractor in effect on the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157).” in its place.

(2) Paragraph (6) is amended by striking the phrase “District.” and inserting the phrase “District, except as otherwise provided in a contract between the temporary staffing firm and the employer in effect on the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157).” in its place.

(b) Section 7(a) (D.C. Official Code § 32-1307(a)) is amended to read as follows:

ENROLLED ORIGINAL

“(a)(1) Any employer who negligently fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

“(A) For the first offense, an amount per affected employee of not more than \$2,500;

“(B) For any subsequent offense, an amount per affected employee of not more than \$5,000.

“(2) Any employer who willfully fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall:

“(A) For the first offense, be fined not more than \$5,000, or imprisoned not more than 30 days, or both; or

“(B) For any subsequent offense, be fined not more than \$10,000, or imprisoned not more than 90 days, or both.

“(3) The fines set forth in paragraphs (1) and (2) of this subsection shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).”

(c) Section 8(a) (D.C. Official Code § 32-1308(a)) is amended by striking the phrase “, or any entity a member of which is aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act”.

(d) A new section 10b is added to read as follows:

“Sec. 10b. Rules.

“The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1068 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.”

Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*), is amended as follows:

(a) Section 9(a)(1) (D.C. Official Code § 32-1008(a)(1)) is amended by striking the phrase “3 years or whatever the prevailing federal standard is, whichever is greater” and inserting the phrase “3 years or the prevailing federal standard, if identified in regulations issued pursuant to this act, whichever is greater” in its place.

(b) Section 10(c) (D.C. Official Code § 32-1009(c)) is amended to read as follows:

“(c) The Mayor shall make copies or summaries of this act publicly available on the District government’s website or by some other appropriate method within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157). An employer shall not be liable for failure to post notice if the Mayor has failed to provide to the employer the notice required by this section.”

(c) Section 12(d)(1)(C) (D.C. Official Code § 32-1011(d)(1)(C)) is amended by striking the phrase “3 years or whatever the prevailing federal standard is, whichever is greater” and inserting the phrase “3 years or the prevailing federal standard, if identified in regulations issued pursuant to this act, whichever is greater” in its place.

ENROLLED ORIGINAL

(d) Section 13 (D.C. Official Code § 32-1012) is amended as follows:

(1) Subsection (c) is amended by striking the phrase “act.” and inserting the phrase “act, except as otherwise provided in a contract between the contract and subcontractor in effect on the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157).” in its place.

(2) Subsection (f) is amended by striking the phrase “District.” and inserting the phrase “District, except as otherwise provided in a contract between the temporary staffing firm and the employer in effect on the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157).” in its place.

Sec. 4. Section 7 of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157), is repealed.

Sec. 5. Applicability.

This act shall apply as of January 22, 2016.

Sec. 6. 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. 7. Effective date.

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

January 27, 2016

ENROLLED ORIGINAL

A RESOLUTION

21-365

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the Marijuana Possession Decriminalization Amendment Act of 2014 to clarify that, for the purposes of the act, a private club is a place to which the public is invited, but does not include a private residence, and that the prohibition on consumption of marijuana in public is not limited by the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014; and to amend Chapter 28 of Title 47 of the District of Columbia Official Code to require the Mayor to revoke any certificate of occupancy or permit held by an entity that knowingly permits a violation of section 301(a) of the Marijuana Possession Decriminalization Amendment Act of 2014 to occur at the specific address or unit identified in the certificate of occupancy or permit.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Marijuana Possession Decriminalization Clarification Emergency Declaration Resolution of 2016”.

Sec. 2. (a) On March 4, 2014, the Council of the District of Columbia enacted the Marijuana Possession Decriminalization Amendment Act of 2014, effective July 17, 2014 (D.C. Law 20-126; 61 DCR 3482).

(b) Although the Marijuana Possession Decriminalization Amendment Act of 2014 decriminalizes the possession or transfer of one or fewer ounces of marijuana, it also makes plain that consumption of marijuana in a public space, which includes any place to which the public is invited, remains subject to criminal penalties.

(c) On November 4, 2014, District of Columbia voters approved the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014, effective February 26, 2015 (D.C. Law 20-153; 62 DCR 880), which legalizes the possession and use of 2 or fewer ounces of marijuana under certain circumstances.

(d) When applied together, the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014 and the Marijuana Possession Decriminalization Amendment Act of 2014 continue to prohibit consumption of marijuana in a public space, including any place to which the public is invited. The measures do not further define a place to which the public is invited. Consequently, it is unclear whether a private club is a place to which the public is invited.

ENROLLED ORIGINAL

(e) In order to address whether marijuana consumption is permitted in a private club, on March 3, 2015, the Council approved the Marijuana Decriminalization Clarification Emergency Amendment Act of 2015, effective March 26, 2015 (D.C. Act 21-0019; 62 DCR 3857), and the Marijuana Decriminalization Clarification Temporary Amendment Act of 2015, effective June 4, 2015 (D.C. Law 21-0011; 62 DCR 4717), to clarify that, for the purposes of the act, a private club is a place to which the public is invited, but does not include a private residence, and that the prohibition on consumption of marijuana in public is not limited by the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014.

(f) The emergency and temporary legislation additionally amended Chapter 28 of Title 47 of the District of Columbia Official Code to require the Mayor to revoke any license, certificate of occupancy, or permit held by an entity that knowingly permits a violation of section 301(a) of the Marijuana Possession Decriminalization Amendment Act of 2014 to occur at the specific address or unit identified in the license, certificate of occupancy, or permit.

(g) The Committee on the Judiciary held a public hearing on the permanent version of the legislation, Bill 21-107, on December 10, 2015, but the temporary legislation will expire on January 15, 2016, before the permanent version will be marked up by the Committee.

(h) In order to prevent a gap in the law, the Council must now pass this emergency and temporary legislation.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Marijuana Possession Decriminalization Clarification Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA
PROPOSED LEGISLATION
BILLS

B21-598	<p>Vacant Property Enforcement Amendment Act of 2016</p> <p>Intro. 2-2-16 by Councilmembers Silverman, Todd, May, Bonds, Evans, Cheh, Nadeau, McDuffie, Allen, and Chairman Mendelson and referred to the Committee on Business, Consumer, and Regulatory Affairs with comments from the Committee on Housing and Community Development</p>
<hr/>	
B21-599	<p>Equal Pay Amendment Act of 2016</p> <p>Intro. 2-2-16 by Councilmembers Cheh, Bonds, May, Silverman, Alexander, and Nadeau and referred to the Committee on Judiciary</p>
<hr/>	
B21-600	<p>Free Licenses for Veterans Amendment Act of 2016</p> <p>Intro. 2-2-16 by Councilmembers Todd and May and referred to the Committee on Transportation and the Environment</p>
<hr/>	
B21-601	<p>District of Columbia State Athletics Consolidation Act of 2016</p> <p>Intro. 2-2-16 by Councilmember Nadeau and referred to the Committee on Education</p>
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B21-602 Substance Abuse and Opioid Overdose Prevention Amendment Act of 2016

Intro. 2-2-16 by Councilmembers Alexander, Allen, Grosso, Cheh, and Silverman and referred to the Committee on Health and Human Services with comments from the Committee on Judiciary

B21-603 Foster Parents Statements of Rights and Responsibilities Amendment Act of 2016

Intro. 2-2-16 by Councilmembers Alexander, Bonds, Nadeau, and Cheh and referred to the Committee on Health and Human Services

PROPOSED RESOLUTIONS

PR21-545 Office of Unified Communications Karima Holmes Confirmation Resolution of 2016

Intro. 1-27-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-546 Corrections Information Council D. Yvonne Rivers Confirmation Resolution of 2016

Intro. 1-27-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-547 Public Employee Relations Board Barbara Somson Confirmation Resolution of 2016

Intro. 1-27-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PR21-548 Public Employee Relations Board Douglas A. Warshof Confirmation Resolution of 2016

Intro. 1-27-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PR21-552 Sense of the Council Urging the President of the United States and the Federal Government to Establish a Comprehensive National Immigration Policy Resolution of 2016

Intro. 2-2-16 by Councilmember Orange and referred to the Committee of the Whole

PR21-553 Sense of the Council in Support of a New Communities Initiative Relocation and Return Rights Strategy Resolution of 2016

Intro. 2-2-16 by Councilmembers Bonds, Alexander, Cheh, Evans, Grosso, McDuffie, Orange, Silverman, Allen, Nadeau, Todd, May, and Chairman Mendelson and Retained by the Council

**COUNCIL OF THE DISTRICT OF COLUMBIA
 ABBREVIATED NOTICE OF PUBLIC HEARINGS
 AGENCY PERFORMANCE OVERSIGHT HEARINGS
 FISCAL YEAR 2015-2016**

2/3/2016

SUMMARY

February 3, 2016 Committee of the Whole Public Briefing on the Fiscal Year 2015 Comprehensive Annual Financial Report (CAFR) 9:30 a.m. in Room 500

February 4, 2016 to March 10, 2016 Agency Performance Oversight Hearings on Fiscal Year 2015-2016

The Council of the District of Columbia hereby gives notice of its intention to hold public oversight hearings on agency performances for FY 2015 and FY 2016. The hearings will begin Thursday, February 4, 2016 and conclude on Thursday, March 10, 2016 and will take place in the Council Chamber (Room 500), Room 412, Room 123, and Room 120 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to Nyasha Smith, Secretary to the Council of the District of Columbia; Suite 5; John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004. If a written statement cannot be provided prior to the day of the hearing, please have at least 10 copies of your written statement available on the day of the hearing for immediate distribution to the Council. The hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget performance oversight hearing schedule, please contact the Council's Office of the Budget Director at (202) 724-8544.

ADDENDUM OF CHANGES TO THE PUBLIC HEARING SCHEDULE

<u>New Date</u>	<u>Original Date</u>	<u>Hearing</u>
2/11/2016	2/4/2016	Criminal Justice Coordinating Council
3/2/2016	2/4/2016	Deputy Mayor for Public Safety and Justice
3/3/2016	2/4/2016	Office of Victim Services and Justice Grants
3/3/2016	2/4/2016	Department of Youth Rehabilitation Services
3/4/2016	2/24/2016	District of Columbia Public Schools (Education)

PUBLIC HEARING SCHEDULE

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

WEDNESDAY, FEBRUARY 3, 2016; COUNCIL CHAMBER (Room 500)	
Time	Subject
9:30 a.m. - End	Committee of the Whole Public Briefing on the Fiscal Year 2015 Comprehensive Annual Financial Report (CAFR)

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

THURSDAY, FEBRUARY 4, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, FEBRUARY 8, 2016; Room 412	
Time	Agency
Noon - End	Department of Parks and Recreation
	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

WEDNESDAY, FEBRUARY 10, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Department of Health Care Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT

Chairperson Anita Bonds

WEDNESDAY, FEBRUARY 10, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Advisory Commission on Caribbean Community Affairs
	Office of African American Affairs
	Office of Asian and Pacific Islanders Affairs
	Office of Latino Affairs
	Office on African Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE ON THE JUDICIARY

Chairperson Kenyan McDuffie

THURSDAY, FEBRUARY 11, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Sentencing and Criminal Code Revision Commission
	Office of Police Complaints
	Criminal Justice Coordinating Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT

Chairperson Mary Cheh

THURSDAY, FEBRUARY 11, 2016; Room 412	
Time	Agency
11:00 a.m. - End	Department of Energy and Environment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT

Chairperson Anita Bonds

FRIDAY, FEBRUARY 12, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Office on Aging
	Advisory Neighborhood Commissions

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE ON THE JUDICIARY

Chairperson Kenyan McDuffie

WEDNESDAY, FEBRUARY 17, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Fire and Emergency Medical Services Department
	Office of Unified Communications
	Homeland Security and Emergency Management Agency
	Office of the Chief Medical Examiner

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, FEBRUARY 17, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Office of the State Superintendent of Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT

Chairperson Anita Bonds

WEDNESDAY, FEBRUARY 17, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Office of Gay, Lesbian, Bisexual, and Transgender Affairs
	Office of Religious Affairs
	Office of Veterans Affairs
	Office on Women's Policy and Initiatives

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

WEDNESDAY, FEBRUARY 17, 2016; Room 123	
Time	Agency
10:00 a.m. - End	Health Benefit Exchange Authority
	Department of Health Professional Licensing Boards

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, FEBRUARY 18, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

THURSDAY, FEBRUARY 18, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Washington Metropolitan Area Transit Authority
	Events DC
	Destination DC
	Office of Partnerships and Grant Services
	Commission on Arts and Humanities

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, sloy@dccouncil.us or by calling 202-724-8058.

COMMITTEE ON THE JUDICIARY

Chairperson Kenyan McDuffie

THURSDAY, FEBRUARY 18, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Judicial Nomination Commission
	Commission on Judicial Disabilities and Tenure
	Office of the Attorney General
	Mayor's Office of Legal Counsel
	Office of Administrative Hearings

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

FRIDAY, FEBRUARY 19, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Department of Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, FEBRUARY 22, 2016; Room 412	
Time	Agency
11:00 a.m. - End	Department of Motor Vehicles
	District of Columbia Taxicab Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON THE JUDICIARY

Chairperson Kenyan McDuffie

TUESDAY, FEBRUARY 23, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Metropolitan Police Department
	Board of Elections
	Office of Campaign Finance
	Board of Ethics and Government Accountability
	Office of Human Rights

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

TUESDAY, FEBRUARY 23, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Children and Youth Investment Corporation
	United Medical Center
	Deputy Mayor for Health and Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON EDUCATION

Chairperson David Grosso

TUESDAY, FEBRUARY 23, 2016; Room 120	
Time	Agency
10:00 a.m. - End	District of Columbia Public Library System

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT

Chairperson Anita Bonds

WEDNESDAY, FEBRUARY 24, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Housing Finance Agency
	District of Columbia Housing Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

THURSDAY, FEBRUARY 25, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
Noon - End	Department of General Services
	Washington Aqueduct
	DC Water

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HEALTH AND HUMAN SERVICES

Chairperson Yvette Alexander

THURSDAY, FEBRUARY 25, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS

Chairperson Vincent Orange

MONDAY, FEBRUARY 29, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Alcoholic Beverage Regulation Administration
	Department of Consumer and Regulatory Affairs
	Department of Insurance, Securities and Banking
	Office of Risk Management
	Department of Small and Local Business Development
	Office of the Tenant Advocate
	Deputy Mayor for Greater Economic Opportunity

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Peter Johnson, pjohnson@dccouncil.us or by calling 202-727-6683.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, FEBRUARY 29, 2016; Room 412	
Time	Agency
11:00 a.m. - End	Bicycle Advisory Council
	Pedestrian Advisory Council
	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

WEDNESDAY, MARCH 2, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Office of the Chief Financial Officer
	District of Columbia Lottery and Charitable Games Control Board
	Real Property Tax Appeals Commission
	Office of the Inspector General

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, sloy@dccouncil.us or by calling 202-724-8058.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

WEDNESDAY, MARCH 2, 2016; Room 412	
Time	Agency
9:30 a.m. - End	Office of Zoning
	Office of Planning
	Deputy Mayor for Planning and Economic Development

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: cow@dccouncil.us.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, MARCH 2, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Office of the Deputy Mayor for Education
	State Board of Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON THE JUDICIARY

Chairperson Kenyan McDuffie

WEDNESDAY, MARCH 2, 2016; Room 123	
Time	Agency
10:00 a.m. - End	Department of Corrections
	Corrections Information Council
	Office of Returning Citizens Affairs
	Commission on Fathers, Men, and Boys
	Deputy Mayor for Public Safety and Justice

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

THURSDAY, MARCH 3, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
9:30 a.m. - End	Interagency Council on Homelessness
	University of the District of Columbia
	Department of Human Resources
	Office of Labor Relations and Collective Bargaining
	Office of Employee Appeals
	Public Employee Relations Board

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: cow@dccouncil.us.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

THURSDAY, MARCH 3, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Child and Family Services Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON THE JUDICIARY

Chairperson Kenyan McDuffie

THURSDAY, MARCH 3, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Department of Forensic Sciences
	District of Columbia National Guard
	Office of Victim Services and Justice Grants
	Department of Youth Rehabilitation Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, MARCH 3, 2016; Room 123	
Time	Agency
10:00 a.m. - End	Public Charter School Board

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT

Chairperson Anita Bonds

FRIDAY, MARCH 4, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Department of Housing and Community Development
	Housing Production Trust Fund
	Rental Housing Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE ON EDUCATION

Chairperson David Grosso

FRIDAY, MARCH 4, 2016; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

MONDAY, MARCH 7, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Executive Office of the Mayor
	Office of the City Administrator
	Office of the Senior Advisor
	Secretary of the District of Columbia
	Contract Appeals Board
	Office of Contracting and Procurement
	Office of the Chief Technology Officer

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: cow@dccouncil.us.

COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS

Chairperson Vincent Orange

MONDAY, MARCH 7, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Office of Cable Television, Film, Music and Entertainment
	Office of the People's Counsel
	Public Service Commission
	Department of Employment Services
	Workforce Investment Council
	Public Access Corporation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Peter Johnson, pjohnson@dccouncil.us or by calling 202-727-6683.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

TUESDAY, MARCH 8, 2016; Room 412	
Time	Agency
10:30 a.m. - End	Metropolitan Washington Airport Authority
	Metropolitan Washington Council of Governments
	Office of the District of Columbia Auditor
	New Columbia Statehood Commission
	Office of Budget and Planning
	District of Columbia Retirement Board
	Retiree Health Contribution (Other Post-Employment Benefits)

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: cow@dccouncil.us.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

THURSDAY, MARCH 10, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Department of Disability Services
	Office of Disability Rights

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

**COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARINGS
FISCAL YEAR 2017 PROPOSED BUDGET AND FINANCIAL PLAN,
FISCAL YEAR 2017 BUDGET SUPPORT ACT OF 2016,
FISCAL YEAR 2017 BUDGET REQUEST ACT OF 2016, AND
COMMITTEE MARK-UP SCHEDULE**

2/3/16

SUMMARY

March 24, 2016	Mayor Transmits the Fiscal Year 2017 Proposed Budget and Financial Plan
April 4, 2016	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2016 Proposed Budget and Financial Plan
April 6, 2016 to April 26, 2016	Committee Public Hearings on the "Fiscal Year 2017 Budget Request Act of 2016." (The Committees may also simultaneously receive testimony on the sections of the Fiscal Year 2017 Budget Support Acts that affect the agencies under each Committee's purview)
April 29, 2016	Committee of the Whole Public Hearing on the "Fiscal Year 2017 Budget Request Act of 2016" and the "Fiscal Year 2017 Budget Support Act of 2016"
May 4-5, 2016	Committee Mark-ups and Reporting on Agency Budgets for Fiscal Year 2017
May 17, 2016	Committee of the Whole and Council consideration of the "Fiscal Year 2017 Budget Request Act of 2016", and the "Fiscal Year 2017 Budget Support Act of 2016"
May 31, 2016	Council consideration of the "Fiscal Year 2017 Budget Request Act of 2016"
June TBD	Council consideration of the "Fiscal Year 2017 Budget Support Act of 2016"

The Council of the District of Columbia hereby gives notice of its intention to hold public hearings on the FY 2017 Proposed Budget and Financial Plan, the "Fiscal Year 2017 Budget Request Act of 2016", and the "Fiscal Year 2017 Budget Support Act of 2016". The hearings will begin Monday, April 4, 2016 and conclude on Friday, April 29, 2016 and will take place in the Council Chamber (Room 500), Room 412, Room 120, or Room 123 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

The Committee mark-ups will begin Wednesday, May 4, 2016 and conclude on Thursday, May 5, 2016 and will take place in the Council Chamber (Room 500) of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to Nyasha Smith, Secretary to the Council of the District of Columbia; Suite 5; John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004. If a written statement cannot be provided prior to the day of the hearing, please have at least 15 copies of your written statement available on the day of the hearing for immediate distribution to the Council. The hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget oversight hearing and mark-up schedule please contact the Council's Office of the Budget Director at (202) 724-8544.

PUBLIC HEARING SCHEDULE

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

MONDAY, APRIL 4, 2016; COUNCIL CHAMBER (Room 500)	
Time	Subject
10:00 a.m. - End	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2017 Proposed Budget and Financial Plan

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

WEDNESDAY, APRIL 6, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
9:30 a.m. - End	Office of Zoning
	Office of Planning
	Deputy Mayor for Planning & Economic Development

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: cow@dccouncil.us.

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

WEDNESDAY, APRIL 6, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Criminal Justice Coordinating Council
	Department of Youth Rehabilitation Services
	Office of Victim Services and Justice Grants
	Office of Human Rights

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

WEDNESDAY, APRIL 6, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

THURSDAY, APRIL 7, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Metropolitan Police Department
	Office of Police Complaints

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

THURSDAY, APRIL 7, 2016; Room 412	
Time	Agency
9:30 a.m. - End	University of the District of Columbia
	Department of Human Resources
	Office of Labor Relations and Collective Bargaining
	Office of Employee Appeals
	Public Employee Relations Board

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: cow@dccouncil.us.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT **Chairperson Anita Bonds**

THURSDAY, APRIL 7, 2016; Room 120	
Time	Agency
11:00 a.m. - End	Advisory Commission on Caribbean Community Affairs
	Office of African American Affairs
	Office of Asian and Pacific Islander Affairs
	Office of Latino Affairs
	Office on African Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling or by calling 202-724-8198.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

FRIDAY, APRIL 8, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

FRIDAY, APRIL 8, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Department of Health Care Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT **Chairperson Anita Bonds**

FRIDAY, APRIL 8, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Office of Gay, Lesbian, Bisexual, and Transgender Affairs
	Office of Religious Affairs
	Office of Veterans Affairs
	Office of Women's Policy and Initiatives

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

MONDAY, APRIL 11, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Executive Office of the Mayor
	Office of the City Administrator
	Office of the Secretary
	Office of the Senior Advisor
	Contracts Appeals Board
	Office of Contracting and Procurement
	Office of the Chief Technology Officer

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: cow@dccouncil.us.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

TUESDAY, APRIL 12, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

TUESDAY, APRIL 12, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Fire and Emergency Medical Services Department
	Office of Unified Communications
	Homeland Security and Emergency Management Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

TUESDAY, APRIL 12, 2016; Room 120	
Time	Agency
11:00 a.m. - End	Department of Energy and Environment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON EDUCATION

Chairperson David Grosso

TUESDAY, APRIL 12, 2016; Room 123	
Time	Agency
10:00 a.m. - End	Public Charter School Board
	State Board of Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

WEDNESDAY, APRIL 13, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Office of the Chief Financial Officer
	District of Columbia Lottery and Charitable Games Control Board
	Real Property Tax Appeals Commission
	Commission on the Arts and Humanities

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, sloy@dccouncil.us or by calling 202-724-8058.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

WEDNESDAY, APRIL 13, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Health Benefit Exchange Authority
	Child and Family Services Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, APRIL 13, 2016; Room 120	
Time	Agency
10:00 a.m. - End	District of Columbia Public Library System
	Office of the Deputy Mayor for Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT

Chairperson Anita Bonds

WEDNESDAY, APRIL 13, 2016; Room 123	
Time	Agency
11:00 a.m. - End	Department of Housing and Community Development
	Housing Production Trust Fund
	Rental Housing Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE ON THE JUDICIARY

Chairperson Kenyan McDuffie

THURSDAY, APRIL 14, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Office of the Attorney General
	Office of Administrative Hearings
	Board of Ethics and Government Accountability
	Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, APRIL 14, 2016; Room 412	
Time	Agency
10:00 a.m. (this hearing will end after the last witness and reconvene at 5:00pm)	District of Columbia Public Schools (Public Witnesses only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

THURSDAY, APRIL 14, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Metropolitan Washington Council of Governments
	Council of the District of Columbia
	District of Columbia Auditor
	New Columbia Statehood Commission
	Office of Budget and Planning
	District of Columbia Retirement Board/Funds
	Retiree Health Contribution

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: cow@dccouncil.us.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

THURSDAY, APRIL 14, 2016; Room 123	
Time	Agency
11:00 a.m. - End	Department of Parks and Recreation
	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

MONDAY, APRIL 18, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Disability Services
	Office of Disability Rights

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON EDUCATION

Chairperson David Grosso

MONDAY, APRIL 18, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Office of State Superintendent of Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

WEDNESDAY, APRIL 20, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS

Chairperson Vincent Orange

WEDNESDAY, APRIL 20, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Alcoholic Beverage Regulation Administration
	Department of Consumer and Regulatory Affairs
	Department of Insurance, Securities and Banking
	Office of Tenant Advocate
	Department of Small and Local Business Development
	Deputy Mayor for Greater Economic Opportunity

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Peter Johnson, pjohnson@dccouncil.us or by calling 202-727-6683.

COMMITTEE ON THE JUDICIARY

Chairperson Kenyan McDuffie

WEDNESDAY, APRIL 20, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Corrections Information Council
	Department of Corrections
	Department of Forensic Sciences
	Department of the Chief Medical Examiner
	Office of Returning Citizens Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT

Chairperson Anita Bonds

THURSDAY, APRIL 21, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Housing Finance Agency
	District of Columbia Housing Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, APRIL 21, 2016; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

FRIDAY, APRIL 22, 2016; Room 412	
Time	Agency
11:00 a.m. - End	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HEALTH & HUMAN SERVICES

Chairperson Yvette Alexander

FRIDAY, APRIL 22, 2016; Room 120	
Time	Agency
10:00 a.m. - End	Children and Youth Investment Trust Corporation
	United Medical Center
	Deputy Mayor for Health and Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-741-0909.

COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS

Chairperson Vincent Orange

MONDAY, APRIL 25, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Office of Cable Television, Film, Music and Entertainment
	Office of the People's Counsel
	Public Service Commission
	Department of Employment Services
	Office of Risk Management

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Peter Johnson, pjohnson@dccouncil.us or by calling 202-727-6683.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

MONDAY, APRIL 25, 2016; Room 412	
Time	Agency
10:00 a.m. - End	Washington Metropolitan Area Transit Authority
	Office of the Inspector General
	Office of Partnerships and Grant Services
	Events DC
	Destination DC

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, sloy@dccouncil.us or by calling 202-724-8058.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT **Chairperson Anita Bonds**

TUESDAY, APRIL 26, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Office on Aging Advisory Neighborhood Commissions

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, omontiel@dccouncil.us or by calling 202-724-8198.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

TUESDAY, APRIL 26, 2016; Room 412	
Time	Agency
11:00 a.m. - End	Department of Motor Vehicles District of Columbia Taxicab Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

FRIDAY, APRIL 29, 2016; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Committee of the Whole Hearing on the "Fiscal Year 2017 Budget Request Act of 2016", and the "Fiscal Year 2017 Budget Support Act of 2016"

COMMITTEE MARK-UP SCHEDULE

WEDNESDAY, MAY 4, 2016; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Committee on Business, Consumer and Regulatory Affairs
12:00 p.m. - 2:00 p.m.	Committee on Finance and Revenue
2:00 p.m. - 4:00 p.m.	Committee on Transportation and the Environment
4:00 p.m. - 6:00 p.m.	Committee on Health and Human Services

THURSDAY, MAY 5, 2016; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Committee on Housing and Community Development
12:00 p.m. - 2:00 p.m.	Committee on the Judiciary
2:00 p.m. - 4:00 p.m.	Committee on Education
4:00 p.m. - 6:00 p.m.	Committee of the Whole

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

NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE ON

Snowzilla: The District's Response to the Winter Storm of January 2016

Thursday, February 18, 2016
at 10:30 a.m.
in Room 123 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Thursday, February 18, 2016, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public oversight roundtable on the District's response to Snowzilla and the winter weather of January 2016. The roundtable will begin at 10:30 a.m. in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The purpose of the roundtable is to hear from the public and relevant District agencies regarding the District's response to the winter weather and blizzard that took place in the District in January of 2016. The roundtable will examine the District's preparation for the storm as well as its response during and after the storm, with the goal of identifying areas in which the relevant agencies performed well, areas that need improvement, and actions needed to ensure that the District is prepared for future storms.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 8 copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

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

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B21-595, Chancellor of the District of Columbia Public Schools Salary and Benefits Approval Temporary Amendment Act of 2016, **B21-605**, Protecting Pregnant Workers Fairness Temporary Amendment Act of 2016, and **B21-607**, Marion S. Barry Summer Youth Employment Expansion Temporary Amendment Act of 2016 were adopted on first reading on February 2, 2016. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on March 1, 2016.

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

NOTICE OF PUBLIC HEARING

10:00 A.M., WEDNESDAY, FEBRUARY 24, 2016

**FRANK D. REEVES MUNICIPAL CENTER
ALCOHOLIC BEVERAGE CONTROL BOARD HEARING ROOM
2000 14TH STREET, N.W., SUITE 400 SOUTH, 4TH FLOOR
WASHINGTON, D.C. 20009**

The Alcoholic Beverage Control Board (Board) will hold a hearing to receive public comment concerning the Georgetown Moratorium Zone (23 DCMR § 305). The existing Georgetown Moratorium expires on February 3, 2016. The Board adopted emergency rules on December 9, 2015, to prevent the existing moratorium from expiring. The Georgetown Moratorium Emergency Rules will remain in effect until April 9, 2016.

HEARING INFORMATION

WHEN: 10:00 a.m. on Wednesday, February 24, 2016

WHERE: Alcoholic Beverage Control Board Hearing Room, 2000 14th Street, N.W., Suite 400 South, 4th Floor, Washington, D.C. 20009

Individuals and representatives of organizations that want to testify should contact ABRA General Counsel Martha Jenkins by **Friday, February 19, 2016:**

- Call - (202) 442-4456
- Email - abralegal@dc.gov
(include full name, title, and organization, if applicable, of the person(s) testifying in the email)

Witnesses should bring six (6) copies of their written testimony to the Board. Testimony may be limited to five minutes in order to permit each person an opportunity to be heard.

Members of the public that are unable to testify in person are encouraged to provide written comments, which will be made a part of the Board's official record. Copies of written statements should be submitted to ABRA General Counsel Martha Jenkins no later than **4 p.m. on Friday, March 4, 2016**, at ABRA's mailing address or e-mail address stated above.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: February 5, 2016
Petition Date: March 21, 2016
Hearing Date: April 4, 2016
Protest Date: June 1, 2016

License No.: ABRA-101629
Licensee: J & J Holdings, LLC
Trade Name: Pho 88 Noodles and Grill
License Class: Retailer's Class "D" Restaurant
Address: 608 H Street, N.W.
Contact: Guozhen Sun: (240) 449-9512

WARD 2 ANC 2C SMD 2C01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for June 1, 2016 at 1:30 pm.

NATURE OF OPERATION

A Retailer's Class 'D' restaurant serving Asian dishes with 66 seats and a Total Occupancy Load of 115.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 12 pm - 9 pm, Monday through Saturday 11 am - 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

2/5/2016

Notice is hereby given that:

License Number: ABRA-024362

License Class/Type: A Retail - Liquor Store

Applicant: Decatur Liquors, Inc.

Trade Name: Uptown Wine and Spirits

ANC: 4C02

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

4704 14TH ST NW

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

3/21/2016

A HEARING WILL BE HELD ON:

4/4/2016

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

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

ENDORSEMENTS: Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

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

TIME AND PLACE: **Monday, March 21, 2016, @ 6:30 P.M.**
 Jerrily R. Kress Memorial Hearing Room
 441 4th Street, N.W. Suite 220-S
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 15-09 (Residents of Lanier Heights and ANC 1C - Map Amendment @ Squares 2580, 2581, 2582, 2583, 2584, 2586W, 2587, and 2589)

THIS CASE IS OF INTEREST TO ANC 1C

On April 7, 2015, the Office of Zoning received a petition from Advisory Neighborhood Commission (ANC) 1C and the Residents of Lanier Heights requesting amendments to the Zoning Map to rezone portions of Squares 2580, 2581, 2582, 2583, 2584, 2586W, 2587, and 2589 that are currently zoned in the R-5-B Zone District to the R-4 Zone District.

At a properly noticed public meeting on December 14, 2015, the Zoning Commission set down this case for a public hearing. The Commission did not request the Petitioner to provide any additional information and the Petitioner, through an email dated January 21, 2016, advised the Office of Zoning that it would not be submitting a supplemental filing prior to the advertisement of the public hearing as permitted by § 3013. This allowed for the immediate publication of this notice.

The proposed amendment to the Zoning Map is as follows:

Rezone portions of Squares 2580, 2581, 2582, 2583, 2584, 2586W, 2587, and 2589 that are zoned R-5-B to the R-4 Zone District.

A complete list of the properties included in this rezoning case is attached to the end of this notice.

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

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations, Title 11, and Zoning.

How to participate as a witness.

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

Z.C. Notice of Public Hearing
 Z.C. Case No. 15-09
 Page 2

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

Time limits.

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

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

- 1. Organizations 5 minutes each
- 2. Individuals 3 minutes each

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

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

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

Properties Included in Rezoning from R-5-B to R-4 Zone District		
Square	Lot	Address
2580	0354	1756 Lanier Place, NW
2580	0359	1746 Lanier Place, NW
2580	0360	1744 Lanier Place, NW
2580	0386	1788 Lanier Place, NW
2580	0387	1786 Lanier Place, NW
2580	0417	1730 Lanier Place, NW

Properties Included in Rezoning from R-5-B to R-4 Zone District		
Square	Lot	Address
2580	0418	2724 Ontario Road, NW
2580	0419	2722 Ontario Road, NW
2580	0420	2720 Ontario Road, NW
2580	0421	2718 Ontario Road, NW
2580	0422	2716 Ontario Road, NW
2580	0432	1740 Lanier Place, NW

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Properties Included in Rezoning from R-5-B to R-4 Zone District		
Square	Lot	Address
2580	0432	1742 Lanier Place, NW
2580	0433	1738 Lanier Place, NW
2580	0434	1736 Lanier Place, NW
2580	0435	1734 Lanier Place, NW
2580	0436	1732 Lanier Place, NW
2580	0449	1784 Lanier Place, NW
2580	0480	1768 Lanier Place, NW
2580	0481	1766 Lanier Place, NW
2580	0482	1764 Lanier Place, NW
2580	0483	1762 Lanier Place, NW
2580	0484	1760 Lanier Place, NW
2580	0485	1758 Lanier Place, NW
2580	0513	1776 Lanier Place, NW
2580	0824	1748 Lanier Place, NW
2580	0840	1752 Lanier Place, NW
2580	0841	1750 Lanier Place, NW
2581	0290	2719 Ontario Road, NW
2581	0291	2721 Ontario Road, NW
2581	0292	2723 Ontario Road, NW
2581	0293	2725 Ontario Road, NW
2581	0294	2727 Ontario Road, NW
2581	0295	2729 Ontario Road, NW
2581	0296	2731 Ontario Road, NW
2581	0297	2733 Ontario Road, NW
2581	0298	2735 Ontario Road, NW
2581	0441	1726 Lanier Place, NW
2581	0442	1724 Lanier Place, NW
2581	0443	1722 Lanier Place, NW
2581	0444	1720 Lanier Place, NW
2581	0445	1718 Lanier Place, NW
2581	0446	1716 Lanier Place, NW
2581	0447	1714 Lanier Place, NW
2581	0464	1704 Lanier Place, NW
2581	0465	1706 Lanier Place, NW
2581	0466	1708 Lanier Place, NW
2581	0467	1710 Lanier Place, NW
2581	0468	1712 Lanier Place, NW
2581	0472	1702 Lanier Place, NW
2581	0473	1700 Lanier Place, NW
2581	0474	1698 Lanier Place, NW
2581	0475	1696 Lanier Place, NW
2581	0476	1694 Lanier Place, NW
2582	0172	1741 Lanier Place, NW
2582	0173	2803 Ontario Road, NW
2582	2040	2803 Ontario Road, NW
2582	2041	2803 Ontario Road, NW

Properties Included in Rezoning from R-5-B to R-4 Zone District		
Square	Lot	Address
2582	2042	2803 Ontario Road, NW
2582	2043	2803 Ontario Road, NW
2582	2044	2803 Ontario Road, NW
2582	2045	2803 Ontario Road, NW
2582	0191	2801 18 th Street, NW Unit B
2582	0192	2803 18 th Street, NW Unit 1B
2582	0193	2805 18 th Street, NW Unit 1A
2582	0194	2807 18 th Street, NW Unit 2A
2582	0195	2815 18 th Street, NW Unit 2B
2582	0196	2817 18 th Street, NW Unit 3
2582	0353	2809 Ontario Road, NW
2582	0376	1729 Lanier Place, NW
2582	0377	1731 Lanier Place, NW
2582	0378	1733 Lanier Place, NW
2582	0379	1735 Lanier Place, NW
2582	0380	1737 Lanier Place, NW
2582	0381	1739 Lanier Place, NW
2582	0401	1719 Lanier Place, NW
2582	0402	1717 Lanier Place, NW
2582	0403	1715 Lanier Place, NW
2582	0404	1713 Lanier Place, NW
2582	0405	1711 Lanier Place, NW
2582	0406	1709 Lanier Place, NW
2582	0407	1707 Lanier Place, NW
2582	0408	2805 Ontario Road, NW
2582	0409	2807 Ontario Road, NW
2582	0827	2809 Ontario Road, NW
2582	0828	2819 18 th Street, NW
2583	0334	1779 Lanier Place, NW
2583	0335	1781 Lanier Place, NW
2583	0336	1783 Lanier Place, NW
2583	0337	1785 Lanier Place, NW
2583	2108	1785 Lanier Place, NW Unit 1
2583	2109	1785 Lanier Place, NW Unit 2
2583	2110	1785 Lanier Place, NW Unit 3
2583	2111	1785 Lanier Place, NW Unit 4
2583	0338	1787 Lanier Place, NW
2583	0343	1850 Ontario Place, NW
2583	0344	1848 Ontario Place, NW
2583	0345	1846 Ontario Place, NW
2583	0346	1844 Ontario Place, NW
2583	0347	1842 Ontario Place, NW
2583	0348	1840 Ontario Place, NW
2583	0349	1838 Ontario Place, NW
2583	0350	1836 Ontario Place, NW
2583	0351	1834 Ontario Place, NW

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Properties Included in Rezoning from R-5-B to R-4 Zone District		
Square	Lot	Address
2583	0352	1832 Ontario Place, NW
2583	0356	1775 Lanier Place, NW
2583	0357	1777 Lanier Place, NW
2583	0361	1882 Ontario Place, NW
2583	0362	1880 Ontario Place, NW
2583	0363	1878 Ontario Place, NW
2583	0389	1892 Ontario Place, NW
2583	0390	1890 Ontario Place, NW
2583	0391	1888 Ontario Place, NW
2583	0392	1886 Ontario Place, NW
2583	0393	1884 Ontario Place, NW
2583	0394	1824 Ontario Place, NW
2583	0395	1822 Ontario Place, NW
2583	0396	1820 Ontario Place, NW
2583	0397	1858 Ontario Place, NW
2583	0398	1856 Ontario Place, NW
2583	0399	1854 Ontario Place, NW
2583	0400	1852 Ontario Place, NW
2583	0414	1812 Ontario Place, NW
2583	0415	1810 Ontario Place, NW
2583	0416	1808 Ontario Place, NW
2583	0437	1830 Ontario Place, NW
2583	0438	1828 Ontario Place, NW
2583	0439	1826 Ontario Place, NW
2583	0450	1818 Ontario Place, NW
2583	0451	1816 Ontario Place, NW
2583	0452	1814 Ontario Place, NW
2583	0454	1745 Lanier Place, NW
2583	0455	1747 Lanier Place, NW
2583	0456	1749 Lanier Place, NW
2583	0457	1751 Lanier Place, NW
2583	0458	1753 Lanier Place, NW
2583	0459	1755 Lanier Place, NW
2583	0460	1757 Lanier Place, NW
2583	0461	1759 Lanier Place, NW
2583	0462	1761 Lanier Place, NW
2583	0486	1769 Lanier Place, NW
2583	0487	1771 Lanier Place, NW
2583	0512	1793 Lanier Place, NW
2583	2097	1793 Lanier Place, NW Unit 1
2583	2098	1793 Lanier Place, NW Unit 2
2583	2099	1793 Lanier Place, NW Unit 3
2583	2100	1793 Lanier Place, NW Unit 4
2583	2101	1793 Lanier Place, NW Unit 5
2583	2102	1793 Lanier Place, NW Unit 6
2583	2103	1793 Lanier Place, NW Unit 7

Properties Included in Rezoning from R-5-B to R-4 Zone District		
Square	Lot	Address
2583	2104	1793 Lanier Place, NW Unit 8
2583	0856	1767 Lanier Place, NW
2583	0857	
2584	0310	1841 Ontario Place, NW
2584	0311	1843 Ontario Place, NW
2584	0312	1845 Ontario Place, NW
2584	0313	1847 Ontario Place, NW
2584	0314	1849 Ontario Place, NW
2584	0315	1851 Ontario Place, NW
2584	0316	1853 Ontario Place, NW
2584	0365	1823 Ontario Place, NW
2584	0366	1825 Ontario Place, NW
2584	0367	1827 Ontario Place, NW
2584	0368	1829 Ontario Place, NW
2584	0373	1817 Ontario Place, NW
2584	0374	1819 Ontario Place, NW
2584	0375	1821 Ontario Place, NW
2584	0504	1839 Ontario Place, NW
2584	0505	1837-1839 Ontario Place, NW
2584	0818	1835 Ontario Place, NW
2584	0822	1857 Ontario Place, NW
2584	0823	1855 Ontario Place, NW
2584	0825	1831 Ontario Place, NW
2584	0828	1833 Ontario Place, NW
2587	0489	2922 18 th Street, NW
2587	2001	2922 18 th Street, NW Unit 1
2587	2002	2922 18 th Street, NW Unit 2
2587	2003	2922 18 th Street, NW Unit 3
2587	2004	2922 18 th Street, NW Unit 4
2587	2005	2922 18 th Street, NW Unit 5
2587	0490	2920 18 th Street, NW
2587	0491	2918 18 th Street, NW
2587	0492	2916 18 th Street, NW
2587	0493	2914 18 th Street, NW
2587	0494	2912 18 th Street, NW
2587	0495	2910 18 th Street, NW
2587	0496	2908 18 th Street, NW
2587	0497	2906 18 th Street, NW
2587	2009	2906 18 th Street, NW Unit 1
2587	2010	2906 18 th Street, NW Unit 2
2587	0498	2904 18 th Street, NW
2587	0499	2902 18 th Street, NW
2587	0500	2900 18 th Street, NW
2589	0452	1652 Argonne Place, NW
2589	0453	1650 Argonne Place, NW
2589	0454	1648 Argonne Place, NW

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Properties Included in Rezoning from R-5-B to R-4 Zone District		
Square	Lot	Address
2589	0455	1646 Argonne Place, NW
2589	0456	1644 Argonne Place, NW
2589	0457	1642 Argonne Place, NW
2589	0458	1640 Argonne Place, NW
2589	0459	1638 Argonne Place, NW
2589	0460	1636 Argonne Place, NW
2589	0461	1634 Argonne Place, NW
2589	0462	1632 Argonne Place, NW
2589	0463	1630 Argonne Place, NW

Properties Included in Rezoning from R-5-B to R-4 Zone District		
Square	Lot	Address
2589	0464	1628 Argonne Place, NW
2589	0465	1626 Argonne Place, NW
2589	0466	1624 Argonne Place, NW
2589	0467	1622 Argonne Place, NW
2589	0468	1620 Argonne Place, NW
2586W	0806	2800 Adams Mill Road, NW
2586W	0805	2810 Adams Mill Road, NW
2586W	0412	2812 Adams Mill Road, NW
2586W	0411	2814 Adams Mill Road, NW

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in Section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1203; D.C. Official Code § 2-559 (2012 Repl.)), hereby gives notice of corrections to the Notice of Final Rulemaking issued by the Department of Consumer and Regulatory Affairs (DCRA) and published in the *D.C. Register* on January 22, 2016 at 63 DCR 878.

The final rulemaking amended Chapter 89 (Trade Name Registration) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR). Section 8903 (Renewal) mistakenly misnumbers Subsection 8903.4 in place of Subsection 8903.3, and Section 8907 (Changes in Registration, Cancellation, and Filing Requirements) mistakenly misnumbers Subsection 8907.2 in place of 8907.1. The correction to the final rulemaking is illustrated by showing the deleted word in strike-through text and added the correct subsection as underlined text.

~~8903.4~~ 8903.3 If a person fails to file its trade name renewal application by the filing deadline and the trade name expires pursuant to § 8902.2, the person shall complete a new trade name application and pay all fees associated with the trade name application if the person wishes to continue to register the trade name.

~~8907.2~~ 8907.1 An amendment to, notice of cancellation of, or new registration of a trade name shall be filed according to D.C. Official Code § 47-2855.03.

This Errata Notice's correction to the Notice of Final Rulemaking is non-substantive in nature and does not alter the intent, application, or purpose of the proposed rules. The rules are effective upon the original publication date of January 22, 2016.

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

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Sections 3(b)(7) and (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)(7) and (11) (2012 Repl. & 2015 Supp.)); Section 403 of the Public Education Reform Amendment Act of 2007 (PERAA), effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-2652(a)(3) (2012 Repl. & 2015 Supp.)); with the advice and approval to be requested of the State Board of Education (SBOE) pursuant to Section 403(a)(3) of PERAA (D.C. Law 17-9; D.C. Official Code § 38-2652(a)(3) (2012 Repl. & 2015 Supp.)), hereby gives notice of the adoption of a new Chapter 22 (Graduation) to Title 5 (Education), Subtitle A (Office of the State Superintendent of Education), of the District of Columbia Municipal Regulations (DCMR).

The Office of the State Superintendent of Education (OSSE), pursuant to D.C. Official Code § 38-2602(b)(7) (2012 Repl. & 2015 Supp.), is responsible for establishing the minimum credits that must be achieved in order to graduate from any public and public charter school, with the advice and approval of the SBOE, pursuant to D.C. Official Code §§ 38-2652(a)(3) and (4) (2012 Repl. & 2015 Supp.). In developing the regulations, OSSE and SBOE engaged in an extensive period of public engagement and solicitation of public comments. These rules will establish a state diploma that will be provided to the District's nontraditional student residents such as adult students and students attending alternative schools who have passed the General Educational Development (GED[®]) test or completed the requirements of the National External Diploma Program (NEDP).

The Notice of Proposed Rulemaking was first published in the *D.C. Register* on December 11, 2015 at 62 DCR 15863. No comments were received. This Notice of Final Rulemaking is unchanged from the Proposed Rulemaking. These rules were adopted as final on January 20, 2016 and will become effective upon publication of this notice in the *D.C. Register*.

Add a new Chapter 22, GRADUATION, to Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, as follows:

Add a new Section 2201, STATE DIPLOMA, to read as follows:

2201 STATE DIPLOMA

2201.1 A resident who has successfully passed 2014 Series General Educational Development (GED[®]) test in compliance with Title 5-E DCMR §§ 2320 *et seq.*, (General Educational Development (GED[®]) Testing), or successfully completed the requirements of the National External Diploma Program (NEDP), shall be eligible for a state diploma from the Office of the State Superintendent of Education.

- 2201.2 The diploma of a resident eligible under § 2201.1 shall bear the signature of the State Superintendent of Education and the seal of the Office of the State Superintendent of Education.
- 2201.3 A diploma granted pursuant to § 2201.1 shall be recognized as equivalent to a high school diploma granted pursuant to Title 5-E DCMR § 2203 (Graduation: Academic Requirements).
- 2201.4 Pursuant to the regulatory requirements of the United States Department of Education (34 C.F.R. § 200.19), a state diploma provided for passing the GED[®] test or successfully completing the NEDP shall not be included in the District's calculation of the adjusted cohort graduation rate.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Sections 102, 106 and 501 of the Pre-K Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code §§ 38-271.02, 38-271.06, and 38-275.01 (2012 Repl. & 2015 Supp.)) (“Pre-k Act”), and Mayor’s Order 2009-44, dated March 27, 2009, hereby gives notice of the adoption of a new Chapter 35 (Pre-K Enhancement and Expansion Funding) of Title 5 (Education), Subtitle A (Office of the State Superintendent of Education) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to enhance and expand high quality pre-K programs across the District. Research has shown the multiple benefits of attending high quality pre-K programs, including increased school readiness, lower rates of grade retention and special education placements, improved high school graduation rates, reduced interaction with law enforcement, and higher rates of college attendance and completion. This rulemaking establishes procedures to facilitate and distribute funding for pre-K enhancement and expansion, administered by the Office of the State Superintendent of Education, into community-based organizations providing pre-K programs. Further, these rules enable the enhancement of current pre-K education services and broaden access to high quality early education programs by maximizing resources through utilization of multiple funding sources.

Emergency and proposed regulations were published in the *D.C. Register* on October 2, 2015, at 62 DCR 13045. The comment period officially closed on November 2, 2015, with the State Superintendent having received comments from two (2) advocates and members of the regulated community. The State Superintendent had made one (1) non-substantive clarification amendment. Subsection 3501.1(i) is amended to add the language “that meets OSSE’s requirements” and is revised to change “federally-stated goals” to “Federal law.” This clarifying additional language reflects the intent of the original language. This amendment is intended to clarify the role of OSSE as the District of Columbia State Educational Agency to ensure high quality inclusive opportunities for children with disabilities so that children with disabilities and their families are provided the opportunity for full participation and success in accordance with Federal requirements.

One commenter requested that OSSE issue a “frequently asked questions” document to address common questions from providers. In response to this comment, OSSE will issue a “frequently asked questions” document in the near future to address the main concerns or questions that we have received from providers thus far. The same commenter also requested that the State Superintendent also include a requirement to compensate the management team at the rate equal to those in D.C. public schools. OSSE has considered this comment; however, the Superintendent does not intend to adopt this recommendation in the current rulemaking.

In addition, this final rulemaking does not adopt Subsection 3501.1(e) regarding teacher academic and degree requirements that was included in the Notice of Proposed Rulemaking. However, this final rulemaking does reserve this subsection, as teacher academic and degree

requirements will be adopted in a separate final rulemaking action upon approval of the State Board of Education, pursuant to Section 201(b)(6) of the Pre-K Act (D.C. Official Code § 38-272.01(b)(6) (2012 Repl. & 2015 Supp.)).

These rules have been “deemed approved” by the Council of the District of Columbia, pursuant to Section 501(a) of the Pre-K Act (D.C. Official Code § 38-275.01(a) (2012 Repl. & 2015 Supp.)). These rules were adopted as final by the Superintendent on January 22, 2016, and will become effective upon publication of this notice in the *D.C. Register*.

Title 5- A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended by adding a new Chapter 35 to read as follows:

CHAPTER 35 PRE-K ENHANCEMENT AND EXPANSION FUNDING

3500 GENERAL PROVISIONS

- 3500.1 This chapter establishes regulations governing the allocation or award of pre-K enhancement and expansion funding to be distributed by the Office of the State Superintendent of Education (“OSSE”) to community-based organizations pursuant to the Pre-K Enhancement and Expansion Amendment Act of 2008 (the “Act”), effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code §§ 38-271.01 *et seq.*).
- 3500.2 Pursuant to Section 201 of the Act (D.C. Official Code § 38-272.01) the purpose of this chapter is to establish the process for allocation or award of funding to community-based organizations providing high quality pre-K education services for pre-K age children, including allocations or awards where available appropriations are insufficient to fund the full amount of the uniform per student funding formula (“UPSFF”) established pursuant to Section 2401 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-107; D.C Official Code § 38-1804.01).
- 3500.3 To receive and maintain an allocation or award of funding under this chapter, each high quality pre-K program shall meet and maintain the following eligibility criteria:
- (a) Be a community-based organization;
 - (b) Operate a pre-K education service in the District of Columbia;
 - (c) Prior to the provision of high quality pre-K education services to a child, the high quality pre-K program shall determine if the child:
 - (1) Is a resident of the District of Columbia, in reliance on the same type of documentation that may be used to establish residency for

public school students pursuant to Section 12 of the Student Residency Requirement Act (D.C. Official Code § 38-309);

- (2) Is or will be three (3) years of age or four (4) years of age on or before September 30 of the program year for which the child is being enrolled; and
- (3) Is eligible for subsidized child care;
- (d) Provide the support necessary to help families initially acquire or maintain subsidized child care if they are eligible;
- (e) Enroll and maintain a class size of no fewer than fifteen (15) and no more than sixteen (16) children in classrooms where the youngest child is three (3) years old or a class size of no fewer than sixteen (16) and no more than twenty (20) in classrooms where the youngest child is four (4) years old;
- (f) Participate in the Child and Adult Care Food Program (CACFP), as authorized by Section 17 of the National School Lunch Act, approved October 7, 1975 (89 Stat. 522; 42 U.S.C. § 1766), unless exempted from participation through a waiver from OSSE;
- (g) Operate Monday through Friday, beginning no earlier than 7:00 a.m.; provide at least six and a half (6.5) hours of pre-K education services, at least thirty-nine (39) weeks a year, for a total of at least one hundred eighty (180) days; and follow the holiday and closing calendar schedule of the District of Columbia Public Schools;
- (h) Meet any other eligibility criteria established by OSSE.

3501

HIGH QUALITY STANDARDS

3501.1

A CBO providing pre-K education services shall be designated as a high quality pre-K program and be eligible for the purposes of funding under this chapter, if the CBO meets each of the following high-quality standards:

- (a) An adult-to-child ratio of one-to-eight (1:8) for children thirty (30) months to three (3) years of age and of one-to-ten (1:10) for children four (4) years of age or older. When children of different ages are combined in one group, the adult-to-child ratio for the youngest child shall apply;
- (b) The consistent use of a comprehensive curriculum that is aligned with the District of Columbia's early learning standards. High quality pre-K programs shall provide a comprehensive educational program and use age-appropriate instructional practices in the implementation of that program.

Programs shall use, as the basis of their education programs, one of the following curriculum models:

- (1) Creative Curriculum[®];
 - (2) HighScope[®];
 - (3) Tools of the Mind[®];
 - (4) Core Knowledge[®];
 - (5) Opening the World of Learning[®];
 - (6) Houghton Mifflin Pre-K[®];
 - (7) Frog Street[®];
 - (8) Montessori[®]; or
 - (9) Another curriculum approved by OSSE that is both research-based and nationally recognized.
- (c) Accreditation by a national accrediting body approved by OSSE;
- (d) Utilization of child assessment tools that are aligned with the curriculum selected by the program. Children enrolled in the program shall be assessed using this tool at least three (3) times during the program year and the assessments shall be shared with families at least two (2) times during the program year. The program shall ensure that child assessment procedures reflect appropriate practices for young children. The program shall provide the results of the assessment for each child to OSSE within a month after conducting the assessment;
- (e) **[RESERVED]**;
- (f) The following teachers and assistant teachers shall be paid wages equivalent to District of Columbia Public School pre-K teachers or assistant teachers, respectively, based on years of experience:
- (1) A teacher that holds a bachelor's degree in early child development, early childhood education, or child and family studies or who has a bachelor's degree and has completed eighteen (18) credits in child development, early childhood education, or child and family studies;

- (2) An assistant teacher that holds an associate's degree in early childhood education or who has completed nine (9) credits in child development, early childhood education, or child and family studies;
- (g) A professional development and training plan for pre-K teachers and assistant teachers;
- (h) High quality pre-K programs shall provide opportunities for the parents of children to participate in and support the program's educational mission as active partners in their child's learning and development. High quality pre-K programs shall be supportive and sensitive to the cultural and linguistic backgrounds of the parents. High quality pre-K programs shall plan activities to increase parent participation such as encouraging families to volunteer their time, talents, special skills, and experiences. High quality pre-K programs shall plan educational workshops for parents, hold two (2) parent- teacher conferences a year, and provide other activities that foster family partnership over the program year. Parents shall be given timely notice in advance of each enrichment opportunity. Documentation of the offered parent activities and of the family participation is required and shall be submitted along with a site's quarterly report;
- (i) A plan that meets OSSE's requirements to ensure inclusion of children with disabilities, in accordance with Federal law;
- (j) High quality pre-K programs shall provide and maintain at all times safe, secure, and developmentally appropriate space for use as classrooms. The classrooms shall be of sufficient size to provide a minimum of thirty-five (35) square feet of interior, usable space per child which space shall be accessible to children with disabilities in accordance with the Americans with Disabilities Act;
- (k) High quality pre-K programs shall ensure that the daily active play for each pre-K age child includes, at a minimum, two (2) hours of active play time, including a minimum of forty-five (45) minutes of outdoor play time, weather permitting. In inclement weather, active play shall be encouraged and supported in a safe indoor play area;
- (l) High quality pre-K programs shall be licensed according to Chapter 3 of Title 29 of the District of Columbia Municipal Regulations (29 DCMR), prior to the receipt of funding. All participating sites shall remain in compliance with the licensing requirements as defined by 29 DCMR regulations;

- (m) Maintain a process for continuous improvement, ongoing classroom assessments, and the collection of authentic child assessment data at least three (3) times a year; and
- (n) Provide comprehensive health and support services for all children enrolled in the program. High quality pre-K programs shall ensure all children receive within forty-five (45) days of enrollment a developmental screening that includes assessments of social and emotional development. High quality pre-K programs shall also ensure children receive vision and hearing screenings.

3501.2 Designation as a high quality pre-K program is solely for the purpose of obtaining pre-K enhancement and expansion funding.

3502 PRE-K ENHANCEMENT AND EXPANSION FUNDING

3502.1 OSSE shall ensure that funding allocated to CBOs providing high quality pre-K education services, pursuant to this chapter, supplements and does not supplant existing federal and local funding sources available for education services for pre-K age children in the District of Columbia, including but not limited to funding available through subsidized child care programs and the Head Start program, as appropriate.

3502.2 High quality pre-K programs receiving pre-K enhancement and expansion funding shall only use the funding provided under this chapter to maintain the pre-K high quality standards as defined in Section 201 of the Pre-K Enhancement and Expansion Amendment Act (D.C. Official Code § 38-272.01) and in this chapter.

3502.3 If a child enrolled in a high quality pre-K classroom loses funding provided through a subsidized child care program because the child, or parent or guardian of the child, is no longer eligible to receive the subsidy, funds allocated pursuant to this chapter may be used to cover the cost of delivering child care services to ensure continuity of services for the child. Such a child shall remain enrolled in the current educational setting and classroom regardless of his or her subsidy status, unless both the high quality pre-K program and the child's parent or guardian determine that another environment is more appropriate to serve the needs of the child. High quality pre-K programs shall help the child's family regain and restore eligibility for the subsidized child care program when possible. High quality pre-K programs shall work closely with families to anticipate potential changes to subsidized child care, such as loss of work and annual redetermination. If a family is not able to restore subsidized child care, funds allocated pursuant to this chapter may be used to cover the full cost of maintaining the child's continued participation in the high quality pre-K program, including child care services.

- 3502.4 The funds allocated pursuant to this chapter may also be used to cover the full UPSFF costs for a child who is enrolled in a high quality pre-K program classroom, but is not eligible for subsidized child care.
- 3502.5 High quality pre-K programs providing year-round services to pre-K age children for more than six and a half (6.5) but no more than ten and a half (10.5) hours a day are eligible to receive pre-K enhancement and expansion funding to provide pre-K education services for no more than six and a half (6.5) hours for each child for no more than one hundred eighty (180) days.
- 3502.6 All Head Start, subsidized child care program, and pre-K enhancement and expansion funding policies and regulations shall be applied to the respective student, with the most stringent standard from either program adhered to.

3503 APPLICATION FOR HIGH QUALITY DESIGNATION

- 3503.1 OSSE shall accept applications for high quality designation on an annual basis.
- 3503.2 OSSE shall require all pre-K programs designated as high-quality to re-apply for high quality designation every three (3) years. Each pre-K program designated as high-quality shall submit to OSSE, by August 1st of each year, a projection of the number of pre-K age children it anticipates enrolling, including the projected number of children eligible and receiving subsidized child care.
- 3503.3 All CBOs designated prior to January 2015 as high quality pre-K programs for the purposes of pre-K enhancement and expansion funding shall re-apply for high quality designation pursuant to the requirements of this chapter in order to be eligible for UPSFF funding beginning with the 2016-2017 school year.
- 3503.4 All CBOs who meet the eligibility requirements and the pre-K high quality standards as defined in this chapter, may apply for high quality designation pursuant to the requirements of this chapter in order to be eligible for UPSFF funding beginning with the 2015-2016 school year.
- 3503.5 Applications for high quality designation shall be in a format and shall contain the information designated by OSSE.
- 3503.6 OSSE shall verify each of the eligibility criteria for the high quality designation and determine whether the CBO providing pre-K education services meets all of the high quality standards.

3504 DISTRIBUTION OF PRE-K ENHANCEMENT AND EXPANSION FUNDING

- 3504.1 Pre-K enhancement and expansion funding shall be provided in the manner set forth in this section to eligible District of Columbia high quality pre-K programs

that meet the eligibility requirements set forth in this chapter and maintain the high quality standards set forth in this chapter.

3504.2 OSSE shall allocate the pre-K enhancement and expansion funds as follows:

- (a) FY 2015 pre-K enhancement grantees, CBOs that received funding in 2014-2015 school year, that meet the eligibility requirements set forth in this chapter, and have maintained the high quality standards set forth in this chapter shall receive funding, per student, as appropriate, in an amount not to exceed the UPSFF for a six and a half (6.5) hour day, one hundred and eighty (180) days a year.
- (b) If there is any funding remaining after OSSE has allocated the pre-K enhancement and expansion funding to the FY 2015 pre-K enhancement grantees, OSSE shall:
 - (1) Determine if there is sufficient funding to allocate supplemental funding in an amount not to exceed the UPSFF for a six and a half (6.5) hour day for one hundred eighty (180) days for each student enrolled in a high quality pre-K program that filed an application designation as a high quality program and that meets the eligibility requirements and the high quality standards set forth in this chapter.
 - (2) If there is not sufficient funding to allocate to every such high quality pre-K program that meets the eligibility requirements and the high quality standards set forth in this chapter, OSSE shall distribute funding to each such high quality pre-K program that:
 - (A) Meets the eligibility requirements and the high quality standards set forth in this chapter; and
 - (B) Serves a student population where the percentage of children enrolled are eligible for and receiving subsidized child care or Head Start funding is equal to or exceeds thirty-five percent (35%) of the total enrolled pre-k child population.
 - (3) If there is not sufficient funding to allocate to every high quality pre-K program that meets the requirements set forth in subparagraph (2) of this paragraph, OSSE shall distribute funding to each high quality pre-K program that:
 - (A) Meets the eligibility requirements and the high quality standards set forth in this chapter;

(B) Serves a student population where the percentage of children enrolled are eligible for and receiving subsidized child care funding or Head Start funding is equal to or exceeds thirty five percent (35%) of the total enrolled pre-K child population; and

(C) Serves a student population in a high need community.

3504.3 The actual amount of funding allocated to each high quality pre-K program will be based on the number of pre-K age children served by the high quality pre-K program, as verified by OSSE's annual enrollment audit pursuant to D.C. Official Code § 38-1804.02(b)(3), and minus any other local or federal funding sources available for education services for pre-K age children in the District of Columbia, including but not limited to subsidized child care and the Head Start Program, as applicable.

3504.4 If the amount appropriated to OSSE is insufficient to fund all high quality pre-K programs that meet the eligibility requirements and the high-quality standards set forth in this chapter, OSSE may distribute the funds through a competitive grant process.

3505 PRE-K ENHANCEMENT AND EXPANSION GRANT

3505.1 This section applies to allocation of pre-K enhancement and expansion funding through a competitive grant process.

3505.2 For each competitive grant cycle, OSSE shall make available a request for funding application (RFA).

3505.3 To be eligible to apply for a grant, an applicant shall:

- (a) Be a CBO;
- (b) Provide all assurances required in the RFA, and
- (c) Meet any other requirements set forth in the RFA.

3505.4 The maximum funding available for a pre-K grant for each competitive grant cycle shall be specified in the RFA.

3505.5 A pre-K grant shall be used only to assist eligible pre-K programs in maintaining the high quality standards and program requirements.

3505.6 Grants awarded through the pre-K funding shall supplement, not supplant, any federal, local, or other funds received by a CBO providing education programs for pre-K age children in the District.

3505.7 OSSE reserves the authority to define the terms of pre-K grants in the RFA for each pre-K grant competition.

3506 MONITORING

3506.1 OSSE shall have the authority to monitor high quality pre-K programs at any time to verify their continued eligibility, and may revoke the high quality designation based upon a finding that the school does not meet the eligibility criteria. A high quality pre-K program shall cooperate with any monitoring conducted by OSSE pursuant to this subsection, and failure to do so may result in loss of high quality designation.

3506.2 A high quality pre-K program that receives pre-K enhancement and expansion funding shall submit monthly reports and a final report to OSSE, in a format and manner as determined by OSSE. The monthly report shall be due no later than ten (10) business days after the end of each month during the funding period, and the final report shall be due no later than fifteen (15) business days after the end of the funding period. Reports shall include copies of all invoices for all expenditures made with pre-K enhancement and expansion funding, enrollment and attendance reports, and specific measurable activities and outcomes reports.

3506.3 A high quality pre-K program that receives pre-K enhancement and expansion funding shall submit individual child outcome assessment data for all pre-K age children enrolled on November 30, February 28, and May 31 of each program year.

3506.4 A high quality pre-K program that receives pre-K enhancement and expansion funding shall:

- (a) Submit budget amendment and modification requests to OSSE and obtain approval from OSSE before expending pre-K enhancement funds for a purpose that was not included in the original approved budget;
- (b) Maintain accurate and complete records of all activities supported by the grant for three (3) years after the end of the funding period or such longer period as may otherwise be specified by OSSE;
- (c) Maintain records that document initial and periodic assessments, initial and periodic plans, and the ongoing progress of program activities; and
- (d) Ensure confidentiality and prevent unauthorized access to records. Programs shall maintain all records, including required reports, documents, and files on-site, in a properly secured cabinet or location. Records shall be accessed by authorized personnel only.

3506.5 OSSE shall monitor a high quality pre-K program that receives pre-K enhancement and expansion funding throughout the funding period. OSSE's monitoring may include, but is not limited to, scheduled and unscheduled visits to the high quality pre-K program's facility or principal place of business.

3506.6 A high quality pre-K program that receives pre-K enhancement and expansion funding shall fully cooperate with authorized representatives of the Government of the District of Columbia, including OSSE, and shall provide them access to facilities, staff, and records related to the allocation of pre-K enhancement and expansion funding upon request.

3507 FAILURE TO MAINTAIN HIGH QUALITY PRE-K PROGRAM

3507.1 If a high quality pre-K program that receives pre-K enhancement and expansion funding fails to comply with the terms of the distribution or applicable federal or District of Columbia laws or regulations, OSSE may, after giving reasonable written notice to the recipient, terminate the funding in whole or in part and/or, in its discretion, place the high quality pre-K program that received pre-K enhancement and expansion funding on probation to ensure compliance. In the absence of extenuating circumstances, reasonable notice shall be no less than thirty (30) calendar days

3507.2 OSSE shall provide to the high quality pre-K program that received pre-K enhancement and expansion funding written notice of termination or probation, and, if applicable, required remedial action. The notice shall state with specificity the reasons for the termination or probation, the specific remedial action required of the high quality pre-K program, and the effective date of the termination or placement on probation.

3507.3 OSSE may in its discretion make the termination effective in less than thirty (30) days, if a delayed effective date would be unreasonable under the circumstances, taking into consideration the responsibility to protect the public interest.

3507.4 A high quality pre-K program placed on probation status shall be required to complete a corrective action plan and may have its funding withheld until all identified noncompliance is corrected.

3507.5 A corrective action plan shall include strategies to regain compliance. OSSE may provide technical assistance during the preparation of the corrective action plan. Failure to correct all areas of noncompliance may result in a recommendation to terminate funding to the program.

3507.6 A high quality pre-K program may request review of a decision by OSSE to terminate the funding or probation. A request for review shall be submitted in writing to OSSE at any time before the effective date of the termination or probation, or within thirty (30) calendar days of the date the recipient received

notice of termination, whichever is longer. The written request for review shall include the following:

- (a) A concise statement of facts regarding each specified reason for the termination or required remedial action;
- (b) The specific basis for contesting each reason;
- (c) The specific relief requested; and
- (d) Two (2) copies of all documentary evidence supporting the recipient's positions.

3507.7 Review of the high quality pre-K program's request shall be performed by an OSSE employee designated by the State Superintendent of Education and such person shall not have participated in the decision to designate the CBO as a high quality pre-k program, the allocation or award of pre-K enhancement and expansion funding, or the decision to terminate the funding. The decision of the reviewer shall be final.

3599 DEFINITIONS

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

“Accreditation” means approval by a nationally recognized accrediting body or other body satisfying similar standards as approved by OSSE.

“Child Development Associate” or “CDA” means a credential obtained under the award system of the Council for Professional Recognition.

“Community-based organization” or “CBO” means a Head Start or early childhood education program operated by a non-profit, for-profit, or faith-based organization, or organization that participates in local or federally-funded early childhood programs, including the Child Care Subsidy.

“Enrolled” means a child has been accepted and attended at least one classroom in the high quality pre-K program.

“FY15 Pre-K Enhancement Grantees” means the CBOs that received a Pre-K Enhancement grant in the 2014-2015 school year.

“Head Start” means the federal program for children ages three (3) to five (5) years old that promotes the school readiness of young children from low-income families pursuant to the Improving Head Start for School Readiness Act of 2007, approved December 12, 2007 (121 Stat. 1363, 42 U.S.C. §§ 9801 *et seq.*), and its implementing regulations.

“High need community” means a geographically defined area, such as a neighborhood or Ward within the District that is currently underserved by high quality pre-k programs, based on the number and percentage of three (3)- and four (4)-year-olds not enrolled in a high quality pre-K program provided by the District of Columbia Public Schools, public charter schools, or a community based organization.

“High quality pre-K program” means a program providing pre-K education services to pre-K age children operated by a CBO, designated by OSSE, as a program meeting and maintaining the high quality standards and program requirements for pre-K programs pursuant to D.C. Official Code § 38-272.01 or as provided in this chapter.

“High quality standards” means the high quality standards for pre-K programs pursuant to D.C. Official Code § 38-272.01 or as updated in any subsequent regulations or legislation.

“OSSE” means the Office of the State Superintendent of Education.

“Pre-K age children” means children who are (i) three (3) years of age on or before September 30 of the program year for which the child is being enrolled; (ii), four (4) years of age; or (iii) five (5) years of age after September 30 of the program year for which the child is being enrolled.

“Pre-K education service” means the purposeful, well planned and developmentally appropriate practice and instruction provided by community-based organizations to pre-K age children.

“Pre-K enhancement and expansion funding” means funding to be distributed by the OSSE, subject to availability, to community based organizations pursuant to the Pre-K Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code §§ 38-271.01 *et seq.*).

“Program year” means the thirty-nine (39) weeks of a year, for a total of one hundred eighty (180) days, that the high quality pre-K program offers pre-K education services.

“Subsidized child care” means part-time or full-time child care services, subsidized in whole or in part to eligible families pursuant to local and federal law, including but not limited to Sections 5a and 6 of the Day Care Policy Amendment Act of 1998, effective April 13, 1999 (D.C. Law 12-216; D.C. Official Code §§ 4-404.01 and 4-405), 29 DCMR § 380 (“Direct-Subsidized Child Care Services”), and the Child Care and

Development Block Grant Act of 2014, approved November 19, 2014 (Pub. L 113-186, 128 Stat. 1971).

“Uniform per student funding formula” or “UPSFF” means the amount of funding provided for each student attending a public school in the District of Columbia, pursuant to Section 2401 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-107; D.C. Official Code § 38-1804.01).

DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the District of Columbia Department of Human Resources (Director), with the concurrence of the City Administrator, and pursuant to Mayor's Order 2008-92, dated June 26, 2008, and Sections 404 and 1651 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-604.04, and 1-616.51 *et seq.* (2014 Repl.)), gives notice of the adoption of amendments to Chapter 16 (General Discipline and Grievances) of Title 6 (Personnel), Subtitle B (Government Personnel) of the District of Columbia Municipal Regulations (DCMR).

The adopted rules will amend Chapter 16 to implement a new discipline and grievance program.

Proposed regulations were published in the *D.C. Register* on November 20, 2015, at 62 DCR 015142. The comment period officially closed on December 21, 2015, during which time the Director received comments from three labor organizations: the Doctor's Council of the District of Columbia; the American Federation of Government Employees (District 14); and the American Federation of State, County and Municipal Employees (District Council 20). DCHR made one non-substantive change to § 1630.2, correcting a cross-reference error relating to mediation.

The Director received several comments relating to reassignments as a form of corrective action, which is a new concept in the proposed rules. In these comments, there are concerns that there could be confusion as to whether *all* reassignments are "corrective action" as opposed to reassignments taken for cause. In its current form, the proposed rules establish a process remedying circumstances that fit the definition of cause, issuing a notice of proposed action based on that cause, and subsequently issuing a final decision for cause. Taken in the context of the entire rulemaking, the rules clearly apply to reassignments for cause, and not reassignments taken for other purposes. For this reason, DCHR did not make any changes to the proposed rules in this regard. However, it will consider adding explicit language on this point through future amendments.

The Director also received several comments urging that the revised Table of Illustrative Actions (§ 1607) be made mandatory, and that it is also overly broad in the range of actions specific to individual causes. The Director has considered these comments and has decided to retain the more flexible and holistic approach established in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981), as set forth in § 1606.2.

The Director received several comments urging the retention of adversarial hearings during the notice period of proposed adverse actions. Under existing rules, if the materials supplied by an agency through a notice of proposed action do not establish for the hearing officer that, more likely than not, the claimed cause occurred, the hearing officer may request an evidentiary hearing. However, a notice of proposed action should not be issued unless there is sufficient evidence to support the charged misconduct. Accordingly, under the new rules, if there is insufficient evidence to support the charges to the satisfaction of the reviewing official, that official should issue a decision consistent with that finding. The employee retains his or her right

to provide the hearing officer any relevant evidence in his or her defense, which could include witness affidavits.

The Director also received comments relating to management's burden of proof. Specifically, several commenters requested that language be retained making clear that the District bears the burden of proving cause by a preponderance of the evidence. The Director has considered these comments, but has decided to retain the plain language used in the revised rules. If an agency action goes to an evidentiary hearing before the Office of Employee Appeals, its rules govern those proceedings. In those proceedings, management bears the burden of proving material facts by a preponderance of the evidence pursuant to 6-B DCMR § 628.

These rules were adopted as final on January 22, 2016 and will become effective upon publication in the *D.C. Register*.

Chapter 16, GENERAL DISCIPLINE AND GRIEVANCES, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended to read as follows:

**CHAPTER 16 CORRECTIVE AND ADVERSE ACTIONS; ENFORCED LEAVE;
AND GRIEVANCES**

1600 APPLICABILITY

1600.1 This chapter establishes a progressive approach for addressing District of Columbia government employee performance and conduct deficits, pursuant to chapter XVI of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, as amended (D.C. Law 2-139; D.C. Official Code §§ 1-616.51 through 1-616.54).

1600.2 The provisions of this chapter apply to all District government employees except the following:

- (a) Employees serving in a probationary period;
- (b) Employees serving in a temporary appointment in the Career Service;
- (c) Employees organized under the Office of the Chief Financial Officer;
- (d) Employees of the Board of Trustees of the University of the District of Columbia;
- (e) Attorneys in the Legal or Senior Executive Attorney Service;
- (f) Employees in the Executive Service; and
- (g) Except as provided in § 1600.3, employees in the Management Supervisory Services.

- 1600.3 The rules established in this chapter shall be relied upon as a guide for Management Supervisory Services (MSS) when a disciplinary action is taken for cause.
- (a) For purposes of this chapter, employees in MSS are considered “exempt” employees and § 1625 does not apply to these employees.
 - (b) In accordance with D.C. Official Code § 1-609.54(a), MSS positions are at-will appointments. Nothing in this chapter shall be construed as conferring any substantive rights to MSS employees.

1601 POLICY

- 1601.1 The policies outlined in this section apply to employees and their supervisors, personnel authorities and agency heads, and form the basis for the standards governing this chapter.
- 1601.2 Each supervisor has a duty and responsibility to ensure that employees are aware of the established performance and conduct standards (“standards”) applicable to their role and function and the consequences of not meeting those standards. Whenever such standards are not met, supervisors have an affirmative obligation to provide the employee necessary guidance and training to meet these standards and, when appropriate, to take corrective or adverse action pursuant to this chapter.
- 1601.3 Each employee has the duty and the responsibility to be aware of and abide by the existing rules and policies. Each employee also has the responsibility to perform his or her duties to the best of his or her ability and to the standards established by management and his or her job description.
- 1601.4 The District of Columbia takes a positive approach toward employee management to achieve organizational effectiveness by using a progressive system to address performance and conduct issues.
- 1601.5 The District’s progressive system typically includes the following:
- (a) Verbal counseling;
 - (b) Reprimand;
 - (c) Corrective action; and
 - (d) Adverse action.
- 1601.6 Strict application of the progressive steps in §§ 1601.5 and 1610 may not be appropriate in every situation. Therefore, management retains the right to evaluate each situation on its own merits and may skip any or all of the progressive steps.

However, deviation from the progressive disciplinary system is only appropriate when consistent with §§ 1606 and 1607.

1601.7 Each agency head and personnel authority has the obligation to and shall ensure that corrective and adverse actions are only taken when an employee does not meet or violates established performance or conduct standards, consistent with this chapter.

1602 EMPLOYEE RIGHTS

1602.1 Employees enjoy the protections established in this chapter. No employee may be reprimanded, suspended, demoted, placed on enforced leave, or removed without cause, as defined in this chapter.

1602.2 Employees who are subject to a recognized labor agreement shall enjoy the additional benefits of their collective bargaining agreement. Conflicts between such agreements and this chapter shall be resolved as follows:

- (a) The provisions of any labor agreement shall be construed as complementary to the provisions of this chapter;
- (b) The provisions of any labor agreement shall be construed as to give effect to the provisions of this chapter;
- (c) However, where a specific provision of a labor agreement cannot be reconciled with a specific provision of this chapter, the labor agreement shall control with respect to that provision.

1602.3 Corrective and adverse actions taken against employees are subject to the following limitations:

- (a) A corrective or adverse action shall be commenced no more than ninety (90) business days after the agency or personnel authority knew or should of known of the performance or conduct supporting the action;
- (b) When there is an investigation involving facts or circumstances germane to the performance or conduct supporting a corrective or adverse action, the time limit established in paragraph (a) shall be tolled pending any criminal investigation by the Metropolitan Police Department or any other law enforcement agency with jurisdiction within the United States, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General; or, pending any investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, or the Office of Police Complaints.
- (c) Except in matters involving employees of the Metropolitan Police Department and Fire and Emergency Medical Services Department, the time limit imposed in paragraph (a) may be suspended by the personnel

authority for good cause and shall be suspended pending any related investigation by the Board of Ethics and Government Accountability.

1603 [RESERVED]

1604 [RESERVED]

1605 MISCONDUCT; PERFORMANCE DEFICITS

1605.1 District employees are expected to demonstrate high standards of integrity, both on and off the job, guided by established standards of conduct and other Federal and District laws, rules and regulations. When established standards of conduct are violated or performance measures are not met, or the rules of the workplace are disregarded, corrective action or adverse action is warranted to encourage conformity to acceptable behavioral and performance standards or to protect operational integrity.

1605.2 Taking a corrective or adverse action against an employee is appropriate when the employee fails to or cannot meet identifiable conduct or performance standards, which adversely affects the efficiency or integrity of government service. Before initiating such action, management shall conduct an inquiry into any apparent misconduct or performance deficiency (collecting sufficient information from available sources, including when appropriate the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation.

1605.3 Whether an employee fails to meet performance standards shall be determined by application of the provisions set forth in Chapter 14.

1605.4 Though not exhaustive, the following classes of conduct and performance deficits constitute cause and warrant corrective or adverse action:

- (a) Conduct prejudicial to the District of Columbia government, including:
 - (1) Conviction of any felony;
 - (2) Conviction of any criminal offense that is related to the employee's duties or his or her agency's mission;
 - (3) Conduct that an employee should reasonably know is a violation of law or regulation; and
 - (4) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects the employing agency's mission or has an otherwise identifiable nexus to the employee's position.
- (b) False Statements, including:

- (1) Deliberate falsification of an application for employment or other personal history record by omission of a material fact or by making a false entry;
 - (2) Misrepresentation, falsification, or concealment of material facts or records in connection with an official matter;
 - (3) Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record; and
 - (4) Knowingly and willfully reporting false or misleading information or purposely omitting material facts, to any supervisor.
- (c) Fiscal irregularities;
- (d) Failure or refusal to follow instructions;
- (e) Neglect of duty;
- (f) Attendance-related offenses, including:
- (1) Unexcused tardiness;
 - (2) Unauthorized absence; and
 - (3) Falsification of official records concerning attendance (*i.e.* timesheets, overtime requests, etc.).
- (g) Using or being influenced by intoxicants while on duty;
- (h) Unlawful possession of controlled substances and paraphernalia;
- (i) Safety and health violations;
- (j) Discriminatory practices;
- (k) Sexual misconduct;
- (l) Prohibited personnel practices;
- (m) Failure to meet performance standards; and
- (n) Inability to carry out assigned responsibilities or duties.

1605.5

An employee of the Department of Corrections, Department of Youth Rehabilitation Services, or the Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if:

- (a) The employee engages in any act or omission that constitutes a criminal offense; or
- (b) There is any credible evidence that the employee unlawfully used a controlled substance.

1606 ESTABLISHING APPROPRIATE ACTION

1606.1 After establishing a sufficient basis for taking action (*i.e.*, evidence to support the allegation(s); a nexus between the conduct or performance at issue and the employee's job or the agency's mission), managers must determine the appropriate action for the employee's conduct or performance deficits.

1606.2 For all agency actions managers shall be prepared to demonstrate that the following factors were considered:

- (a) The nature and seriousness of the misconduct or performance deficit, and its relationship to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical or inadvertent; was committed maliciously or for gain; or was frequently repeated;
- (b) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (c) The employee's past disciplinary record;
- (d) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (e) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
- (f) Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (g) Consistency of the penalty with the table of illustrative penalties (§ 1607);
- (h) The notoriety of the offense or its impact upon the reputation of the agency or the District government;
- (i) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (j) Potential for the employee's rehabilitation;

- (k) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (l) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

1606.3 All of these factors shall be considered and balanced to arrive at the appropriate remedy. While not all of these factors may be deemed relevant, consideration should be given to each factor based on the circumstances.

1606.4 The analysis of the factors above shall be included in any final agency decision on adverse action.

1607 TABLE OF ILLUSTRATIVE ACTIONS

1607.1 Once it is established that an employee has failed to meet performance or conduct standards, which requires corrective or adverse action, a supervisor or manager must determine the appropriate action based on the circumstances.

1607.2 The illustrative actions in the following table are not exhaustive and shall only be used as a guide to assist managers in determining the appropriate agency action. Balancing the totality of the relevant factors established in § 1606.2 can justify an action that deviates from those outlined in the table.

	NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(a)	Conduct Prejudicial to the District Government		
	(1) Conviction of any felony.	Removal	
	(2) Conviction of any criminal offense that is related to the employee’s duties or his or her agency’s mission.	Removal	
	(3) Indictment or charge of any felony or a criminal offense that is related to the employee’s duties or his or her agency’s mission.	Enforced leave pending criminal prosecution.	
	(4) On-duty conduct that an employee should reasonably know is a violation of law or regulation.	Reprimand to Removal	Removal

NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(5) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position.	Counseling to 30-day suspension	15-day suspension to Removal
(6) Concealing, removing, mutilating, altering, or destroying government records required to be kept by statute, regulation, Mayor's Order, document hold or subpoena, or other similar requirements.	Reprimand to Removal	14-Day Suspension to Removal
(7) Malicious or intentional damage to or loss of District owned or leased property.	Suspension to Removal	14-Day Suspension to Removal
(8) Using public office for significant private gain.	Removal	
(9) Unethical or improper use of official authority or credentials.	Counseling to Removal	Removal
(10) Unauthorized disclosure or use of (or failure to safeguard) information protected by statute or regulation or other official, sensitive or confidential information.	Counseling to Removal	Removal
(11) Obtaining a direct or indirect financial interest that an employee should reasonably expect to be in conflict or appear to be in conflict with his or her official duties and responsibilities.	Reprimand to Removal	Removal
(12) Use of (or authorizing the use of) District owned or leased property, services or funds for inappropriate or non-official purposes.	Counseling to Removal	Removal
(13) Use of (or authorizing the use of) District owned or leased vehicles such as cars, vans, trucks, buses, aircraft, boats or any other motor vehicle for use other than	15-Day Suspension to Removal	Removal

NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
official purposes.		
(14) Unauthorized use, removal or possession of an item of value belonging to another.	Counseling to Removal	Removal
(15) Assaulting, fighting, threatening, attempting to inflict or inflicting bodily harm while on District property or while on duty.	14-Day Suspension to Removal	30-Day Suspension to Removal
(16) Use of abusive, offensive, unprofessional, distracting, or otherwise unacceptable language, gestures, or other conduct; quarreling; creating a disturbance or disruption; or inappropriate horseplay.	Counseling to 15-Day Suspension	5-Day Suspension to Removal
(17) Failure to timely and properly pay any debts to the District government.	Reprimand to 14-Day Suspension	1-Day Suspension to Removal
(18) Gambling while on duty or on District government property.	Counseling to Removal	Removal
(19) Participating in a strike, work stoppage, slowdown, sickout or similar activity against the District government.	Removal	
(b) False Statements / Records --		
(1) Deliberate falsification of a material item on an application for employment, or other personal history record by omission or by making a false entry.	14-Day Suspension to Removal	Removal
(2) Misrepresentation, falsification or concealment of material facts or records in connection with an official matter, including investigations	Reprimand to Removal	Removal
(3) Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record.	Counseling to Removal	Removal
(4) Knowingly and willfully reporting false or	7-Day	Removal

NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
misleading material information, or purposely omitting material facts, to any superior.	Suspension to Removal	
(c) Fiscal Irregularities --		
(1) Knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).	Suspension to Removal	Removal
(2) Unauthorized and/or improper use of property, funds, or any other thing of value coming into an employee's custody as a result of employment.	Counseling to Removal	Removal
(3) Failure to properly account for or make proper distribution of any property, or any other thing of value coming into an employee's custody as a result of employment.	Suspension to Removal	Removal
(4) Concealment of (or failing to report) missing, lost or misappropriate funds, or other fiscal irregularities.	Reprimand to Removal	14-Day Suspension to Removal
(d) Failure/Refusal to Follow Instructions -		
(1) Negligence, including the careless failure to comply with rules, regulations, written procedures, or proper supervisory instructions.	Counseling to Removal	5-Day Suspension to Removal
(2) Deliberate or malicious refusal to comply with rules, regulations, written procedures or proper supervisory instructions.	3-day Suspension to Removal	14-Day Suspension to Removal
(3) Failure to submit required statement of financial interests and outside employment.	Counseling to 3-Day Suspension	5-Day Suspension to Removal

NATURE OF CIRCUMSTANCES		FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(e) Neglect of Duty --			
Careless or negligent work, general negligence, loafing, sleeping or dozing on-duty, wasting time, and conducting personal business while on duty.		Counseling to Removal	5-Day Suspension to Removal
(f) Attendance Related Offenses --			
(1)	Unexcused tardiness, including delay in:	Counseling to 1-Day Suspension	5-Day Suspension to Removal
	(a) Reporting at the scheduled starting time;		
	(b) Returning from lunch or break periods; and		
	(c) Returning from an authorized absence to a work station.		
(2)	Unauthorized absence of one (1) workday or less, including leaving the work station without permission or before the end of the workday.	Counseling to 3-Day Suspension	3-Day Suspension to Removal
(3)	Unauthorized absence of one (1) workday or more, but less than five (5) workdays.	Suspension to Removal	14-Day Suspension to Removal

NATURE OF CIRCUMSTANCES		FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(4)	Unauthorized absence of five (5) workdays or more.	Removal	Removal
(g) Intoxicants – Alcohol and Spirits			
(1)	Unauthorized use of intoxicants while on District Government property, including where official duties are performed.	Reprimand to Removal	30-Day Suspension to Removal
(2)	Being under the influence of intoxicants when reporting to work or any time while on duty.	Suspension to Removal	30-Day Suspension to

Removal

- (3) Operating a government owned or leased vehicle (or a privately owned vehicle while on duty) while under the influence of intoxicants. Removal

(h) Controlled Substances/Paraphernalia --

(1)	Possession of an illegal drug, drug paraphernalia, or unauthorized controlled substance while on duty, on District government property or District government-controlled property, or on premises where official duties are performed.	5-Day Suspension to Removal	Removal
(2)	Use of an illegal drug or unauthorized controlled substance while on duty, on District government property or District government-controlled property, or on premises where official duties are performed.	14-Day Suspension to Removal	Removal
(3)	Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.	14-Day Suspension to Removal	Removal
(4)	Sale or distribution of an illegal drug or controlled substance.	Removal	

	NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(5)	Operating a government owned or leased vehicle (or privately-owned vehicle on official business) while under the influence of an illegal drug.	Removal	
(6)	Interfering with, or refusing or failing to submit to a properly ordered or authorized drug test, including substituting, adulterating, or otherwise tampering with a urine sample.	Removal	

(i) Safety and Health Violations --

NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(1) Failure to report an accident and/or injury as required.	Counseling to Removal	14-Day Suspension to Removal
(2) Failure or refusal to wear/use required protective equipment (e.g. seat belts, earplugs, eye protection, etc.)	Counseling to 14-Day Suspension	14-Day Suspension to Removal
(3) Operating a District owned or leased vehicle (or privately owned vehicle while on official business) without a District or State driver’s license.	Suspension to Removal	Removal
(4) Failure or refusal to observe and/or enforce safety and health regulations or to perform duties in a safe manner.	Reprimand to Removal	5-Day Suspension to Removal

(j) Discriminatory Practices --

(1) Improperly taking or failing to take an official action based on a classification protected under the D.C. Human Rights Act or the Civil Rights Act of 1964.	Reprimand to Removal	Removal
(2) Any reprisal or retaliation against an individual because of his or her involvement in the EEO complaint process.	10-Day Suspension to Removal	Removal

NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(3) Use of remarks or gestures that relate to and insult or denigrate an individual based on any actual or perceived trait or classification protected under the D.C. Human Rights Act or the Civil Rights Act of 1964.	Counseling to 15-Day Suspension	15-Day Suspension to Removal
(4) Negligent or insensitive conduct with respect to an individual relating to any actual or perceived trait or classification protected under the D.C. Human Rights	Counseling to 5-Day Suspension	5-Day Suspension to Removal

NATURE OF CIRCUMSTANCES		FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
Act or the Civil Rights Act of 1964.			
(5)	Failure of a supervisor to take appropriate action regarding allegations or findings of discriminatory practices.	5-Day Suspension to Removal	Removal
(k) Sexual Misconduct --			
(1)	Sexual assault or abuse or attempted sexual assault or abuse.	Removal	
(2)	Inappropriate and/or unwelcome touching or other physical contact.	14-Day Suspension to Removal	30-Day Suspension to Removal
(3)	Pressure for (or official action based on) sexual favors, including taking any action for or against an employee whether favorable or unfavorable, because of the granting of a sexual favor or the withholding of a sexual favor.	Removal	
(4)	Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Counseling to 30-Day Suspension	14-Day Suspension to Removal

NATURE OF CIRCUMSTANCES		FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(l) Prohibited Personnel Actions --			
	Abuse of authority or commission of a prohibited personnel action.	Suspension to Removal	Removal
(m) Performance Deficits --			
	Failure to meet established performance standards;	Reassignment Reduced Grade Removal	

	NATURE OF CIRCUMSTANCES	FIRST OCCURRENCE	SUBSEQUENT OCCURRENCES
(n)	Inability to carry out assigned duties		
	Any circumstance that prevents an employee from performing the essential functions of his or her position, and for which no reasonable accommodation has been requested or can be made, unless eligible for leave protected under the D.C. Family Medical Leave Act.	Removal	

1608 [RESERVED]

1609 [RESERVED]

1610 PROGRESSIVE DISCIPLINE

1610.1 The District strives to employ highly qualified and motivated individuals who successfully perform their job duties, without the need for disciplinary action. To this end, the District uses a progressive disciplinary system when an employee’s conduct fails to meet expectations. The District’s progressive system includes the following steps:

- (a) Verbal counseling;
- (b) Reprimand;
- (c) Corrective action; and
- (d) Adverse action.

1610.2 Every situation is different and in each case management must consider a number of factors when determining an appropriate action to take. This includes, among others, consideration of the seriousness of the situation, the employee’s past disciplinary history, and the employee’s work history. When appropriate, and consistent with §§ 1606 and 1607, management may skip any or all of the progressive steps outlined in § 1610.1.

1611 VERBAL COUNSELING

1611.1 As an employer, the District and its managerial staff have an obligation to create a fair, supportive, and transparent work environment that prevents the need for disciplinary action.

- 1611.2 However, when employees engage in misconduct or fail to meet performance standards, steps shall be taken to gather the relevant facts, correctly identify the problem(s), and then decide whether further action is warranted.
- 1611.3 As a first step within the continuum of progressive discipline, management should attempt to correct misconduct and performance deficits. When appropriate to the circumstances, employees shall first be counseled concerning misconduct. Performance matters shall be progressively addressed as set forth in Chapter 14.
- 1611.4 When counseling the employee is deemed appropriate to the circumstances the supervisor or manager shall:
- (a) Articulate the relevant conduct standard(s);
 - (b) Explain how the employee has failed to meet those standards;
 - (c) Explain management's conduct expectations; and
 - (d) Explain the potential consequences if those expectations are not met prospectively.
- 1611.5 Within five (5) days, supervisors shall follow-up verbal counseling with a letter (or e-mail) to the employee. The correspondence shall establish the date, time, and content of all verbal counseling described in this section, and shall restate the information contained in § 1611.4. Supervisors shall retain a copy of the correspondence for a period of no less than two years, but it shall not be made a part of the official personnel file.
- 1611.6 While verbal counseling is a step within the disciplinary model, it is neither a corrective nor adverse action for purposes of this chapter.

1612 REPRIMANDS

- 1612.1 When counseling fails to correct conduct or performance issues, or where verbal counseling is an inadequate disciplinary response to address the conduct or performance that fails to meet expectations, a more formal response may be required. Within the progressive disciplinary model, this formal response is a reprimand and represents a corrective action.
- 1612.2 A reprimand is a written document issued by an employee's supervisor that identifies a specific conduct fault by an employee. At a minimum, a reprimand shall include:
- (a) A short narrative concerning the factual circumstances warranting the reprimand;
 - (b) A description of the conduct standards at issue and how these standards were not met;

- (c) A brief narrative on how the employee should conduct himself or herself prospectively to alleviate the conduct fault;
- (d) The potential consequences if the conduct requirements are not met;
- (e) A notice informing the employee that he or she may submit a written response to the reprimand; and
- (f) Notification to the employee of his or her right to grieve the final decision pursuant to Sections 1626 through 1637, or pursuant to an applicable labor agreement.

1612.3 The employee against whom a reprimand is issued shall be asked to acknowledge its receipt in writing. If the employee refuses to acknowledge receipt in writing, a witness to the refusal shall provide a brief written statement that the employee refused to acknowledge receipt in writing, which shall be signed and dated by the witness.

1612.4 When an employee chooses to submit a written response to the reprimand, he or she must do so within ten (10) workdays of receipt of the reprimand. Such a response shall be in writing and submitted to the person issuing the reprimand. An employee's written response may clarify, expand on, or take exception to the statements or conclusions made in the reprimand. Once submitted, the response shall be maintained and treated as an attachment to the reprimand.

1612.5 The official who issued the reprimand shall consider any written response submitted by the employee. The official may sustain, modify or rescind the reprimand, based on an employee's response. If the reprimand is modified, the modified reprimand shall be served and the employee given an opportunity to submit a supplemental response consistent with §§ 1612.2 through 1612.4.

1612.6 Unless modified or rescinded pursuant to § 1612.5, a reprimand shall be final upon receipt of an employee written response, or the expiration of the ten days specified in § 1612.4, whichever is later.

1612.7 A reprimand may be considered in establishing a corrective or adverse action, when the action is initiated within three (3) years of the reprimand.

1612.8 Nothing in this chapter shall preclude a management official from issuing admonitions. Admonitions shall not be maintained within the official personnel file.

1613 CORRECTIVE ACTIONS

1613.1 A corrective action is a reprimand, reassignment, or suspension of less than ten (10) workdays.

1613.2 When a corrective action is warranted, the agency shall –

- (a) Provide a notice of proposed action, in accordance with § 1618;
- (b) Afford the employee an opportunity to respond, in accordance with § 1621;
- (c) Provide a final decision on the proposed action, in accordance with § 1623; and
- (d) If a corrective action is taken, notify the employee of his or her right to grieve the final decision pursuant to §§ 1626 through 1637, or pursuant to an applicable labor agreement.

1613.3 Immediately following the issuance of a notice of proposed corrective action for a suspension pursuant to § 1613.2(a), the proposing official may conduct a resolution conference with the employee and his or her union representative (if any).

- (a) Through a resolution conference, the proposing official and affected employee may agree to a suspension which is shorter in time than the suspension in the notice of proposed action, or a reprimand in lieu of suspension.
- (b) To be valid and binding, any agreement reached between the proposing official and the employee shall be reduced to a written agreement, in which the employee voluntarily waives his or her right to file a grievance concerning any circumstances that give rise to the notice of proposed action under this chapter or pursuant to the provisions of a negotiated labor agreement.
- (c) The proposing official may defer the effective date of a proposed suspension by no more than five (5) days to accommodate the resolution conference process.
- (d) Statements concerning an agreement during the resolution conference process may not be used by any party as evidence or precedent in any other disciplinary action. Nevertheless, the outcome of a resolution conference may be considered in the future for purposes of progressive discipline.

1613.4 The use of resolution conferences shall be limited only to proposed suspensions of less than ten (10) days.

1614 ADVERSE ACTION

1614.1 Whenever a corrective action fails to improve a performance or conduct problem, or in the case when an employee cannot carry an essential duty of his or her employment, adverse action may be warranted.

- 1614.2 An adverse action shall be a suspension of ten (10) or more workdays, a reduction in grade, or removal.
- 1614.3 When an adverse action is warranted, the agency shall:
- (a) Provide a notice of proposed adverse action, in accordance with § 1618;
 - (b) Afford the employee an opportunity to respond, in accordance with § 1621;
 - (c) In the case of removal, provide for an independent review by a hearing officer, pursuant to § 1622;
 - (d) Provide a final decision on the proposed adverse action, in accordance with § 1623; and
 - (e) If an adverse action is taken, notify the employee of his or her applicable appeal rights.

1615 [RESERVED]

1616 SUMMARY ACTIONS

- 1616.1 An employee may be summarily suspended or removed from his or her position, notwithstanding §§ 1613 and 1614.
- 1616.2 An employee may be suspended or removed summarily when his or her conduct:
- (a) Threatens the integrity of District government operations;
 - (b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
 - (c) Is detrimental to the public health, safety, or welfare.
- 1616.3 Any decision to take a summary action under this section must be approved in writing by the agency head. All such approvals must identify:
- (a) Sufficient facts relied upon by the agency head to support the actions;
 - (b) The specific paragraph(s) of § 1616.2 established by those facts; and
 - (c) The specific misconduct, consistent with § 1605, warranting suspension or removal.
- 1616.4 When the agency head is satisfied that the conditions of § 1616.2 are present, the agency may order the employee to immediately leave his or her duty station. Additionally, the agency may order the employee to stay away from any District government owned or occupied properties, to the extent reasonably necessary to

ensure the safety of District employees and property, the integrity of government operations, and the public health, safety, and welfare

- 1616.5 When summary action is warranted, the agency shall:
- (a) Provide the employee with a notice of summary action, in accordance with § 1620;
 - (b) Provide the employee an opportunity to respond, in accordance with § 1621;
 - (c) Provide the employee with a final determination, in accordance with § 1623; and
 - (d) Advise the employee of his or her applicable appeal rights.
- 1616.6 Except when the associated suspension or removal action is overturned by a tribunal of competent jurisdiction, an agency head's final decision on a summary action under this section shall be final and not subject to further review.
- 1617 ENFORCED LEAVE ACTION**
- 1617.1 Enforced leave occurs when an employee is involuntarily placed in a non-duty leave status, which is neither a corrective nor adverse action for purposes of this chapter. This section sets forth the standards for an agency's implementation of an enforced leave action.
- 1617.2 For any period of enforced leave, the employee shall use any accrued leave, except sick leave, until exhausted. Thereafter, the employee will be held in a leave without pay status.
- 1617.3 An agency may place an employee on enforced leave when there is reliable evidence that he or she:
- (a) Utilized fraud in securing his or her appointment;
 - (b) Falsified official records;
 - (c) Has been indicted on, arrested for, charged with, or convicted of a felony charge (including conviction following a plea of nolo contendere); or
 - (d) Has been indicted on, arrested for, or convicted of any crime that bears a relationship to his or her position.
- 1617.4 Notwithstanding § 1617.3(c), the Metropolitan Police Department may place uniformed members and the Department of Corrections may place a correctional officers on enforced leave when he or she has been arrested, charged, indicted or

convicted of any crime irrespective of the relationship between the crime and the employee's duties and responsibilities.

1617.5 Any decision to place an employee on enforced leave under this section shall be approved in writing by the personnel authority. All such approvals shall:

- (a) Identify the evidence relied upon by the agency to support the action; and
- (b) Identify the specific subparagraph(s) of § 1617.3 established by that evidence.

1617.6 Upon finding that the conditions described in § 1617.3 are met, the personnel authority shall place an employee on administrative leave for five (5) days prior to the effective date of the enforced leave action.

1617.7 When enforced leave is warranted, the agency shall –

- (a) Provide a notice of proposed action, pursuant to § 1618;
- (b) Provide the employee an opportunity to respond in writing, pursuant to § 1621, orally, or both;
- (c) Provide the employee a final determination, pursuant to § 1623; and
- (d) If placed on enforced leave, advise the employee of his or her applicable appeal rights

1617.8 Whenever an employee is placed on enforced leave:

- (a) The agency must initiate either corrective or adverse action based on the evidence supporting the enforced leave action; and
- (b) The employee shall remain on enforced leave no longer than is required to reach a final determination on corrective or adverse action, or one hundred eighty (180) days, whichever is shorter.

1617.9 If the basis for placing an employee on enforced leave pursuant to this section does not result in corrective or adverse action, any annual leave or pay lost as a result of the enforced leave action shall be restored retroactively.

1617.10 The personnel authority may extend the time limit prescribed by § 1617.8(b) for good cause.

1618 NOTICES OF PROPOSED ACTION

1618.1 Except in the case of a summary actions, described in § 1616, an agency contemplating a corrective, adverse, or enforced leave action shall provide the employee a notice of proposed action. Such notices shall be delivered to the employee:

- (a) No less than five (5) days prior to implementing an enforced leave action;
- (b) No less than ten (10) days prior to implementing a corrective action; and
- (c) No less than fifteen (15) days prior to implementing an adverse action.

1618.2 The notice of the proposed action shall inform the employee of the following:

- (a) The type of proposed action (corrective, adverse, or enforced leave);
- (b) The nature of the proposed action (days of suspension or enforced leave, reduction in grade, reassignment, or removal);
- (c) The specific performance or conduct at issue;
- (d) How the employee's performance or conduct fails to meet appropriate standards; and
- (e) The name and contact information of the anticipated deciding official, or if a removal action, the anticipated hearing officer for the administrative review.

1618.3 In addition to the information outlined in § 1618.2 the notice shall advise the employee of his or her right to:

- (a) Review any material upon which the proposed action is based;
- (b) Prepare a written response to the notice, as provided for § 1621;
- (c) Representation by an attorney or other representative; and
- (d) An administrative review in the case of a removal.

1618.4 The notice shall be approved and signed by a proposing official, who must be a manager within the employee's chain of command or a management official designated by the personnel authority.

1618.5 The material upon which the notice of proposed action is based, and which is necessary to support the reasons given in the notice, shall be assembled and provided to the employee along with the notice, unless impractical. If the materials cannot be provided at the time of notice, they shall be made available to the employee for his or her review, upon request.

1618.6 The notice of proposed actions and supporting materials shall be served upon the employee. Service shall be accomplished by delivering the notice and materials to the employee in person, or to the employee's address of record by a commercial courier that provides delivery tracking and confirmation information. However, service shall also be deemed proper upon a showing that the employee actually received delivery of the notice, irrespective of delivery method.

- 1618.7 For notices of proposed actions delivered in person, the employee to whom the notice is issued shall be asked to certify its receipt in writing. If the employee refuses to certify receipt, a brief descriptive written statement, signed by a witness to the refusal, may be used as evidence of service.
- 1618.8 For purposes of §§ 1618.6 and 1618.7, service shall be deemed effective when the employee has actual notice of the proposed actions.
- 1618.9 Except in the case of a summary action in § 1615, employees shall remain in an active duty status pending issuance of a final determination of the proposed action pursuant to § 1623.

1619 ADMINISTRATIVE LEAVE DURING NOTICE PERIODS

- 1619.1 Following the issuance of a notice of proposed corrective or adverse action pursuant to § 1618 of this chapter, an agency head, at his or her discretion, may place the employee on administrative leave pending a final determination in accordance with this section.
- 1619.2 Except as provided in §§ 1619.3 and 1619.4, an agency may place an employee on administrative leave for no more than ninety (90) calendar days.
- 1619.3 Prior to the expiration of the limit in § 1619.2 the agency head may make a written request for an extension of time to the personnel authority.
- 1619.4 The personnel authority may approve extensions of time in increments of no more than thirty (30) days when:
- (a) Returning the employee to duty would undermine the integrity of District government operations, threaten the safety of employees, or threaten the health, safety or welfare of the public; or
 - (b) The agency has been diligently pursuing a final decision and the delay is due to circumstances beyond the agency's control.
- 1619.5 When the time limits prescribed by this section are exhausted, the employee shall be returned to full duty pending a final agency decision.

1620 SUMMARY ACTION NOTICES

- 1620.1 Whenever an agency summarily removes or suspends an employee, it shall serve the employee with a notice of summary action within five (5) days. Service shall be accomplished pursuant to §§ 1618.6 and 1618.7.
- 1620.2 The notice shall inform the employee of the following:
- (a) The nature of the summary action;

- (b) The effective date of the summary action;
- (c) The specific conduct at issue;
- (d) How the employee's conduct fails to meet appropriate standards;
- (e) The specific paragraph(s) of § 1616.2 warranting summary action; and
- (f) The name and contact information of the deciding official, or if a removal, the hearing officer.

1620.3 In addition to the information outlined in § 1620.2, the notice of the proposed summary action shall advise the employee of his or her right to:

- (a) Review any material upon which the proposed summary action is based;
- (b) Prepare a written response to the notice of the proposed summary action, as provided for in § 1621;
- (c) Be represented by an attorney or other representative; and
- (d) An administrative review in the case of a removal.

1621 EMPLOYEE RESPONSES

1621.1 Whenever an employee is served a notice of proposed or summary action, he or she may submit a written response to the appropriate official identified in the notice. In the case of removals, the appropriate official shall be a hearing officer appointed pursuant to § 1622. Otherwise, the appropriate official shall be the deciding official.

1621.2 An agency head shall authorize an employee to use official time to prepare a written response to any notice of proposed action in the following amounts: a minimum of four (4) hours for proposed corrective actions and eight (8) hours for proposed adverse actions.

1621.3 Written responses must be received by the appropriate official according to the following schedule:

- (a) For enforced leave actions, within two (2) days of service;
- (b) For corrective actions, within five (5) days of service; and
- (c) For adverse actions, within ten (10) days of service.

1621.4 Upon application by the employee and a showing of good cause, the deciding official, or in the case of removal the hearing officer, may grant a reasonable extension of time to the limits prescribed by § 1621.3.

1621.5 The right to respond shall include the right to present evidence that the employee believes might affect the final decision on the proposed or summary action. Such evidence may include written statements of witnesses, affidavits, or documents or any other form or depiction of information.

1621.6 At the time of the response, an employee shall raise every defense, fact or matter in extenuation, exculpation, or mitigation that is relevant to the reasons for the proposed or summary action.

1622 ADMINISTRATIVE REVIEWS

1622.1 The personnel authority shall provide for an administrative review of a proposed or summary removal action against an employee, unless he or she is an exempt employee.

1622.2 The administrative review shall be conducted by a hearing officer, who shall meet the following criteria:

- (a) Be appointed by the agency head;
- (b) Be at grade levels DS-13 and above or equivalent;
- (c) Be a licensed attorney, if available;
- (d) Be neither in the supervisory chain of command between the employee and the deciding official, nor a subordinate to the proposing official; and
- (e) Have no direct and personal knowledge of the matters contained in the proposed or summary removal action, aside from hearsay that does not affect impartiality.

1622.3 In conducting the administrative review, the hearing officer shall:

- (a) Review the notice of proposed or summary action, including any supporting materials; and
- (b) Review the employee's response, if applicable.

1622.4 A hearing officer's review of a proposed or summary removal action shall be limited to the notice and supporting materials and any written arguments and evidence submitted by the employee.

1622.5 Within thirty (30) days after receiving the employee's response, or the expiration of his or her time to respond, the hearing officer shall submit a written report and recommendation to the deciding official, and shall provide a copy to the employee.

1622.6 Upon request, the time limit in § 1622.5 may be extended by the personnel authority for good cause for no more than thirty (30) days.

1622.7 The hearing officer shall ensure that there are no substantive *ex parte* communications during the administrative review process. Any substantive inquiry or information sent by or to the hearing officer shall be served on the employee, the employee's representative (if any), and the agency representative.

1623 FINAL AGENCY DECISION

1623.1 The final agency decision relating to a corrective or adverse action against an employee shall be made by the deciding official, who shall be the agency head, or his or her designee. A proposing official may not serve as the deciding official for the same matter, except when the size of the agency mandates otherwise.

1623.2 In making the final decision, the deciding official shall:

- (a) Consider the notice of proposed or summary action and supporting materials, the employee's response (if any), and any report and recommendation of a hearing officer; and
- (b) Either sustain or reduce the proposed or summary action, remand the action to the proposing official with instructions for further consideration, or dismiss the action. A copy of any remand decision shall be served on the employee.

1623.3 The final determination shall be in writing, dated and signed by the deciding official.

1623.4 The final determination shall:

- (a) Provide a concise summary of the action(s) being taken and the effective date of the action(s);
- (b) Succinctly enumerate each independent cause for which corrective or adverse action is being taken; specifications shall not be used in any final written decision;
- (c) Provide for an independent corrective or adverse action for each enumerated cause, consistent with § 1623.1(b);
- (d) Demonstrate reasoned consideration of the relevant factors set forth in § 1606.2 for each independent action; and
- (e) Articulate the employee's appeal rights, as outlined in § 1625, if any.

1623.5 In addition to the information specified in § 1623.4 each final agency decision shall be accompanied by:

- (a) Copies of the materials relied upon by the agency in rendering its decision;
- (b) For enforced leave of ten (10) or more days and adverse actions:
 - (1) A copy of the Rules of Procedure for the Office of Employee Appeals (OEA); and
 - (2) An OEA appeal form;
- (c) A notice of the employee's right to elect between the remedies specified in § 1625; and
- (d) A notice of the employee's right to be represented by an attorney or other representative authorized by law.

1623.6 The final decision shall be completed within forty-five (45) days of the latter of:

- (a) The expiration of the employee's time to respond;
- (b) The agency's receipt of the employee's response (if any);
- (c) The completion of the hearing officer's report—and recommendation, if applicable; or
- (d) A date agreed to by the employee.

1623.7 The final agency decision shall be served on the employee in accordance with §§ 1618.6 and 1618.7.

1623.8 The time limit established in § 1623.6 may be extended by the personnel authority for good cause.

1623.9 A copy of the final agency decision shall be placed in the employee's official personnel file. If the decision incorporates a notice of proposed or summary action, in whole or in part, the notice of proposed or summary action shall be attached to the final agency decision before filing in the official personnel file.

1623.10 Except in the case of a removals, a final agency decision shall be retained by the personnel authority in the official personnel file for three (3) years unless sooner ordered withdrawn by the issuing official, the official's superiors or successors, a court of competent jurisdiction, an arbitrator of competent jurisdiction, the appropriate personnel authority, the Office of Human Rights, or pursuant to a settlement agreement.

1623.11 A final agency decision separating an employee from government service shall be a permanent record maintained by the personnel authority in the official personnel file.

1624 [RESERVED]

1625 APPEAL RIGHTS

- 1625.1 Except for exempt employees, an employee who disputes a final agency reprimand, corrective, adverse, or enforced leave action under this chapter may seek one (1) of the following remedies:
- (a) If the matter is covered by a grievance procedure negotiated between the District and a labor organization, the employee may elect to pursue a grievance in accordance with the applicable collective bargaining agreement;
 - (b) For enforced leave actions of less than ten (10) days and for corrective actions, the employee may elect to pursue a grievance within ten (10) days from the issuance date of the final agency action;
 - (c) For enforced leave actions of ten (10) or more days and adverse actions, the employee may elect to appeal the final agency action to the Office of Employee Appeals (OEA) within thirty (30) days of the effective date of the final agency decision; and
 - (d) For any other agency actions under this chapter, the employee may elect to pursue a grievance within forty-five (45) business days from the date of the alleged violation or final action, whichever is later.
- 1625.2 An employee may elect only one (1) of the remedies specified in § 1625.1. Whenever a labor organization acts on behalf of the employee, the employee shall be deemed to have made his or her election of remedy, irrespective of whether the employee consented to the election.
- 1625.3 Neither grievances nor appeals to OEA shall delay implementation of any final agency action under this chapter.

1626 GRIEVANCE POLICY AND APPLICABILITY

- 1626.1 The District of Columbia government maintains a grievance policy and procedure to allow for the prompt, fair and orderly resolution of grievances and complaints relating to District employment. The grievance procedures shall be applied to:
- (a) Provide procedural consistency across District agencies;
 - (b) Ensure applicants and employees have access to procedures to address complaints and grievances timely, fairly, and without fear of reprisal; and
 - (c) Resolve workplace issues efficiently and effectively.
- 1626.2 Except for the Mayor and members of the Council, the grievance policies and procedures established at §§ 1626 through 1635 apply to all applicants and employees of all District agencies except:

- (a) The District of Columbia Superior Court and Court of Appeals;
- (b) The District of Columbia Board of Education;
- (c) The University of the District of Columbia;
- (d) The District of Columbia Public Schools;
- (e) District boards and commissions; and
- (f) Advisory Neighborhood Commissions.

1626.3 Employees subject to a negotiated collective bargaining agreement may choose between any grievance procedure contained in the agreement and the grievance procedure outlined in §§ 1627 through 1637, but not both.

1627 MATTERS SUBJECT TO GRIEVANCE PROCEDURES

1627.1 An applicant or employee may grieve any agency action taken pursuant to this subtitle if:

- (a) A provision of this subtitle has been violated; and
- (b) The applicant or employee has suffered or will suffer harm as a result of that violation, which is neither trivial nor speculative.

1627.2 Notwithstanding § 1627.1, no applicant or employee may submit a grievance to an agency action under this subtitle if the action is:

- (a) Not subject to a grievance or appeal by law or regulation;
- (b) Taken to implement the lawful order of a court or other tribunal recognized by law; or
- (c) Agreed to by the applicant or employee.

1628 FILING A GRIEVANCE; TIME LIMITS

1628.1 All grievances shall be made using a grievance form provided by the Director of the District of Columbia Department of Human Resources (DCHR). DCHR shall maintain the grievance form on its internet website.

1628.2 Each grievance shall include the following:

- (a) The name, e-mail address, and phone number of the applicant or employee seeking the relief;
- (b) For employees, the name, e-mail address, phone number, and agency of his or her immediate supervisor;

- (c) The name of the agency at issue;
- (d) A concise written statement of facts, including dates, that establishes the alleged violation;
- (e) A written statement as to the applicant or employee's injury; and
- (f) The relief sought by the applicant or employee.

1628.3 For purposes of this chapter, grievance official means:

- (a) For applicants seeking employment in agencies under the authority of the Mayor, the Director of DCHR, or his or her designee;
- (b) For applicants seeking employment in District government agencies independent of the Mayor's authority, the independent agency head, or his or her designee; and
- (c) For employees, the employee's supervisor who has the authority to resolve the grievance and for whom there is no conflict of interest (typically the immediate supervisor or the immediate supervisor's immediate superior).

1628.4 Grievances of corrective actions and of enforced leave actions of less than ten (10) days shall be filed with the appropriate grievance official within ten (10) days of the issue date of the final decision.

1628.5 All other grievances shall be filed with the appropriate grievance official within forty-five (45) business days from the date of the alleged violation or the final action, whichever is later.

- (a) For applicants, the alleged violation occurs on the date the notification is issued to the applicant of the hiring decision, the date on which the applicant knew or should have known of the hiring decision, or the effective date of the selectee's appointment, whichever occurs first.
- (b) For employees, the alleged violation occurs when the employee knew or should have known of the events or actions that are the basis for the alleged violation.
- (c) A grievance shall be deemed to have been filed when actually received by the grievance official. The burden of establishing the date of receipt shall rest with the applicant or employee.

1628.6 Grievances may be filed with the grievance official by one of the following means:

- (a) By mail to the official's principal business address;

- (b) By e-mail to the grievance official; or
- (c) By hand delivery to the grievance official's principal business address.

1629 INITIAL GRIEVANCE REVIEW

- 1629.1 Upon receipt, the grievance official shall make a preliminary determination as to whether the grievance meets the criteria set forth in §§ 1627 and 1628.
- 1629.2 Within five (5) business days of receipt, the grievance official shall do one of the following:
- (a) Acknowledge receipt and begin processing the grievance pursuant to § 1630;
 - (b) Deny the grievance as being a matter not subject to review pursuant to § 1627;
 - (c) Deny the grievance as being untimely pursuant to § 1628.4; or
 - (d) Request the grievant to supply additional information required by § 1628.2.

1630 FIRST LEVEL GRIEVANCE REVIEWS

- 1630.1 Within five (5) days of acknowledging the grievance, the grievance official, or designee, shall interview the grievant and review the record.
- 1630.2 Unless mediation has already been attempted pursuant to § 1635, at the interview, the grievance official shall inform the grievant that he or she has the option of pursuing mediation. The grievant shall execute either a declination of mediation or a mediation agreement. If mediation is declined, the grievance official shall proceed with the initial grievance interview, in accordance with § 1630.3. If mediation is elected by executing a mediation agreement, mediation shall proceed in accordance with § 1634.
- 1630.3 During the interview, the grievance official, or designee, shall note the grievant's specific allegations, the facts supporting those assertions and the relief being sought by the grievant.
- 1630.4 The grievance official, or designee, shall interview the subject of the grievance and any additional witnesses deemed appropriate to the grievance. Following each interview, the grievance official shall summarize each interview in writing.
- 1630.5 Within five (5) days of interviewing the grievant, the grievance official, or designee, shall issue a first level grievance decision and report based on the totality of the facts.

- (a) If the grievance official finds that the grievance is substantiated by the facts, the grievance decision shall specify the remedy being provided and the date the remedy will be implemented.
- (b) If the grievance official finds that the grievance is not substantiated by the facts, then the grievance shall be denied.

1630.6 Within five (5) days of the issuance of the first level grievance decision, a grievant may notify the grievance official in writing that he or she is not satisfied with the decision. The notification shall include any additional arguments and documents that support the grievant's position. Upon receipt of this notification, the grievance official shall proceed to the second level of grievance review.

1631 SECOND LEVEL GRIEVANCE REVIEWS

1631.1 At the second level of grievance review, the grievance shall be reviewed by a second level official in the grievant's chain of command who reports directly to the agency head. If the grievance official and the second level official are the same person, the grievance request for further review shall be treated as a notification under § 1631.6 and processed pursuant to § 1632.

1631.2 Within two (2) days of receiving the notification specified in § 1630.6, the grievance official shall forward all materials to the second level official for resolution. The materials forwarded shall include the grievance application, the grievance official's decision and report, any interview summaries, any records reviewed by the grievance official in rendering his or her decision, and the notification requesting second level review.

1631.3 In his or her discretion, and within no more than ten (10) days, the second level official may interview the grievant and any other individuals deemed necessary. An interview summary shall be created following any interview.

1631.4 After having completed any interviews, and any further investigation that may be deemed appropriate by the second level official, the second level official shall issue a second level grievance report and decision based on the totality of the facts.

1631.5 If the second level official finds that the grievance is substantiated by the facts, the grievance decision shall specify the remedy being provided and the date the remedy will be implemented.

- (a) If the second level official finds that the grievance is not substantiated by the facts, then the grievance shall be denied.
- (b) The second level grievance decision shall be issued no more than twenty-one (21) days following the second level official's receipt of the grievance and shall inform the grievant of his or her right to seek a final grievance review.

1631.6 Within five (5) days of the issuance of the second level grievance decision, a grievant may notify the original grievance official in writing that he or she is not satisfied with the decision and request a third level grievance review. Upon receipt of this notification, the grievance official shall proceed to the third level grievance review.

1632 THIRD LEVEL GRIEVANCE REVIEWS

1632.1 At the third level of grievance review, the grievance shall be reviewed by the agency head.

1632.2 Within two (2) days of receiving the notification specified in § 1631.6, the grievance official shall forward all materials to the agency head for resolution. The materials forwarded shall include the grievance application, the second level official's decision and report, any interview summaries, any records reviewed by the second level official in rendering his or her decision, and the notification requesting third level review.

1632.3 In his or her discretion, and within no more than ten (10) days, the agency head may interview the grievant and any other individuals deemed necessary. An interview summary shall be created following any interview.

1632.4 After having completed any interviews, and any further investigation that may be deemed appropriate by the agency head, the agency head shall issue a third level grievance report and decision based on the totality of the facts.

1632.5 If the agency head finds that the grievance is substantiated by the facts, the grievance decision shall specify the remedy being provided and the date the remedy will be implemented.

1632.6 If the agency head finds that the grievance is not substantiated by the facts, then the grievance shall be denied.

1632.7 The third level grievance decision shall be issued no more than twenty-one (21) days following the notification specified in § 1631.6 and shall inform the grievant of his or her right to seek a final review.

1632.6 Within five (5) days of the issuance of the third level grievance decision, a grievant may notify the original grievance official in writing that he or she is not satisfied with the decision and request a final review. Upon receipt of this notification, the grievance official shall proceed to the final grievance review.

1633 FINAL GRIEVANCE REVIEWS

1633.1 At the final level of grievance review, the grievance shall be reviewed and decided by the personnel authority. For purposes of this section, when the grievant is an employee of the Department of Human Resources, the personnel authority shall mean the City Administrator or his or her designee.

- 1633.2 Within two (2) days of receiving the grievance request for a final review, the grievance official shall forward all materials the agency received during the grievance process to the personnel authority.
- 1633.3 The personnel authority shall conduct a thorough records review of the grievance.
- (a) If the personnel authority finds that the grievance is substantiated by the facts, the grievance decision shall specify the remedy being provided and the date the remedy will be implemented.
 - (b) If the personnel authority finds that the grievance is not substantiated by the facts, then the grievance shall be denied.
- 1633.4 The decision of the personnel authority shall be delivered to the agency and the grievant no more than thirty (30) days after receiving the grievance request. The decision of the personnel authority shall be final and not subject to any further grievance or appeal before any administrative body or court.

1634 GRIEVANCES UNDER COLLECTIVE BARGAINING AGREEMENTS

- 1634.1 Any valid negotiated grievance procedure established within a collective bargaining agreement shall supersede and replace the grievance procedures established in this chapter.

1635 MEDIATION

- 1635.1 Mediation shall be initiated by the grievant executing and presenting the grievance official with a mediation agreement, pursuant to § 1630.2. The mediation agreement shall be a standard agreement form issued by the personnel authority. The agreement shall, at a minimum:
- (a) Explain the nature of the mediation process;
 - (b) Explain the respective roles the parties;
 - (c) Explain the confidential and privileged nature of mediation communications, consistent with D.C. Official Code §§ 16-4203 and 16-4207; and
 - (d) Explain the potential remedies that are available, consistent with § 1636.
- 1635.2 The grievance official shall forward a copy of the agreement to the personnel authority. Within five (5) business days, the personnel authority shall designate an individual to serve as a mediator and the agency head, or his or her designee, shall designate an appropriate agency official to serve as the agency representative. The mediator shall either be an attorney licensed to practice law in the District of Columbia or an individual trained in conducting mediation. The agency representative shall have sufficient authority to mediate the dispute.

- 1635.3 The mediator shall schedule the mediation date(s) and conduct the mediation proceedings in such a manner as to ensure a fair and equitable result. However, the mediation process must be concluded within thirty (30) days from the date the mediator was designated by the personnel authority. If mediation has not concluded within that time period, the matter shall be returned to the grievance official for the first level of review.
- 1635.4 The parties may agree to any remedies permitted under § 1636. If an amicable resolution of the grievance is reached through mediation, the terms of the resolution shall be reduced to writing in a Mediation Settlement Agreement and signed by all parties, including the mediator. The written resolution shall be binding on all parties and is not subject to review by any administrative body, court or other tribunal.
- 1635.5 If the parties are unable to resolve the grievance through the mediation process, the grievance shall be returned to the grievance official to resume the first level grievance review. Grievances shall be returned to the grievance official by the mediator on either the date the mediator determines that no resolution can be reached or thirty (30) days from the date the mediator was designated by the personnel authority, whichever is earlier.
- 1635.6 If a grievance is returned to the grievance official pursuant to § 1635.5, the grievance official shall proceed with the first level grievance review pursuant § 1630.

1636 REMEDIES

- 1636.1 Whenever a grievance is substantiated, the appropriate deciding official shall establish a remedy that is equitable and fitting to the circumstances.
- 1636.2 Remedies provided under this section shall be consistent with, but need not precisely conform to, the provisions of this subtitle. However, remedies that vary from the precise language of any regulation shall conform to the variance standards established at Chapter 1.
- 1636.3 Remedies under this section shall be limited to those remedies within the authority of the personnel authority.

1637 DISMISSAL OF GRIEVANCE

- 1637.1 A grievant may request a dismissal of the grievance at any time.
- 1637.2 A grievance official may dismiss a grievance if the grievant substantially fails to carry out his or her responsibilities; fails to participate with; or otherwise impedes the grievance process under this chapter.
- 1637.3 A dismissal issued pursuant to this section following the issuance of a second level grievance decision shall be with prejudice.

1637.4 A dismissal of a grievance under this section shall not toll or otherwise enlarge the time limits established in § 1628.

1699 DEFINITIONS

1699.1 As used in this chapter the following meanings apply –

Administrative leave – an excused absence with full pay and benefits that is not charged to annual leave or sick leave

Admonition – any written communication from a supervisor or manager to an employee, up to but excluding an official reprimand, that advises or counsels the employee about conduct or performance deficiencies, and the possibility that future violations will result in corrective or adverse action.

Adverse action – a suspension of ten (10) workdays or more, a reduction in grade, or a removal.

Agency – any unit of the District of Columbia government, excluding the courts, required by law or by the Mayor of the District of Columbia to administer any law, rule, or any regulation adopted under authority of law. The term “agency” shall also include any unit of the District of Columbia government created by the reorganization of one (1) or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency, and shall include boards and commissions as described in D.C. Official Code § 1-603.01(13).

Cause – a reason that is neither arbitrary nor capricious, such as misconduct or performance deficits, which warrants administrative action, including corrective and adverse actions. The classes of conduct and performance deficits outlined in § 1605 constitute causes for corrective and adverse action.

Conduct – the act, manner or process taken by an employee to carry on, including the lack or omission of taking action or carrying out duties and responsibilities.

Corrective action – an official reprimand, involuntary reassignment or a suspension of less than ten (10) workdays.

Days – are calendar days for all periods of more than ten (10) days; otherwise, days are workdays.

Deciding official – the individual who issues a final decision on a disciplinary action in accordance with § 1623.

Disciplinary action – a corrective or adverse action taken against an employee.

Enforced leave – involuntary placement of an employee in a leave status in accordance with § 1617.

Ex parte communication – an oral or written communication between a hearing officer and only one of the parties, either the employee or management.

Exempt employee – individuals serving the District of Columbia in the Management Supervisory Services.

Grievance official – see § 1628.

Hearing officer – an impartial individual who assess the sufficiency of a proposed action consistent with § 1622.

Independent agency – an agency that is not subject to the administrative control of the Mayor.

Manager – an individual responsible for controlling or administering all or part of an agency or its operation. The term “manager” includes all individuals who supervise others and are employed in the Executive, Excepted and Management Supervisory Services, and similar managerial at-will employees.

Nexus – connection or link (such as a connection to an employee’s duties and responsibilities).

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program as provided in D.C. Official Code §§ 1-604.01 *et seq.*

Progressive disciplinary process – refers to the incremental steps to correct either misconduct or systemic performance deficits. Typically, the process includes verbal counseling, reprimand, corrective action and adverse action.

Proposing official – an agency head or an official authorized by the agency head to issue a written notice of proposed corrective or adverse action or enforced leave.

Reduction in grade – an involuntary action that changes an employee to a lower grade level, typically with lower pay.

Removal – the involuntary separation of an employee from District government service.

Reprimand – a written, official censure of an employee that is placed in the employee’s Official Personnel Folder.

Subordinate agency – any agency under the direct administrative control of the Mayor.

Summary action – an action taken to immediately suspend or separate an employee pursuant to § 1616.

Suspension – the temporary placing of an employee in a non-duty, non-pay status.

Standard - any criterion, guideline, or measure established by appropriate authority for the purpose of making objective comparisons or determinations for such purposes, including, but not limited to, the classification of positions, establishment of pay, evaluation of qualifications, and appraisal of work performance.

Temporary appointment – a Career Service appointment effected as provided in Chapter 8 of these regulations that has a specific time limitation of one (1) year or less.

Toll - to delay, suspend or hold off the effect of a statute, regulation or rule.

With prejudice – mean without the ability to re-bring an action; for example, a grievance dismissed with prejudice cannot be reinitiated and the dismissal is final.

Supervisor – an individual who supervises another employee or his or her activities.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGRM13-2015-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice pursuant to Sections 34-802, 2-505, and 34-912(b) of the District of Columbia Official Code¹ of its approval of amendments to Chapter 13 (Rules Implementing the Public Utilities Reimbursement Fee Act of 1980) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in Order No. 18087, issued January 20, 2016. These amendments are effective as of the publication of this Notice of Final Rulemaking in the *D.C. Register*. The full text of the amendments is published below.

CHAPTER 13, RULES IMPLEMENTING THE PUBLIC UTILITIES REIMBURSEMENT FEE ACT OF 1980, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

1301 DETERMINATION OF REIMBURSEMENTS

1301.2 By March 15th of each year the Commission shall send to each utility, competitive electric supplier, competitive natural gas supplier, and CLEC an Annual Survey and Affidavit for assessment purposes. Each utility, competitive electric supplier, competitive natural gas supplier, and CLEC shall file its responses to the Annual Survey with the Commission by April 15th. Each response shall include a report of the responder's gross jurisdictional revenues for the proceeding calendar year ending December 31st.

1301.3 Failure to respond to the Commission issued Annual Survey by April 15th shall result in a penalty of \$100.00 per day for each day that the filing is late.

1303 PAYMENT OF REIMBURSEMENTS

1303.1 By June 1st of each year, the Commission shall send each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC separate Notices of Proposed Assessment for the Commission and the Office of the People's Counsel. The Notices of Proposed Assessment shall contain the proposed assessment due from each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC for the Commission and for the Office of the People's Counsel. The Notices of Proposed Assessment shall

¹ D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2012 Repl.) and D.C. Official Code § 34-912(b) (2015 Supp.).

indicate a specific time period for objections to the assessments contained in the Notices of Proposed Assessment to be filed with the Commission.

- 1303.2 If a public utility, competitive electric supplier, competitive natural gas supplier, or CLEC for the Commission and for the Office of the People's Counsel believes that the Proposed Assessment is incorrect, it may file a Notice of Objection with supporting documentation with the Commission before the objection period specified in the Notices of Proposed Assessment has expired. The Commission will not consider Notices of Objection that are not timely filed.
- 1303.3 Once the objection period specified in the Notices of Proposed Assessment has expired and, if no objections have been filed, the Commission shall send each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC separate Orders of Assessment for the Commission and the Office of the People's Counsel no later than August 31st of each year.
- 1303.4 If a timely Notice of Objection is filed, the Commission shall review and decide on the objection on or before July 15th. If an objection is determined to be valid, the Commission may, if necessary, send revised Notices of Proposed Assessment to each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC and allow an additional abbreviated comment period for Notices of Objection to the revised Notices of Proposed Assessment. If no further objections are filed by the closed on the comment period, the Commission shall send each public utility, competitive electric supplier, competitive natural gas supplier, and CLEC separate Orders of Assessment for the Commission and the Office of the People's Counsel no later than August 31st of each year.
- 1303.5 The amounts set out in the Orders of Assessment shall be paid in full to the Treasurer of the District of Columbia within thirty (30) days of the date of the Order of Assessment.
- 1303.6 Failure to pay the assessments in full within thirty (30) days of the Orders of Assessment shall result in a penalty of ten percent (10%) of the assessment due but not to exceed one hundred dollars (\$100.00) per day for each day that the assessment is late. Failure to pay the assessments and the penalty due, if any, in full may also result in a suspension or revocation of the license of the public utility, competitive electric supplier, competitive natural gas supplier, or CLEC.
- 1303.7 In the event the Commission determines that a penalty may be appropriate pursuant to § 1303.6, the Commission shall provide a Notice of any penalty that it intends to impose for non-payment to the public utility, competitive electric supplier, competitive natural gas supplier, or CLEC and shall give the recipients of the notice an opportunity for a hearing pursuant to D.C. Official Code §§ 34-706(c), 34-1508(a), 34-1671.11(a), or 34-2002(h-1) and 15 DCMR § 1301.6.

1306 REFUNDS OR CREDITS

1306.1 If total obligations of the Commission or the Office of the People's Counsel are less than ninety-five percent (95%) of total appropriations for the Commission or the Office of the People's Counsel as determined by the Office of the Chief Financial Officer in the annual audit released in the month of February of each year, the Commission or the Office of the People's Counsel shall cause the difference to be refunded or credited against the next year's assessment to the public utilities, competitive electric suppliers, competitive natural gas suppliers, and CLECs according to the formula under § 1301, within one hundred fifty (150) days following the end of the fiscal year. The decision to refund or credit the difference shall be at the Commission's discretion.

1399 DEFINITIONS

Gross jurisdictional revenue - gross revenues derived from operations regulated by the Commission in the District of Columbia.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (“Commission”), pursuant to the authority set forth in Sections 8(c)(2), (3), (5), (7), (8), (19), 14, 20, and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2) (3), (5), (7), (8), (19), 50-319, and 50-320 (2014 Repl. & 2015 Supp.)), and D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2014 Repl. & 2015 Supp.), hereby gives notice of its intent to adopt amendments to Chapter 4 (Taxicab Payment Service Providers) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

This final rulemaking would amend the Chapter 4 requirement that each payment service provider (“PSP”) integrate with the D.C. Universal Taxicab App (“DC TaxiApp”), for which service and support are provided by the D.C. Taxicab Industry Co-op (“Co-op”). The amendment alters the division of expenses related to the integration of the DC TaxiApp and any PSP which is approved following the implementation date in 31 DCMR § 1612. The previous requirement was that the Co-op and each such PSP would share such expenses equally; the amendment would require the Co-op and each such PSP to bear its own expenses for integration.

The proposed rulemaking was adopted by the Commission on May 29, 2015 and published in the *D.C. Register* on October 2, 2015 at 62 DCR 013040. The Commission did not receive any comments during the comment period, which expired on November 1, 2015. The language was clarified to ensure that PSPs which receive new or renewed approval after the implementation date in § 1612 are on notice of the requirements of the costs and burdens associated with this regulation. No other changes were required and none have been made.

The Commission voted to adopt this rulemaking as final on November 18, 2015, and it will become effective upon publication in the *D.C. Register*.

Chapter 4, TAXICAB PAYMENT SERVICE PROVIDERS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 408, OPERATING REQUIREMENTS APPLICABLE TO PSPs AND DDSs, is amended as follows:

Subsection 408.16 (a) (2) is amended to read as follows:

- (2) For integration with each PSP which obtains operating authority after the implementation date in § 1612: the Co-op and the PSP shall bear its own expenses for integration.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD**

NOTICE OF PROPOSED 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. & 2015 Supp.)) and Mayor's Order 2009-22, dated February 25, 2009, as amended, hereby gives notice of the intent to adopt the following amendments to Title 12 (D.C. Construction Codes Supplement of 2013) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking would (1) revise provisions in the 2013 District of Columbia Building Code Supplement, the 2013 District of Columbia Fire Code Supplement, and the 2013 District of Columbia Residential Code Supplement 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) revise provisions in the 2013 District of Columbia Building Code Supplement, the 2013 District of Columbia Fire Code Supplement, and the 2013 District of Columbia Property Maintenance Code Supplement to clarify the authority of the code official to take emergency measures where there is imminent danger; and (3) revise the 2013 District of Columbia Building Code Supplement to clarify and coordinate the relationship between the 2013 District of Columbia Construction Codes Supplement and the Flood Hazard Rules set forth in 20 DCMR, Chapter 31, for projects located in Special Flood Hazard Areas.

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

The process for submitting comments on the proposed rulemaking is detailed on the final page of this Notice.

The Chairperson also hereby gives notice of the intent to take final rulemaking action to adopt this amendment. Pursuant to Section 10(a) of the Act, the proposed amendment will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* or Council approval of the amendment.

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

Title 12-A DCMR, BUILDING CODE SUPPLEMENT OF 2013, 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*.

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 homes* 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.

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.

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 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.

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*.

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~~

SECTION 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.

SECTION AM102 DEFINITION

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*.

SECTION 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 m²) 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 *abatement*.~~

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 1¹/₄ inches (32 mm) square, unless the fence has slats at the top or bottom which reduce the opening to no more than 1³/₄ 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.

SECTION AM104 SMOKE DETECTION

AM104.1 General.

Smoke alarms shall be installed in all *dwelling*s 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 *dwelling*s 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.~~

SECTION AM105 CARBON MONOXIDE DETECTION

AM105.1 General. Carbon monoxide alarms shall be installed in all *dwelling*s 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.

SECTION 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

<u>Age of children¹</u>	<u>Adult /Child Ratio</u>	<u>Maximum Group size</u>
<u>1 infant and between 1 and 11 children over 2 years of age</u>	<u>1:6</u>	<u>12</u>
<u>2 infants and between 1 and 4 children over 2 years of age</u>	<u>1:6</u>	<u>6</u>
<u>3 infants and between 1 and 6 children over 2 years of age</u>	<u>1:3 (but at least 2 caregivers)</u>	<u>9</u>
<u>4 infants and between 1 and 8 children over 2 years of age</u>	<u>1:3 (but at least 2 caregivers)</u>	<u>12</u>
<u>5 infants and between 1 and 4 children over 2 years of age</u>	<u>3 caregivers</u>	<u>9</u>
<u>6 infants and between 1 and 3 children over 2 years of age</u>	<u>3 caregivers</u>	<u>9</u>

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 *dwelling*s 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 *dwelling*s used for home day care operations.

SECTION 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.

SECTION 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*.

SECTION 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*.

Title 12-G, PROPERTY MAINTENANCE CODE SUPPLEMENT OF 2013, 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 *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.).

Title 12-H, FIRE CODE SUPPLEMENT OF 2013, 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 109 herein 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.).

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

SECTION 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 *dwelling*s 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.

SECTION K101 GENERAL

K101.1 General.

This appendix shall apply to a home day care (a) operated within existing detached one and two-family *dwelling*s 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.

SECTION K102 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*.

SECTION K103 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 1¹/₄ inches (32 mm) square, unless the fence has slats at the top or bottom which reduce the opening to no more than 1³/₄ 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 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.

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.

SECTION K104 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.

SECTION K105 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.

SECTION K106 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

<u>Age of children¹</u>	<u>Adult /Child Ratio</u>	<u>Maximum Group size</u>
<u>1 infant and between 1 and 11 children over 2 years of age</u>	<u>1:6</u>	<u>12</u>
<u>2 infants and between 1 and 4 children over 2 years of age</u>	<u>1:6</u>	<u>6</u>
<u>3 infants and between 1 and 6 children over 2 years of age</u>	<u>1:3 (but at least 2 caregivers)</u>	<u>9</u>
<u>4 infants and between 1 and 8 children over 2 years of age</u>	<u>1:3 (but at least 2 caregivers)</u>	<u>12</u>
<u>5 infants and between 1 and 4 children over 2 years of age</u>	<u>3 caregivers</u>	<u>9</u>

<u>6 infants and between 1 and 3 children over 2 years of age</u>	<u>3 caregivers</u>	<u>9</u>
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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 *dwelling*s 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 *dwelling*s 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 *dwelling*s 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 *dwelling*s used for home day care operations.

SECTION K107 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.

SECTION K108 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.

SECTION K109 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.

All persons desiring to comment on these proposed regulations should submit comments in writing to Jill Stern, Construction Codes Coordinating Board Chairperson, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5100, Washington, D.C. 20024, or via e-mail at jill.stern@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in Section 2 of the Gallery Place Project Graphics Amendment Act of 2004, effective April 5, 2005 (D.C. Law 15-278;52 DCR 835 (February 4, 2005)), and Mayor's Order 2013-147, dated August 8, 2013, hereby gives notice of the intent to adopt the following amendment of Appendix N (Signs) of Subtitle A (Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes Supplement of 2013) of the District of Columbia Municipal Regulations, in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

The amendment would revise and update the Illustrations referenced in Section N101.18.2, which govern the types and locations of signs authorized for the Gallery Place Project. As revised, the Illustrations will reflect amendments that have been made to the underlying rules and include signs that are currently being displayed pursuant to those amendments.

Appendix N, SIGNS, of Title 12-A DCMR, BUILDING CODE SUPPLEMENT OF 2013, is amended as follows:

Section N101.18, Rules for Gallery Place Project Graphics, is amended as follows:

The Illustrations referenced in Section N101.18.2 are hereby superseded and replaced by the following revised Illustrations, dated November 2015. The revised Illustrations are incorporated by reference into Section N101.18.2 and shall be available in the office of the code official.

The illustrations also make reference to Heroic Graphic Areas, which are defined in the illustrations as areas that allow unlimited square footage for signage except for any physical limitations imposed by the physical area of the site or the illustrations. These areas also allow for digital video monitors, digital screens, and theater marquees, provided that they do not obscure the building's structural frame, spandrels, and architectural elements.

Revised illustrations are available on the Department of Consumer and Regulatory Affairs website at <http://dcra.dc.gov/page/agency-news> under "Administrative Publications".

The Illustrations have been revised as follows:

Illustrations 1 and 2. These Illustrations now contain a Heroic Graphic Area block on the Gallery Place project above the Metro entranceways at the corner of the Seventh Street and H Streets (replacing the Storefront Signage Area). This block authorizes the type of Gallery Place Project Graphics that currently exist on the Project.

Illustrations 3 and 3a. These Illustrations include the addition of a Heroic Graphic Area block placed vertically from the ground of the alleyway between the Gallery Place Project and the Verizon Center to the top of the second story of the Gallery Place Project and horizontally from the south-facing façade of the Gallery Place Project to the north-facing façade of the Verizon

Center. This block reflects an amendment to the rules that added Section N101.18.2a (Gallery Place Projects Graphics Displays in Private Alley), which authorized the installation of a free-standing digital display (the “G Street Alley Digital Signage”) in the private alleyway located between the Gallery Place Project and the Verizon Center. This Heroic Graphic Area is in addition to the Heroic Graphic Areas already identified in the Illustrations on the west-facing façade of Gallery Place,

Explanatory Text. The text accompanying the Illustrations has also been updated to include: (1) statements on each Illustration affirming that Gallery Place Signage must comply with 12A DCMR N101.18; (2) a correction to the language specifying that individual elements of storefront signs may only project up to eight inches (8 in.); (3) a clarification that the G Street Alley Digital Signage is limited to five hundred seventy square feet (570 sq. ft.); and (4) arrows added pointing to the defined elements of typical storefront façades on Illustrations 5 and 6.

All persons desiring to comment on these proposed regulations should submit comments in writing to Matt Orlins, Legislative Affairs Director, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5164, Washington, D.C. 20024, or via e-mail at matt.orlins@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at <http://dcra.dc.gov> by going to the “About DCRA” tab, clicking on “News Room,” and then clicking on “Rulemaking.”

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act (the Act) for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the intent to adopt an amendment to Chapter 95 (Medicaid Eligibility) by adding a new Section 9512 (Non-MAGI Eligibility Group: Katie Beckett Pathway), of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), and to amend Section 9500 (General Provisions) of Chapter 95 (Medicaid Eligibility) of Title 29 DCMR (Public Welfare) to add definitions.

DHCF is the single state agency responsible for the administration of the State Medicaid program under Title XIX of the Act and the Children's Health Insurance Program (CHIP) under Title XXI of the Act in the District. Pursuant to Section 1902(e) of the Act and Section 134 of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, approved September 3, 1982 (Pub. L. 97-248, 42 USC § 1396a), children with disabilities, who would not be eligible for Medicaid benefits due to their parent's income, may become eligible for Medicaid. Eligibility under the Katie Beckett Pathway allows the District to waive the deeming of parental income and resources for children who meet certain criteria. To be found eligible for Medicaid through the Katie Beckett Pathway, a child must be age zero (0) through eighteen(18) years old; have income at or below three hundred (300%) of the Supplemental Security Income (SSI) federal benefit; have resources equal to or less than \$4,000; have a disability which can be expected to result in death or to last for more than twelve (12) months in accordance with Section 1614(a) of the Act; have a level of care that is typically provided in either a hospital, intermediate care facility, or skilled nursing facility; be able to safely live at home; not otherwise eligible for Medicaid; have estimated Medicaid costs of care received at home that do not exceed the estimated Medicaid costs of care received in an institution pursuant to the District's cost effectiveness methodology; and meet non-financial eligibility factors in accordance with Section 9506.9 of this chapter. Accordingly, these proposed amended rules establish the eligibility factors and standards governing eligibility determinations for children under the age of nineteen (19) who are disabled, and enable them to receive medical care outside of a hospital, intermediate care facility, or nursing facility. Additionally, these rules allow these children to have access to the same set of services, such as early periodic screening diagnosis and treatment (EPSDT) services, that are available to children who are eligible for Medicaid on another basis.

The District of Columbia Medicaid Program is also amending the District of Columbia State Plan for Medical Assistance (State Plan) to reflect the methodology in determining cost effectiveness of providing care for the child at home instead of an institution. These proposed rules correspond to the amendment, which require approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS). These rules shall become effective for services

rendered on or after January 1, 2016, if the corresponding State Plan Amendment (SPA) has been approved by CMS with an effective date of January 1, 2016, or the effective date established by CMS in its approval of the corresponding SPA, whichever is later. These proposed rules amend Chapter 95 of Title 29 DCMR by incorporating the Medicaid eligibility requirements for children to receive reimbursable services through the Katie Beckett Pathway. The District approximates that there will be no fiscal impact related to these updates.

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

CHAPTER 95, MEDICAID ELIGIBILITY, of Title 29 DCMR, PUBLIC WELFARE, is amended by adding a new Section 9512 to read as follows:

9512 NON-MAGI ELIGIBILITY GROUP: KATIE BECKETT PATHWAY

9512.1 A child below the age of nineteen (19) years old that applies for Medicaid eligibility under the Katie Beckett pathway shall comply with the following requirements:

- (a) Submit a complete application for Medicaid, in accordance with § 9501.5 of this chapter, which shall include but not be limited to supplying information on household income; and
- (b) Be evaluated for Medicaid eligibility based on Modified Adjusted Gross Income (MAGI Medicaid) pursuant to the requirements set forth under § 9506.6 of this chapter .

9512.2 The District of Columbia (District) shall provide Medicaid benefits under the Katie Beckett Pathway to eligible children with disabilities who do not qualify for MAGI Medicaid due to being over the MAGI Medicaid income threshold for children in the District, subject to the provisions of this section.

9512.3 If an applicant is deemed to be ineligible for MAGI Medicaid due to being over the income threshold set forth in § 9506.6(b), then the Department shall submit notice of the applicant's ineligibility of MAGI Medicaid and the applicant's opportunity to be evaluated for Medicaid through the Katie Beckett Pathway. The Department shall also submit the following documents for the applicant's completion to determine the applicant's eligibility for Medicaid under the Katie Beckett pathway:

- (a) A Care Plan that is completed by the applicant and the applicant's physician, containing the prescribed or ordered services for the child; and

- (b) Level of Care (LOC) forms that are completed by the applicant's physician, and are accompanied with documentation that supports a LOC in accordance with § 9512.4(e).

9512.4 In order to be eligible for Medicaid through the Katie Beckett Pathway, a child shall meet the following non-financial and financial requirements:

- (a) Be age zero (0) through eighteen (18) years old;
- (b) Have individual income at or below three hundred percent (300%) of the Supplemental Security Income (SSI) federal benefit level;
- (c) Have individual resources equal to or less than two thousand six hundred dollars (\$2,600) after application of a disregard of all countable resources between \$2,600 and four thousand dollars (\$4,000);
- (d) Have a disability which can be expected to result in death or to last for at least twelve (12) months in accordance with Section 1614(a) of the Social Security Act;
- (e) Have a LOC that is typically provided in one of the following settings:
 - (1) A hospital, as described in 42 C.F.R. § 440.10, pursuant to the criteria set forth under § 9512.6;
 - (2) An intermediate care facility, as described in 42 C.F.R. § 440.150, pursuant to the criteria set forth under § 9512.7; or
 - (3) A nursing facility, as described in the "Health Care and Community Residence License Act of 1983, approved October 28, 1983 (D.C. Law 5-48; D.C. Official Code § 44-501), pursuant to the criteria set forth under § 9512.9;
- (f) Be able to safely live at home;
- (g) Not otherwise be eligible for Medicaid;
- (h) Have estimated Medicaid costs of care received at home that do not exceed the estimated Medicaid costs of care received in an institution pursuant to the cost effectiveness methodology set forth in § 9512.10; and
- (i) Meet non-financial eligibility factors in accordance with § 9506.9.

9512.5 Only the income and assets of the child shall be considered in determining financial eligibility under § 9512.4. The parents' income and assets shall not be deemed to the child.

9512.6 A child shall meet a hospital LOC if a child meets all of the following criteria:

- (a) The child has a condition for which room, board, and professional services furnished under the direction of a physician is expected to be medically necessary for a period of forty eight (48) hours or longer;
- (b) The professional services needed are something other than intermediate care facility and nursing facility services, under §§ 9512.7 and 9512.9, respectively;
- (c) The child's condition is such that requires treatment which is ordinarily furnished in an inpatient setting;
- (d) The service that the child needs has been ordered by a physician who is licensed in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)) and complies with screening and enrollment requirements set forth under § 9512.14;
- (e) The service that the child receives is furnished either directly by, or under the supervision of, a physician that is licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)) and in compliance with screening and enrollment requirements set forth under § 9512.15; and
- (f) The service that the child receives is ordinarily furnished, as a practical matter, in a hospital, certified by the Health Regulation and Licensing Administration (HRLA) in the Department of Health (DOH) pursuant to §§ 2000 – 2099 of Title 22, Subtitle B, of the District of Columbia Municipal Regulations (DCMR), for the care and treatment of individuals with disorders other than mental diseases.

9512.7 A child shall meet an intermediate care facility LOC if a child meets all of the following criteria:

- (a) The child has the diagnosis of an intellectual disability that meets one of the criteria set forth under § 1902.4 of Title 29 DCMR;
- (b) The child is referred for an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) LOC based on a medical evaluation by a physician that is licensed pursuant to the District of Columbia Health

Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)) and complies with screening and enrollment requirements set forth under § 9512.14;

- (c) The child requires active treatment by meeting the following requirements:
- (1) The child's needs have not been met with the child's current plan of treatment, *i.e.*, wraparound services in school and in the community;
 - (2) The child requires twenty-four (24) hour supervision by a licensed practical nurse or nursing assistive personnel, as appropriate, who are acting within the scope of practice authorized under District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
 - (3) The child requires ongoing care, either directly or on-call, by one or more of the following, as appropriate:
 - (A) A physician who is licensed in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
 - (B) A psychiatrist who is licensed as a physician in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)), and has completed a residency program in psychiatry accredited by the Residency Review Committee for Psychiatry of the Accreditation Council for Graduate Medical Education and is eligible to sit for the psychiatric board examination;
 - (C) An advanced practice registered nurse who is licensed in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
 - (D) A registered nurse that is licensed in accordance with District of Columbia Health Occupations Revision Act of

1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));

- (E) A psychologist that is licensed to practice psychology in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
- (F) A social worker that is licensed as a licensed independent social worker, a licensed graduate social worker, or a licensed independent clinical social worker, in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
- (G) A physical therapist that is licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
- (H) An occupational therapist that is licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
- (I) A speech pathologist that is licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));
- (J) An audiologist that is licensed in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)); or
- (K) A recreational therapist that is registered in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99;

D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.));

- (4) Subject to limitations under § 9512.8 of this chapter, the child requires specialized services through an integrated program of therapies and other activities that are developed and supervised by medical and rehabilitative professionals, as appropriate, in order to improve the child's ability to function at a higher less dependent level;
- (5) The child requires more behavior modification than is provided in a six (6) hour school day;
- (6) The child has severe functional limitations in three (3) or more of the following areas of major life activities:
 - (A) Self-care;
 - (B) Understanding the use of language;
 - (C) Learning;
 - (D) Mobility;
 - (E) Self-direction; and
 - (F) Capacity for independent living;
- (d) The services that the child requires will be furnished either directly by, or under the supervision of, appropriately qualified professionals that are licensed and practicing within the scope of their license pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)) and in compliance with screening and enrollment requirements set forth under § 9512.15; and
- (e) The services that the child requires would have ordinarily been provided in an intermediate care facility, licensed by HRLA pursuant to §§ 3100 – 3199 of Title 22, Subtitle B, of the DCMR, in the absence of community services.

9512.8 Specialized services under § 9512.7(c)(4) shall not include:

- (a) Interventions that address age-appropriate limitations;

- (b) General supervision of children whose age is such that supervision is required for all children of the same age; or
- (c) Physical assistance for children who are unable to physically perform tasks but who understand the process needed to do them.

9512.9 A child shall meet a nursing facility LOC if a child meets all of the following criteria:

- (a) The child requires service that is inherently complex (*e.g.*, treatment for cystic fibrosis, osteogenesis imperfecta, sickle cell, spina bifida, etc.) and can be safely and effectively performed only by, or under the supervision of, professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, social workers, and speech pathologists or audiologists, who are licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)) and in compliance with screening and enrollment requirements set forth under § 9512.15;
- (b) The child requires one (1) of the following three (3) categories of services:
 - (1) The service is required seven (7) days per week and is one (1) of the following, or similar:
 - (A) Overall management and evaluation of a care plan for a child who is totally dependent in all activities of daily living;
 - (B) Observation and assessment of a child's changing condition when the documented instability of his or her medical condition is likely to result in complications, or because the documented instability of his or her mental condition is likely to result in suicidal or hostile behavior;
 - (C) Intravenous or intramuscular injections or intravenous feeding;
 - (D) Enteral feeding that comprises at least twenty-six (26) percent of daily calorie requirements and provides at least five hundred and one (501) milliliters of fluid per day;
 - (E) Nasopharyngeal or tracheostomy aspiration;

- (F) Insertion and sterile irrigation or replacement of uprapubic catheters;
 - (G) Application of dressings involving prescription medications and aseptic techniques;
 - (H) Treatment of extensive decubitus ulcers or other widespread skin disorder;
 - (I) Heat treatments as part of active treatment which requires observation by nurses;
 - (J) Initial phases of a regimen involving administration of medical gases;
 - (K) Rehabilitation nursing procedures, including the related teaching and adaptive aspects of nursing, that are part of active treatment;
- (2) The service is required five (5) days per week and is one (1) of the following or similar:
- (A) Ongoing assessment of rehabilitation needs and potential services concurrent with the management of a patient care plan;
 - (B) Therapeutic exercises and activities performed by physical therapy or occupational therapy;
 - (C) Gait evaluation and training to restore function to a child whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality;
 - (D) Range of motion exercises which are part of active treatment of a specific condition that has resulted in a loss of, or restriction of mobility;
 - (E) Maintenance therapy when specialized knowledge and judgment is needed to design a program based on initial evaluation;
 - (F) Ultrasound, short-wave, and microwave therapy treatment;
 - (G) Hot pack, hydrocollator, infrared treatments, paraffin baths, and whirlpool treatment when the child's condition is

- complicated by circulatory deficiency, areas of desensitization, open wounds, etc. and specialized knowledge and judgment is required;
- (H) Services of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing; or
- (3) The service is one (1) of the following only if an additional medical complication requires that it be performed or supervised by professional personnel:
- (A) Administration of routine medications, eye drops, and ointments;
 - (B) General maintenance care of an ostomy;
 - (C) General maintenance care in connection with a plaster cast;
 - (D) Routine services to maintain satisfactory functioning of indwelling bladder catheters;
 - (E) Changes of dressings for non-infected postoperative or chronic conditions;
 - (F) Prophylactic and pain relief for skin care, including bathing and application of creams, or treatment of minor skin problems;
 - (G) Routine care of an incontinent child, including use of diapers and protective sheets;
 - (H) Use of heat as a pain relief and comfort measure (e.g., whirlpool and hydrocollator);
 - (I) Routine evaluation of blood gases after a regimen of oxygen therapy has been established;
 - (J) Assistance in dressing, eating, and toileting;
 - (K) Periodic turning and positioning of the child;
 - (L) General supervision of exercises that were taught to the child and can be safely performed by the child including the actual carrying out of maintenance programs;

- (c) The service needed has been ordered by a physician who is licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)), and complies with screening and enrollment requirements set forth under § 9512.14;
- (d) The service is furnished either directly by, or under the supervision of, qualified professionals that are licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)) and in compliance with screening and enrollment requirements set forth under § 9512.15; and
- (e) The beneficiary requires skilled nursing or skilled rehabilitation services, or both, at a minimum of five (5) days per week.

9512.10 The Department, or its agent, shall determine whether the estimated Medicaid cost of caring for the child outside of an institution exceeds the estimated cost of appropriate institutional care based on the following methodologies:

- (a) Upon initial application, the Department shall:
 - (1) Identify the services that the child is prescribed or ordered to receive based on forms submitted by the applicant under § 9512.3(a) – (b);
 - (2) Estimate the annual cost of the services using the established Medicaid Fee Schedule, available at <http://www.dc-medicaid.com>. The beneficiary's acuity level and severity of illness shall be factored into the estimation;
 - (3) Estimate the annual costs of services if services were provided in an institution by multiplying the current institutional per diem reimbursement rate, in accordance with § 9512.10(b), with the number of days in one year. The beneficiary's acuity level, severity of illness, and length of stay shall be factored into the estimation. This estimate shall be the maximum allowable costs; and
 - (4) Compare the annual costs identified in § 9512.10(a)(2) with the maximum allowable costs identified in § 9512.10(a)(3). If the annual cost is more than the maximum allowable costs, the applicant will be ineligible for Medicaid under the Katie Beckett Pathway.

(b) The institutional per diem reimbursement rate of services, described in § 9512.10(a)(3), shall be determined as follows:

- (1) If the Department determines that the child has a hospital LOC pursuant to § 9512.6, the Department shall use the applicable per-diem reimbursement rates of a specialty hospital provider that most closely meets the medical needs of the child, in accordance with Chapter 48 of Title 29 DCMR, and is enrolled with the Department pursuant to Chapter 94 of Title 29 DCMR;
- (2) If the Department determines that the child has an intermediate care facility LOC pursuant to § 9512.7, the Department shall use applicable per-diem reimbursement rates in accordance with the ICF/IID fee schedule, set forth under Subsection 4102.15 of Title 29 DCMR; or
- (3) If the Department determines that the child has a nursing facility LOC pursuant to § 9512.9, the Department shall use the applicable per-diem reimbursement rates of the pediatric nursing facility that most closely meets the medical needs of the child, pursuant to Chapter 65 of Title 29 DCMR or pursuant to the Medicaid rates of the jurisdiction in which the facility is located, and is enrolled with the Department pursuant to Chapter 94 of Title 29 DCMR.

(c) The Department shall employ the following methodology during annual renewals, unless § 9512.19 applies:

- (1) Calculate the actual annual costs of care incurred for the child in the preceding year by aggregating the actual monthly costs of care;
- (2) Compare actual annual costs determined under § 9512.10(c)(1) with the maximum allowable costs that was previously determined under § 9512.10(a)(3). If the actual annual cost is more than the maximum allowable costs, the applicant will be ineligible for renewed Medicaid under the Katie Beckett Pathway.

9512.11 If an applicant is found eligible for Medicaid through the Katie Beckett Pathway, the Department shall notify the applicant within sixty (60) calendar days of receipt of completed documents set forth in § 9512.3, in accordance with § 9501.9(a) of this Chapter. The applicant shall be automatically enrolled in fee-for-service Medicaid. However, the applicant shall have the option to transition his or her enrollment to a managed care plan, subject to the Department’s approval.

9512.12 Retroactive eligibility, pursuant to §§ 9501.10 – 9501.12, shall apply to Katie Beckett Pathway applicants if the applicant was eligible in accordance with the

requirements set forth under § 9512.4 and received covered services during that period.

9512.13 Pursuant to § 9501.15, each beneficiary shall notify the Department within ten (10) calendar days of any change in circumstances that directly affects the beneficiary's eligibility to receive Medicaid. Once changes are reported, the Department shall review the beneficiary's eligibility in accordance with the requirements of this chapter to determine if the beneficiary remains eligible for Medicaid under the Katie Beckett pathway.

9512.14 The physician that orders or refers services for a child that meets a LOC criteria set forth under §§ 9512.6, 9512.7, or 9512.9 and is found eligible through the Katie Beckett Pathway shall be subject to the following screening and enrollment criteria:

- (a) If a child enrolls in a managed care plan contracted with the Department, the physician that continues to order or refer services for the child shall be subject to the managed care plan's screening and enrollment requirements pursuant to the managed care contract;
- (b) If a child enrolls in fee-for-service Medicaid, the physician that continues to order or refer services for the child shall be subject to screening and enrollment requirements set forth under Chapter 94 of Title 29 DCMR; and
- (c) If a physician, who is not already enrolled with the Department, orders or refers services for a child that requires services to be furnished by a qualified professional who must to enter into a Single Case Agreement with the Department pursuant to § 9512.17, the physician shall submit a streamlined application for enrollment to the Department.

9512.15 The qualified professionals that furnish services to a child that meets a LOC criteria set forth under §§ 9512.6, 9512.7, or 9512.9 and is found eligible through the Katie Beckett Pathway shall be subject to the following screening and enrollment criteria:

- (a) If a child enrolls in a managed care plan contracted with the Department, the qualified professionals that continue to furnish services for the child shall be subject to the managed care plan's screening and enrollment requirements, unless a Single Case Agreement has been approved subject to § 9512.16; and
- (b) If a child enrolls in fee-for-service Medicaid, the qualified professionals that continue to furnish services to the child shall be subject to screening and enrollment requirements set forth under Chapter 94 of Title 29

DCMR, unless a Single Case Agreement has been approved subject to § 9512.17.

- 9512.16 If a child that is enrolled in a managed care plan requires service(s) from a qualified professional that is not within the managed care plan's network, the managed care plan may enforce conditions under which it will engage in Single Case Agreements with qualified professionals that are reflective of the conditions set forth in § 9512.17 (a) – (b), in addition to any other conditions set forth in the managed care contract with the Department.
- 9512.17 Services may be delivered to a beneficiary pursuant to a Single Case Agreement between a qualified professional and the Department if all of the following conditions are met:
- (a) The child requires a service that is Medicaid-reimbursable pursuant to the District's State Plan for Medical Assistance;
 - (b) The service is medically necessary based on the submitted supporting documentation; and
 - (c) The service cannot be delivered by providers that are currently enrolled with the Department pursuant to Chapter 94 of Title 29 DCMR.
- 9512.18 If a qualified professional is interested in entering into a Single Case Agreement with the Department, the following requirements shall be met:
- (a) An ordering, referring, or prescribing physician who is enrolled with the Department pursuant to Chapter 94 of Title 29 DCMR submits a request for a Single Case Agreement with supporting clinical documentation of the required service to be furnished by a non-enrolled qualified professional;
 - (b) The qualified professional submits a separate short application for a Single Case Agreement;
 - (c) The qualified professional is screened by the Department pursuant to Chapter 94 of Title 29 DCMR; and
 - (d) Claims are reimbursed pursuant to the Department's fee schedule, available at www.dc-medicaid.com.
- 9512.19 If upon annual renewal there is a change to the services prescribed or ordered for a child in the Care Plan, described in § 9512.3(a), the Department shall conduct a cost effectiveness review using the methodology set forth under § 9512.10(a).

- 9512.20 If additional or a change of services are prescribed or ordered for the child before the end of the child's certification period, the following shall occur:
- (1) If a child is enrolled in fee-for-service Medicaid, the child's physician shall submit a new Care Plan to the Department, and the Department shall conduct a new cost effectiveness review using the methodology set forth under § 9512.10(a).
 - (2) If the child is enrolled in a managed care plan, the child's physician shall submit the new Care Plan to the managed care plan in which the child is enrolled. The managed care plan shall submit the Care Plan to the Department, and the Department shall conduct a new cost effectiveness review using the methodology set forth under § 9512.10(a).
- 9512.21 Each applicant and beneficiary shall be subject to the provisions of Chapter 14 of Title 29 DCMR, including but not limited to providing the Department with written notice of any known or suspected third-party liability at the time the child applies for Medicaid and at all times the beneficiary is receiving Medicaid through the Katie Beckett Pathway.
- 9512.22 In addition to the requirements set forth under § 9512.21, if an applicant or beneficiary requires a service that is covered within the applicant's or beneficiary's primary health insurance plan, each applicant or beneficiary shall follow the rules and requirements of the primary health insurance before seeking reimbursement from the Department or managed care plan for the service.
- 9512.23 For continued Medicaid coverage through the Katie Beckett Pathway, each beneficiary shall complete and submit the following documents every twelve (12) months in order for the Department to determine all of the eligibility requirements set forth under § 9512.4:
- (a) A completed and signed renewal form;
 - (b) A new Care Plan as described in § 9512.3(a);
 - (c) A new LOC form with documentation as described in § 9512.3(b); and
 - (d) Supporting documentation to verify other financial and non-financial eligibility factors described in § 9512.4.
- 9512.24 The Department shall send a renewal package, containing the documents described in §§ 9512.23(a) - (c) for the beneficiary's completion, no later than ninety (90) days prior to the end of the eligibility period.

- 9512.25 If the beneficiary's annual renewal documents reveal that the beneficiary no longer meets all of the eligibility factors set forth under § 9512.4, the beneficiary's Medicaid coverage under the Katie Beckett Pathway shall be terminated and the Department shall evaluate the beneficiary's eligibility for Medicaid under other pathways pursuant to 42 C.F.R. § 435.916. The Department shall provide notice to the beneficiary or the beneficiary's authorized representative prior to termination in accordance with the provisions under Section 9508 of this chapter. The Department shall also provide notice to the beneficiary of its eligibility determination under other pathways.
- 9512.26 If a cost effectiveness review conducted pursuant to § 9512.20 reveals that a beneficiary's estimated Medicaid costs of care received at home exceed the estimated Medicaid costs if care is received in an institution, the beneficiary's Medicaid coverage under the Katie Beckett Pathway shall be terminated. The Department shall provide notice to the beneficiary prior to termination in accordance with the provisions under Section 9508 of this chapter.
- 9512.27 At all times during the beneficiary's enrollment in Medicaid through the Katie Beckett Pathway, the beneficiary shall meet all eligibility factors described in § 9512.4.
- 9512.28 Eligibility through the Katie Beckett Pathway shall not continue once a beneficiary turns nineteen (19) years old. Upon the beneficiary's nineteenth (19th) birthday, the Department shall re-evaluate the beneficiary's eligibility for Medicaid under another eligibility category.

The following definitions shall be added to Section 9500, GENERAL PROVISIONS, Subsection 9500.99:

9500.99 DEFINITIONS

Active treatment - a continuous program, which includes consistent implementation of training, therapies, health and related services designed to address the child's social, intellectual, and behavioral deficits and, further, that are directed toward the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible. The program is designed to prevent or decelerate the regression or loss of current optimal functional status. Additionally, the program shall address a child's need for a combination and sequence of interdisciplinary supports that are individually planned, coordinated and are of lifelong or extended duration.

Activities of Daily Living - shall have the same meaning as set forth in [D.C. Official Code § 44-102.01\(1\)](#).

Katie Beckett Pathway - a pathway that provides Medicaid benefits for eligible children with disabilities, who would not ordinarily qualify for Medicaid due to being over the Medicaid income threshold for children in the District.

Single Case Agreement - an agreement between a rendering non-enrolled Medicaid provider and the Department for Medicaid reimbursement of covered services for an eligible D.C. Medicaid beneficiary.

Skilled nursing- medical and educational services that address healthcare needs related to prevention and primary healthcare activities.

Skilled rehabilitative services- services delivered in an inpatient or outpatient setting that assists with retention, regaining, or improving skills and functioning for daily living that are lost or impaired due to a new medical condition, an acute exacerbation of a chronic medical condition, sickness, injury, or disability. Services require the judgment, knowledge and skill of a qualified therapist and may include, but are not limited to, physical and occupational therapy, speech pathology, and audiology.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKINGRM29-2016-01, IN THE MATTER OF 15 DCMR CHAPTER 29-RENEWABLE ENERGY PORTFOLIO STANDARD-RENEWABLE ENERGY PORTFOLIO STANDARD AMENDMENT ACT OF 2014

1. The Public Service Commission of the District of Columbia (“Commission”), pursuant to its authority under D.C. Official Code §§ 2-505 and 34-802 (2012 Repl.), hereby gives notice of its intent to amend Chapter 29 (Renewable Energy Portfolio Standard) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (“DCMR”), Renewable Energy Portfolio Standard, in accordance with the “Renewable Energy Portfolio Standard Amendment Act of 2014”¹ (“REPS Amendment Act of 2014”) in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

2. The REPS Amendment Act of 2014 changes the definition of the term “qualifying biomass”. The legislation also requires that, to qualify as a Tier 1 resource, a generation unit using biomass must achieve a total system efficiency of at least sixty-five percent (65%) on an annual basis, demonstrate that it achieved a total system efficiency of at least 65% on an annual basis through actual operational data after one year, and demonstrate that it started commercial operation after January 1, 2007 and refrain from using black liquor. Under this law, those biomass generation units that cannot achieve a total system efficiency of at least 65%; or that started commercial operations on or before December 31, 2006 or that use black liquor, can no longer qualify as Tier I resources. Rather, they now qualify as Tier II resources. The following definitions are also amended: qualifying biomass, tier one renewable source, and tier two renewable source. In addition, new definitions are added for the following terms: “black liquor”, “fuel input”, “total system efficiency”, and “useful thermal energy output”. Finally, under the Distributed Generation Amendment Act of 2011, energy supply contracts executed prior to August 1, 2011 are not subject to the increased solar requirement required by that law.² Under the REPS Amendment Act of 2014, any extension or renewal of these contracts executed on or after that date shall be subject to the higher solar energy requirement. Commission Rule 2901.14 is revised accordingly.

Chapter 29, RENEWABLE ENERGY PORTFOLIO STANDARD, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

2901 RPS COMPLIANCE REQUIREMENTS

Section 2901.14 is amended to read as follows:

¹ Renewable Energy Portfolio Standard Amendment Act of 2014, effective April 30, 2015 (D.C. Law 20-245; 62 DCR 1492 (February 6, 2015)).

² Distributed Generation Amendment Act of 2011, effective October 20, 2011 (D.C. Law 19-36, § 3; 58 DCR 6837 (August 12, 2011)).

2901.14 Energy supply contracts entered into prior to August 1, 2011, shall not be subject to the increased solar energy requirement as required by law; but any extension or renewal of such contracts, executed on or after August 1, 2011, shall be subject to the higher solar energy requirement as required by law.

2902 GENERATOR CERTIFICATION AND ELIGIBILITY

Section 2902.22 is added to read as follows:

2902.22 Every facility using qualifying biomass to generate electricity and certified as a qualifying resource by the Commission shall submit annually by June 1, starting in 2016, information demonstrating each system's total system efficiency for the current calendar year consistent with the definitions of "total system efficiency," "fuel input," and "useful thermal energy output" in Section 2999.1.

2999 DEFINITIONS

The following definitions in Section 2999.1 are amended to read as follows:

Qualifying biomass -- a solid, non-hazardous, cellulosic waste material that is segregated from other waste materials, and is derived from any of the following forest-related resources, with the exception of old growth timber, construction and demolition-derived wood and whole trees that are not part of a closed-loop biomass system, cleared solely for the purpose of energy production, unsegregated solid waste, or post-consumer wastepaper:

- (a) Mill residue;
- (b) Precommercial soft wood thinnings;
- (c) Slash;
- (d) Brush;
- (e) Yard waste;
- (f) A waste pallet, crate, or dunnage;
- (g) Agricultural sources, including tree crops, vineyard materials, grain, legumes, sugar, and other crop by products or residues; or
- (h) Cofired biomass.

Construction and demolition-derived wood and whole trees that are not part of a closed-loop biomass system, cleared solely for the purpose of energy production, shall be considered **qualifying biomass**, if a) this material was used to generate RECs and those RECs are retired for compliance purposes with respect to electricity consumed by SOS customers on or before May 31, 2015; or b) this material was used by a facility certified before April 30, 2015, the effective date of the Renewable Energy Portfolio Standard Amendment Act of 2014, to generate RECs, which were purchased by an electricity supplier pursuant to a contract executed before April 30, 2015, and those RECs are retired for compliance purposes with respect to electricity consumed by non-SOS customers on or before December 31, 2017.

In all other instances, the construction and demolition-derived wood and whole trees that are not part of a closed-loop biomass system, cleared solely for the purpose of energy production, shall not be considered **qualifying biomass**, as of April 30, 2015.

Tier one renewable source -- one (1) or more of the following types of energy sources:

- (a) Solar energy;
- (b) Wind;
- (c) Qualifying biomass used at a generation unit that achieves a total system efficiency of at least 65% on an annual basis, can demonstrate that it achieved a total system efficiency of at least 65% on an annual basis through actual operational data after one year, and that started commercial operation after January 1, 2007;
- (d) Methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;
- (e) Geothermal;
- (f) Ocean, including energy from waves, tides, currents, and thermal differences; and
- (g) Fuel cells producing electricity from a Tier One renewable source under paragraph (c) or (d) of this paragraph.

The qualifications to qualifying biomass in subsection (c) shall not apply to RECs retired for compliance purposes with respect to electricity consumed by SOS customers on or before May 31, 2015; or with respect to electricity consumed by non-SOS customers on or before December 31,

2017, provided that these RECs were produced by a facility certified as a Tier I energy source before April 30, 2015 and were purchased by an electricity supplier pursuant to a contract executed before April 30, 2015. In all other instances, subsection (c) shall apply as of April 30, 2015.

Tier two renewable source -- one (1) or more of the following types of energy sources:

- (a) Hydroelectric power other than pumped storage generation;
- (b) Waste-to-energy; or
- (c) Qualifying biomass used at a generation unit that started commercial operation on or before December 31, 2006; or achieves a total system efficiency of less than 65%; or uses black liquor.

Subsection (c) shall not apply to RECs retired for compliance purposes with respect to electricity consumed by SOS customers on or before May 31, 2015; or with respect to electricity consumed by non-SOS customers on or before December 31, 2017, provided that these RECs were produced by a facility certified as a Tier I energy source before April 30, 2015 and were purchased by an electricity supplier pursuant to a contract executed before April 30, 2015. In all other instances, subsection (c) shall apply as of April 30, 2015.

The following definitions that are being added to Section 2999.1 read as follows:

Black liquor -- the spent cooking liquor from the Kraft process of paper making.

Fuel input -- the higher heating value of the input fuel type, measured in BTU/LB, based on the standardized heating type of fuel type, multiplied by the annual fuel used in as delivered tons, multiplied by 2000.

Total system efficiency -- the sum of the net useful thermal energy output measured in BTUs divided by the total fuel input.

Useful thermal energy output -- energy in the form of direct heat, steam, hot water, or other thermal form that is used in production and beneficial measures for heating, cooling, humidity control, process use, or other valid thermal end use energy requirements and for which fuel or electricity would otherwise be consumed. Useful thermal energy output does not include thermal energy used for the purpose of drying or refining biomass fuel.

3. All persons interested in commenting on the subject matter of this NOPR may submit written comments and reply comments no later than thirty (30) and forty-five (45) days, respectively, after the publication of this Notice in *D.C. Register*. Comments may be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, West Tower, Washington, D.C. 20005 or at the Commission's website at www.dcpsc.org. Persons with questions concerning this Notice should call 202-626-5150.

FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chief of the Fire and Emergency Medical Services Department (“Department”), pursuant to the authority under Sections 511 through 517 of the Omnibus Public Safety Agency Reform Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code §§ 5-1031 to 5-1057 (2012 Repl.)), as added by the Firefighter Retirement While Under Disciplinary Investigation Amendment Act of 2014, effective March 11, 2015 (D.C. Law 20-236; 62 DCR 485 (January 16, 2015)), hereby gives notice of the adoption on an emergency basis of new Sections 878 (Notification of Retirement or Resignation of a Member of the Fire and Emergency Medical Services Department) and 879 (Retirement or Resignation of a Member of the Fire and Emergency Medical Services Department While Under Disciplinary Investigation) of Title 6 (Personnel), Subtitle B (Government Personnel), Chapter 8 (Career Service) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking implements the Act by providing procedures applicable to Department members who resign or retire while under disciplinary investigation. The emergency rulemaking places any Department member in a conditional retirement status until the disciplinary investigation is completed. The investigation must occur within twenty-five days from the date of retirement or resignation. While in conditional retirement status, the Department member will not receive pay or retirement benefits. If the Department member is absolved of wrongdoing, the Department member’s retirement benefits will be paid retroactive to the date of his or her retirement or resignation. If the wrongdoing is upheld, the Department member will be penalized as prescribed in the Act, which includes a fine between one hundred dollars (\$100) and five thousand dollars (\$5,000) for an offense that would result in a suspension and a fine between one thousand dollars (\$1,000) and five thousand dollars (\$5,000) for an offense that would result in demotion or termination.

Adoption of this rulemaking on an emergency basis is necessary for the immediate protection of the public safety and welfare because it will promote accountability for misconduct by District employees who are responsible for protecting the public safety and welfare.

This emergency rulemaking was adopted on January 26, 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 May 25, 2016, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

In addition, the Chief of the Department 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 date of publication of this notice in the *D.C. Register*.

Chapter 8, CAREER SERVICE, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended by adding new Sections 878 and 879 to read as follows:

878 NOTIFICATION OF RETIREMENT OR RESIGNATION OF A MEMBER OF THE FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

878.1 Pursuant to Section 5 of An Act To classify the officers and members of the fire department of the District of Columbia, and for other purposes, approved January 20, 1906 (34 Stat 315; D.C. Official Code § 5-407), a member who decides to resign from FEMS shall submit a written notification through his or her chain of command to the Fire and EMS Chief at least thirty (30) days before the date the member wishes to resign. The written notification shall include:

- (a) The member's name;
- (b) Appointment date;
- (c) Forwarding address;
- (d) Social security number;
- (e) Date of separation;
- (f) Reason for resignation;
- (g) If accepting another position with the District of Columbia or federal government, the name and address of the government agency; and
- (h) If desired, a request for waiver of the thirty (30) day notification period.

878.2 Pursuant to Section 12(h) of the Policemen and Firemen's Retirement and Disability Act, approved September 1, 1916 (39 Stat. 718; D.C. Official Code § 5-712), and FEMS Special Order No. 77, Series 2013 (effective August 14, 2013), a member who decides to voluntarily retire from FEMS shall submit a request for optional retirement through his or her chain of command to the Fire and EMS Chief at least sixty (60) days before the date the member wishes to retire.

878.3 The definitions set forth in Section 879 shall apply to this section.

879 RETIREMENT OR RESIGNATION OF A MEMBER OF THE FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT WHILE UNDER DISCIPLINARY INVESTIGATION

879.1 Upon receipt of a notification of resignation or request for optional retirement, the Assistant Fire Chief of Operations and/or the Assistant Fire Chief of Services shall:

- (a) Determine whether the member is under disciplinary investigation; and
- (b) Forward the notification of resignation or request for optional retirement to the Fire and EMS Chief with a notation as to whether the member is under disciplinary investigation.

879.2 Upon receipt of a notification of resignation or request for optional retirement that includes a notation that the member is under disciplinary investigation, the Fire and EMS Chief shall:

- (a) Deny the request for waiver of the thirty (30) day notification requirement for members seeking to resign, if such a waiver was requested;
- (b) Deny the request for waiver of the sixty (60) day notification requirement for members seeking to retire, if such a waiver was requested;
- (c) Order the expedited completion of the investigation;
- (d) Inform the member that he or she is under conditional resignation or conditional retirement due to the pending disciplinary investigation for allegations of serious misconduct and that the final accounting of the member's salary and annual leave balance is conditioned upon final resolution of the investigation; and
- (e) Inform the Director of the Department of Human Resources and the Chief Financial Officer that the member's resignation or retirement is conditional and that the final accounting with respect to the member's salary and annual leave balances are to be held in abeyance pending resolution of the disciplinary investigation.

879.3 A member who is in conditional resignation or conditional retirement shall not be paid a pension or receive other accrued benefits of any kind, including salary, compensatory time, or accrued leave, during the pendency of the disciplinary investigation.

879.4 The investigation of a member for alleged serious misconduct shall be completed within twenty-five (25) days after the effective date of the member's resignation or retirement. If FEMS does not complete the investigation within twenty-five (25) days after the date of retirement or resignation, the matter shall be deemed to be closed and the allegations of misconduct not sustained. The member's pension rights and accrued benefits shall be paid retroactive to the date on which the member initially retired or resigned.

879.5 If at any time during a member's conditional retirement or conditional resignation FEMS finds that the serious misconduct allegation is not sustained or is unfounded, the matter shall be deemed closed and the member's pension rights

and accrued benefits shall be paid retroactive to the date on which the member initially retired or resigned.

879.6

If FEMS sustains the serious misconduct allegation, the disciplinary process shall proceed as if the member in conditional retirement or conditional resignation continued to be a member of FEMS.

- (a) The member shall be accorded all rights to which he or she is entitled under federal and District of Columbia law and regulations, Department regulations, and any applicable labor agreement.
- (b) If FEMS, through the disciplinary process, ultimately determines that a member in conditional retirement or conditional resignation should be subject to discipline as provided by law and regulation, the member shall be subject to penalties in lieu of discipline.
- (c) A member in conditional retirement or conditional resignation who would have received a suspension as discipline had he or she remained a member of FEMS, shall be assessed a penalty of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000), as determined in the discretion of the Fire and EMS Chief based on the length of suspension, and FEMS Order Book Article VII, *Maintenance of Discipline*.
- (d) A member in conditional retirement or conditional resignation who would have been demoted or terminated as discipline had he or she remained a member of FEMS, shall be assessed a penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) as determined in the discretion of the Fire and EMS Chief based on FEMS Order Book Article VII, *Maintenance of Discipline*.
- (e) Penalties assessed against a member in conditional retirement or conditional resignation as provided shall be treated as a debt owed to the District of Columbia government, pursuant to Section 2903 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-629.03), and may be collected by the District of Columbia government, pursuant to Section 2904 of the CMPA (D.C. Official Code § 1-629.04), or by any other means authorized by law.
- (f) A member in conditional retirement or conditional resignation may challenge the imposition of penalties in an administrative proceeding before the District of Columbia Office of Employee Appeals, pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §§ 2-501 *et seq.*).

879.7 A member who retires or resigns without knowing that he or she was under disciplinary investigation for serious misconduct shall not be deemed to be in conditional retirement or conditional resignation, but shall instead be provided the opportunity to continue employment with FEMS during the pendency of the disciplinary investigation. Should the member decide to retire or resign after being informed of the disciplinary investigation, he or she shall be deemed to be in conditional retirement or conditional resignation as provided in these regulations.

879.8 The following terms, when used in this section or Section 878, shall have the meanings ascribed:

- (a) **“Conditional Resignation”** – the resignation of an FEMS member while under disciplinary investigation for serious misconduct.
- (b) **“Conditional Retirement”** – the retirement of an FEMS member while under disciplinary investigation for serious misconduct.
- (c) **“Disciplinary Investigation”** – an official investigation by FEMS, including the Office of Internal Affairs, of an allegation of serious misconduct by any FEMS member.
- (d) **“Member”** – a uniform employee of FEMS, including but not limited to the following positions:
 - (1) Assistant Fire Chief;
 - (2) Basic Paramedic;
 - (3) Battalion Fire Chief;
 - (4) Captain;
 - (5) Captain Paramedic;
 - (6) Deputy Fire Chief;
 - (7) EMS Preceptor;
 - (8) Emergency Medical Technician;
 - (9) Fire Arson Investigator;
 - (10) Fire Assistant Marine Engineer;
 - (11) Fire / EMS Chief;

- (12) Fire Marine Engineer;
 - (13) Firefighter;
 - (14) Firefighter EMT;
 - (15) Firefighter Inspector;
 - (16) Firefighter Inspector Technician;
 - (17) Firefighter Investigator;
 - (18) Firefighter Paramedic;
 - (19) Firefighter Paramedic Technician;
 - (20) Fire Pilot;
 - (21) Firefighter Technician;
 - (22) Lieutenant;
 - (23) Lieutenant Paramedic;
 - (24) Paramedic;
 - (25) Paramedic Firefighter;
 - (26) Paramedic Instructor;
 - (27) Sergeant;
 - (28) Sergeant Paramedic; or
 - (29) Supervisory Paramedic.
- (e) “**FEMS**” – the Fire and Emergency Medical Services Department.
- (f) “**Resign**” – the voluntary separation of a member from FEMS before the member’s pension rights have accrued or vested.
- (g) “**Retire**” – the voluntary separation of a member from FEMS after the member’s pension rights, retirement pay, or other benefits have accrued and vested as provided by federal or District of Columbia law or regulation.

- (h) “**Serious Misconduct**” – any felony violation of federal, local, or District of Columbia law, making of a false statement under oath, falsification of official records or reports, using unnecessary force, gross dereliction of duty, perpetrating a felony or assisting a person to escape investigation or prosecution, use of illegal or controlled substances, or other violations as determined by the Fire and EMS Chief (*See* FEMS Order Book Article VII, *Maintenance of Discipline*).

Comments on the emergency and proposed rules shall be submitted, in writing, to Marceline D. Alexander, General Counsel, District of Columbia Fire and Emergency Medical Services Department, 2000 14th Street, N.W., Suite 500, Washington, D.C. 20009, or by email at FEMSPublicComments@dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to §§ 1901-1902, 1904-1909, 1911-1912, 1937, and 1999, and new § 1938, of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish general standards for the services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

The Notice of Final Rulemaking for amendments to 29 DCMR §§ 1901-1902, 1904-1909, 1911-1912, and 1937, was published in the *D.C. Register* on May 2, 2014, at 62 DCR 004406. A Notice of Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on September 25, 2015, at 62 DCR 012777, was adopted on September 12, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remained in effect until January 8, 2016. The first emergency and proposed rules amended the previously published final rules by: (1) changing the name of Art Therapies to Creative Arts Therapies; (2) adding Companion to the list of covered services; (3) deleting Shared Living from the list of covered services; (4) clarifying the eligibility requirements related to intellectual disability; (5) allowing a waiver of the requirement that the owner/operator have a specific degree and years of experience; (6) requiring that providers of residential and day/ vocational services show evidence of fiscal and organization accountability; (7) modifying training requirements for a provider staff person who works exclusively as a driver; (8) requiring providers to participate and cooperate with the reporting requirements pursuant to, the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.01 *et seq.* (2012 Repl.)); (9) modifying requirements for Cardio Pulmonary Resuscitation and First Aid certification; (10) clarifying the educational requirements for Direct Support Professionals who were educated outside of the United States; (11) requiring

that a Direct Support Professional be acceptable to the person for whom they are providing services; (12) requiring that providers report all reportable incidents to the Department on Disability Services; (13) adding support plan to the list of required records; (14) clarifying the requirements for daily progress notes; (15) amending Section 1937 on cost reports and audits; (16) adding a new Section 1938 entitled Home and Community-Based Setting (HCBS) Requirements; (17) amending Subsection 1909.1 to clarify that DHCF and or its designees shall have access to all waiver provider locations, including access to the people receiving supports and all records in any form, and clarifying the meaning of “records” for purposes of this section; (18) adding certain definitions including definitions for Group Home for a Person with an Intellectual Disability, Living Wage, and SMARTER Goals; and (19) clarifying the requirements for Intellectual Disability and Qualified Development Disabilities Professional. DHCF did not receive any comments to the first emergency and proposed rules. DHCF is promulgating this Notice of Second Emergency and Proposed Rulemaking to continue the changes reflected in the first emergency and proposed rules described above and to further amend the rules by (1) requiring participation and cooperation with the National Core Indicators surveys or its successors; (2) indicating a timeframe where terminated or withdrawn providers may not re-enroll in the Waiver program; (3) requiring service coordinators to upload all documents pertaining to the service rule to the Department of Disability Service, Developmental Disabilities Administration’s MCIS database system or its successor; (4) requiring certain choices for a person receiving supports in some HCBS settings; and (5) requiring Provider Human Rights Committees to address certain questions before deviations from HCBS Requirements are made to a person’s supports.

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

The emergency rulemaking was adopted on January 28, 2016, and became effective immediately. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until May 27, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

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

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

1901 COVERED SERVICES AND RATES

1901.1 Services available under the Waiver shall include the following:

- (a) Creative Arts Therapies;
- (b) Behavioral Supports;
- (c) Companion;
- (d) Day Habilitation;
- (e) Dental;
- (f) Employment Readiness;
- (g) Environmental Accessibilities Adaptations;
- (h) Family Training;
- (i) Host Home without Transportation;
- (j) Individualized Day Supports;
- (k) In-Home Supports;
- (l) Occupational Therapy;
- (m) One-Time Transitional Services;
- (n) Personal Care Services;
- (o) Personal Emergency Response System (PERS);
- (p) Physical Therapy;
- (q) Residential Habilitation;
- (r) Respite;
- (s) Skilled Nursing;
- (t) Small Group Supported Employment;
- (u) Speech, Hearing and Language Services;
- (v) Supported Employment;
- (w) Supported Living;
- (x) Supported Living with Transportation;
- (y) Vehicle Modifications; and
- (z) Wellness Services.

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

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

1902.1 Any person eligible to receive Waiver services shall be a person who currently receives services from DDS/DDA and meets all of the following requirements:

- (a) Has a special income level up to three hundred percent (300%) of the SSI federal benefit or be aged and disabled with income up to one hundred percent (100%) of the federal poverty level or be medically needy as set forth in 42 C.F.R. §§ 435.320, 435.322, 435.324 and 435.330;
- (b) Has an intellectual disability as defined in D.C. Official Code § 7-1301.03(15A), which, when establishing qualifying intelligence quotient (IQ), includes consideration of the standard error of measurement

associated with the particular IQ test, and requires adaptive deficits across at least two of the following three domains: conceptual, practical, and social;

- (c) Is eighteen (18) years of age or older;
- (d) Is a resident of the District of Columbia as defined in D.C. Official Code § 7-1301.03(22);
- (e) Has a Level of Care (LOC) determination that the person requires services furnished in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or be a person with related conditions pursuant to the criteria set forth in § 1902.4; and
- (f) Meets all other eligibility criteria applicable to Medicaid recipients including citizenship and alienage requirements.

1902.4

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

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

- (6) Self-direction;
 - (7) Capacity for independent living; or
 - (8) Health and safety.
- (d) The person has an intellectual disability, has severe functional limitations in at least three (3) of the major life activities as set forth in § 1902.4(c)(1) through § 1902.4(c)(8), and has one (1) of the following diagnoses:
- (1) Autism;
 - (2) Cerebral Palsy;
 - (3) Prader Willi; or
 - (4) Spina Bifida.

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

1904 PROVIDER QUALIFICATIONS

- 1904.1 HCBS Waiver provider agencies shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the Medicaid provider enrollment application and the following organizational information:
- (a) A resume and three (3) letters of reference demonstrating that the owner(s)/operators(s) have a degree in the Social Services field or a related field with at least three (3) years of experience of working with people with intellectual and developmental disabilities; or a degree in a non-Social Services field with at least five (5) years of experience working with people with intellectual and developmental disabilities, unless waiver by the Department on Disability Services Deputy Director for the Developmental Disabilities Administration;
 - (b) Documentation proving that the program manager of the HCBS Waiver provider agency has a Bachelor's degree in the Social Services field or a related field with at least five (5) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities or a Master's degree in the Social Services field or a related field with at least three (3) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities;
 - (c) A copy of the business license issued by the Department of Consumer and Regulatory Affairs (DCRA);
 - (d) A description of ownership and a list of major owners or stockholders owning or controlling five percent (5%) or more outstanding shares;

- (e) A list of Board members and their affiliations;
- (f) A roster of key personnel, with qualifications, resumes, background checks, local license, if applicable, and a copy of their position descriptions;
- (g) A copy of the most recent audited financial statements of the agency performed by a third-party Certified Public Accountant or auditing company (not applicable for a new organization);
- (h) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreements, if applicable;
- (i) A copy of the Bylaws or similar documents regarding conduct of the agency's internal affairs;
- (j) A copy of the certificate of good standing from the DCRA;
- (k) Organizational policies and procedures, such as personnel policies and procedures required by DDS and available at:
<http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1>;
- (l) A continuous quality assurance and improvement plan that includes community integration and person-centered thinking principles and values as intentional outcomes for persons supported;
- (m) A copy of professional/business liability insurance of at least one million dollars (\$1,000,000) prior to the initiation of services, or more as required by the applicable Human Care Agreements;
- (n) A sample of all documentation templates, such as progress notes, evaluations, intake assessments, discharge summaries, and quarterly reports;
- (o) For providers of Supported Living, Supported Living with Transportation, Host Homes, and Residential Habilitation, a Continuity of Operations Plan;
- (p) For providers, of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, evidence fiscal and organizational accountability; and

- (q) Any other documentation deemed necessary to support the approval as a provider.

1904.2 Professional service provider applicants who are in private practice as an independent clinician and are not employed by an enrolled HCBS Waiver provider agency of residential or day/vocational services or a Home Health Agency, shall complete and submit to DDS the Medicaid provider enrollment application and the following:

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

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

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

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

- (a) Maintain a copy of the approval letter issued by DHCF;
- (b) Maintain a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for services under the Waiver;

- (c) Obtain a National Provider Identification (NPI) number from the National Plan and Provider Enumeration System website;
- (d) Comply with all applicable District of Columbia licensure requirements and any other applicable licensure requirements in the jurisdiction where services are delivered;
- (e) Maintain a copy of the most recent Individual Support Plan (ISP) and Plan of Care that has been approved by DDS for each person;
- (f) Maintain a signed copy of a current Human Care Agreement with DDS for the provision of services, if determined necessary by DDS;
- (g) Ensure that all staff are qualified, properly supervised, and trained according to DDS policy;
- (h) Ensure that a plan is in place to provide services for non-English speaking people pursuant to DDA's Language Access Policy available at: <http://dds.dc.gov/publication/language-access-policy>;
- (i) Offer the Hepatitis B vaccine to all employees with potential exposure;
- (j) Ensure that staff are trained in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), as set forth in 29 C.F.R. § 1910.1030;
- (k) Ensure compliance with the provider agency's policies and procedures and DDS policies such as, reporting of unusual incidents, human rights, language access, employee orientation objectives and competencies, individual support plan, most integrated community based setting, health and wellness standards, behavior management, and protection of the person's funds, available at: <http://dds.dc.gov/page/policies-and-procedures-dda>;
- (l) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, complete mandatory training in Person-Centered Thinking, Supported Decision-Making, Supporting Community Integration, and any other topics as determined by DDS;
- (m) Provide a written staffing schedule for each site where services are provided, if applicable;
- (n) Maintain a written staffing plan, if applicable;

- (o) Develop and implement a continuous quality assurance and improvement system, that includes person-centered thinking, community integration, and compliance with the HCBS Settings Rule, to evaluate the effectiveness of services provided;
- (p) Ensure that a certificate of occupancy is obtained, if applicable;
- (q) Ensure that a certificate of need is obtained, if applicable;
- (r) Obtain approval from DDS for each site where residential, day, employment readiness, and supported employment services are provided prior to purchasing or leasing property;
- (s) Ensure that, if services are furnished in a private practice office space, spaces are owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice;
- (t) Ensure that a sole practitioner shall individually supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner;
- (u) Complete the DDA abbreviated readiness process, if applicable;
- (v) Participate, and support willing waiver recipients to participate, in the National Core Indicators surveys, or successors surveys, as requested by DDS and/ or its assigned contractors; and
- (w) Adhere to the specific provider qualifications in each service rule.

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

- (a) Ensure that each vehicle used to transport a person has valid license plates;
- (b) Ensure that each vehicle used to transport a person has at least the minimum level of motor vehicle insurance required by law;
- (c) Present each vehicle used to transport a person for inspection by a certified inspection station every six (6) months, or as required in the jurisdiction where the vehicle is registered, and provide proof that the vehicle has passed the inspection by submitting a copy of the Certificate of Inspections to DDS upon request, except in circumstances where transportation is not included in the Waiver service;

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

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

1905.10 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR; to the provider certification standards established by DDS,

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

- 1905.11 Each provider who has been terminated or has voluntarily withdrawn from the Waiver program may not reapply to the Waiver program for a period of no less than one (1) year.

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

1906 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS

- 1906.1 The basic requirements for all employees and volunteers providing direct services are as follows:
- (a) Be at least eighteen (18) years of age;
 - (b) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;
 - (c) Possess a high school diploma, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;
 - (d) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;
 - (e) Complete pre-service and in-service training as described in DDS policy;
 - (f) Have the ability to communicate with the person to whom services are provided;
 - (g) Be able to read, write, and speak the English language;
 - (h) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and
 - (i) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as

amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*) for the following employees or contract workers:

- (1) Individuals who are unlicensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code, who assist licensed health professionals in providing direct patient care or common nursing tasks;
- (2) Nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides; and
- (3) Housekeeping, maintenance, and administrative staff who may foreseeably come in direct contact with Waiver recipients or patients.

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

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

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

1907 INDIVIDUAL SUPPORT PLAN (ISP)

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

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

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

- 1907.4 At a minimum, the composition of the support team shall include the person being served, his or her substitute decision maker, if applicable, the DDS Service Coordinator and other individuals chosen by the person.
- 1907.5 The ISP shall be reviewed and updated annually by the support team. The ISP shall be updated more frequently if there is a significant change in the person's status or any other significant event in the person's life which affects the type or amount of services and supports needed by the person or if requested by the person.
- 1907.6 The Plan of Care shall be derived from the ISP and shall describe the frequency and types of services to be provided to the person, and the providers of those services.
- 1907.7 The provider shall:
- (a) Ensure that the service provided is consistent with the person's ISP and Plan of Care;
 - (b) Participate in the annual ISP and Plan of Care meeting or Support Team meetings when indicated; and
 - (c) Develop the documents described under § 1909.2(i), including goals and objectives, within thirty (30) days of the initiation of services, which shall address how the service will be delivered to each person, after notification by DDS that a service has been authorized.
- 1907.8 DHCF shall not reimburse a provider for services that are not authorized in the ISP, not included in the Plan of Care, furnished prior to the development of the ISP, furnished prior to receiving a service authorization from DDS, or furnished pursuant to an expired ISP.
- 1907.9 Each provider shall submit to the person's DDS Service Coordinator a quarterly report which summarizes the person's progress made toward achieving the desired goals and outcomes and identification and response to any issue relative to the provision of the service.
- 1907.10 Each provider shall submit to the DDS Court Liaison and to the person's DDS Service Coordinator an annual court status report not less than fifteen (15) business days prior to the annual review hearing for the person, pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by the Superior Court of the District of Columbia. Each provider shall provide the annual court status report to the person's court appointed attorney not less than ten (10) business days prior to the annual review hearing of the person. Each provider shall cooperate with DDS to ensure that any

necessary corrections to the annual court status report are made and submitted promptly and prior to the annual review hearing for the person.

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

1908 REPORTING REQUIREMENTS

- 1908.1 Each Waiver provider shall submit quarterly reports to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.
- 1908.2 For purposes of reporting, the first quarter shall begin on the effective date of a person's ISP.
- 1908.3 Each Waiver provider shall submit assessments, quarterly reports as set forth in § 1909.2(n), documents as described in § 1909.2(i), and physician orders, if applicable, to the DDS Medicaid Waiver unit for the authorization of services.
- 1908.4 Each Waiver provider shall complete all documents required for the service(s) as set forth in each service rule and upload the documents into DDS' MCIS system, ninety (90) days prior to the person's ISP meeting.
- 1908.5 Failure to submit all required documents may result in sanctions by DDS up to and including a ban on authorizations for new service recipients. Service interruptions to the waiver participant due to the service provider's failure to submit required documentation will initiate referrals to a choice of a new service provider to ensure a continuation of services for the waiver participant. The date of the authorization of services shall be the date of receipt of the required documents by the Medicaid Waiver Unit, if the documents are submitted after the effective date of the ISP.
- 1908.6 Each Waiver provider shall report on a quarterly basis to the person served, his or her family, as applicable, guardian and/or surrogate decision maker and the DDS Service Coordinator about the programming and support provided to fulfill the objectives and outcomes identified in the ISP and Plan of Care, and any recommended revisions to the ISP and Plan of Care, when necessary, to promote continued skill acquisition, no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.
- 1908.7 Each Waiver provider shall report all reportable incidents and all serious reportable incidents to DDS pursuant to the timelines established under DDA's Incident Management and Enforcement Policy and Procedures, available at: <http://dds.dc.gov/page/policies-and-procedures-dda>.

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

- 1909.1 Each Waiver provider shall allow appropriate personnel of DHCF, DDS and other authorized agents of the District of Columbia government or of other jurisdictions where services are provided, and the federal government full access, whether the visit is announced or unannounced, to all waiver provider locations, including access to the people receiving supports and all records, in any form. For purposes of this section, the term 'records' includes, but is not limited to, all information relating to the provider, the services and supports being provided, and the people for whom services are provided; any information which is generated by or in the possession of the provider; the information required by D.C. Law 2-137; and any information required by the regulations implementing the HCBD waiver program.
- 1909.2 Each Waiver provider entity shall maintain the following records, if applicable, for each person receiving services for monitoring and audit reviews:
- (a) General information including each person's name, Medicaid identification number, address, telephone number, date of birth, sex, name and telephone number of emergency contact person, physician's name, address and telephone number, and the DDS Service Coordinator's name and telephone number;
 - (b) A copy of the most recent DDS approved ISP and Plan of Care indicating the requirement for and identification of a provider who shall provide the services in accordance with the person's needs;
 - (c) A record of all service authorization and prior authorizations for services;
 - (d) A record of all requests for change in services;
 - (e) The person's medical records;
 - (f) A discharge summary;
 - (g) A written staffing plan, if applicable;
 - (h) A back-up plan detailing who shall provide services in the absence of staff when the lack of immediate care poses a serious threat to the person's health and welfare;
 - (i) Documents which contain the following information:
 - (1) The results of the provider's functional analysis for service delivery;

- (2) A schedule of the person's activities in the community, if applicable, including strategies to execute goals identified in the ISP and the date and time of the activity, The staff as identified in the staffing plan;
 - (3) Teaching strategies utilized to execute goals in the ISP and the person's response to the teaching strategy; and
 - (4) A support plan with SMARTER goals and outcomes using the information from the DDS approved person-centered thinking and discovery tools, the functional analysis, the ISP, Plan of Care, and other information as appropriate to assist the person in achieving their goals;
- (j) Any records relating to adjudication of claims;
- (k) Any records necessary to demonstrate compliance with all rules and requirements, guidelines, and standards for the implementation and administration of the Waiver;
- (l) An annual supervision plan for each staff member who is classified as a Direct Support Professional (DSP), developed and implemented by a provider designated staff member, containing the following information:
- (1) The name of the DSP and date of hire;
 - (2) The DSP's place of employment, including the name of the provider entity or day services provider;
 - (3) The name of the DSP's supervisor who shall have at least two (2) years' experience working with persons with intellectual and developmental disabilities;
 - (4) A documentation of performance goals for the DSP;
 - (5) A description of the DSP's duties and responsibilities;
 - (6) A comment section for the DSP's feedback;
 - (7) A statement of affirmation by the DSP's supervisor confirming statements are true and accurate;
 - (8) The signature, date, and title of the DSP; and
 - (9) The signature, date, and title of the DSP's supervisor.

- (m) Progress notes, as set forth in each service rule, containing the following information:
 - (1) The progress in meeting the specific goals in the ISP and Plan of Care that are addressed on the day of service and relate to the provider's scope of service;
 - (2) The health or behavioral events or change in status that is not typical to the person;
 - (3) Evidence of all community integration and inclusion activities attended by the person and related to the person's ISP goals and for each, a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?" DDS recommends the use of the Learning Log for recording this information;
 - (4) The start time and end time of any services received including the DSP's signature; and
 - (5) The matters requiring follow-up on the part of the Waiver service provider or DDS.

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

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

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

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

1911 INDIVIDUAL RIGHTS

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

- (a) Be treated with courtesy, dignity, and respect;
- (b) Direct the person-centered planning of his or her supports and services;
- (c) Receive treatment, care, and services consistent with the ISP;
- (d) Receive services by competent personnel who can communicate with the person;
- (e) Refuse all or part of any treatment, care, or service and be informed of the consequences;
- (f) Be free from mental and physical abuse, neglect, and exploitation from staff providing services;
- (g) Be assured that for purposes of record confidentiality, the disclosure of the contents of his or her personal records is subject to all the provisions of applicable District and federal laws and rules;
- (h) Voice a complaint regarding treatment or care, lack of respect for personal property by staff providing services without fear of retaliation;
- (i) Have access to his or her records; and
- (j) Be informed orally and in writing of the following:
 - (1) Services to be provided, including any limitations;

- (2) The amount charged for each service, the amount of payment received/authorized for him or her and the billing procedures, if applicable;
- (3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party source;
- (4) Acceptance, denial, reduction, or termination of services;
- (5) Complaint and referral procedures including how to file an anonymous complaint;
- (6) The name, address, and telephone number of the provider;
- (7) The telephone number of the DDS customer complaint line;
- (8) How to report an allegation of abuse, neglect and exploitation;
- (9) For people receiving residential supports, the person's rights as a tenant, and information about how to relocate and request new housing.

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

1912.1 A provider shall hold a support team meeting and provide each person receiving Waiver services at least thirty (30) calendar days advance written notice of intent to initiate, suspend, reduce, or terminate services and shall offer a meeting to explain the notice. A copy of the notice shall also be provided to DDS and DHCF. If DDS intends to suspend, reduce or terminate services, DDS shall also provide written notice which complies with the requirements set forth in this section.

1912.6 In the event of a person's death, a provider shall comply with all written notice requirements and any policies established by DDA in accordance with DDA's Incident Management and Enforcement Policy and Procedures available at: <http://dds.dc.gov/page/policies-and-procedures-dda>.

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

1937.1 **Beginning October 1, 2015**, each waiver provider of residential habilitation, host home, supported living, supported living with transportation, day habilitation, in-home supports, individualized day supports, respite, employment readiness and supported employment services shall report costs to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting

purposes, unless DHCF has approved an exception, on request. Such cost reporting will be for the purpose of informing rate setting parameters to be the most cost-effective for the government and to reimburse allowable costs for the providers. All cost reports shall cover a twelve (12) month cost reporting period. DHCF shall provide a cost report template.

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

1938 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS

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

- (a) Be chosen by the person from HCBS settings options including non-disability settings;
- (b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint;
- (c) Be physically accessible to the person and allow the person access to all common areas;
- (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;
- (e) Provide opportunities for the person to seek employment and meaningful non-work activities in the community;
- (f) Provide information on individual rights;
- (g) Optimize the person's initiative, autonomy and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact;
- (h) Facilitate the person's choices regarding services and supports, and who provides them;
- (i) Create individualized daily schedules for each person receiving supports, that includes activities that align with the person's goals, interests and preferences, as reflected in his or her ISP;
- (j) Provide opportunities for the person to engage in community life; and

- (k) Allow visitors at any time, with any exception based on the person's assessed need and justified in his or her person-centered plan.

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

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

1938.3 All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment and Employment Readiness settings must develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (a) Privacy for personal care, including when using the bathroom;
- (b) Access to snacks at any time; and
- (c) Meals at the time and place of a person's choosing.

- 1938.4 Any deviations from the requirements in § 1938.2(d) and § 1938.3 must be supported by a specific assessed need, justified in the person's person-centered Individualized Support Plan, and reviewed and approved as a restriction by the Provider's Human Rights Committee (HRC?). There must be documentation that the Provider's HRC review included discussion of the following elements:
- (a) What the person's specific individualized assessed need is that results in the restriction;
 - (b) What prior interventions and supports have been attempted, including less intrusive methods;
 - (c) Whether the proposed restriction is proportionate to the person's assessed needs;
 - (d) What the plan is for ongoing data collection to measure the effectiveness of the restriction;
 - (e) When the HRC or the person's support team will review the restriction again;
 - (f) Whether the person, or his or her substitute decision-maker, gives informed consent; and
 - (g) Whether the HRC has assurance that the proposed restriction or intervention will not cause harm.

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

1999 DEFINITIONS

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

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

Archive – Maintenance and storage of records.

Group Home for a Person with an Intellectual Disability - Shall have the same meaning as Group Home for Mentally Retarded Persons and shall meet the definitions and licensure requirements as set forth in Health-Care and

Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules.

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

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

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

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

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

Living Wage - Living Wage refers to minimum hourly wage requirements as set forth in Title I of the Living Wage Act of 2006, effective June 9, 2006 (D.C. Law 16-18; D.C. Official Code §§ 2-220.01 to .11). The law provides that District of Columbia government contractors and recipients of government assistance (grants, loans, tax increment financing) in the

amount of \$100,000 or more shall pay affiliated employees wages no less than the current living wage rate.

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

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

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

Registered Nurse - An individual who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), as amended, or licensed as a registered nurse in the jurisdiction where services are provided.

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

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

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

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

Waiver - Shall mean the HCBS Waiver for Individuals with Intellectual and Developmental Disabilities as approved by the Council of the District of

Columbia (Council) and CMS, as may be further amended and approved by the Council and CMS.

Comments on these second emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these second emergency and proposed rules may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 1916, entitled “In-Home Supports Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of in-home supports provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, for a five-year period beginning November 20, 2012. An amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307(a)(8)(E) (2014 Repl. & 2015 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

In-home supports services are essential to ensuring that persons enrolled in the ID/DD Waiver continue to receive services and supports in the comfort of their own homes or family homes. The Notice of Final Rulemaking for 29 DCMR § 1916 (In-Home Supports Services) was published in the *D.C. Register* on January 1, 2016, at 63 DCR 000043. This emergency and proposed rulemaking amends the previously published final rulemaking by increasing the rates, using the approved rate methodology, to reflect the \$.04 increase in the D.C. Living Wage, effective January 1, 2016, to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of in-home support services. The ID/DD Waiver serves some of the District’s most vulnerable residents. Timely rate increases are necessary to ensure a stable workforce and provider base. In order to ensure that the person’s health, safety, and welfare are not threatened, it is necessary that that these rules be published on an emergency basis.

The emergency rulemaking was adopted on January 28, 2016 and these rules became effective immediately. The emergency rules shall remain in effect for not longer than one hundred and

twenty (120) days from the adoption date or until May 27, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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

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

Subsection 1916.18 of Section 1916, IN-HOME SUPPORTS SERVICES, is amended to read as follows:

1916.18 In-home supports services, including those provided in the event of a temporary emergency shall be billed at the unit rate. The reimbursement rate shall be twenty-three dollars and thirty-six cents (\$23.36) per hour, billable in units of fifteen (15) minutes at a rate of five dollars and eight-four cents (\$5.84), and shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-017
February 1, 2016

SUBJECT: Delegation — Authority Pursuant to the Private Security Camera Incentive Program Emergency Act of 2016


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. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2014 Repl.), and pursuant to section 2 of the Private Security Camera Incentive Program Emergency Act of 2016 ("**Act**"), effective January 15, 2016 (D.C. Act 21-274; 63 DCR --), and any substantially similar subsequent temporary or permanent legislation, it is hereby **ORDERED** that:

1. The Director of the Office of Victim Services is delegated the Mayor's authority to implement the Act, including the authority to issue rules pursuant to section 2(f) of the Act.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, FEBRUARY 10, 2016
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

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

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00004; LSEMY, LLC, t/a Mike's Market/Trinidad Market
1322 Florida Ave NE, License #100653, Retailer A, ANC 5D
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00003; Edgy Craft, LLC, t/a Craft Beer Cellar DC, 301 H
Street NE, License #100882, Retailer A, ANC 6C
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00002; Daikaya Shaw, LLC, t/a To Be Determined, 805 V
Street NW, License #100621, Retailer CR, ANC 1B
Application of a New License

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00122; Half Smoke, LLC, t/a Half Smoke, 651 Florida Ave
NW, License #100855, Retailer CR, ANC 1B
Application for a New License

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CMP-00570; Minnesota Store, LLC, t/a Minnesota Store, 3728
Minnesota Ave NE, License #95245, Retailer B, ANC 7F
No ABC Manager on Duty

Board's Calendar
February 10, 2016

Show Cause Hearing* **10:00 AM**

Case # 15-CC-00079; The New Brookland Café, LLC, t/a B Café/Brookland Café, 3740 12th Street NE, License #83121, Retailer CR, ANC 5B
No ABC Manager on Duty, Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Remand Hearing* **10:00 AM**

Asefu Alemayehu t/a Yegna; 1920 9th Street NW, License #74241, Retailer CT ANC 1B

Hearing Request

Show Cause Hearing* **11:00 AM**

Case # 15-CMP-00494; Po Boy Jim, LLC, t/a Po Boy Jim, 709 H Street NE License #87903, Retailer CR, ANC 6C
No ABC Manager on Duty, Failed to Follow Settlement Agreement

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Protest Hearing* **1:30 PM**

Case # 15-PRO-00114; Bardo, LLC, t/a Bardo, 25 Potomac Ave SE, License #100646, Retailer DT, ANC 6C
Application for a New License

Protest Hearing* **3:30 PM**

Case # 15-PRO-00121; Colorado & Cohen, LLC, t/a Bullfrog Bagels, 317 7th Street SE, License #100249, Retailer CR, ANC 6B
Application for a New License

Protest Hearing* **4:30 PM**

Case # 15-PRO-00113; Dean & Deluca of Georgetown, Inc., t/a Dean & Deluca 3276 M Street NW, License #93723, Retailer DR, ANC 2E
Application for a New License

Protest Hearing* **5:30 PM**

Case # 15-PRO-00094; Neighborhood Restaurant Group XXIV, LLC, t/a Hazel 808 V Street NW, License #99839, Retailer CR, ANC 1B
Application for a New License

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, FEBRUARY 10, 2016
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On February 10, 2016 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case#15-CC-00148 Capitol View Market, 4920 CENTRAL AVE NE Retailer A Retail - Liquor Store, License#: ABRA-076250

2. Case#15-CMP-00977 Busboys & Poets, 1390 V ST NW 111 Retailer C Restaurant, License#: ABRA-071220

3. Case#15-CC-00149 Giant Food Store #378, 1345 PARK RD NW Retailer B Retail - Grocery, License#: ABRA-072580

4. Case#15-CMP-00996 The Front Page Restaurant & Grille, 1333 NEW HAMPSHIRE AVE NW Retailer C Restaurant, License#: ABRA-001910

5. Case#15-AUD-00103 Pasta Mia, 1790 COLUMBIA RD NW Retailer C Restaurant, License#: ABRA-017452

6. Case#16-CC-00001 Suburban Market, 4600 SHERIFF RD NE Retailer B Retail - Grocery, License#: ABRA-010677

7. Case#15-CC-00145 Circle 7 Market, 740 KENILWORTH AVE NE Retailer B Retail - Grocery, License#: ABRA-014581

8. Case#15-CC-00146 Union Liquors, 1537 Good Hope RD SE Retailer A Retail - Liquor Store,
License#: ABRA-079922

9. Case#15-CMP-00975 We, The Pizza, 305 PENNSYLVANIA AVE SE Retailer C Restaurant,
License#: ABRA-082062

10. Case#15-251-00225 Bar 7, 1015 1/2 7TH ST NW Retailer C Tavern, License#: ABRA-
082350

11. Case#15-CMP-00962 Music & Arts Club/Tropicalia, 2001 14TH ST NW Retailer C
Nightclub, License#: ABRA-083264

12. Case#15-CMP-00997 Sign of the Whale, 1825 M ST NW Retailer C Tavern, License#:
ABRA-085120

13. Case#15-CMP-00931 Da Luft Restaurant & Lounge, 1242 H ST NE Retailer C Restaurant,
License#: ABRA-087780

14. Case#15-CMP-00976 New H Wine & Spirits, 914 H ST NE Retailer A Retail - Liquor Store,
License#: ABRA-093550

15. Case#16-CMP-00001 Bluejacket/The Arsenal, 300 Tingey ST SE Retailer C Restaurant,
License#: ABRA-090281

16. Case#16-CC-00010 Sugar, 2121 K ST NW Retailer C Tavern, License#: ABRA-098866

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, FEBRUARY 10, 2016 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 3C. SMD 3C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Noodles & Company*, 2635 Connecticut Avenue NW, Retailer CR, License No. 087904.
-

2. Review Application for Safekeeping of License – Original Request. ANC 2E. SMD 2E07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Noodles & Company*, 1815 Wisconsin Avenue NW, Retailer CR, License No. 091044.
-

3. Review Application for Entertainment Endorsement. Entertainment to include light jazz bands, comedy, and private events. ANC 5E. SMD 5E06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *The Washington Firehouse Restaurant*, 1626 North Capital Street NW, Retailer CT, License No. 092685.
-

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

OFFICE OF DISABILITY RIGHTS**DC COMMISSION ON
PERSONS WITH DISABILITIES (DCCPD)****PUBLIC NOTICE OF MEETING****February 4, 9:00 AM to 10:30 AM****441 4th St. NW, Ste. 1112****Washington, DC 20001****Toll Free: (866) 628-2987****Passcode: 8488992****Meeting Agenda**

1. Welcome and Introductions	All	05 Minutes
2. Review Agenda and Previous Meeting	All	05 Minutes
3. Health Care Subcommittee Update	All	10 Minutes
4. Mayor's Homeless Initiative Subcommittee	Julia and Shakira	10 Minutes
5. Finalize 2016 Events	All	10 Minutes
6. MS Alliance Open House	Kamilah	10 Minutes
7. Open Discussion	All	20 Minutes
8. Closing Remarks, 2016 Meetings and Adjourn	All	10 Minutes

BOARD OF ELECTIONS**CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 3F01

Petition Circulation Period: **Monday, February 8, 2016 thru Monday, February 29, 2016**

Petition Challenge Period: **Thursday, March 3, 2016 thru Wednesday, March 9, 2016**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001**

For more information, the public may call **727-2525**.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY
GRANTS FOR THE**Well and Boring Regulation Guidance Document**

The Department of Energy and Environment (“DOEE”) is seeking eligible entities, as defined below, to develop a supporting guidance document that will present detailed procedures and specifications for well construction, maintenance, and abandonment that will assist the responsible party with achieving regulatory compliance. The guidance document will provide directions for individuals and businesses that own, construct, maintain, or abandon wells in the District, and for those who seek to engage in these activities. The amount available for the project in this RFA is approximately \$100,000.00. This amount is subject to continuing availability of funding and approval by the appropriate agencies.

Beginning 2/05/2016, the full text of the Request for Applications (“RFA”) will be available online at DOEE’s website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

Download from DOEE’s website, www.doe.dc.gov. Select “Resources” tab. Cursor over the pull-down list; select “Grants and Funding;” then, on the new page, cursor down to the announcement for this RFA. Click on “Read More,” then download and related information from the “attachments” section.

Email a request to WellGuidanceDoc.WQD@dc.gov with “Request copy of RFA 2015-1509-WQD” in the subject line;

Pick up a copy in person from the DOEE reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Rebecca Diehl at (202) 535-2648 to make an appointment and mention this RFA by name; or

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, “Attn: Rebecca Diehl RE: 2015-1509-WQD” on the outside of the letter.

The deadline for application submissions is 3/25/2016 4:30 PM. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to WellGuidanceDoc.WQD@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, please contact DOEE as instructed in the RFA document, at WellGuidanceDoc.WQD@dc.gov.

DEPARTMENT OF HEALTH
HEALTH REGULATION AND LICENSING ADMINISTRATION
NOTICE OF MEETING

Board of Chiropractic
February 9, 2016

On February 9, 2016 at 1:30 pm, the Board of Chiropractic will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 2:00 pm until 4:00 pm to plan, discuss, or hear reports concerning licensing issues ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be open to the public from 1:30 pm – 2:00 pm to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 4:00 pm.

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 Chiropractic website www.doh.dc.gov/boc and select BOC Calendars and Agendas to view the agenda and any changes that may have occurred.

Interim Executive Director for the Board – Robin Jenkins, (202) 442-8336.

DEPARTMENT OF HEALTH**PUBLIC NOTICE**

The District of Columbia Board of Long Term Care Administration (“Board”) hereby gives notice of a change in its regular meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (“Act”).

The Board, formerly the Board of Nursing Home Administration, was scheduled to meet on Wednesday, January 13, 2016. However, due to unforeseen circumstances, the meeting was canceled for lack of quorum. The Board will instead meet on Thursday, February 18, 2016 from 1:30 PM to 3:30 PM. The meeting will be open to the public from 1:30 PM to 2:30 PM. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed to the public from 2:30 PM to 3:30 PM to allow the Board to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations

Thereafter, the Board will resume its regular quarterly meeting on the first Wednesday of the quarter from 10:00 AM to 12:00 PM as follows:

Wednesday, April 8, 2016
Wednesday, July 8, 2016
Wednesday, October 7, 2016

The meetings will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health’s Events webpage at www.doh.dc.gov/events to view the agenda.

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****LED Lighting**

KIPP DC is soliciting proposals from qualified vendors for LED Lighting. The RFP can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on February 17, 2016. Questions can be addressed to nate.schwartz@kippdc.org.

PERRY STREET PREP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Multiple Services**

The Perry Street Prep Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for the following services:

- Tutoring
- Technology Equipment
- Assessment Services

Please go to www.pspdc.org/bids to view a full RFP offering, with more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 P.M., Monday, February 15, 2016.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator
psp_bids@pspdc.org

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

**OFFICE OF THE DEPUTY MAYOR
FOR PLANNING AND ECONOMIC DEVELOPMENT**

NOTICE OF FUNDING AVAILABILITY

Historic Martin Luther King Jr Avenue Commercial Corridor Grant

The Office of the Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of applications for the Historic Martin Luther King Jr Avenue Commercial Corridor Improvement Grant from the Economic Development Special Account pursuant to DC Official Code §2-1225.21.

Grant funds purpose and availability

The purpose of the Historic Martin Luther King Jr Avenue Commercial Corridor Grant is to support development and project financing located within that commercial corridor. DMPED will award one grant at a maximum award of \$3,000,000.00. Grant funds will support the construction of retail, restaurant and neighborhood-based commercial construction activity.

Eligible applicants

- 501(c) (3) non-profit corporations.
- Joint ventures, partnerships, and limited liability arrangements with for-profit developers are permitted only if the non-profit developer has at least 51% management control of the project *
- Be a registered business in Good Standing with the DC Department of Consumer and Regulatory Affairs (DCRA), the DC Office of Tax and Revenue (OTR), the DC Department of Employment Services (DOES), and the federal Internal Revenue Service (IRS).
- Provide proof of property and liability insurance (an insurance quote is permitted for new businesses) compliant with the requirements set forth in the grant application.
- Provide site control of the business property either through fee simple ownership or an executed contract or lease with the property owner with a minimum unexpired term of at least fifteen (15) years.

**The non-profit developer must materially participate in the development project by being involved in the operations of the development and the development process on a basis that is regular, continuous and substantial.*

Eligible Project Uses:

- Neighborhood sit-down restaurants
- Retail
- Neighborhood-based commercial space

Prior to the execution of a grant agreement with the District, the grantee must enter into a First Source Agreement with DOES and Subcontracting Plan with DSLBD. More information about the First Source Employment Program can be found at does.dc.gov.

Application process

The grant application will be released on **Friday, February 19th, 2016**. The grant application will be available on the DMPED website at www.dmped.dc.gov .

Please direct all inquiries to:

LaToyia Hampton, Grants Manager
Office of the Deputy Mayor for Planning and Economic Development
1100 4th Street SW, Suite E500
Washington, DC 20024
Telephone: [\(202\) 724-7648](tel:(202)724-7648)
Email: LaToyia.Hampton@dc.gov

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION**

NOTICE OF GENERAL COMMISSION MEETING

The District of Columbia Taxicab Commission will hold its regularly scheduled General Commission Meeting on Wednesday, February 10, 2016 at 10:00 am. The meeting will be held at our new office location: 2235 Shannon Place, SE, Washington, DC 20020, inside the Hearing Room, Suite 2032. Visitors to the building must show identification and pass through the metal detector. Allow ample time to find street parking or to use the pay-to-park lot adjacent to the building.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Commission on any issue of concern; the Commission generally does not answer questions. Statements are limited to five (5) minutes for registered speakers. Time and agenda permitting, nonregistered speakers may be allowed 2 minutes to address the Commission. To register, please call 202-645-6002 no later than 3:30 p.m. on February 9, 2016. Registered speakers will be called first, in the order of registration. **Registered speakers must provide ten (10) printed copies of their typewritten statements to the Secretary to the Commission no later than the time they are called to the podium.**

DRAFT AGENDA

- I. Call to Order
- II. Commission Communication
- III. Commission Action Items
- IV. Government Communications and Presentations
- V. General Counsel's Report
- VI. Staff Reports
- VII. Public Comment Period
- VIII. Adjournment

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

Application No. 16620-A of The Embassy of the Republic of Azerbaijan, pursuant to 11 DCMR § 1002 of the Foreign Missions Act, to allow the construction of a security fence in the TSP/NO/R-1-A District at premises 2741 34th Street N.W. (Square 2122, Lot 27).

HEARING DATES: October 27, 2015¹ and November 10, 2015
DECISION DATE: November 10, 2015

NOTICE OF FINAL RULEMAKING

and

DETERMINATION AND ORDER

The Board of Zoning Adjustment (“Board”), pursuant to the authority set forth in § 306 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 283; D.C. Official Code, § 6-1306 (2012 Repl.)) and Chapter 10 of the Zoning Regulations of the District of Columbia, Title 11 DCMR, and after a public hearing on November 10, 2015, hereby gives notice that it took final action not to disapprove the application of The Embassy of the Republic of Azerbaijan (“Applicant”) to allow the construction of a security fence in the TSP/NO/R-1-A District at premises 2741 34th Street, N.W. (Square 2122, Lot 27) (the “Subject Property”).

In Order No. 16620, the Board determined not to disapprove the application of The Embassy of the Republic of Azerbaijan (“The Applicant”) to locate a chancery at the Subject Property, subject to nine conditions.

In Application No. 16620-A, the Applicant proposes to install a five-foot wrought iron gate and connecting fencing on the 34th Street, N.W. frontage along portions of the property line. The proposed security fence would connect to the existing fencing on the property line along 34th Street, N.W, in front of the building restriction area to complete the fencing around the property. The Applicant proposes no alterations to the existing structure on the property.

A notice of proposed rulemaking was published in the *D.C. Register* on September 11, 2015 (62 DCR 12485), and notice of the hearing was also published in the *D.C. Register* on September 11, 2015 (62 DCR 12405).

Pursuant to § 406(d) of the Foreign Missions Act, D.C. Official Code § 6-1306(d), the Board must consider six enumerated criteria when reviewing a chancery application. The provision

¹ The hearing was postponed on October 27, 2015 administratively.

BZA APPLICATION NO. 16620-A
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further dictates who is to make the relevant finding for certain factors. The factors and relevant findings are as follows:

1. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.

The Department of State determined that favorable action on this application would fulfill the international obligation of the United States to facilitate the Republic of Azerbaijan in acquiring adequate and secure premises to carry out their diplomatic mission. (Exhibit 31.)

2. Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.

The Subject Property is not designated as a historic landmark nor is it located within a historic district.

3. The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.

The Board agrees with the findings reached by the Office of Planning ("OP") (Exhibit 34) and the D.C. Department of Transportation (Exhibit 35) that the Subject Property is adequately served by sufficient on-site parking and public transportation services. The proposed security fence would not alter the Embassy's existing on-site parking.

The Department of State, after consulting with the Federal agencies authorized to perform protective services, determined that there exist no special security requirements relating to parking in this case. (Exhibit 31.)

4. The extent to which the area is capable of being adequately protected, as determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.

After consulting with Federal agencies authorized to perform protective services, The Department of State determined that the subject site and area are capable of being adequately protected. (Exhibit 31.)

5. The municipal interest, as determined by the Mayor.

OP, on behalf of the Mayor of the District of Columbia, determined that not disapproving this application is in the municipal interest and is generally consistent with the Comprehensive Plan

**BZA APPLICATION NO. 16620-A
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for the Nation's Capital and the Zoning Regulations. (Exhibit 34.)

6. The federal interest, as determined by the Secretary of State.

The Department of State determined that there is a federal interest in this project. Specifically, the Department of State acknowledged the Republic of Azerbaijan's generous assistance in accommodating security requirements for the U.S. Embassy in Baku. Such cooperation was essential for successfully achieving the Federal Government's mission for providing safe, secure, and functional facilities for the conduct of U.S. diplomacy and the promotion of U.S. interests worldwide. (Exhibit 31.)

ANC 3C Recommendation

The Board is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the issues and concerns raised in the written report of the affected ANC which is ANC 2B. The ANC submitted a resolution indicating that at its regularly scheduled, duly noticed public hearing on October 19, 2015, with a quorum present, the ANC voted to recommend approval of the application. (Exhibit 32.) The ANC indicated that the resolution was approved by voice vote, and accordingly a vote count was not given in the report. The Board's decision to not disapprove the Application is consistent with the ANC's resolution.

Based upon its consideration of the six criteria discussed above, and having given great weight to the ANC, the Board has decided not to disapprove this application.

As a result, the Applicant will be permitted to construct a five-foot wrought iron gate and connecting fencing on the 34th Street, N.W. frontage along portions of the property line as shown on **Exhibit 9** at premises 2741 34th Street, N.W.

Accordingly, it is hereby **ORDERED** that the application is **NOT DISAPPROVED**.

Vote of the Board of Zoning Adjustment taken at its public hearing on November 10, 2015, to Not Disapprove the application:

VOTE: **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Peter G. May to Not Disapprove; Marcel C. Acosta not participating; and one Board seat vacant.)

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

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

FINAL DATE OF ORDER: January 27, 2016

**BZA APPLICATION NO. 16620-A
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PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

APPROVAL OF THIS 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. THE APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 18400-B¹ of Jewish Primary Day School, as amended,² pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot occupancy requirements under § 403, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, and a special exception from the private school requirements under § 206, and from the roof structure requirements under § 411.11, to increase the enrollment cap to 350 students and 72 staff and construct an addition to the existing school building in the R-1-B and R-5-A Districts at premises 6045 16th Street N.W. (Square 2726, Lots 825 and 831).

HEARING DATES: December 22, 2015³ and January 12, 2016
DECISION DATE: January 12, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.) The zoning relief requested was subsequently amended when the Applicant submitted a revised self-certification form to request additional special exception relief from the roof structure requirements of § 411.11. (Exhibit 26.) The Applicant's Prehearing Statement further clarified that it seeks relief pursuant to § 411.11 from the requirements of § 411.3 to allow two separate equipment penthouse enclosures. (Exhibit 27.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4A, and to owners of property 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 indicating that, at its regularly scheduled and properly noticed public meeting of January 5, 2016, at which a quorum was in

¹ This application was processed and noticed as Application No. 18400-A; however, an order denying reconsideration to Application No. 18400 was previously issued as Order No. 18400-A, therefore this order has been re-numbered as Application No. 18400-B.

² The Applicant submitted a revised self-certification form to amend the application and add a request for special exception relief for roof structures under § 411.11 to its originally requested relief. (Exhibit 26.) The caption has been revised accordingly.

³ This case was scheduled for December 22, 2015 and postponed to January 12, 2016 at the Applicant's request. (Exhibit 22.)

BZA APPLICATION NO. 18400-B
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attendance, ANC 4A voted 6-0 in support of the application. (Exhibit 33.) The Single Member District Commissioner for ANC 4A07, Dave Wilson, also testified in support at the public hearing and noted that the ANC was particularly impressed with the Applicant's efforts to secure off-site parking and to subsidize bus transportation for students.

The Office of Planning ("OP") submitted a timely report on January 5, 2016, recommending approval of the application with five conditions (Exhibit 29), and testified in support of the application at the hearing. The Applicant testified that it accepted OP's proposed conditions, but noted that one condition, requiring the Applicant to provide 16 bicycle racks, should be modified based on prior discussions between the Applicant and the District Department of Transportation ("DDOT") regarding bicycle parking. OP concurred with the Applicant's comment, and accordingly, the Board adopted the proposed conditions, with the suggested modification.

DDOT submitted a timely report on January 5, 2016, indicating that it had no objection to the Applicant's requests for variance and special exception relief and recommending several conditions related to the Applicant's Performance Monitoring Plan, curb ramps, and bicycle parking spaces. (Exhibit 32.) The Applicant testified that it accepted these conditions, but that the final condition regarding ten long-term, indoor bicycle parking spaces had been reduced to require six long-term, indoor bicycle spaces, based on conversations with DDOT prior to the hearing. OP also testified that it was part of the Applicant's discussions with DDOT and confirmed that DDOT was satisfied with the Applicant's agreement to provide six bicycle spaces. The Board adopted DDOT's proposed conditions with the modified requirement for long-term bicycle parking spaces.

Letters in support were submitted to the record from Sixteenth Street Heights Civic Association (Exhibit 30) and from Shepard Park Citizens Association (Exhibit 31.)

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, from the lot occupancy requirements under § 403, the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1. 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 filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 403, 2101.1, and 2201.1, the Applicant has met the burden of proving under § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially

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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 § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, from the private school requirements under § 206, and from the roof structure requirements under § 411.11. 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 filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 206, and 411.11, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 25, AND THE FOLLOWING CONDITIONS:**

1. Enrollment shall not exceed 350 students.
2. Faculty and staff combined shall not exceed 72.
3. The Applicant shall implement the recommendations contained within the Transportation Impact Study under Exhibit 24 of the record.
4. A minimum of 25 off-site parking spaces shall be provided to faculty and staff, enabling those employees to carpool to the school, with reserved or preferential parking provided onsite.
5. The Applicant shall amend the Performance Monitoring Plan and establish a trip cap to include the following:
 - a. The Applicant shall conduct counts and provide a monitoring report to DDOT's Policy, Planning, and Sustainability Administration twice per year (fall and spring semesters, not to coincide within a week before or after any extended school breaks) for two years beginning when the school reaches 275 enrolled students and again when the school reaches the proposed cap of 350 students.

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- b. Trip generation counts and queuing shall be observed a minimum of 7:00 a.m. to 9:30 a.m. and 2:30 p.m. to 6:00 p.m.
 - c. Vehicle trip generation shall include all vehicle trips to the site, inclusive of vehicles traveling to the site but not entering the driveway.
 - d. The Applicant shall establish a vehicle trip generation cap of 271 total trips (ins and outs) during the a.m. peak hour and 135 total trips during the school p.m. peak hour (not commuter p.m. peak hour).
 - e. Vehicle queuing for pick-up and drop-off shall be within the property line. Vehicle queuing shall not extend to block the sidewalk across the driveway or onto any public streets.
 - f. If vehicle queuing does not meet the above-mentioned criteria or the site exceeds the vehicle trip generation count, the Applicant shall employ additional Transportation Demand Management (“TDM”) measures and continue monitoring twice per year for two years for a total of four successful monitoring reports.
 - g. The Applicant shall document all current TDM measures.
 - h. The Applicant shall include any proposed updates to the TDM plans.
 - i. The Applicant shall return to the BZA to seek relief, lower their student and staff enrollment, or provide additional and more aggressive TDM measures should vehicle queue length not meet the criteria established above or should trips generated exceed the 271 total trips during the a.m. peak hour and 135 total trips during the school p.m. peak hour threshold for two consecutive monitoring periods.
6. The Applicant shall construct three ADA-compliant curb ramps at the intersection of Fort Stevens Drive and Rock Creek Ford Road
7. The Applicant shall provide six long-term bicycle parking spaces.

Vote: 4-0-1 (Peter G. May, Frederick L. Hill, Marnique Y. Heath, and Jeffrey L. Hinkle to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

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FINAL DATE OF ORDER: January 15, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE 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

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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**

Order No. 18881-A on the Motion for Reconsideration of the Application of Nando's of Woodley Park, LLC, pursuant to 11 DCMR §§ 3104.1, 3103.2, and 1304.1 for special exceptions from the 25 percent street frontage limitation under § 1302.5(a) and the fast food establishment prohibition under § 1307.5, and a variance from the enclosure wall requirements of § 721.3(j) to establish a fast food establishment in the WP/C-2-B District at premises 2631 Connecticut Avenue, N.W. (Square 2204, Lot 161).

HEARING DATE: December 16, 2014

DECISION DATE: February 10, 2015

FIRST RECONSIDERATION

DECISION DATE: June 9, 2015

**DECISION TO REOPEN
RECORD:** October 20, 2015

SECOND RECONSIDERATION

DECISION DATE: November 2, 2015

ORDER ON RECONSIDERATION

By order dated April 24, 2015, (“Order”) the Board of Zoning Adjustment (“Board”) granted an application submitted by Nando’s of Woodley Park, LLC (“Applicant”) for special exceptions and an area variance to establish a fast food establishment in the WP/C-2-B District. (Exhibit 68.) The parties to the proceeding were: the Applicant; Advisory Neighborhood Commission (“ANC”) 3C; the Woodley Park Community Association (“WPCA”); and Salim Zaytoun, the owner of a nearby restaurant, whom the Board consolidated with WPCA into a single party.

On May 1, 2015, the Applicant filed a Motion for Reconsideration (“Motion”) of Condition No. 1 of the Order (“Condition No. 1”), which limits the validity of the Board’s approval to a period of five years beginning on the effective date of the Order. (Exhibit 1.)¹ In the Motion, the Applicant states that the five-year term prevents the Applicant from fulfilling its obligations under the lease agreement for the subject property. The lease provides for an initial term of 10 years, beginning when renovations are complete and a certificate of occupancy is granted, and grants the Applicant two options to renew for an additional five years each. The Applicant further states that it will be investing over \$1 million to renovate the property and that it would not be able to amortize this investment within the term set by Condition No. 1. Accordingly, the

¹ This and all future references to exhibit numbers in the body of the order refer to those exhibits filed in Application 18881-A.

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Motion requests that the term be extended to 20 years, provided that the relief granted would expire if the Applicant ceases to operate at the property before that time. Alternatively, the Applicant proffers the following conditions in lieu of imposing a term:

1. Food shall be served only in/on non-disposable tableware² and shall be served to patrons by staff (as opposed to self-service);
2. Wait staff shall clear and clean the tables after guests finish their meals; and
3. Carry out service shall be clearly subordinate to the principal on-premises use.

On May 13, 2015, WPCA filed an Opposition to the Motion (“Opposition”). (Exhibit 2.) WPCA argues that extending the term to 20 years would render it essentially meaningless and that the Applicant should instead modify its lease arrangement to be consistent with the Board’s Order. WPCA further states that the conditions the Applicant proposes in lieu of a term would not address the community’s concerns over the potential adverse impacts of allowing another eating establishment in the area.

On May 20, 2015, the Applicant filed a reply to WPCA’s Opposition (“Reply”). (Exhibit 3.) The Reply argues that the Opposition is not timely and that, in contrast with the rationale underlying Condition No. 1 as stated by WPCA, the condition was intended to prevent a “typical” fast food establishment from replacing the Applicant’s establishment without the need for zoning relief. ANC 3C did not participate in the reconsideration.

At a public meeting on June 9, 2015, the Board voted to deny the motion for reconsideration.

Prior to issuance of its written order denying reconsideration, the Board received a letter dated October 6, 2015, from ANC 3C³ informing the Board that the Applicant had cancelled its plans to locate in Woodley Park due to the five-year limit on approval of the application. The ANC asserted that the five-year limit had resulted in a *de facto* denial of the application and disregarded the overwhelming community-wide support to having the Applicant open a restaurant at this location. The ANC advised the Board that the Applicant was willing to proceed with its proposed food establishment at the Woodley Park location if the approved term of the Board’s Order was extended to ten years.

On October 20, 2015, following the review of the ANC correspondence, the Board voted on its own motion to reopen the record to allow the parties until November 2, 2015 to file responses to

² This portion of the proposed condition already is stated in existing Condition No. 5.

³ The letter was signed by two ANC commissioners who were authorized in the initial ANC resolution dated November 17, 2014, to act on behalf of the ANC either specifically or as a designee. (*See* Exhibit 58 in BZA Case No. 18881.) However, because the letter was not approved by the ANC at a properly noticed meeting with a quorum present, the issues and concerns expressed in the letter are not entitled to great weight pursuant to D.C. Official Code § 1-309.10 (d). Nevertheless, the substance of the letter represented a relevant submission by a party to this proceeding.

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the ten-year term proposed by the ANC.⁴ The Board received responses in support of a ten-year time limit from the Applicant and the property owner. The cover letter from the Applicant's counsel stated that it was amending its motion for reconsideration to accept a ten-year term. In addition, the Applicant again offered the three additional conditions pertaining to the operation of the use, but this time in conjunction with the term limit. The Applicant also requested that the term begin upon the issuance of a certificate of occupancy for the use, rather than as of the final date of the order as required by § 3131.1.

WPCA filed a letter in opposition to a ten-year time limit on the grounds that it would not adequately protect the community from the adverse effects of increased trash and rodents.

On November 3, 2015, the Board voted to rescind its earlier denial of the Motion, grant the amended Motion, enlarge the time limit on approval to a ten-year term, and modify the conditions of the Order to reflect the revised language proffered by the Applicant in its November 2, 2015 submission.

CONCLUSIONS OF LAW

Pursuant to 11 DCMR § 3126.2, a party may file a motion for reconsideration of any decision of the Board within 10 days after a final written order is issued. A motion for reconsideration must state specifically all respects in which the final decision is claimed erroneous, the grounds of the motion, and the relief sought. (11 DCMR § 3126.4.) Although the Board concluded that the Applicant's Motion did not provide a sufficient basis to reconsider its decision to limit its approval to a five-year term, it concluded that the Applicant's agreement to a ten-year term, with the addition of conditions pertaining to the operation of the use, justifies its reconsideration of the case and allows for the imposition of the ten-year term.

Before addressing the merits, the Board first finds that WPCA's Opposition was timely. Under §§ 3121.7 and 3110.3, a response to a motion served by mail must be filed within 10 days after service. The Applicant states in its Reply that the Motion was served on WPCA via mail on May 1, 2015, while the Opposition states that WPCA was served via email on May 9, 2015. Neither party filed any evidence to support their allegations. The Motion itself states that the Office of Planning was served via email and that ANC 3C was served by mail, but it does not indicate how WPCA was served. Absent any evidence, the Board finds that the Applicant has not carried its burden on this issue. Accordingly, the Board finds that the period to file a response to the Applicant's Motion did not begin to run until May 9, 2015. Thus, the Opposition, filed on May 13, 2015, was within the applicable period provided by §§ 3121.7 and 3110.3.

With respect to the merits of the Motion as initially filed, the Board finds that it does not provide a basis for reconsidering Condition No. 1. The Applicant suggests that the Board was not aware

⁴ The Board has the inherent authority to re-deliberate upon its decisions after a vote but prior to the final order. *See Application No. 16970-B of National Child Research Center* (2004) (Board re-deliberated following vote to deny both enrollment increase and new construction, opened record for submissions, and voted to grant new construction).

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of its proposed lease, and had it known of the lease's existence, the Board would have imposed a 20-year term so as not to "conflict" with the lease. First, the Board was aware of the Applicant's lease arrangement when it made its decision to impose the five-year term. A representative of the Applicant testified to the proposed term of the lease at the public hearing on December 16, 2014. (Hearing Transcript of December 16, 2014, at 60:8–10.) Second, the Board rejects the Applicant's premise that the Board cannot impose a term of approval that is less than the term of a lease. The term of a lease is based upon the commercial best interests of private parties, whereas the imposition of a special exception term is based upon the best interest of the public. To the extent these two considerations conflict, the best interests of the public prevails.⁵

However, with the Applicant now agreeing to a ten-year term in combination with the conditions the Applicant originally offered in the alternative to a term, this balance of private and public interests is now achieved. Although the Board's order identified an increase in trash and rodent infestation as a potential concern, the Board remains confident that Condition Nos. 2 and 4 will adequately control potential trash and rodent problems. Those conditions require the Applicant to use the existing trash compactor at the site and provide trash pick-up service at least five times per week. Moreover, Condition No. 6 requires the Applicant to communicate with the ANC and WPCA on a quarterly basis, thus creating a more immediate, frequent, and effective mechanism to evaluate compliance.

The Board's principal concern was with the impact of a new fast food establishment on the overlay. The additional language proffered by the Applicant for Condition No. 5 will help protect the community from the adverse effects associated with a typical fast food establishment in the event another fast food establishment leases the space prior to the end of the ten-year limit. In addition to the current requirement that all food and drinks be served on/in non-disposable tableware, Condition No. 5 as revised will now require wait staff to serve all food and alcoholic beverages to patrons and to clear and clean tables after patrons finish their meals. Further, Condition No. 5 requires that carry-out service must be clearly subordinate to the principal on-site use. As with any condition of a BZA order, noncompliance furnishes grounds for revocation of the certificate of occupancy. (12 DCMR A § 110.5.5.2.)

While the Board continues to believe that the additional language would not justify permitting the proposed fast food establishment without any term, the Board concludes that a ten-year term will suffice. The Applicant demonstrated that its proposed restaurant would be a far better use of

⁵ The Applicant appears to disagree with the Board's view that the Board cannot lawfully condition its approval on the fast food establishment being operated only by the Applicant. The Applicant is correct that the Board may, with the consent of an applicant, impose a condition on its operations "that is not strictly confined to the regulation of the use of land." *President & Directors of Georgetown Coll. v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 77 (D.C. 2003). However, the proposed limitation in ownership is not a restriction placed upon how this use may be operated, but upon who its operator must be. As such it is *prima facie* unlawful. *See Nat'l Black Child Dev. Inst. v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 691 (D.C. 1984); *Olevson v. Zoning Bd. of Review of Town of Narragansett*, 44 A.2d 720, 722 (R.I. 1945) (holding that a zoning board was without power to limit the operation of a boarding and rooming house to the current owner "because it amounts really to a mere license or privilege to an individual and does not relate in its proper sense to the use of the property and the zoning thereof.").

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the property than the matter-of-right options being considered by the owner. However, the Board's initial term clearly doomed the project, which is a result the Board never intended. The Board's order describes its support for the proposed use. Further, as a result of the ANC's participation in this reconsideration proceeding, the Board is now fully aware of the "strong community-wide support" for the proposed use and the detriment to the community that would result should the original five-year term remain in place.

The Board acknowledges the concerns expressed by WPCA, but believes that the threat of increased rodent infestation is relatively small whereas the value to the neighborhood of permitting this use is great. Further, the Applicant has every interest in assuring that no adverse impacts would result if it wishes to avail itself of the full 20 years permitted under its lease options. Thus, a 10-year term, in combination with all of the conditions being imposed on this use, will achieve a result that is in the best interests of all concerned.

The Board also grants the Applicant's request that the term should begin upon the date that the certificate of occupancy for the use is issued notwithstanding § 3131.1. Subsection 3100.5 of the Board's rules of practice and procedure permits the Board for good cause shown, to waive most of the provisions of Chapter 31, including § 3131, if the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. The purpose of the term is to allow the Board to evaluate the impact of the use while in operation. It therefore serves no purpose to commence this term before those operations begin. While WPCA no doubt would object to this additional time, the Board does not believe that making the length of its approval coterminous with the actual operation of the use will prejudice any right WPCA might have.

For all of these reasons, the Board hereby **ORDERS** that the amended motion for **RECONSIDERATION** is **GRANTED** and it is **FURTHER ORDERED** that Conditions Nos. 1 and 5 are amended as follows:

1. The Board's approval shall be valid for a period of **TEN (10) YEARS** beginning on the date that the certificate of occupancy for the approved fast food establishment use is issued.

5. All food and drinks consumed on the premises shall be served on/in non-disposable tableware with no exceptions. Wait staff shall serve all food and alcoholic beverage to patrons and shall clear and clean the tables after guests finish their meals. Carry out service shall be clearly subordinate to the principal on-premises use.

VOTE: 3-0-2

(Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller to Grant; Frederick L. Hill not present, not voting; one Board seat vacant)

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

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

FINAL DATE OF ORDER: January 27, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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

Application No. 19037 of Derek S. Mattioli, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the enlargement of nonconforming structure requirements under § 2001.3 to allow the construction of a two-story rear open deck addition at an existing one-family dwelling in the R-4 District at premises 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102).

HEARING DATE: July 7, 2015
DECISION DATE: July 7, 2015

DECISION AND ORDER

This application was submitted on April 30, 2015 by Derek S. Mattioli, the owner of the property that is the subject of the application. The application requested area variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the enlargement of nonconforming structure requirements under § 2001.3 to allow the construction of a two-story rear open deck addition at an existing one-family dwelling in the R-4 District at 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102). Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 7, 2015, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6; Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located; and Single Member District/ANC 6B08. Pursuant to 11 DCMR § 3112.14, on May 11, 2015 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on May 15, 2015 (62 DCR 6008).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Mark O’Donnell, a resident of the 1300 block of Massachusetts Avenue S.E. near the subject property.

Applicant’s Case. The Applicant provided testimony and evidence describing a planned two-story rear deck addition to his dwelling. According to the Applicant, the deck addition would

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extend the usable living space behind the dwelling, would “beautify the area,” and would “bring the structure in line with construction on adjoining properties.” (Exhibit 4.)

OP Report. By memorandum dated June 30, 2015, the Office of Planning indicated it was not opposed to the zoning relief requested by the Applicant. (Exhibit 72.)

DDOT. By memorandum dated June 25, 2015, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 65.)

ANC Report. By letter dated June 12, 2015, ANC 6B indicated that, at a properly noticed public meeting on June 9, 2015 with a quorum present, the ANC voted 9-0 in support of the application. (Exhibit 36.)

Person in opposition. The Board received a letter in opposition to the application from the zoning committee of the Capitol Hill Restoration Society, stating that the Applicant had not met the burden of proof for variance relief. (Exhibit 73.)

FINDINGS OF FACT**The Subject Property**

1. The subject property is located on the south side of Massachusetts Avenue, S.E. near its intersection with 14th Street (Square 1037, Lot 102). Square 1037 is generally triangular, defined by Massachusetts Avenue on the north, 13th Street on the west, and Independence Avenue on the south. The eastern portion of the square becomes narrower as it approaches 14th Street.
2. The subject property is generally rectangular, although slightly irregular in shape. The lot is 20 feet wide at the street frontage and approximately 17 feet wide at the rear, with a depth of 41 feet on the west lot line and approximately 39.5 feet on the east lot line.
3. The subject property is improved with a one-family row dwelling, built in 1908, that is two stories in height. The rear yard is accessible only through a door at the basement level.
4. A paved walkway, approximately three feet wide, abuts the rear lot line of the subject property to provide pedestrian access to Independence Avenue. The walkway is used by the Applicant and residents of nearby dwellings to provide rear access to the properties and for the removal of trash and recyclable materials.
5. The subject property is nonconforming with respect to lot area, lot occupancy, and rear yard. Lot area is 818 square feet, where a minimum of 1,800 square feet is required. (11 DCMR § 401.1.) Lot occupancy is approximately 81%, where a maximum of 60% is

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- permitted, and the rear yard is approximately seven feet, where a minimum of 20 feet is required. (11 DCMR §§ 403.2, 404.1.)
6. The Applicant's residence abuts similar row dwellings. Properties in the vicinity are also improved with row dwellings. The lots on the eastern end of the square, especially those facing Massachusetts Avenue, are smaller than other nearby properties. The subject property is one of the smallest in the square.
 7. The subject property is located in the R-4 District, which is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The "primary purpose" of the R-4 zone is "the stabilization of remaining one-family dwellings." (11 DCMR § 330.2.)
 8. The Applicant previously constructed a rear porch addition to the dwelling that did not comply with zoning requirements and was not built in accordance with a building permit. The Applicant's prior request for variance relief to allow the rear porch addition was denied by the Board. *See* Application No. 18556 (order issued June 30, 2014). The Applicant subsequently removed the rear porch addition.
 9. The Applicant now proposes to construct a rear addition comprising two open decks, on the first and second floors of the dwelling. The decks would be constructed 18 feet across the rear of the dwelling and extend approximately six feet into the rear yard. The decks would not be enclosed but would have a wrought iron railing around their perimeters.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the enlargement of nonconforming structure requirements under § 2001.3 to allow the construction of a two-story rear open deck addition at an existing one-family dwelling in the R-4 District at 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (*See* 11 DCMR § 3103.2.)

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Based on the findings of fact, the Board concludes that the application satisfies the requirements for variance relief in accordance with § 3103.2. The Board concurs with the Office of Planning that the subject property “exhibits an exceptional condition with regard to the size of the lot and location of the lot on Square 1037 which poses a practical difficulty in meeting the maximum lot occupancy and minimum rear yard requirements.” (Exhibit 72.) The subject property is faced with an exceptional situation relating especially to the small size of the lot. Given the triangular shape of Square 1037, and the location of the subject property close to its most narrow point, the subject property is one of the smallest and most shallow parcels in the square. Its area is less than half of the minimum required in the R-4 zone and only slightly more than half of the average lot area in the square, which OP calculated at 1,557 square feet. The subject property lacks a useful rear yard, since the existing dwelling occupies more than 80% of the lot and is situated relatively close to the rear lot line of the shallow parcel.

The Board concludes that the strict application of the Zoning Regulations would create a practical difficulty to the Applicant as the owner of the property. Variance relief would be needed for any enlargement of the Applicant’s relatively small dwelling. The Applicant’s planned rear deck addition would increase the useable living area at the dwelling, and would create an area of outdoor space where a rear yard consistent with the Zoning Regulations is not feasible.

The Board does not find that approval of the requested variance relief would cause substantial detriment to the public good or would substantially impair the intent, purpose, and integrity of the zone plan. As noted by OP, “[t]he proposed style and materials (wrought iron and wood) ... appear to be consistent with the established character of the immediate neighborhood and more specifically, the character of the rear yard areas adjacent to the Applicant’s property, which is primarily pressure-treated wood decking.” (Exhibit 72.) The Applicant described meetings with the staff of the Historic Preservation Office, who provided assistance in devising a design for the deck that would be historically appropriate for the setting.

The Board finds no merit in the assertions by the party in opposition that the planned rear addition would impair light and air available to nearby properties, or impinge on the privacy of those properties. The open design of the deck addition will allow greater circulation of air than would an enclosed addition. Many nearby properties also have rear deck additions, and the Applicant’s decks will not significantly affect the privacy currently available at any neighboring dwelling. Similarly, the Board was not persuaded by the party in opposition that the Applicant’s proposed deck would “choke off that whole end of the block” since the new construction will be limited to the Applicant’s property and will not affect the existing walkway that abuts the rear lot line of the subject property. The planned deck addition will be consistent with the primary purpose of the R-4 District of stabilizing the one-family dwellings by creating usable outdoor space at the Applicant’s residence.

The Board is required to give “great weight” to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2012 Repl.). In this case, OP did not oppose approval of the

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application, and its report concluded that the application had met the requirements for the requested variance relief.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). In this case ANC 6B did not express any issues or concerns but voted unanimously in support of the application. For the reasons discussed above, the Board concurs with the ANC’s recommendation that the requested zoning relief should be granted.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for area variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the enlargement of nonconforming structure requirements under § 2001.3 of the Zoning Regulations to allow the construction of a two-story rear open deck addition at an existing one-family dwelling in the R-4 District at 1375 Massachusetts Avenue, S.E. (Square 1037, Lot 102). Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7.**

VOTE: 3-0-2 (Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen voting to approve; Lloyd L. Jordan abstaining; one Board member not present, not voting.)

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

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

FINAL DATE OF ORDER: January 14, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR

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GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Appeal No. 19049 of Caesar Junker, et. al., pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit B11400387 allowing the expansion of the upper portion of an existing building on the C-2-A portion of the property located at 1351 Wisconsin Avenue, N.W., where the property is split-zoned (existing building front two-thirds C-2-A zone/carriage house rear third R-3 zone) (Square 1243, Lot 811).

HEARING DATE: July 21, 2015

DECISION DATE: July 21, 2015

DECISION AND ORDER

This appeal was filed with the Board of Zoning Adjustment (the “Board”) on May 7, 2015, challenging DCRA’s decision to approve a building permit (the “permit”) on December 10, 2014 allowing various interior and exterior renovations at the subject property. The property owner to whom the permit was issued, 1351 LLC, (the “Owner”) moved to dismiss the appeal, and DCRA filed a similar motion. The Board conducted a public hearing, at which time it heard from the Owner, from DCRA, and from the Appellant. After consideration of the written submissions and arguments from the parties, the Board found that the appeal was untimely filed. As a result, it granted the motion to dismiss. A full discussion of the facts and law that support this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on July 21, 2015. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, Advisory Neighborhood Commission (“ANC”) 2E (the ANC in which the subject property is located), the Owner, and DCRA.

Parties

The Appellants in this case are four individuals who live in close proximity to the property, Caesar Junker, Christian Mulder, Bill Gallagher, and Tom Adams. Mr. Junker was the spokesman for the group.¹ The Appellants will be referred to collectively as Mr. Junker or the Appellant.

¹ The Appeal forms list Mr. Junker, Mr. Mulder and Mr. Adams, but do not list Mr. Gallagher. (Exs. 1 and 2). However, at the public hearing, Mr. Junker stated there were four individuals prosecuting this appeal, and Mr. Gallagher identified himself as one of the four (Tr., July 21, 2015, p.30).

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The property is owned by 1351 LLC, who is an automatic party to the appeal pursuant to 11 DCMR §3199.1(a)(3). The Owner was represented by the law firm of Sullivan & Barros, LLP, Martin Sullivan, Esq. (Ex. 21.)

DCRA appeared during the proceedings and was represented by Assistant General Counsel Maximilian Tondro, Esq.

ANC 2E, as the affected ANC, was automatically a party in this Appeal. However, the ANC did not submit a report or take a position regarding the appeal.² Nor did it participate in the proceedings.

Motion to Dismiss

The Owner and DCRA each filed a motion to dismiss prior to the hearing scheduled on July 21, 2015. (Exs. 22 and 23). In addition to considering the written submissions, the Board heard argument from each of the parties.

FINDINGS OF FACT**The Property**

1. The subject property is improved with a building known as the Georgetown Movie Theater (the “building”), as well as a carriage house at the rear of the property (the “carriage house”).
2. The property is split zoned. The front portion of the property on which the building is located is in the C-2-A zone. The rear portion of the property on which the carriage house is located is in the R-3 zone.

Communications between the Parties

3. Sometime during 2014, the Owner developed plans to convert the building used as a theater to a mixed use building with four residential units, and to convert the carriage house into a home office use. These plans were submitted to DCRA in connection with an application for a building permit.
4. Appellants knew about the permit application and associated plans during the DCRA review process, as evidenced by the following:
 - a. On or about May 5, 2014, a land use attorney retained by the Appellant e-mailed

² In 2014, the ANC submitted a report to the Board opposing a request for zoning relief at this property (Ex. 5), but the zoning application was ultimately withdrawn (BZA Application No. 18884). The work covered by the permit in this appeal differs from what was proposed in the BZA application. The BZA application requested special exception and variance relief to connect the rear carriage house in the R-3 zone portion to the principal structure in the C-2-A portion of the property. The permit at issue here approved – as a matter-of-right -- the expansion of the upper portion of the principal structure.

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the Owner requesting a meeting, stating that her clients wished to discuss various claimed zoning violations that had been identified with the permit plans. (Ex .22, Tab A).

- b. Also on or about May 5, 2014, Appellants themselves sent an e-mail to the Deputy Zoning Administrator (“ZA”) at DCRA who was reviewing the permit application. This e-mail explained why the Appellants believed the permit plans did not comply with the Zoning Regulations. For example, the e-mail stated that the Owner’s FAR³ calculations were incorrect and that the proposed project resulted in an FAR that exceeded the maximum allowable FAR of 2.5. (Exs. 6 and 24.)
 - c. The email from Appellants dated May 5, 2014 included a screenshot of the DCRA Permit Tracking system at that point in time.
 - d. During May, June, and July of 2014, Appellant sent “four letters and emails to DCRA advising the ZA that the permit under consideration was not a matter of right”. Appellant was represented by counsel during that period. (Tr., p. 39.)
5. The Board accepts DCRA’s assertion that the ZA posted its approval of the permit application to the Permit Tracking System on October 23, 2014. (Ex. 23.)
 6. There is no evidence demonstrating that the Appellants knew the ZA had posted its approval on October 23, 2014.

The Building Permit

7. The Owner obtained Building Permit No. B1400387 on or about December 10, 2014, authorizing the proposed conversion and allowing, among other things, interior renovations at the building, raising the building ceilings to the height of the front façade, and extending the existing roof to the rear of the building. (Ex. 11.)
8. No material changes were made to the permit plans after the permit was issued.
9. Construction under the permit took place immediately after the permit was issued.
10. The Board finds that the building was under roof by April 16, 2015. The Owner testified that the converted building was under roof by April 16, 2015, and that fact was not rebutted by the Appellant.

Events Leading to the Filing of the Appeal

11. The Appellant asserts that the instant permit was part of a complex set of permits that was “ambiguous and confusing” to the neighbors. (Ex. 3.)

³ “FAR” stands for the “floor area ratio”, a figure that expresses the total gross floor area as a multiple of the area of the lot”. (§199.1 Definitions.)

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12. The Appellant asserts that the FAR calculations were only clarified by the issuance of a memorandum from the ZA to the District Office of Planning (“OP”) that was dated April 10, 2015. This memorandum (the “ZA memo”) concerned the subject property but was written in connection with the Owner’s request for zoning relief in Application No. 18884. The ZA memo is Exhibit 4 in the record of this appeal.
13. Among other things, the ZA memo explains the FAR calculations that were provided by the Owner to the ZA in connection with his proposed plans, and explains how the ZA calculated FAR.
14. The Appellant testified that the project was “over-built” and that the alleged FAR violations are the basis of this appeal. (Hearing Transcript of July 21, 2015, “Tr.,” p. 41.)
15. The Appellant testified that he took issue with the permit “both before the permit was issued and after the permit was issued”. (Tr., p. 47.)

The Instant Appeal

16. The Appellant filed this appeal on May 7, 2015, almost five months after the building permit was issued and approximately 21 days after the building was under roof.

CONCLUSIONS OF LAW

The rules governing the timely filing of an appeal before the Board are set forth in 11 DCMR § 3112.2. Paragraph (a) provides that an appeal must be filed within 60 days from the date the person filing the appeal first had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge, whichever is earlier. In addition, Paragraph (b) provides that if the decision complained of involves the conversion or alteration of a structure, the appeal must be filed no later than ten days after the date on which the structure is under roof.

Although the Board has concluded that this rule is not jurisdictional and therefore failure to raise a timeliness argument during the pendency of an appeal bars its consideration before the Court of Appeals or in a subsequent remand, *see Appeal No. 18031-C of West End Citizens Association (2014), affirmed on other grounds, W. End Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 112 A.3d 900, 903 (D.C. 2015), if a timeliness argument is raised during an appeal, the Board must dismiss the case if the 60-day timeframe is not met, unless the time is extended for the reasons discussed later in this order. As will be explained, the appeal was untimely filed and no circumstances exist to allow its late filing.

The appeal in this case relates to DCRA’s issuance of the building permit. Ordinarily, the building permit is the document that reflects a zoning decision about whether a proposed structure and its use conform to the Zoning Regulations. *Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356, 364 (2008), *citing*, *Schonberger v. District of Columbia Bd. of Zoning Adjustment*, 940 A.2d 159 (2008).

As stated in the Findings of Fact, the building permit was issued on December 10, 2015. In their

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filings, both DCRA and the Owner argue that Appellant had knowledge of the relevant zoning decision even before the permit was issued, on October 23, 2014, when the ZA posted his approval to the Permit Tracking System. However, during argument at the public hearing, the Owner altered its position, stating through counsel that the appeal period was triggered by the issuance of the building permit, not by the earlier ZA posting. (Tr., p. 34.)

Because DCRA maintained its original position, the Board will address whether the ZA's posting on October 23, 2014 was the first appealable notice of a zoning decision. As DCRA notes, the Board has found that "pre-permit" decisions may be the first instance of a zoning decision in certain cases and may trigger the appeal period if there was notice of the pre-permit decision. (See, for instance, *Appeal No. 18300 of Lawrence M. and Kathleen Ausubel* (2011) (Pre-permit email from ZA to Appellant constituted notice of zoning determination); *Appeal No. 18469 of Susan L. Lynch* (2013) (ZA posting on Permit Tracking System constituted notice of zoning determination where Appellant acknowledged knowledge of the zoning approval).

However, in this case no conclusive evidence was presented showing that the Appellant had notice and knowledge of the ZA's posting. DCRA maintains that Appellant knew about the Permit Tracking System, as evidenced by Appellant's email showing a "screenshot" of the System. (Finding of Fact 4(c).) However, while the Appellant may have been familiar with the Permit Tracking system, there is no evidence that Appellant knew of the ZA's actual determination or posting on October 23, 2014.

The Board accepts Appellant's assertion that it first learned of the final zoning decision when the permit was issued. Accordingly, the 60 day appeal period runs from that date, December 10, 2014. Appellant concedes that the appeal was not filed within the 60 day time period that began on that date. However, Appellant urges the Board to extend its time to file pursuant to § 3112.2(d). This provision allows for an extension of the 60 day time limit only if the appellant shows that: (1) there were exceptional circumstances outside of the appellant's control that substantially impaired its ability to file its appeal; and (2) the extension of time will not prejudice other parties to the appeal.

Here, the Board sees no exceptional circumstances that prevented Appellant from filing a timely appeal. There is nothing ambiguous about the building permit. Once the Appellant had knowledge of its issuance, the rule gave it 60 days within which to determine whether grounds existed to challenge its issuance. In fact, the Appellant had come to believe even before permit issuance that the project would exceed the permitted FAR. The Appellant complained about the alleged FAR violations for nearly a year before the appeal was filed, both in his email to DCRA and in the email to the Owner from Appellant's retained zoning counsel. (Finding of Fact 4(a) and (b).) The Appellant also testified that he continued to complain to DCRA after the permit was issued in December, 2014, yet waited until May, 2015 to file the appeal. Even assuming as Appellant states, that the permit was part of a set of "complex" permits, the scope of work should have been obvious once the converted building was under roof and even then Appellant waited 21 days to file the appeal.

Moreover, the ZA memo that Appellant cites as an "exceptional circumstance" contained no new

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information. It was merely a clarification of the same zoning issues, such as FAR, that had been raised in the past. Even if the ZA memo gave Appellant some additional insight into the zoning issues, it in no way impaired Appellant from filing its appeal earlier. Given Appellant's one year scrutiny of the issues, the Board concludes that nothing prevented Appellant from filing his appeal as soon as he learned of the permit decision.

Additionally, the Board cannot justify extending Appellant's time to appeal because there is no doubt that the Owner would be prejudiced. The Owner asserts that he undertook "significant and sensitive construction, historic in nature and difficult to execute". (Ex. 22.) Therefore, it would be inequitable to extend the appeal period under these circumstances.

Thus, for reasons discussed above, the Board hereby **GRANTS** the **Motions to Dismiss** the appeal as untimely.

Vote taken on July 21, 2015.

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller to Grant the motion to dismiss; Frederick L. Hill not voting, being necessarily absent.)

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

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

FINAL DATE OF ORDER: January 15 2016

PURSUANT TO 11 DCMR §3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6

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

Application No. 19112 of 307 Taylor St NW LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the conversion to apartment house requirements pursuant to § 336, to permit the conversion of a pre-1958 residential building into a three-unit apartment house in the R-4 District at premises 307 Taylor Street N.W. (Square 3312, Lot 44).

HEARING DATES: December 8, 2015¹ and January 12, 2016
DECISION DATE: January 12, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The ANC submitted a timely report in support of the application, as revised. The ANC's report indicated that at a duly noticed and scheduled public meeting on December 9, 2015, at which a quorum was present, the ANC voted to support the application by a vote of 10:0:0. The ANC report referenced a negotiated settlement agreement entered into between the adjacent neighbors and the developers, which included significant changes to the original plans. (Exhibit 38.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 40) and testified in support of the application at the hearing. OP's support was based on the most recent revised plans. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 33.)

Two applications for party status in opposition were submitted. One party status application was from Paulo Gusmo and Katherine Filardo, who reside at 305 Taylor Street, N.W. (Exhibit 25.) Paulo Gusmo and Katherine Filardo subsequently submitted a letter of support together with a settlement agreement entered into with the Applicant and

¹ The hearing on December 8, 2015, was postponed at the Applicant's request. (Exhibit 32.)

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formally withdrew their application for party status in opposition.² (Exhibit 37.) The other application for party status in opposition was from Ramona Burns and Mark Otero who reside at 303 Taylor Street, N.W. (Exhibits 26 and 27.) They did not attend the hearing or otherwise pursue their opposition after the Applicant had revised its plans. The Applicant's agent testified that he had not heard anything further from these neighbors since the plans were revised. Because Ms. Burns and Mr. Otero did not formally withdraw the request for party status nor appear at the hearing, the Board denied their party status application.

In addition to the letter of support submitted from Mr. Gusmo and Ms. Filardo (Exhibit 37), a letter in support was submitted to the record from Janis and Elaine Williams. (Exhibit 42.)

Five letters in opposition from neighbors were submitted to the record. (Exhibits 21, 28-30, and 34.) A petition in opposition with 44 signatures was also submitted to the record. (Exhibit 31.) The Applicant's agent testified that the opposition to the project was based on the original proposal and that no comments in opposition had been received since the plans were revised.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception from the conversion to apartment house requirements pursuant to § 336, to permit the conversion of a pre-1958 residential building into a three-unit apartment house in the R-4 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 336, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

² A Settlement Agreement, which contained the revisions to the project, was entered into with the Applicant and Katherine Filardo, Paulo Gusmao, Janis E. Williams and Elaine D. Williams and was submitted for the record. (Exhibit 37.)

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It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 36.**

VOTE: **4-0-1** (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Peter G. May to APPROVE; one Board seat vacant.)

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

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

FINAL DATE OF ORDER: January 14, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC

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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. 19121-A of The JBG Companies,¹ as amended,² pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1, and a special exception from the roof structure setback requirements under §§ 411 and 777.1, to implement the second phase of a mixed-use development in the C-3-C District at premises Square 672, Lot 260 (Assessment and Taxation Lots 860-862).

HEARING DATE: December 1, 2015

DECISION DATE: December 1, 2015

CORRECTED SUMMARY ORDER³

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.) The Applicant indicated in its Prehearing Statement (Exhibit 28) that the originally sought special exception relief related to roof structure height would no longer be required under the new regulations approved by the Zoning Commission in Case No. 14-13. Under the new regulations, however, the Applicant noted that a special exception would be required from the roof structure setback requirements of § 411.18(c)(3).

At the public hearing, the Applicant clarified that it wished to amend its application to proceed under the newly approved regulations, although those regulations were not yet in effect, as a Notice of Final Rulemaking had not yet been published in the *D.C. Register*. The application was therefore amended to remove the request for special exception relief under § 411.5 and to instead include a request for special exception relief from the new setback requirements of

¹ The named Applicants to this case were 50 Patterson Office, L.L.C., 1250 First Street Office, L.L.C., and 51 N Residential, L.L.C., all of which are controlled by The JBG Companies.

² In the Applicant's Prehearing Statement (Exhibit 28), it noted that the originally sought special exception relief related to roof structure height would no longer be required under new regulations approved by the Zoning Commission in Case No. 14-13 and that, instead, a special exception from the new setback requirements would be required. At the public hearing, the Applicant indicated that it wished to amend the application to proceed under the newly approved regulations. The application was therefore amended to remove the request for special exception relief for enclosing walls of unequal height under § 411.5 and to include a request for special exception relief from the new setback requirements of § 411.18(c)(3). The caption has been amended accordingly.

³ The original summary order for this case incorrectly cited certain provisions of the new regulations based on a prior version of the text approved by the Zoning Commission in Case No. 14-13. This order has been issued to correct those discrepancies.

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§ 411.18(c)(3). A Notice of Final Rulemaking for Z.C. Case No. 14-13 was published in the *D.C. Register* on January 8, 2016, and the new regulations went into effect on that date. (60 DCR 390.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 6C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C filed a report on November 24, 2015 indicating that at a regularly scheduled, duly noticed public meeting on November 12, 2015, with a quorum of Commissioners present, the ANC voted 4-0-0 to recommend approval of the application. (Exhibit 30.) The ANC indicated that it reviewed the changes included in the Applicant’s prehearing statement and recommended approval of the application based on the revisions to the original application.

The Office of Planning (“OP”) submitted a timely report on November 24, 2015, recommending approval of the application. (Exhibit 29.) During the public hearing of December 1, 2015, OP testified that it would support the amended request for relief under the newly approved regulations. The District Department of Transportation (“DDOT”) submitted a timely report on November 24, 2015 indicating that it had no objection to the Applicant’s requests for variance and special exception relief. (Exhibit 31.) DDOT requested that the Applicant unbundle the cost of office and residential parking from the lease of office space and residential units or purchase of residential units and, instead, set the parking price at market rate. The Applicant indicated at the public hearing that it would follow DDOT’s recommendation.

A letter in support was submitted to the record from Robin-Eve Jasper on behalf of the NoMa Business Improvement District. (Exhibit 33.)

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from the off-street parking requirements under § 2101.1, and the loading requirements under § 2201.1. 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 filed in this case, the Board concludes that in seeking a variance from 11 DCMR §§ 2101.1 and 2201.1, the Applicant has met the burden of proving under § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially

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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 § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception from the roof structure setback requirements under §§ 411 and 777.1. 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 filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411, and 777.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 28C.**

VOTE: 3-0-2 (Marnique Y. Heath, Robert E. Miller, and Frederick L. Hill, to APPROVE; Jeffrey L. Hinkle not participating and one Board seat vacant.)

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

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

FINAL DATE OF ORDER: January 15, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH

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REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19125 of Sanford “Sandy” Roskes, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, and a special exception from the minimum pervious surface requirements under § 412.3, to permit the construction of a one-story rear addition to an existing one-family dwelling in the R-1-B District at premises 3008 Ordway Street N.W. (Square 2071, Lot 7).

HEARING DATES: December 1, 2015¹ and January 12, 2016

DECISION DATE: January 12, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated June 10, 2015, from the Zoning Administrator, certifying the required relief. (Exhibit 7.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. The ANC submitted a report in support of the application. The ANC report indicated that at a scheduled and noticed public meeting on December 15, 2015, at which a quorum was present, the ANC voted to approve the application. The ANC's resolution acknowledged and referenced the agreement that was reached between the Applicant and the adjoining neighbors as to the size and other aspects of the addition. (Exhibit 25.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 26) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 22.)

Three letters of support were submitted to the record by neighbors. (Exhibits 31-33.)

A letter in opposition was submitted to the record by a neighbor. (Exhibit 21.)

Testimony at the hearing was provided by adjacent neighbor, Layla Afzal, who requested clarification of the relief and testified about the contents of a covenant between herself

¹ The hearing scheduled for December 1, 2015 was postponed at the Applicant's request. (Exhibit 24.)

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and the Applicant that details the agreed-upon dimensions and conditions for the proposed project. Ms. Afzal also made a verbal party status request during the hearing, which was denied by the Board. The Board declined to adopt the provisions of the covenant as conditions of its order. Another neighbor testified in opposition, citing concerns about setting precedent for rear additions in the neighborhood.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under § 223, not meeting the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, and a special exception from the minimum pervious surface requirements under § 412.3, to permit the construction of a one-story rear addition to an existing one-family dwelling in the R-1-B District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, 406.1, 2001.3, and 412.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 28.**

VOTE: **4-0-1** (Frederick L. Hill, Marnique Y. Heath, Jeffrey L. Hinkle, and Peter G. May to APPROVE; one Board seat vacant.)

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

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

FINAL DATE OF ORDER: January 14, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19138 of James Suh, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to allow the construction of a flat in the R-4 District at premises 441 Rhode Island Avenue, N.W. (Square 508N, Lots 16 and 1235).

HEARING DATES: December 22, 2015 and January 26, 2016¹
DECISION DATE: January 26, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

This application was accompanied by a memorandum, dated September 23, 2015, from the Zoning Administrator certifying the required relief. (Exhibit 9.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (“ANC”) 6E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. ANC 6E submitted a letter, dated January 25, 2016, in support of the application. The ANC’s letter indicated that at a duly noticed and scheduled public meeting on January 5, 2016, at which a quorum was in attendance, the ANC voted 6-1-0 in support of the application. (Exhibit 25.)

The Office of Planning (“OP”) submitted a timely report and testified at the hearing in support of the application. (Exhibit 22.) The District Department of Transportation filed a report expressing no objection to the approval of the application. (Exhibit 21.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the strict application of the off-street parking requirements under § 2101.1, to allow the construction of a flat in the R-4 District. 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.

¹This application was originally scheduled to be heard on December 22, 2015, but the hearing was postponed until January 26, 2016, at the Applicant’s request (Exhibit 23) to enable the Applicant to meet the posting requirements and to meet with the ANC.

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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 § 2101.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6**.

VOTE: 3-0-2 (Marnique Y. Heath, Frederick L. Hill and Michael G. Turnbull to APPROVE; Jeffrey L. Hinkle not present, not voting; one Board seat vacant).

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

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

FINAL DATE OF ORDER: January 28, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

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AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19151 of Saratoga Housing Inc., pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to construct a three-story, one-family dwelling in the R-2 District at premises 402 Burbank Street, S.E. (Square 5398E, Lot 30).

HEARING DATE: January 12, 2016

DECISION DATE: January 12, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission (“ANC”) 7F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7F, which is automatically a party to this application. ANC 7F did not submit a report related to the application. However, the Applicant’s representative filed into the record evidence of his efforts to present his proposal before the ANC. (Exhibit 29.) He testified that in his communications with ANC representative prior to the hearing, she had no objection to the application.

The Office of Planning (“OP”) submitted a report dated January 5, 2016 recommending approval of the application. (Exhibit 25.) The District Department of Transportation submitted a report dated January 5, 2016 expressing no objection to the application. (Exhibit 24.)

Two support letters were filed into the record – one from the residents at 404 Burbank Street, S.E. (Exhibit 27); the other letter was from neighbors residing at 406 Burbank Street, S.E. (Exhibit 28). One neighbor residing at 4324 D Street, S.E. filed a letter in opposition to the application. (Exhibit 30.)

At the public hearing, one neighbor testified in support of the proposal, based on her opposition to a curb cut at the property. Another neighbor testified in opposition, citing concerns about street parking.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from § 2101.1. The only parties to the application were the Applicant and the ANC, which did not participate. 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.

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Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from § 2101.1, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 9.**

VOTE: **4-0-1** (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill and Peter G. May to Approve; one Board seat vacant).

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

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

FINAL DATE OF ORDER: January 20, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

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

HEARING DATE: January 12, 2016
DECISION DATE: January 12, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

This application was accompanied by a memorandum, dated August 24, 2015, from the Zoning Administrator certifying the required relief. (Exhibit 8.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4D, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on November 17, 2015, at which a quorum was in attendance, ANC 4D voted 6-0-0 in support of the application. (Exhibit 38.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 35), and testified in support of the application at the hearing. The District Department of Transportation submitted a timely report, indicating that it had no objection to the approval of the application. (Exhibit 37.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1 for a special exception under § 411.11 and § 400.7. 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 under 11 DCMR §§ 3104.1, 411.11, and 400.7 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The

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Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBITS 7 and 11.**

VOTE: 4-0-1 (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May to APPROVE; one Board seat vacant).

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

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

FINAL DATE OF ORDER: January 14, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

HEARING DATE: January 12, 2016

DECISION DATE: January 12, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E, and to owners of property 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.

ANC 2E filed a report dated December 2, 2015, indicating that at a regularly scheduled, duly noticed public meeting on November 30 2015, with a quorum of Commissioners present, the ANC considered the application. The ANC voted 6-0 to recommend approval of the application with seven conditions. (Exhibit 26.) The Applicant accepted the conditions proffered by the ANC (Exhibit 27), and the Board adopted them as a part of this order.

The Office of Planning ("OP") submitted a timely report on January 5, 2016, recommending approval of the application (Exhibit 30), and testified in support at the public hearing. The District Department of Transportation ("DDOT") submitted a timely report on January 5, 2016 indicating that it had no objection to the Applicant's request for variance and special exception relief. (Exhibit 29.)

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a

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variance from the distance from a residence district requirement under § 734.2. 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 filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 734.2, the Applicant has met the burden of proving under § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception from the food delivery service use requirements under § 734. 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 filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 734, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The hours of operation shall not exceed 10:00 am – 2:00 am seven days a week, but carry-out service shall not be permitted after 11:00 pm.
2. Individual slices of pizza shall only be sold from the premises between the hours of 10:00 am – 2:00 pm.
3. No more than six seats shall be provided in the fast food delivery service restaurant.
4. The delivery service area shall be limited to properties that are located within a two-mile radius of the fast food delivery service restaurant.

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5. The Applicant, or any subsequent owner or operator of the property, shall use personal vehicles, mopeds (electric and gas-powered), and bicycles for deliveries.
6. The Applicant, or any subsequent owner or operator of the property, shall utilize vent hoods that exhaust through the roof, using best available technology, to mitigate any cooking odors.
7. The Applicant, or any subsequent owner or operator of the property, shall closely monitor refuse and recycling collection in order to mitigate any potential negative impacts on neighboring properties and the general public.

VOTE: 4-0-1 (Marnique Y. Heath, Frederick L. Hill, Jeffrey L Hinkle, and Peter G. May to APPROVE; one Board seat vacant.)

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

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

FINAL DATE OF ORDER: January 14, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, 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,

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

HEARING DATE: January 12, 2016

DECISION DATE: January 12, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC submitted a report in support of the application, as revised. The ANC's report indicated that at a duly noticed and scheduled public meeting held on December 9, 2015, with a quorum present, the ANC voted 5:0:0 to support the application based on the Applicant's most recent plan revisions. (Exhibit 36.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 35) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 37.)

A Party Status application in opposition to the application was submitted by Brendan Danaher and Kathleen Franz who reside at 655 F Street, N.E. (Exhibits 33 and 34.) However, at the hearing on the case, the Applicant's agent testified that their privacy concerns had been addressed in the revisions to the plans and that they no longer were in opposition to the application. They did not attend the hearing or otherwise further pursue their opposition. The Board considered the Party Status application withdrawn.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under § 223, not meeting the lot occupancy requirements under § 403, the open

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court requirements under § 406, and the non-conforming structure requirements under § 2001.3, and a special exception from the height requirements under § 400.23, to construct a third-floor addition with roof deck to an existing one-family dwelling in the R-4 District. 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 averse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, 403, 406, 2001.3, and 400.23, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED REVISED ARCHITECTURAL PLANS AND ELEVATIONS AT EXHIBIT 28.**

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May to APPROVE; one Board seat vacant.)

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

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

FINAL DATE OF ORDER: January 13, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN

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APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7,
SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19170 of Kevin O'Day, as amended¹ pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, and the nonconforming structure requirements under § 2001.3, to construct a one-story rear deck to an existing one-family dwelling in the R-3 District at premises 1616 Webster Street, N.W. (Square 2646, Lot 10).

HEARING DATE: Applicant waived right to public hearing

DECISION DATE: January 12, 2016 (Expedited Review Calendar)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

This application was accompanied by two memoranda, the first dated October 6, 2015, and a subsequent revised memorandum, dated January 4, 2016, from the Zoning Administrator certifying the required relief. (Exhibits 6 and 7 (original), and 31 (revised).)

Pursuant to 11 DCMR § 3118, this application was tentatively placed on the Board of Zoning Adjustment ("Board") expedited review calendar for decision without hearing as a result of the Applicant's waiver of its right to a hearing. (Exhibit 2.)

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 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 did not submit a report or testify with respect to the application. However, the Applicant submitted the ANC 4A meeting minutes of December 1, 2015, which indicated that the Applicant presented the project and there were no objections to the application. (Exhibit 33.) Letters in support of the application

¹ The Applicant initially filed for special exception relief under § 223, for an addition not meeting the lot occupancy requirements of § 403, the side yard requirements of § 405.3, and the non-conforming structure requirements under § 2001.3. The Zoning Administrator's original memorandum of October 6, 2015 (Exhibits 6 and 7) included these three areas of special exception relief, including that for the side yard requirements of § 405.3. Subsequently, the Applicant revised the application and submitted a revised memorandum from the Zoning Administrator (Exhibit 31) that removed the side yard relief. The caption has been amended accordingly.

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were filed by both of the Applicant's adjacent neighbors, Peter Castro and William Valencia. (Exhibit 29.)

The Office of Planning ("OP") filed a timely report recommending approval of the application (Exhibit 30), and testified in support of the application at the hearing. The District Department of Transportation submitted a report expressing no objection to the approval of the application. (Exhibit 32.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application, as amended.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, 403.2, and 2001.3. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 403.2, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 9.**

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Peter G May to APPROVE; one Board seat vacant).

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

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

FINAL DATE OF ORDER: January 15, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO §

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3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

441 4TH STREET, N.W.
SUITE 200-SOUTH
WASHINGTON, D.C. 20001

PUBLIC NOTICE OF CLOSED MEETINGS FOR FEBRUARY 2016

In accordance with § 405(c) of the Open Meetings Act, D.C. Official Code § 2-575 (c), on December 22, 2015, the Board of Zoning Adjustment voted 3-0-2 to hold *closed meetings telephonically on Mondays, February 1st, February 8th, and February 22nd*, beginning at 4:00 p.m. for the purpose of obtaining legal advice from counsel and/or to deliberate upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting, as those cases are identified on the Board's meeting and hearing agendas for February 2nd, February 9th, and February 23rd, 2016.

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

**Marnique Y. Heath, Chairperson, Frederick L. Hill, Vice-Chairperson,
Jeffrey L. Hinkle, Board Seat Vacant, and a Member of the Zoning Commission.
Clifford W. Moy, Secretary of the Board of Zoning Adjustment,
Sara A. Bardin, Director, Office of Zoning.**

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