

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 22-257, District of Columbia Green Finance Authority Act of 2017
- D.C. Council schedules a public oversight roundtable on the “Department of Behavioral Health’s Realignment Plan and Opioid Strategies”
- D.C. Council schedules a public oversight roundtable on the “District’s Crime Prevention Strategies for Summer 2017”
- Executive Office of the Mayor establishes a commitment to adopt, honor, and uphold the Paris Agreement to reduce greenhouse gas emissions in the District (Mayor’s Order 2017-142)
- Department of Housing and Community Development schedules a public hearing on the “District of Columbia’s Fiscal Year 2018 Annual Action Plan”
- Office of the Deputy Mayor for Planning and Economic Development revises the Fiscal Year 2017 Neighborhood Prosperity Fund
- Department of Small and Local Business Development announces funding availability for the DC Main Streets project
- Office of the State Superintendent of Education announces availability of the Pre-Kindergarten Enhancement and Expansion Funding

DISTRICT OF COLUMBIA REGISTER

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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

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MAYOR

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ADMINISTRATOR

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-68

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 2, 2017

To amend, on a temporary basis, the Prevention of Child Abuse and Neglect Act of 1977 to broaden the definitions of neglected child and abused to include a victim of sex trafficking or severe forms of sex trafficking; and to amend An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children to make a conforming amendment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Child Neglect and Sex Trafficking Temporary Amendment Act of 2017”.

Sec. 2. Section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), is amended as follows:

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

“(1)(A) “Abused”, when used in reference to a child, means:

“(i) Abused as that term is defined in D.C. Official Code § 16-2301(23); or

“(ii) Sexual abuse, which shall include sex trafficking or severe forms of trafficking in persons as those terms are defined in section 103(10) and (9)(A) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(10) and (9)(A)).

“(B) Nothing in this paragraph shall be construed as preventing or intending to prevent sex trafficking or severe forms of trafficking in persons from being considered a form of sexual abuse for purposes of D.C. Official Code § 16-2301(32).”.

(b) Paragraph (15A) is amended to read as follows:

“(15A) “Neglected child” means a child who is a:

“(A) Neglected child as that term is defined in D.C. Official Code § 16-2301(9); or

“(B) Victim of sex trafficking or severe forms of trafficking in persons as those terms are defined in section 103(10) and (9)(A) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(10) and (9)(A)).”.

ENROLLED ORIGINAL

Sec. 3. Section 2(a) of An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children, approved November 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.02(a)), is amended by striking the phrase “neglected child, as defined in D.C. Code, sec. 16-2301(9), shall” and inserting the phrase “neglected child, as defined in section 102(15A) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02(15A)), shall” in its place.

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.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
June 2, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-69

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 2, 2017

To establish, on a temporary basis, 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 Temporary Act of 2017".

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. Fiscal impact statement.

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

Sec. 4. Effective date.

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

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
June 2, 2017

ENROLLED ORIGINAL

A RESOLUTION

22-116

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To declare the existence of an emergency with respect to the need to symbolically designate a portion of the public alley system in Square 42 that partially adjoins St. Mary's Church, which is located at 728 23rd Street, N.W., in Ward 2, as St. Mary's Way, in honor of the church's 150th anniversary.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "St. Mary's Way Designation Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists an immediate need to symbolically designate a portion of the public alley system in Square 42 that partially adjoins St. Mary's Church ("Church"), which is located at 728 23rd Street, N.W., in Ward 2, as "St. Mary's Way".

(b) The Church will be celebrating its 150th anniversary on June 10, 2017.

(c) The Church's milestone celebration will include the unveiling of the signage symbolically designating a partially adjoining portion of the public alley system as "St. Mary's Way".

(d) The symbolic designation will honor the Church's historic community presence and its commitment to serving District residents.

(e) Permanent legislation to effectuate the symbolic designation, the St. Mary's Way Designation Act of 2017, passed on 1st reading on May 16, 2016 (Engrossed version of Bill 22-150), is currently under review by the Council. However, that legislation will not take effect in sufficient time to guarantee that the appropriate signage will be installed before the Church's 150th anniversary celebration on June 10, 2017.

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 St. Mary's Way Designation Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-117

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To declare the existence of an emergency with respect to the need to amend the Inclusionary Zoning Implementation Amendment Act of 2006 to reflect the changes to the inclusionary zoning regulations adopted by the Zoning Commission for the District of Columbia on October 17, 2016; and to amend the District of Columbia Administrative Procedure Act, the Housing Production Trust Fund Act of 1988, and section 47-902 of the District of Columbia Official Code to make conforming amendments.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Inclusionary Zoning Consistency Emergency Declaration Resolution of 2017”.

Sec. 2. (a) The District lost nearly half of its low-cost rental housing units between 2002 and 2013.

(b) Currently, the District has a shortage of more than 30,000 rental housing units affordable and available to low-income renters.

(c) Rising home prices significantly limit low-income homebuyer options.

(d) The District government is using all tools at its disposal to address the affordable housing crisis. Those tools include making an unprecedented investment of \$100 million in the Housing Production Trust Fund in Fiscal Years 2016 and 2017, increasing funding for Local Rent Supplement Program vouchers, and creating the Inclusionary Zoning program.

(e) The Inclusionary Zoning program, which includes both the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) (“Act”), and inclusionary zoning regulations promulgated by the Zoning Commission for the District of Columbia, requires certain new rental and homeownership housing developments to set aside a percentage of units for low- and moderate-income renters and owners.

(f) On October 17, 2016, the Zoning Commission for the District of Columbia amended the inclusionary zoning regulations, set forth at Chapter 10 of Title 11-C of the District of Columbia Municipal Regulations, in its Notice of Final Rulemaking and Zoning Commission Order No. 04-33G (63 DCR 15404) (“Final Rulemaking”). Among other changes, the amended regulations establish revised maximum income limits of 60% of Median Family Income for inclusionary units set aside for rental and 80% of Median Family Income for inclusionary units set aside for ownership.

ENROLLED ORIGINAL

(g) There exists an immediate need to amend the Act to bring District law into agreement with the changes made by the Zoning Commission for the District of Columbia in the Final Rulemaking, which will take effect June 5, 2017.

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 Inclusionary Zoning Consistency Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-128

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 6, 2017

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$22 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist Paul Public Charter School, Inc. in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Paul Public Charter School, Inc. Revenue Bonds Project Approval Resolution of 2017".

Sec. 2. Definitions.

For the purpose of this resolution, the term:

(1) "Authorized Delegate" means the Mayor or the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have subdelegated any of the Mayor's functions under this resolution pursuant to section 422(6) of the Home Rule Act.

(2) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(3) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this resolution.

(4) "Borrower" means the leasehold owner, operator, manager, and user of the assets financed, refinanced, or reimbursed with proceeds from the Bonds, which shall be Paul Public Charter School, Inc., a corporation organized under the laws of the District of Columbia, and exempt from federal income taxes under 26 U.S.C § 501(a) as an organization described in 26 U.S.C. § 501(c)(3).

(5) "Chairman" means the Chairman of the Council of the District of Columbia.

(6) "Closing Documents" means all documents and agreements other than Financing Documents that may be necessary and appropriate to issue, sell, and deliver the Bonds and to make the Loan, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(7) "District" means the District of Columbia.

ENROLLED ORIGINAL

(8) “Financing Documents” means the documents other than Closing Documents that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the Bonds and the making of the Loan, including any offering document, and any required supplements to any such documents.

(9) “Home Rule Act” means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(10) “Issuance Costs” means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the Bonds and the making of the Loan, including, but not limited to, underwriting, legal, accounting, rating agency, and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the Bonds and the making of the Loan, together with financing fees, costs, and expenses, including program fees and administrative fees charged by the District, fees paid to financial institutions and insurance companies, initial letter of credit fees (if any), and compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District.

(11) “Loan” means the District’s lending of proceeds from the sale, in one or more series, of the Bonds to the Borrower.

(12) “Project” means the financing, refinancing, or reimbursing of all or a portion of the Borrower’s costs of:

(A) Refinancing certain indebtedness of the Borrower incurred in connection with:

(i) The renovation of approximately 132,000 square feet of academic and office space located at 5800 8th Street, N.W., Washington, D.C. (also known as 5901 9th Street, N.W., Washington, D.C.) (Lot 0814, Square 2985) (“Campus”); and

(ii) The construction, installation, and equipping of approximately 29,600 square feet of additional academic and office space located at the Campus;

(B) Financing the construction, installation, and equipping of certain additional educational facilities of the Borrower located at the Campus, including but not limited to, the refurbishment of the Borrower’s athletic fields and the addition of lighting thereto, and the construction of exterior educational space of approximately 3,200 square feet or the construction of a green roof of approximately 3,200 square feet;

(C) Funding a debt service reserve fund with respect to the Bonds; and

(D) Paying allowable Issuance Costs.

Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may by resolution authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse

ENROLLED ORIGINAL

costs, and to assist in the financing, refinancing, or reimbursing of, the costs of undertakings in certain areas designated in section 490 and may effect the financing, refinancing, or reimbursement by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$22 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

(3) The Project is located in the District and will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District.

(4) The Project is an undertaking in the area of elementary, secondary and college and university facilities within the meaning of section 490 of the Home Rule Act.

(5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

Sec. 4. Bond authorization.

(a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing the costs of the Project by:

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$22 million; and

(2) The making of the Loan.

(b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the issuance, sale, and delivery of each series of the Bonds, the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements with the District, and maintaining official records of each bond transaction and assisting in the redemption, repurchase, and remarketing of the Bonds.

Sec. 5. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this resolution in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the Bonds of each series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificated or book-entry form;

(2) The principal amount of the Bonds to be issued and denominations of the Bonds;

ENROLLED ORIGINAL

- (3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;
 - (4) The date or dates of issuance, sale, and delivery of, and the payment of interest on the Bonds, and the maturity date or dates of the Bonds;
 - (5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;
 - (6) Provisions for the registration, transfer, and exchange of the Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;
 - (7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;
 - (8) The time and place of payment of the Bonds;
 - (9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds to ensure that the proceeds are properly applied to the Project and used to accomplish the purposes of the Home Rule Act and this resolution;
 - (10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed; and
 - (11) The terms and types of credit enhancement under which the Bonds may be secured.
- (b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District, do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.
- (c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary of the District of Columbia's manual or facsimile signature. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the Bonds.
- (d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds.
- (e) The Bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee to be selected by the Borrower subject to the approval of the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.
- (f) The Bonds may be issued at any time or from time to time in one or more issues and in one or more series.

Sec. 6. Sale of the Bonds.

- (a) The Bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interest of the District.

ENROLLED ORIGINAL

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the Bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the sale of the Bonds.

(c) The Mayor is authorized to deliver the executed and sealed Bonds, on behalf of the District, for authentication, and, after the Bonds have been authenticated, to deliver the Bonds to the original purchasers of the Bonds upon payment of the purchase price.

(d) The Bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the Bonds of such series and, if the interest on the Bonds is expected to be exempt from federal income taxation, the treatment of the interest on the Bonds for purposes of federal income taxation.

Sec. 7. Payment and security.

(a) The principal of, premium, if any, and interest on, the Bonds shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Loan, income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners, other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

(b) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the Bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

Sec. 8. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents that may be necessary or appropriate to issue, sell, and deliver the Bonds and to make the Loan to the Borrower.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Financing Documents and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

ENROLLED ORIGINAL

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the Bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 9. Authorized delegation of authority.

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this resolution.

Sec. 10. Limited liability.

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The Bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the Bonds.

(c) Nothing contained in the Bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than those listed for that purpose in section 7.

(d) The District shall have no liability for the payment of any Issuance Costs or for any transaction or event to be effected by the Financing Documents.

(e) All covenants, obligations, and agreements of the District contained in this resolution, the Bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

(f) No person, including, but not limited to, the Borrower and any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District or any of its elected or appointed officials, officers, employees or agents to perform any covenant, undertaking, or obligation under this resolution, the Bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 11. District officials.

(a) Except as otherwise provided in section 10(f), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or be subject to any personal liability by reason of the issuance, sale, or delivery of the

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Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the Bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the Bonds, the Financing Documents, or the Closing Documents.

Sec. 12. Maintenance of documents.

Copies of the specimen Bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 13. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the Bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

Sec. 14. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue the Bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations, the interest on which is excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds.

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing costs of the Project, does not provide any assurance that the Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall rely upon the District with respect to these matters.

Sec. 15. Expiration.

If any Bonds are not issued, sold, and delivered to the original purchaser within 3 years of the date of this resolution, the authorization provided in this resolution with respect to the issuance, sale, and delivery of the Bonds shall expire.

ENROLLED ORIGINAL

Sec. 16. Severability.

If any particular provision of this resolution, or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this resolution is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuing the Bonds, and the validity of the Bonds shall not be adversely affected.

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2635; 26 U.S.C. § 147(f)), and section 490(k) of the Home Rule Act, for the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds. This resolution approving the issuance of the Bonds for the Project has been adopted by the Council after a public hearing held at least 14 days after publication of notice in a newspaper of general circulation in the District.

Sec. 18. Transmittal.

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

Sec. 19. 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. 20. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-109

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To congratulate the Civic League of North Portal Estates on its 50th anniversary and to recognize the organization for its many contributions to the residents of Ward 4 and the District of Columbia.

WHEREAS, the Civic League of North Portal Estates (“CLNPE”) is a membership organization serving residents of North Portal Estates since its founding in 1967;

WHEREAS, the CLNPE held its first meeting on May 3, 1967 at the home of attorney King David;

WHEREAS, the mission of CLNPE is to promote health, education, and welfare of the residents of North Portal Estates, a Ward 4 community consisting of approximately 220 homes in the area bounded by 16th Street, North Portal Drive, East Beach Drive, and the District line;

WHEREAS, CLNPE cooperates with other civic associations and federations to bring matters to the attention of representatives of local and national governmental bodies;

WHEREAS, at its monthly meetings, the CLNPE maintains liaison with police, Ward 4, and the city leaders to discuss traffic and street safety, neighborhood security, street and curb maintenance, and zoning and environmental issues, among other issues;

WHEREAS, members of CLNPE have engaged in community service activities such as organizing events to beautify and restore the adjacent public lands in Rock Creek Park and planting trees through the Casey Trees program; and

WHEREAS, under the leadership of President Michael L. Benjamin, the Civic League of North Portal Estates continues to provide services and resources to the Ward 4 community and will celebrate its 50th anniversary on June 17, 2017 at the Northminster Presbyterian Church.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Civic League of North Portal Estates 50-Year Celebration Recognition Resolution of 2017”.

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia recognizes, honors, and celebrates the Civic League of North Portal Estates for 50 years of distinguished service in Ward 4 and the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-110

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To recognize and celebrate Theodore Roosevelt High School’s Class of 1967 on the occasion of their 50-year class reunion celebration.

WHEREAS, Theodore Roosevelt High School has been educating students and serving the District of Columbia since 1932;

WHEREAS, Theodore Roosevelt High School continues to educate and serve the Ward 4 community under the leadership of Principal Aqueelha James;

WHEREAS, the Class of 1967 is a remarkable group of scholars that embarked on their personal and professional journeys during a critical period of the Civil Rights Movement in the United States of America;

WHEREAS, the Class of 1967 built lifelong memories that would last beyond their days at Theodore Roosevelt High School;

WHEREAS, the Class of 1967 is comprised of distinguished alumni, including Army colonels, a Lieutenant Fire Chief, Vietnam and Desert Storm veterans, civic leaders, ministers, judges, doctors, and lawyers who contribute greatly to the Ward 4 community, the District of Columbia, and the United States;

WHEREAS, the Class of 1967 received a terrific education with the help of dedicated teachers and staff, including Floretta McKenzie, their guidance counselor from 9th through 12th grade, who would later serve as the Superintendent of District of Columbia Public Schools;

WHEREAS, the Alumni Association for the Class of 1967 has remained tight-knit thanks to the leadership of former President Rick Toye, current President James “Pete” Miller, and the many presidents who served before them; and

ENROLLED ORIGINAL

WHEREAS, Theodore Roosevelt High School’s Class of 1967 will be celebrating their 50th class reunion on June 17, 2017 at Martin’s Crosswinds.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Theodore Roosevelt High School Class of 1967 Recognition Resolution of 2017”.

Sec. 2. The Council of the District of Columbia honors Theodore Roosevelt High School’s Class of 1967 on the occasion of its 50-year reunion.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

22-111

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 16, 2017

To commemorate the 100th anniversary of the Washington Area New Automobile Dealers Association, and to recognize the association’s exceptional commitment to the District of Columbia.

WHEREAS, the Washington Area New Automobile Dealers Association (“WANADA”) was founded in 1917 and is celebrating its 100th anniversary;

WHEREAS, WANADA was first known as the Washington Automotive Trade Association and then the Automotive Trade Association National Capital Area before adopting its current name in 1996;

WHEREAS, WANADA was established contemporaneously with the National Automobile Dealers Association, and its initial focus was limited to auto dealers in Washington, D.C.;

WHEREAS, in subsequent years, WANADA’s sphere of influence expanded to include 11 counties in Maryland and Virginia;

WHEREAS, in 1932, WANADA hired Richard Murphy, a former District of Columbia auto dealer, as its first Chief Executive Officer;

WHEREAS, WANADA was led by 3 generations of the Murphy family, as Richard Murphy was succeeded by his son, Maurice, in the 1950s and by his grandson, Gerard, in 1983;

WHEREAS, WANADA’s current Chief Executive Officer, John O’Donnell, has served since July 2014, reporting to a 19-member Board of Directors and leading a staff of 17 in the District of Columbia;

WHEREAS, WANADA is a dynamic and evolving organization, which now includes the nonprofit association, WANADA Insurance Services, The Washington Auto Show, MobilityTalks International, the Automobile Dealer Education Institute, and the Community Support Foundation;

ENROLLED ORIGINAL

WHEREAS, WANADA has produced 75 auto shows since its founding and The Washington Auto Show has been designated one of the nation's top 5 auto shows by the International Organization of Motor Vehicle Manufactures;

WHEREAS, The Washington Auto Show is the District of Columbia's most-attended indoor annual event, drawing tens of thousands of attendees and producing millions in economic activity for the District of Columbia;

WHEREAS, a recent study by Dr. Stephen S. Fuller, Director of the Center for Regional Analysis at George Mason University, calculated that in 2013 The Washington Auto Show contributed over 11,000 room nights for District of Columbia hotels, more than \$18 million to the District of Columbia's economy, and \$2.3 million in new personal earnings for workers who reside in the District of Columbia;

WHEREAS, on the occasion of its centennial in 2017, WANADA launched a new annual conference, known as MobilityTalks International, bringing together industry, governmental, and global experts to discuss emerging technologies, including autonomous technologies and other innovative mobility concepts;

WHEREAS, WANADA's leadership, including members of its Board of Directors, travel the world promoting The Washington Auto Show, MobilityTalks International, and the District of Columbia as a whole;

WHEREAS, WANADA served as a sponsor of the District of Columbia's "We DC House" at the SXSW Conference in Austin, Texas, and organized a successful panel presentation highlighting the District of Columbia's leadership on mobility and technology;

WHEREAS, WANADA has a rich legacy of supporting many important community causes, including the Leukemia & Lymphoma Society, the Greater Washington Boys & Girls Clubs, the Washington Regional Alcohol Program for sober driving, the Greater Washington (Capitol Hill) Soap Box Derby, the Greater Washington Region Clean Cities coalition, and the American Experience Foundation; and

WHEREAS, WANADA's first century of extraordinary dedication to its members and the District of Columbia represents the finest examples of service and civic membership.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "100th Anniversary of the Washington Area New Automobile Dealers Association Recognition Resolution of 2017".

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia celebrates the Washington Area New Automobile Dealers Association on the occasion of its centennial anniversary and recognizes and honors the association for its enduring commitment to the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

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**

B22-302 Large Employer Paid-Leave Compensation Act of 2017

Intro. 5-30-17 by Councilmember Evans and referred to the Committee of the Whole

B22-312 D.C. Voting Rights Notification Act of 2017

Intro. 6-6-17 by Councilmembers Evans, Nadeau, Grosso, Cheh, Todd, R. White, Bonds, McDuffie, Gray, and Silverman and referred to the Committee on Judiciary and Public Safety

B22-313 Healthy Students Amendment Act of 2017

Intro. 6-6-17 by Councilmembers Cheh and Allen and referred to the Committee on Education with comments from the Committee on Transportation and the Environment

B22-314 Elephant Ivory and Rhinoceros Horn Trafficking Prohibition Act of 2017

Intro. 6-6-17 by Councilmembers Cheh, Evans, and Bonds and referred to the Committee on Judiciary and Public Safety

- B22-315 TOPA Accessory Dwelling Unit Amendment Act of 2017
- Intro. 6-6-17 by Councilmembers Bonds, Gray, McDuffie, Todd, Evans, Grosso, and Chairman Mendelson and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-316 Housing Production Trust Fund Advanced Solicitations Amendment Act of 2017
- Intro. 6-6-17 by Councilmembers Silverman, R. White, Grosso, McDuffie, Bonds, Nadeau, Allen, and Gray and referred to the Committee on Housing and Neighborhood Revitalization
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- B22-317 Notification of Vacant and Blighted Classification Amendment Act of 2017
- Intro. 6-6-17 by Councilmembers Allen, Silverman, and R. White and referred to the Committee of the Whole
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- B22-318 Office on African American Affairs Establishment Act of 2017
- Intro. 6-6-17 by Councilmembers Todd, R. White, Bonds, McDuffie, Cheh, Gray, T. White, Grosso, Nadeau, Allen, Evans, and Chairman Mendelson and referred to the Committee on Government Operations
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- B22-319 Ward 4 Full-Service Grocery Store Amendment Act of 2017
- Intro. 6-6-17 by Councilmembers Todd and Bonds and referred to the Committee on Business and Economic Development
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- B22-320 Senior Citizen Tax Cap Transfer Act of 2017
- Intro. 6-6-17 by Councilmembers Gray, T. White, R. White, Todd, Evans, McDuffie, Bonds, and Nadeau and referred to the Committee on Finance and Revenue
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B22-321 Pension Exclusion Restoration and Expansion Act of 2017
Intro. 6-6-17 by Councilmembers Gray, T. White, R. White, Evans, Bonds,
Todd, and Nadeau and referred to the Committee on Finance and Revenue

PROPOSED RESOLUTIONS

PR22-353 Board of Professional Counseling Vanessa Ruffin-Colbert Confirmation
Resolution of 2017
Intro. 5-31-17 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Health

PR22-356 Sense of the Council Regarding the Pairs Agreement on Climate Change
Resolution of 2017
Intro. 6-6-17 by Councilmembers Cheh, Evans, Bonds, Allen, McDuffie,
Nadeau, T. White, R. White, Todd, Grosso, Silverman, Gray, and Chairman
Mendelson and referred to the Committee on Transportation and the
Environment

PR22-357 Sense of the Council Supporting Passage of the Equality Act Resolution of
2017
Intro. 6-6-17 by Chairman Mendelson and Councilmembers Bonds, Evans,
Grosso, Nadeau, Todd, T. White, Allen, Cheh, Gray, McDuffie, Silverman, and
R. White and referred to the Committee on Judiciary and Public Safety

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

REVISED

NOTICE OF PUBLIC HEARING ON

**B22-013, the Bicycle and Pedestrian Safety Technical Amendment Act of 2017;
B22-019, the Personal Delivery Device Act of 2017; and
B22-096, the Electric Vehicle Public Infrastructures Expansion Act of 2017**

Wednesday, June 21, 2017 at 1:00 p.m.
in Room 500 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Wednesday, June 21, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B22-013, the Bicycle and Pedestrian Safety Technical Amendment Act of 2017; B22-019, the Personal Delivery Device Act of 2017; and B22-096, the Electric Vehicle Public Infrastructures Expansion Act of 2017. The hearing will begin at 1:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B22-013, the Bicycle and Pedestrian Safety Technical Amendment Act of 2017, would clarify which accident and traffic data the Mayor shall report to the Council and when an all-terrain vehicle or dirt bike may occupy public space in the District. The bill also specifies that the presence of workers is unnecessary for a moving violation to double. B22-019, the Personal Delivery Device Act of 2017, would authorize the use of electronically powered devices for transportation and related services (personal delivery devices) in the District on sidewalks and crosswalks, except within the central business district. Finally, B22-096, the Electric Vehicle Public Infrastructures Expansion Act of 2017, would require the installation of at least 15 publically-available electric vehicle charging stations in the District by January 1, 2019.

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 eight 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. Benjamin at the following address: Committee on Transportation and the Environment, John

A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements 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 July 5, 2017.

This notice has been revised to remove B22-0125, the Small Business Parking Permit Act of 2017, from the hearing agenda.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

Revised

COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION

ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE

on

Bill 22-100, "Preservation of Affordable Rent Control Housing Amendment Act of 2017"

and

Bill 22-025, "Rental Housing Affordability Stabilization Amendment Act of 2017"

on

Wednesday, June 28, 2017, at 10:00 AM
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Wednesday, June 28, 2017, Councilmember Anita Bonds, Chairperson of the Committee on Housing & Neighborhood Revitalization, will hold a public hearing on Bill 22-025, "Rental Housing Affordability Stabilization Amendment Act of 2017" and Bill 22-100, "Preservation of Affordable Rent Control Housing Amendment Act of 2017". The hearing will take place in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 11:00 a.m. **This notice is being revised to add B22-0100 to the agenda that was previously scheduled for a hearing on June 22, 2017.**

The purpose of B22-0100 is to prohibit agreements between a tenant and a housing provider that inequitably treats current and future tenants. B22-0100 would bar agreements that would result in other current or future tenants paying a rent adjustment, rent surcharge, or change in related services and facilities that would be greater than the amount paid by the tenant or members of the tenant association entering the agreement. The goal of the legislation is to prevent affordable rent control housing from permanently becoming market rate housing.

The purpose of B22-0025 is to preserve rent control housing affordability by limiting annual rent increases to the Consumer Price Index, and also by limiting vacancy increases to 5% of the rent charged.

Those who wish to testify are requested to telephone the Committee on Housing and Neighborhood Revitalization, at (202) 724-8198, or email omontiel@dccouncil.us, and provide

their name, address, telephone number, organizational affiliation and title (if any), by close of business on June 27, 2017. Persons wishing to testify are encouraged to **submit 15 copies of written testimony**. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Neighborhood Revitalization, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004. The record will close at 5:00 p.m. on July 12, 2017.

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

CANCELLATION NOTICE

**COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION**

ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE

on

Bill 22-100, "Preservation of Affordable Rent Control Housing Amendment Act of 2017"

on

Thursday, June 22, 2017, at 11:00 AM
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Anita Bonds, Chairperson of the Committee on Housing and Neighborhood Revitalization, would like to cancel the public hearing on Bill 22-100, "Preservation of Affordable Rent Control Housing Amendment Act of 2017."

The purpose of B22-0100 is to prohibit agreements between a tenant and a housing provider that inequitably treats current and future tenants. B22-0100 would bar agreements that would result in other current or future tenants paying a rent adjustment, rent surcharge, or change in related services and facilities that would be greater than the amount paid by the tenant or members of the tenant association entering the agreement. The goal of the legislation is to prevent affordable rent control housing from permanently becoming market rate housing.

Due to a scheduling conflict, the hearing will be rescheduled to a later date.

**Council of the District of Columbia
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**

ANNOUNCES A PUBLIC HEARING ON

**B22-0148 – THE “JACKSON SCHOOL LEASE RENEWAL
AUTHORIZATION ACT OF 2017”**

**B22-0279 – THE “CAPITOL RIVERFRONT BUSINESS IMPROVEMENT DISTRICT
AMENDMENT ACT OF 2017”**

**Wednesday, June 28, 2017, 10:00 a.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Wednesday, June 28, 2017, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public hearing on Bill 22-0148, the “Jackson School Lease Renewal Authorization Act of 2017” and Bill 22-0279, the “Capitol Riverfront Business Improvement District Amendment Act of 2017”. The hearing will be held in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10:00 a.m.

The stated purpose of B22-0148 is to authorize the Mayor to renew the lease between the District and the Jackson Arts Center for the property located at Lot 840, Square 1282.

The stated purpose of B22-0279 is to amend the Business Improvement Districts Act of 1996 to revise the rates of the assessments in the Capitol Riverfront Business Improvement District.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact Brandon Wallace at (202) 727-6683, or via e-mail at bwallace@dccouncil.us, and provide their name, telephone number, organizational affiliation, and title (if any) **by close of business, June 26, 2017**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. However, the Chairperson reserves the right to adjust the time allocations. Witnesses should bring **15 single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically to bwallace@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on July 3, 2017.**

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

NOTICE OF PUBLIC HEARING ON

**B22-257, the District of Columbia Green Finance Authority Act of 2017; and
PR22-261, the Sense of the Council Reaffirming the District's Commitment to
Climate Change Action Resolution of 2017**

Friday, July 14, 2017 at 11:00 a.m.
in Room 500 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Friday, July 14, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B22-257, the District of Columbia Green Finance Authority Act of 2017, and PR22-261, the Sense of the Council Reaffirming the District's Commitment to Climate Change Action Resolution of 2017. The hearing will begin at 11:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B22-257, the District of Columbia Green Finance Authority Act of 2017, would establish a green bank as an instrumentality of the District government to provide public investment in and assistance with financing of projects supporting energy efficiency, clean energy, and stormwater management. The bill also establishes a fund to be used by the green bank, authorizes the bank to issue bonds, and establishes a board of directors to manage the bank. PR22-261, the Sense of the Council Reaffirming the District's Commitment to Climate Change Action Resolution of 2017, would reaffirm the District's commitment to continued and expanding its efforts to reduce its contribution to climate change and its effects on District residents.

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 eight 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. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements 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 July 28, 2017.

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

COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND NEIGHBORHOOD REVITALIZATION

ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE

on

Bill 22-0315, "TOPA Accessory Dwelling Unit Amendment Act of 2017"

on

Thursday, July 13, 2017, at 11:00 AM
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Thursday, July 13, 2017, Councilmember Anita Bonds, Chairperson of the Committee on Housing & Neighborhood Revitalization, will hold a public hearing on Bill 22-0315, "TOPA Accessory Dwelling Unit Amendment Act of 2017". The hearing will take place in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 11:00 a.m.

The purpose of this bill is to exempt owner-occupied, single-family homes with accessory dwelling units from TOPA, under the following very narrow circumstances: 1. there must be two dwelling units in the housing accommodation; 2. one dwelling unit must contain at least 2/3 of the total square footage of the housing accommodation; 3. the larger dwelling unit must be occupied by the owner; 4. the smaller dwelling unit must be a basement, carriage house, converted garage, or similar such dwelling unit; 5. the accessory dwelling unit must have all required building and occupancy permits; and 6. the housing accommodation must be identified at the District of Columbia Office of the Recorder of Deeds with a single square, suffix, and lot.

Those who wish to testify are requested to telephone the Committee on Housing and Neighborhood Revitalization, at (202) 724-8198, or email omontiel@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any), by close of business on July 12, 2017. Persons wishing to testify are encouraged to **submit 15 copies of written testimony**. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Neighborhood Revitalization, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004. The record will close at 5:00 p.m. on July 27, 2017.

**Council of the District of Columbia
Committee on Health
Notice of Public Oversight Roundtable**

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

**COUNCILMEMBER VINCENT C. GRAY, CHAIR
COMMITTEE ON HEALTH**

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

**“THE DEPARTMENT OF BEHAVIORAL HEALTH’S REALIGNMENT PLAN AND OPIOID
STRATEGIES”**

**WEDNESDAY, JUNE 14, 2017
12:00 P.M., ROOM 500, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004**

Councilmember Vincent C. Gray, Chairman of the Committee on Health, announces a public oversight roundtable on the “The Department of Behavioral Health’s Realignment Plan and Opioid Strategies”, to be held on Wednesday, June 14, 2017 at 12:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

The Department of Behavioral Health has announced a realignment within the agency. This hearing will provide the public with the opportunity to opine on the changes proposed by the Department. Additionally, District residents receiving methadone for substance use disorder treatment have alerted the Council that they have been told by clinic operators that local payments were not available for substance use disorder treatment. As a result, a number of residents were forced to leave the Department of Behavioral Health’s medication assisted treatment program. The causes and scope of this situation will be explored during this hearing.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or mcameron@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization, preferably by 5:00 p.m. on Monday, June 12, 2017. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to mcameron@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 113, Washington D.C. 20004.

**Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE TO CONSIDER

THE DISTRICT'S CRIME PREVENTION STRATEGIES FOR SUMMER 2017

**Monday, June 26, 2017, 10:00 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Monday, June 26, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public oversight roundtable on the District's Crime Prevention Strategies for Summer 2017. The roundtable will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10:00 a.m., and will review District agencies' summer crime prevention strategies, preparedness, and community engagement, including by agencies outside the traditional public safety cluster.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the roundtable should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Thursday, June 22**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on July 7.**

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

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

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

ANNOUNCES A PUBLIC ROUNDTABLE ON:

PR 22-322, the “St. John’s College High School Revenue Bonds Project Approval Resolution of 2017”

PR 22-329, the “National Urban League, Inc., Revenue Bonds Project Approval Resolution of 2017”

PR22-230, the “Washington Convention and Sports Authority Board of Directors John Boardman Confirmation Resolution of 2017”

PR 22-334, the “Washington Convention and Sports Authority Board of Directors Cheryle Doggett Confirmation Resolution of 2017”

PR 22-330, the “Commission on the Arts and Humanities Darrin Glymph Confirmation Resolution of 2017”

PR 22-331, the “Commission on the Arts and Humanities Kay Kendall Confirmation Resolution of 2017”

PR 22-332, the “Commission on the Arts and Humanities Susan Clampitt Confirmation Resolution of 2017”

PR 22-333, the “Commission on the Arts and Humanities Stacie Lee Banks Confirmation Resolution of 2017”

PR 22-335, the “Commission on the Arts and Humanities Miles Gray Confirmation Resolution of 2017”

PR 22-336, the “Commission on the Arts and Humanities Mary Ann Miller Confirmation Resolution of 2017”

PR 22-337, the “Commission on the Arts and Humanities José Alberto Uclés Confirmation Resolution of 2017”

PR 22-338, the “Commission on the Arts and Humanities Maria Hall Rooney Confirmation Resolution of 2017”

PR 22-339, the “Commission on the Arts and Humanities Josef Palermo Confirmation Resolution of 2017”

PR 22-340, the “Commission on the Arts and Humanities Gretchen Wharton Confirmation Resolution of 2017”

Wednesday, June 14, 2017

10:00 a.m.

Room 120 - John A. Wilson Building

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

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, June 14, 2017 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 22-322, the “St. John’s College High School Revenue Bonds Project Approval Resolution of 2017”, would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$26.5 million of District of Columbia revenue bonds to assist St. John’s college High School in the financing, refinancing, or reimbursing of costs incurred by St. John’s College High School in connection with refunding of existing debt and financing new development and construction of the athletic facilities authorized project pursuant to section 490 of the District of Columbia Home Rule Act. This project is located at 2607 Military Road, NW in Ward 4.

PR 22-329, the “National Urban League, Inc., Revenue Bonds Project Approval Resolution of 2017”, would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$4.5 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist National Urban League, Inc., in the financing, refinancing or reimbursing of costs associated with an authorized project pursuant to

section 490 of the District of Columbia Home Rule Act. This project is located at 1805 7th Street, NW in Ward 1.

PR 22-230, the “Washington Convention and Sports Authority Board of Directors John Boardman Confirmation Resolution of 2017” would confirm the reappointment Mr. John Boardman as an organized labor representative member of the Washington Conventions Sports Authority Board of Directors.

PR 22-334, the “Washington Convention and Sports Authority Board of Directors Cheryle Doggett Confirmation Resolution of 2017” would confirm the reappointment of Ms. Cheryle Doggett as a public member of the Washington Convention and Sports Authority Board of Directors.

PR 22-330, the “Commission on the Arts and Humanities Darrin Glymph Confirmation Resolution of 2017” would confirm the reappointment of Mr. Darrin Glymph as a member of the Commission of the Arts and Humanities.

PR 22-331, the “Commission on the Arts and Humanities Kay Kendall Confirmation Resolution of 2017” would confirm the reappointment of Ms. Kay Kendall as a member of the Commission on the Arts and Humanities.

PR 22-332, the “Commission on the Arts and Humanities Susan Clampitt Confirmation Resolution of 2017” would confirm the reappointment of Ms. Susan Clampitt as a member of the Commission on the Arts and Humanities.

PR 22-333, the “Commission on the Arts and Humanities Stacie Lee Banks Confirmation Resolution of 2017” would confirm the reappointment of Ms. Stacie Lee Banks as a member of the Commission on the Arts and Humanities.

PR 22-335, the “Commission on the Arts and Humanities Miles Gray Confirmation Resolution of 2017” would confirm the appointment of Mr. Miles Gray as a member of the Commission on the Arts and Humanities.

PR 22-336, the “Commission on the Arts and Humanities Mary Ann Miller Confirmation Resolution of 2017” would confirm the reappointment of Ms. Mary Ann Miller as a member of the Commission of Arts and Humanities.

PR 22-337, the “Commission on the Arts and Humanities José Alberto Uclés Confirmation Resolution of 2017” would confirm the reappointment of Mr. José Alberto Uclés Confirmation Resolution of the Commission on the Arts and Humanities.

PR 22-338, the “Commission on the Arts and Humanities Maria Hall Rooney Confirmation Resolution of 2017” would confirm the reappointment as of Ms. Maria Hall Rooney member of the Commission on the Arts and Humanities.

PR 22-339, the “Commission on the Arts and Humanities Josef Palermo Confirmation Resolution of 2017” would confirm the reappointment of Mr. Josef Palermo as a member of the Commission on the Arts and Humanities.

PR 22-340, the “Commission on the Arts and Humanities Gretchen Wharton Confirmation Resolution of 2017” would confirm the reappointment of Ms. Gretchen Wharton as a member of the Commission on the Arts and the Humanities.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, June 13, 2017. Witnesses should bring 15 copies of their written testimony to the roundtable. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B22-305, Medical Marijuana Certified Business Enterprise Preference Temporary Amendment Act of 2017 was adopted on first reading on June 6, 2017. This temporary measure was considered in accordance with Council Rule 413. A final reading on this measure will occur on June 13, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
The Wilson Building

NOTICE OF CONTRACT DISAPPROVAL RESOLUTION

The Council of the District of Columbia gives notice that the resolution listed below to disapprove CA 22-139, proposed contract with Amerigroup District of Columbia, Inc. in the amount of \$1,010,514,069.00 to provide healthcare and pharmacy services for its Managed Care Program was filed in the Office of the Secretary on May 23, 2017.

A copy of the approval resolution or the proposed contract is available in the Council's Legislative Services, Room 10, John A. Wilson Building. Telephone: 724-8050. Comments on the proposed contract can be addressed to the Secretary to the Council, Room 5.

PR 22-348: Managed Care Contract Awards Disapproval Resolution of 2017

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

Placard Posting Date: June 9, 2017
Protest Petition Deadline: July 24, 2017
Roll Call Hearing Date: August 7, 2017
Protest Hearing Date: October 4, 2017

License No.: ABRA-106511
Licensee: Effigy, LLC
Trade Name: Effigy
License Class: Retailer's Class "C" Nightclub
Address: 1720 I Street, N.W.
Contact: Emanuel N. Mpras, Esq.: (703) 642-9042

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ANC 2B

SMD 2B06

Notice is hereby given that this licensee has requested to transfer the license to a new location under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 7, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **October 4, 2017 at 4:30 p.m.**

NATURE OF OPERATION

Licensee requests to transfer license from Safekeeping (former address 2840 Alabama Avenue, S.E.) to a new location at 1720 I Street, N.W. Maximum Number of Seats 350, and Total Occupancy Load of 500. Nude Performances permitted.

HOURS OF OPERATION

Sunday through Thursday from 8 am – 2:30 am, Friday through Saturday from 8 am – 3:30 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

Sunday through Thursday 8 am – 2 am, Friday through Saturday 8 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: June 9, 2017
Protest Petition Deadline: July 24, 2017
Roll Call Hearing Date: August 7, 2017

License No.: ABRA-100236
Licensee: A Little Mouthful, LLC
Trade Name: Red, White and Basil
License Class: Retailer’s Class “D” Restaurant
Address: 1781 Florida Avenue, N.W.
Contact: Christopher Lynch: (917) 620-9330

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 7, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Class Change from a Retailer Class “D” Restaurant to a Retailer Class “C” Restaurant.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION ON PREMISE

Sunday through Saturday 11 am – 12 am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION IN THE OUTDOOR SIDEWALK CAFÉ

Sunday 11 am – 12 am, Monday through Friday 11 am – 11 pm, Saturday 11 am – 12 am

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

Placard Posting Date: June 9, 2017
Protest Petition Deadline: July 24, 2017
Roll Call Hearing Date: August 7, 2017

License No.: ABRA-071793
Licensee: Partners At 723 8th St SE, LLC
Trade Name: The Ugly Mug Dining Saloon
License Class: Retailer's Class "C" Restaurant
Address: 723 8th Street, S.E.
Contact: Gaynor Jablonski: (202) 547-8459

WARD 6

ANC 6B

SMD 6B03

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 7, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Request to Add Brew Pub Endorsement to existing CR License.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (PREMISES)

Sunday 12 pm - 1:30 am
Monday-Thursday 11 am - 1:30 am
Friday-Saturday 11 am - 3 am

CURRENT HOURS OF OPERATION (SIDEWALK CAFÉ)

Sunday 12 pm - 12:30 am
Monday-Saturday 11:30 am - 12:30 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SIDEWALK CAFÉ)

Sunday 12 pm - 12 am
Monday-Saturday 11:30 am - 12 am

CURRENT HOURS OF LIVE ENTERTAINMENT

Sunday-Thursday 6 pm - 1:30 am
Friday-Saturday 6 pm - 3 am

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

Placard Posting Date: June 9, 2017
 Protest Petition Deadline: July 24, 2017
 Roll Call Hearing Date: August 7, 2017
 Protest Hearing Date: October 4, 2017

License No.: ABRA-105823
 Licensee: The V.I.P. Room, LLC
 Trade Name: The V.I.P. Room
 License Class: Retailer's Class "C" Tavern
 Address: 6201 3rd Street, N.W.
 Contact: Abner Sampson: (202) 368-4661

WARD 4

ANC 4B

SMD 4B06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 7, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petition and/or request to appear before the Board must be filed on or before the Petition Date. The **Protest Hearing date** is scheduled on **October 4, 2017 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Tavern allowing individuals to bring alcoholic beverages for special events pursuant to BZA Order #12799 issued on 1/29/1979. No alcoholic beverages sales are permitted on the premises. Total Occupancy Load of 150. An endorsement for an outdoor Summer Garden with an occupancy load of 100 seats. An Entertainment Endorsement is requested for inside and outside to include Dancing and a Cover Charge.

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

Sunday through Saturday 8:00 am – 2:00 am

HOURS OF LIVE ENTERTAINMENT INDOORS

Sunday through Saturday 8:00 am – 2:00 am

HOURS OF LIVE ENTERTAINMENT FOR SUMMER GARDEN OUTDOORS

Sunday through Saturday 8:00 am – 12:00 am

DEPARTMENT OF HEALTH
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
NOTICE OF SECOND PUBLIC HEARING

Pursuant to D.C. Official Code 44-404 (c) (1), the D.C. State Health Planning and Development Agency (SHPDA) will hold a second public hearing on the proposed Health Systems Plan (HSP) for the District of Columbia. The purpose of the hearing is to receive comments and suggestions from all interested/affected parties and members of the general public. The hearing will be held for the second time in order to give an opportunity to the members of the public who were not able to attend the first hearing.

The hearing will be held on Thursday, June 15, 2017, at 6:00 p.m., at 899 North Capitol Street, N.E., 6th Floor, Room 6002, Washington, D.C. 20002.

Testimony from all interested/affected persons will be received at the hearing. Comments may be submitted in writing before the hearing, or they may be presented at the hearing orally and/or in writing. A copy of the draft HSP is available at the SHPDA or online at doh.dc.gov/service/certificate-need.

Persons who wish to testify should contact the SHPDA by Wednesday, June 14, 2017 by 4:45 p.m. at (202) 442-5875. Each person testifying will be allowed up to 5 minutes.

**DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
PUBLIC HEARING NOTICE
DISTRICT OF COLUMBIA'S
FISCAL YEAR 2018 ANNUAL ACTION PLAN**

Polly Donaldson, Director, DC Department of Housing and Community Development (DHCD or the Department) will conduct a public hearing on Tuesday, June 27, 2017, to discuss the District's Fiscal Year (FY) 2018 performance in its use of funds received from the U.S. Department of Housing and Urban Development (HUD). The hearing will help form a basis for developing the District's draft "*Fiscal Year 2018 Action Plan*".

DHCD will receive approximately \$33,000,000 from HUD in Fiscal Year 2018 through four programs: the National Housing Trust Fund (NHTF); the Community Development Block Grant (CDBG) Program; the HOME Investment Partnerships Program (HOME); the Emergency Shelter Grant (ESG) Program; and the Housing for Persons with AIDS (HOPWA) Program. DHCD administers the CDBG and HOME funds directly; the Department entered into an agreement with the DC Department of Human Services (DHS) for the Prevention of Homelessness to administer the ESG grant; and transferred the HOPWA grant to the DC Department of Health (DOH).

Residents and stakeholders are strongly encouraged to come out and participate in the development of policies and programs in the following areas: 1) affordable housing; 2) special needs housing; 3) homelessness; 4) homeownership; and, 5) community development and public service activities. The Department is also interested in receiving community feedback on innovative strategies to enhance community participation during this planning process.

Public comment period for the plan is from June 12 to July 10, 2017. During the 2017 DHCD DC Housing Expo on June 24, 2017 at the Walter E. Washington Convention Center we will have a designated area for the public to voice concerns, leave written comments and/or ask questions to DHCD staff about the process of drafting and implementing the Action Plan.

SCHEDULED PUBLIC HEARING:

Tuesday June 27, 2017 ~ 6:30 pm
1800 Martin Luther King Jr, Avenue, SE, 1st Floor Conference Room

District of Columbia residents who would like to present oral testimony are encouraged to register in advance either by e-mail at DHCD.EVENTS@dc.gov or by calling Tilla Hall 202.442.7239. Please provide your name, address, telephone number, and organization affiliation, if any.

Telecommunications Device for the Deaf (TDD) relay service is available by calling (800) 201-7165. A sign language interpreter will be provided upon request by calling Tilla Hall at (202) 442-7239 five days prior to the hearing date.

Residents who require language interpretation should specify which language (Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Deadline for requesting services of an interpreter is five days prior to the hearing date. Bilingual staff will provide services on an availability basis to walk-ins without registration.

Written statements may be submitted for the record at the hearing, or until close of business, Monday, July 10, 2017. Mail written statements to: Polly Donaldson, Director, DHCD, 1800 Martin Luther King Jr., Avenue, SE, Washington, DC 20020.

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JULY 26, 2017
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

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

TIME: 9:30 A.M.

WARD FIVE

THIS CASE WAS POSTPONED FROM JUNE 14, 2017 TO THE HEARING OF JULY 26, 2017 AT THE APPLICANT'S REQUEST:

19508 **Application of John Tekeste**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the lot occupancy requirements under Subtitle G § 1200.4, and pursuant to Subtitle X, Chapter 10, for a variance from the FAR requirements of Subtitle G § 402.1, to allow a mixed-use building in the MU-3 Zone at premises 3418 18th Street N.E. (Square 4146, Lot 39).
ANC 5B

WARD ONE

19517 **Application of James Wright and Sin Wah Li**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 320.2, and pursuant to Subtitle X, Chapter 10, for an area variance from the minimum land area requirements of U § 320.2(d), to permit the use of an existing three-story attached dwelling as a three-unit apartment house in the RF-1 zone at premises 943 S Street N.W. (Square 362, Lot 113).
ANC 1B

WARD SEVEN

19532 **Application of Avenue Property, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the rear yard requirements of Subtitle E § 205, to construct a three-story, rear addition to an existing two-story, four-unit apartment house in the RF-1 Zone at premises 2025 E Street N.E. (Square 4550, Lot 98).
ANC 7D

WARD TWO

19533 **Application of Richard Hall**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 1206.2, to construct a rear deck on an existing one-family dwelling in the R-20 Zone at premises 1959 39th Street N.W. (Square 1310, Lot 77).
ANC 2E

BZA PUBLIC HEARING NOTICE

JULY 26, 2017

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WARD TWO

19534 **Application of Rock Creek Property Group, LLC**, pursuant to 11 DCMR
ANC 2F Subtitle X, Chapter 9, for a special exceptions under Subtitle G § 1200.4 from the
side yard requirements of Subtitle G § 306.1, and from the use requirements of
Subtitle U § 504.1(g) to construct an addition to an existing building for office use
in the MU-2 Zone at premises 5 Thomas Circle, N.W. (Square 212, Lot 852)

WARD SIX

19536 **Application of Brian and Carolyn Wise**, pursuant to 11 DCMR Subtitle X,
ANC 6B Chapter 9, for special exceptions under Subtitle E § 5204 from the rear yard
requirements of Subtitle E § 5104 and the side yard requirements of Subtitle E §
5105, and pursuant to Subtitle X, Chapter 10, for variances from the alley
centerline setback requirements of Subtitle E § 5106 and the pervious surface
requirements of Subtitle E § 5107, to construct a two-story, two-unit apartment
house on an alley lot in the RF-3 Zone at premises 205 3rd Street S.E. (Square
762, Lot 828).

WARD FIVE

19539 **Application of 74 R Street LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10,
ANC 5E for variances from the lot occupancy requirements of Subtitle E § 304.1 and the
nonconforming structures requirements of Subtitle C § 202.2, to allow an addition
to and convert an existing one-family dwelling into a two-unit flat in the RF-1 at
premises 74 R Street N.W. (Square 3101, Lot 57).

WARD TWO

19540 **Application of Starbucks Corporation and PVS International, LLC**, pursuant
ANC 2E to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U §
513.1(n) from the use requirements of Subtitle U § 512.1, to permit a 45-seat
prepared food shop in the MU-4 Zone at premises 3347 M Street N.W. (Square
1205, Lot 810).

WARD FOUR

19542 **Application of Bluebell Massage, LLC**, pursuant to 11 DCMR Subtitle X,
ANC 4C Chapter 9, for a special exception under Subtitle U § 513.1(e), to permit a
massage establishment in the MU-4 Zone at premises 3705 14th Street N.W., Unit
2. (Square 2826, Lot 12).

PLEASE NOTE:

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

BZA PUBLIC HEARING NOTICE

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

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

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

Do you need assistance to participate?

Amharic

ለሙከራ ቦርድ ላይ ለማገልገል ለማድረግ ይደረግብዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ሙከራ ተርጓሚ) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሙከራ በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

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

French

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

Korean

참여하시는데 도움이 필요하세요?

BZA PUBLIC HEARING NOTICE

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

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

Quý vị có cần trợ giúp gì để tham gia không?

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

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

**FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
ONE BOARD SEAT VACANT
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

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

TIME AND PLACE: **Thursday, July 27, 2017 @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 14-07B (GG Union LP, 1250 4th St (Edens), & 4th St., NE, LLC – 2nd-Stage PUD @ Square 3587, Lots 830-832 & 7014-7023 – 1300 4th Street, N.E.)

THIS CASE IS OF INTEREST TO ANC 5D

On November 14, 2016, the Office of Zoning received an application from GG Union LP, 1250 4th St (Edens), LLC, and 4th St., NE, LLC (together, “Applicant”). The Applicant is requesting review and approval of a second-stage planned unit development (“PUD”) pursuant to Subtitle X, Chapter 3 and Subtitle Z, Chapter 3 of the Administrative Regulations¹ contained in Title 11 DCMR for the construction of a multi-family residential building with ground floor retail.

The property that is the subject of this application consists of approximately 16,200 square feet of land area and comprises a portion of the record lot on which the first-stage PUD and a consolidated PUD were approved. The subject property is generally bounded by 4th Street, N.E. to the east, a private extension of Neal Place, N.E. and a mixed-use residential and retail building (“Consolidated PUD”) to the south, a 48-foot wide private alley to the west, and a one-story retail building to the north. The subject property was rezoned from the C-M-1 to the C-3-C Zone District as part of the first-stage PUD order in Z.C. Case No. 14-07.

This application proposes to develop the property with a mixed-use multi-family and retail building with underground parking. The building will measure approximately 110 feet in height and consist of approximately 153,249 square feet of gross floor area, of which approximately 12,000 square feet of gross floor area will be dedicated to retail use and 141,249 square feet of gross floor area dedicated to residential use. The building will have a floor area ratio (“FAR”) of approximately 2.32 (based on the record lot area) and will include 132-138 residential units, 115-135 automobile parking spaces, and 61-66 bicycle parking spaces.²

On January 23, 2017, the Office of Planning filed a report recommending that the Zoning Commission set the application down for public hearing with requests for additional information. On January 30, 2017, at a regular public meeting, the Zoning Commission set the application down for public hearing and requested additional information about the project. The Applicant filed a pre-hearing statement on May 16, 2017.

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

¹ The Administrative Regulations consist of Titles A, X, Y, and Z. See 11-A DCMR § 200.3.

² The record lot of which this project is a part will contain a total density of approximately 8.0 FAR.

How to participate as a witness.

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

How to participate as a party.

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

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

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

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

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

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

- | | | |
|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
| 2. | Parties in opposition | 60 minutes collectively |

- 3. Organizations 5 minutes each
- 4. Individuals 3 minutes each

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

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

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

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

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

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

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

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

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ለመከተሉ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡ በነጻ ነው።

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

TIME AND PLACE: **Thursday, July 20, 2017 @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. CASE NO. 17-06 (Capitol Vista Community Partners and the District of Columbia – Consolidated PUD & Related Map Amendment @ Square 563N, Lots 2-6 and 800-805)

THIS CASE IS OF INTEREST TO ANC 6E

On March 27, 2017, the Office of Zoning received an application from Capitol Vista Community Partners and the District of Columbia (together, the "Applicant") for approval of a consolidated planned unit development ("PUD") and a Zoning Map amendment from the MU-4 zone to the D-4-R zone for the above-referenced property.

The property that is the subject of this application consists of Lots 2-6 and 800-805 in Square 563N in northwest Washington, D.C. ("Subject Property"). The Subject Property has a land area of approximately 9,648 square feet and is bounded by Reservation 194 to the north, New Jersey Avenue, N.W. to the east, H Street, N.W. to the south, and 2nd Street, N.W. to the west.

The Office of Planning provided its report on May 12, 2017, and the case was set down for a public hearing on May 22, 2017. The Applicant provided its prehearing statement on May 23, 2017.

The Applicant is proposing to develop the Subject Property with approximately 109,590 square feet of gross floor area (11.35 floor area ratio ("FAR")) and the overall lot occupancy will be approximately 97.6%. The building on the Subject Property will have a maximum height of 130 feet. No parking spaces will be provided on the Subject Property. All of the new residential units will be set aside as affordable units, with 16 units dedicated to families earning up to 30% of the area median income ("AMI"), 16 units dedicated to families earning up to 50% AMI, and 72 units dedicated to families earning up to 60% AMI or below.

This public hearing will be conducted in accordance with the contested case provisions of the Administrative¹ Regulations, 11 DCMR Subtitle Z, Chapter 4.

¹ The Administrative Regulations consist of Titles A, X, Y, and Z. See 11-A DCMR § 200.3.

How to participate as a witness.

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

How to participate as a party.

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

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

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

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

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

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

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

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

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

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

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

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

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

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DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 4902 of the Department of Health Functions Clarification Act of 2001 (“Act”) effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(a)(11) (2012 Repl. & 2016 Supp.)), and Mayor’s Order 2001-111, dated August 6, 2001, hereby gives notice of the intent to amend the swimming pool and spa pool regulations in Title 25 (Food Operations and Community Hygiene Facilities), Subtitle C (Swimming Pool and Spa Regulations) of the District of Columbia Municipal Regulations (DCMR), by repealing the current regulations in Chapter 64 (Swimming Pools and Spas) of Title 25-C in its entirety, and establishing in its place new “Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas” in Chapters 1 through 10 and 99 of Title 25-C DCMR.

The proposed rulemaking updates the existing regulations to reflect new industry standards and District regulations. Most significantly, the proposed rulemaking incorporates industry standards that are included in the second edition of the “Model Aquatic Health Code” published by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, as well as other industry standards.

On February 10, 2017, the Notice of Proposed Rulemaking was published in the *D.C. Register* at 64 DCR 001389. The Department did not receive any comments and no changes were made to this Notice of Final Rulemaking.

These rules were adopted as final on April 4, 2017 and will take effect immediately upon publication of this Notice in the *D.C. Register*.

Subtitle C, SWIMMING POOL AND SPA REGULATIONS, of Title 25 DCMR, FOOD OPERATIONS AND COMMUNITY HYGIENE FACILITIES, is amended in its entirety to read as follows:

**SUBTITLE C AQUATIC FACILITIES REGULATIONS:
SWIMMING POOLS, SPA POOLS, AND SAUNAS**

CHAPTER 1 TITLE, INTENT, SCOPE

- 100 Title — Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas**
- 101 Intent — Safety**
- 102 Compliance with District Laws, Federal Laws, and Industry Standards/Guidelines**

CHAPTER 2 GENERAL PROVISIONS

- 200 General Provisions — Swimming Pool Supervision & Posting Requirements***

- 201 General Provisions — Swimming Pool Admission Rules, Signs, & Postings*
- 202 General Provisions — Spa Pool and Sauna Admission Rules, Signs, & Postings*
- 203 General Provisions — Aquatic Facilities, Food and Beverage Consumption, Prohibitions

CHAPTER 3 TRAINING & CERTIFICATIONS, DUTIES, FACILITY POSTINGS & USE RESTRICTIONS, AND CHILD SAFETY PLAN*

- 300 Pool and Spa Operator — Training and Certifications, & Department Issued Registration Card*
- 301 Lifeguards — Duties**
- 302 Lifeguards and Swimming Instructors — Training and Certifications*
- 303 Lifeguard Requirements — Swimming Pool, Restricted Use
- 304 Additional Lifeguard Requirements — Bather Load, Pool Size, Visual Obstructions, and Dimensions
- 305 Child Safety Plan

CHAPTER 4 WATER QUALITY, CIRCULATION SYSTEMS, AND REPORTING REQUIREMENTS

- 400 Water Quality — Approved Source*
- 401 Water Quality — Standards, Drinking Water*
- 402 Water Quality — Standards, Clarity, Depth Markers, and Temperature*
- 403 Water Quality — Standards, Bacteriological*
- 404 Water Quality — Standards, Chemical Quality*
- 405 Water Quality — Test Kits
- 406 Water Quality — Contamination
- 407 Recirculation and Treatment System — Cross-Connection Prevention
- 408 Recirculation and Treatment System — Spa Pool and Sauna Turnover Rates & Plumbing System*
- 409 Circulation Systems — Public Swimming Pools, Turnover Rates*
- 410 Circulation System — Aquatic Recreation Facilities’ Turnover Rates, and Skimming Systems*
- 411 Water Supply and Wastewater Disposal — Contaminants, Removal
- 412 Reporting Requirements — Daily Water Quality & Safety Logs
- 413 Reporting Requirements — Emergency Notifications

CHAPTER 5 EQUIPMENT, EQUIPMENT ROOM, STORAGE AND MAINTENANCE, AND SAFETY

- 500 Equipment Rooms — Security Access*
- 501 Equipment Rooms — Floor Covering*
- 502 Equipment Rooms — Ventilation and Access*

- 503 Equipment and Equipment Rooms — Size, Lighting, Maintenance and Good Repair, & Prohibited Items*
- 504 General and Emergency Pool Lighting Requirements
- 505 First Aid and Safety Equipment

CHAPTER 6 PLUMBING SYSTEMS, PHYSICAL STRUCTURE, DESIGN, ACCOMODATIONS, FACILITY MAINTENANCE, AND PEST CONTROL

- 600 Physical Structure — Building Materials and Workmanship
- 601 Plumbing Systems — Design, Construction, Installation, and Cleanable Fixtures*
- 602 Plumbing Systems — Water Temperature & Flow, Numbers, and Prohibitions*
- 603 Toilet Facilities — Required Signage
- 604 Shower Facilities, Dressing Rooms — Reasonable Accommodations
- 605 Facility Maintenance — Physical Structure, Materials, Cleanability, and Prohibitions
- 606 Facility Maintenance — Toilet Facilities (Restrooms), Shower Facilities, Dressing Rooms, Handwashing Sinks, Access, and Prohibitions*
- 607 Facility Maintenance — Equipment, Chemical Supplies, Use, Labeling, and Access*
- 608 Facility Maintenance — Chemicals, Handling, Storage, and Safety*
- 609 Facility Maintenance — Eye Wash Stations, Installation, Accessibility, Maintenance, and Training
- 610 Facility Maintenance — Effective Barriers, Fences*
- 611 Facility Maintenance — Controlling Pests*
- 612 Facility Maintenance — Removing Dead or Trapped Birds, Insects, Rodents, & Other Pests, and Animal Prohibition*

CHAPTER 7 APPLICATION & LICENSING REQUIREMENTS, AND DEFINITIONS

- 700 Licenses, Registrations, & Certifications, and Certificate of Occupancy Requirements*
- 701 Application Procedures for Facility License — Form of Submission, Notice
- 702 Application Procedures for Facility License — Contents of the Application Packet
- 703 Application Procedures — Denial of Application for Facility License, Notice
- 704 Issuance of Pool and Spa Operators’ Registration Cards
- 705 Issuance of Facility License – Required Plan Reviews and Approvals
- 706 Issuance of New and Renewal Facility Licenses – Existing Facility, New Construction, Renovation, and Retrofitting of Swimming Pools, Spa Pools, or Sauna Facilities
- 707 Issuance of Facility License – Existing Facilities, and Change in Ownership, or Location
- 708 Required Postings

- 709 Licenses and Permits Not Transferable*
- 710 Access & Inspections – Department’s Right of Entry, Denial, and Inspectors’ Competency*
- 711 Report of Findings – Specifying Time Frame for Corrections
- 712 Report of Findings – Issuing Report and Obtaining Acknowledgement of Receipt
- 713 Report of Findings – Refusal to Sign Acknowledgement
- 714 Report of Findings – Public Information, Records Retention
- 715 Imminent Health Hazards – Ceasing Facility Operations and Emergency Reporting*
- 716 Imminent Health Hazard – Resumption of Facility Operations*
- 717 Critical Violations – Time Frame for Correction
- 718 Critical Violations – Verification and Documentation of Corrections
- 719 Noncritical Violations – Time Frame for Correction
- 720 Request for Reinspection

CHAPTER 8 ADMINISTRATIVE ENFORCEMENT ACTIONS AND ORDERS

- 800 Administrative Enforcement Action – Remedies
- 801 Administrative Enforcement Action – Condemnation Order, Justifying Conditions and Removal of Equipment, Chemicals, or Other Operational Supplies
- 802 Administrative Enforcement Action – Condemnation Order, Contents
- 803 Administrative Enforcement Action – Condemnation Order, Official Tagging or Marking of Equipment, Chemicals, or Other Operational Supplies
- 804 Administrative Enforcement Action – Condemnation Order, Equipment, Chemicals, or Other Operational Supplies May Not Be Used or Moved
- 805 Administrative Enforcement Action – Condemnation Order, Removing the Official Tag or Marking
- 806 Administrative Enforcement Action – Condemnation Order, Warning or Informal Conference Not Required
- 807 Administrative Enforcement Action – Summary Suspension of License, Conditions Warranting Action
- 808 Administrative Enforcement Action – Contents of Summary Suspension Notice
- 809 Administrative Enforcement Action – Summary Suspension, Warning or Informal Conference Not Required
- 810 Administrative Enforcement Action – Summary Suspension, Time Frame for Reinspection
- 811 Administrative Enforcement Action – Summary Suspension, Term of Suspension, Reinstatement
- 812 Administrative Enforcement Action – Revocation or Suspension of License, or Denial of Application or Renewal of License

CHAPTER 9 SERVICE OF PROCESS

- 900 Service of Process – Notice, Proper Methods**
- 901 Service of Process – Department Issued Notices of Summary Suspension, Notices of Infraction, and Other Directives**
- 902 Service of Process – Notice, Effectiveness**
- 903 Service of Process – Proof of Proper Service**

CHAPTER 10 ADMINISTRATIVE AND CIVIL PENALTIES, AND JUDICIAL REVIEW

- 1000 Notice of Infractions**
- 1001 Civil Fines and Penalties**
- 1002 Judicial Review – Appeals**
- 1003 [RESERVED – Fee and Service Schedule]**

CHAPTER 99 DEFINITIONS

- 9999 Definitions – General Provision and Definitions**

CHAPTER 1 TITLE, INTENT, SCOPE

100 TITLE – AQUATIC FACILITIES REGULATIONS: SWIMMING POOLS, SPA POOLS, AND SAUNAS

100.1 These provisions shall be known as the Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas hereinafter referred to as “these regulations.”

101 INTENT – SAFETY

101.1 The purpose of these regulations is to prevent disease, sanitary nuisances, and accidents that threaten or impair the public’s health and safety, and to prevent any modifications that result in unsanitary operations or danger to public health or safety.

101.2 These regulations prescribe minimum design, construction, and operation requirements that are intended to protect the health and safety of the public in swimming pools and spas.

101.3 The Department shall regulate certain aspects of the design, equipment, operation, installation, new construction and rehabilitation of swimming pools, spa pools, and saunas. Where adequate standards do not exist and these regulations do not provide sufficient guidance for consideration of innovations in design, construction and operation of proposed swimming pools, spa pools, and saunas, the Department will establish requirements necessary to protect the health and safety of patrons.

- 101.4 These regulations establish definitions; set quality control standards for personnel, health, sanitary operations, equipment and facilities; provide for the issuance of licenses and certifications and inspections; and provide for enforcement through suspension and revocation of licenses and certifications, condemnation of equipment, and fines and penalties.
- 101.5 These regulations shall not apply to:
- (a) A swimming pool, spa pool, or sauna that is less than twenty-four inches (24 in.) (six hundred and ten millimeters (610 mm)) deep or that has a surface area less than two hundred fifty (250) square feet (twenty-three and twenty-five squared meters (23.25m²)), except when permanently equipped with a water-recirculating system or constructed with structural materials;
 - (b) Private single family residential swimming pools, spa pools, and saunas as regulated by the Department of Consumer and Regulatory Affairs (DCRA), and as defined in these Regulations;
 - (c) A swimming pool, spa pool, or sauna which is completely emptied of water, disinfected, and refilled with water between each use and that is intended for use or used by a single individual during each use; or
 - (d) A swimming pools, spa pools, or saunas that are operated for medical treatment or physical therapy, and water therapy facilities under the direction and control of medical personnel licensed pursuant to Section 501 of the Health Occupations Revision Act of 1985 Amendment Act of 1994, effective March 23, 1995 (D.C. Law 10-247; D.C. Official Code § 3-1205.01 (2016 Repl.)), as defined in these Regulations.
- 101.6 Certain provisions of these regulations are identified as critical. Critical provisions are those provisions where noncompliance serves as a vector for a waterborne illness, or an environmental health hazard. A critical item is denoted with an asterisk (*).
- 101.7 Certain provisions of these regulations are identified as noncritical. Noncritical provisions are those provisions where noncompliance is less likely to serve as a vector for a waterborne illness, or an environmental health hazard. A headnote that is denoted in these regulations without an asterisk (*) is a noncritical item. However, a critical item may have a provision within it that is designated as a noncritical item with a superscripted letter “N” following the provision.
- 102 COMPLIANCE WITH DISTRICT LAWS, FEDERAL LAWS, AND INDUSTRY STANDARDS/GUIDELINES**

- 102.1 The most recent versions of District and federal laws and regulations or any successor standards are hereby incorporated by reference:¹
- (a) The Virginia Graeme Baker Pool and Spa Safety Act of 2007, approved December 19, 2007 (Pub.L.110-140);
 - (b) 40 CFR Part 141 – National Primary Drinking Water Regulations;
 - (c) National Sanitation Foundation NSF-ANSI Standard 60-2005 Drinking Water Treatment Chemicals – Health Effects;
 - (d) Department of Justice (DOJ) 2010 Americans with Disabilities Act Accessibility Standards, 28 CFR Part 36, Subpart D, effective March 15, 2012;

¹ Section 102.1 cites to copyrighted materials that are not republished in these regulations. However, these materials are available on their respective websites, as follows:

- The Virginia Graeme Baker Pool and Spa Safety Act of 2007, approved December 19, 2007 (Pub.L.110-140) (<http://des.sh.gov/organization/divisions/water/wmb/pools/documents/vgb-act.pdf>)
- National Sanitation Foundation NSF-ANSI Standard 60-2005 Drinking Water Treatment Chemicals – Health Effects (<http://www.nsf.org/services/by-industry/water-wastewater/water-treatment-chemicals/nsf-ansi-standard-60>)
- National Sanitation Foundation NSF/ANSI Standard 50-2007 Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs, dated April 2007, approved substitute filters (http://standards.nsf.org/apps/group_public/download.php/458/50i51r1.pdf)
- American National Standard ASME A112.19.8 - 2007 Suction Fittings For Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs published by the American Society of Mechanical Engineers; performance standard (<http://www.poolsafely.gov/wp-content/uploads/2016/04/pssa.pdf>)
- ASME/ANSI standard A112.19.7 Safety Standard Vacuum Release System or ASTM standard F2387 (<http://www.poolsafely.gov/wp-content/uploads/2016/04/pssa.pdf>)
- American National Standard Specifications for Ceramic Tile A137.1-2012 (Dynamic Coefficient of Friction Specification and Testing for Slip Resistance) (<http://www.tcnatile.com/>)
- U.S. Consumer Product Safety Commission (CPSC) Publication No. 362 Guidelines, entitled “Safety Barrier Guidelines for Home Pools; and any other pool safety guidelines established by the Commission (http://www.anotherperfectpoolnews.com/wp-content/CPODocs/VGB_Handout.pdf)
- U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) “The Model Aquatic Health Code” 2nd Edition (July 2016) (<http://www.cdc.gov/mahc/currentedition/index.html>)
- National Collegiate Athletic Association (NCAA), 2012 – 2013 (<http://www.ncaa.org/>)
- National Federation of State High School Associations, 2015 – 2016 (<https://www.nfhs.org/activities-sports/swimming-diving/>)

- (e) National Sanitation Foundation NSF/ANSI Standard 50-2007 Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs, dated April 2007, approved substitute filters;
- (f) American National Standard ASME A112.19.8 - 2007 Suction Fittings For Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs published by the American Society of Mechanical Engineers; performance standard;
- (g) ASME/ANSI standard A112.19.7 Safety Standard Vacuum Release System or ASTM standard F2387;
- (h) American National Standard Specifications for Ceramic Tile A137.1-2012 (Dynamic Coefficient of Friction Specification and Testing for Slip Resistance);
- (i) U.S. Consumer Product Safety Commission (CPSC) Publication No. 362 Guidelines, entitled “Safety Barrier Guidelines for Home Pools; and any other pool safety guidelines established by the Commission;
- (j) U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) “The Model Aquatic Health Code” 2nd Edition (July 2016);
- (k) National Collegiate Athletic Association (NCAA), 2012 - 2013;
- (l) National Federation of State High School Associations, 2015 - 2016; and
- (m) The District of Columbia’s Construction Codes Supplements of 2013, Title 12 of the District of Columbia Municipal Regulations, (61 DCMR 3453 (March 28, 2014 – Part 2)); which consist of the following International Code Council (ICC):²

²

The International Council Codes are copyrighted and are not republished in these Regulations. However, copies of the International Council Codes, as amended by the District of Columbia’s Construction Codes Supplements of 2013, are available on the following websites:

- (a) The District of Columbia Building Supplement (2013) (12 DCMR A)
(<http://publicecodes.cyberregs.com/icod/ibc/2012/index.htm?bu=IC-P-2012-000001&bi2=IC-P-2012-000019>)
- (b) The District of Columbia Mechanical Code Supplement (2013)(12 DCMR E)
(<http://publicecodes.cyberregs.com/icod/imc/2012/index.htm?bu=IC-P-2012-000005&bu2=IC-P-2012-000019>)
- (c) The District of Columbia Plumbing Code Supplement (2013)(12 DCMR F)
(<http://publicecodes.cyberregs.com/icod/ipc/2012/index.htm?bu=IC-P-2012-000005&bu2=IC-P-2012-000019>)
- (d) The District of Columbia Fire Code Supplement (2013)(12 DCMR H)
(<http://publicecodes.cyberregs.com/icod/ifc/2012/index.htm?bu=IC-P-2012-000005&bu2=IC-P-2012-000019>)
- (e) The District of Columbia Electrical Code Supplement (2013)(12 DCMR C)
(<http://www.nfpa.org>)
- (f) The District of Columbia Swimming Pool and Spa Code Supplement (2013)(12 DCMR L)

- (1) International Building Code (2012 edition);
- (2) International Mechanical Code (2012 edition);
- (3) International Plumbing Code (2012 edition);
- (4) International Fire Code (2012 edition);
- (5) International Existing Building Code (2012 edition);
- (6) International Swimming Pool and Spa Code (2012 edition); and
- (7) The National Fire Protection Association (NFPA) National Electrical Code (2014 edition).

102.2 If a conflict arises between a provision in these regulations and a federal law or regulation cited in Subsection 102.1 above, the federal law or regulation shall take precedence over these regulations. However, where there is a conflict between provisions in these regulations, the International Codes or their referenced standards, or the District's Construction Codes Supplements, the District's Construction Codes Supplements, including standards and amendments, shall take precedence.

102.3 In enforcing the provisions of these regulations, the Department shall regulate certain aspects of a public swimming pool, spa pool, or sauna's physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings in use before the effective date of these regulations based on the following considerations:

- (a) Whether the establishment's physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings used in the public swimming pool, spa pool, or sauna, is in good repair or capable of being maintained in a hygienic condition in compliance with these regulations; or
- (b) The existence of a documented agreement with the licensee that the physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings used in public swimming pool, spa pool, or sauna will be replaced by an agreed upon date.

<http://pullicecodes.cyberregs.com/icod/ispsc/2012/index.htm?bu=IC-P-2012-000005&bu2=IC-P-2012-000019>

(g) The District of Columbia Existing Building Code
<http://pullicecodes.cyberregs.com/icod/iebc/2012/index.htm?bu=IC-P-2012-000006&bu2=IC-P-2012-000019>

CHAPTER 2 GENERAL PROVISIONS**200 GENERAL PROVISIONS — SWIMMING POOL SUPERVISION & POSTING REQUIREMENTS***

200.1 The licensee may employ the services of a swimming pool Management Company to fulfill the requirements of these regulations.

200.2 All licensees, pool and spa operators, lifeguards or swimming instructors in charge of, or working at, public swimming pools shall be responsible for the supervision and swimming pool.

200.3 The licensee shall ensure that pool and spa operators, lifeguards or swimming instructors possess current first aid training certificates as specified in Subsections 302.3 and 302.4 of these regulations, and that pool and spa operators possess valid certificates issued by the Mayor as required in Subsection 700.4 of these regulations.

200.4 A licensee shall ensure that an individual functioning as both a lifeguard and pool and spa operator is in compliance with the requirements identified in Sections 200.3, 300, 301, 302, 304, 412.5, 412.7, 413.1, 704 and 710.3 of these regulations.

200.5 A licensee shall ensure swimming pools that are two hundred square feet (200 sq. ft.) in area or greater without an approved diving well configuration post a sign in letters that are four inch (4 in.) (one hundred and two millimeters (102 mm)) in height, which states:

“NO DIVING”

200.6 A licensee shall ensure swimming pools where the pool depth is five feet (5 ft.) (1524 mm) or less, a sign displaying “No Diving” symbol shall be posted:



200.7 The “No Diving” symbol in Subsection 200.6 or similar symbol shall be posted on the deck at intervals of not more than twenty-five feet (25 ft.) (seven thousand, six hundred and twenty millimeters (7620 mm)).

201 GENERAL PROVISIONS — SWIMMING POOL ADMISSION RULES, SIGNS, & POSTINGS*

201.1 Rules for the admission of bathers to the swimming pool shall be enforced and shall have a heading or caption that reads “Pool Rules” printed legibly with letters

that are three inches (3") or larger on a backing of durable construction and conspicuously posted in an appropriate location for all bathers to see before entering the swimming pool. The sign shall state the following:

- (a) No tobacco products, drink, glass or animals in the pool deck area;
- (b) Bathing load: ____ persons;
- (c) Pool hours: ____ a.m. to ____ p.m.;
- (d) Shower before entering pool area;
- (e) Do not swallow the pool water; and
- (f) The Pool and Spa Operator at this facility is _____ District Permit number _____.

201.2 Pool closed signs shall be provided and posted at bather entrances whenever a swimming pool's operating license is summarily suspended for water quality or safety violations.

201.3 All swimming pools shall post a sign for all bathers to see before entering the swimming pool area directing bathers to shower before entering the pool.

201.4 In addition to Subsection 201.1, licensees, pool and spa operators, lifeguards, and swimming instructors shall enforce the following rules including but not limited to:

- (a) Restricting the introduction of dirt, excreta, and other extraneous matter into the water by bathers;
- (b) Excluding persons from the swimming pool who are intoxicated, and persons who show apparent signs of infection, such as open cuts, wounds, rashes, or blisters.
- (c) Restricting the importation of dangerous objects and materials into the swimming pool area;
- (d) Prohibiting smoking, and unsafe acts, both in and out of the water;
- (e) Prohibiting the use of topical agents including oils, body lotions, and minerals prior to entering, or while in the water. Waterproof sunscreens are allowed when applied and re-applied according to the manufacturers' recommendations;

- (f) The consumption of food or beverages is prohibited on the deck area and a three feet (3 ft.) clearance around the swimming pool, spa pool, or sauna perimeter shall be maintained at all times;
- (g) Ensuring that small children are water-safe, as defined in these regulations;
- (h) Ensuring that small children and frail individuals are properly supervised by a competent water-safe person in addition to the lifeguard; and
- (i) Requiring incontinent individuals to wear protective clothing and small children wearing diapers to also wear snugly-fitting rubber pants.

201.5 In addition to Section 201, when no lifeguard is on duty, a permanently mounted sign shall be printed legibly with letters that are three inches (3 in.) or larger conspicuously posted warning bathers of the following:

“WARNING – NO LIFEGUARD IS ON DUTY. SWIM AT YOUR OWN RISK.”

“NO CHILDREN UNDER THE AGE OF FIFTEEN (15) SHALL USE THE SWIMMING POOL WITHOUT ADULT SUPERVISION.”

“ADULTS SHOULD NOT SWIM ALONE.”

201.6 Wading pools that do not have a lifeguard inside the wading pool enclosure shall have a permanently mounted sign printed legibly with letters that are three inches (3 in.) or larger conspicuously posted which states:

“WARNING – NO LIFEGUARD ON DUTY.”

202 GENERAL PROVISIONS – SPA POOL AND SAUNA ADMISSION RULES, SIGNS, & POSTINGS*

202.1 Rules for the admission to spa pools and saunas shall be enforced and shall have a heading or caption that reads “Spa pools and Saunas Rules” printed legibly with letters that are three inches (3 in.) or larger conspicuously posted adjacent to the entrance to each hot water facility except where notice is provided to bathers pursuant to Subsections 201.1, 201.5, and 201.6. The sign shall state:

- (a) Post a sign which reads, “The Pool and Spa Operator at this facility is _____ District Permit number _____;”
- (b) Do not operate at water temperatures higher than one hundred and four degrees Fahrenheit (104° F) (forty degrees Celsius (40° C)). The actual

temperature of this spa pool at _____ o'clock today is _____ ° F
(_____ ° C) at three (3) hour intervals; and

- (c) Bathers shall shower prior to entering the spa pool or sauna;
- (d) The maximum number of bathers allowed in the spa or hot tub at one time is _____. The maximum bather load shall be determined on the basis of nine square feet (9 sq. ft.) of water surface per bather;
- (e) "Risk of Drowning";
- (f) Unsupervised use by children is prohibited;
- (g) Do not use alone;
- (h) Always enter and exit slowly and cautiously;
- (i) Bathers with a history of heart disease, diabetes, high or low blood pressure or who are pregnant should consult their physician prior to use;
- (j) Bathers on medication should consult with their physician prior to use;
- (k) Observe a reasonable time limit of 10 – 15 minutes, then shower upon exiting the hot water facility, cool down and rest before returning for another brief stay;
- (l) Long exposure may result in discomfort, nausea, dizziness or fainting, a shorter exposure period is recommended when a bather is pregnant;
- (m) Do not use while smoking, or under the influence of alcohol, drugs, medicines, or anything else that may impair the senses or cause drowsiness;
- (n) Do not use electrical appliances or devices within five feet (5 ft.) of a spa pool or sauna;
- (o) Do not use topical agents including, oils, body lotions, and minerals prior to entering, or while in the water. Waterproof sunscreens are allowed when applied and re-applied according to the manufacturers' recommendations; and
- (p) Bathers with apparent signs of infection or other evidence of high contamination risk, such as open cuts, wounds, rashes, or blisters are excluded, except when certified by a physician not to be in a communicable stage.

202.2 A clock or other time-keeping device that is maintained and in good working condition shall be provided on the deck area and visible to bathers from any location within the spa pool or sauna.

203 GENERAL PROVISIONS — AQUATIC FACILITIES, FOOD AND BEVERAGES CONSUMPTION, PROHIBITIONS*

203.1 The consumption of food or beverages is prohibited, except for areas specifically designated as eating areas that are separated from the swimming pool, spa pool, or sauna, as specified in Subsection 201.4(f).

203.2 Aquatic facilities that serve food or beverages shall not use containers made of glass or other material which, when broken, could be a hazard to bathers.

203.3 Only water bottles made of non-glass and non-breakable material are allowed on pool decks, and shall not be used by patrons while swimming inside the swimming pool.

203.4 Swimming pools and pool deck areas shall be closed to the public during competitive swimming practices and/or swimming competitions.

CHAPTER 3 TRAINING & CERTIFICATIONS, DUTIES, FACILITY POSTINGS & USE RESTRICTIONS, AND CHILD SAFETY PLAN*

300 POOL AND SPA OPERATOR — TRAINING AND CERTIFICATIONS, & DEPARTMENT ISSUED REGISTRATION CARD*

300.1 A pool and spa operator shall be on duty during all hours the aquatic facility is open to the public.

300.2 Individuals who maintain the cleanliness, water quality and chemical balance of public swimming pools, spa pools, or saunas shall obtain a Pool and Spa Operator Registration Card issued by the Department.

300.3 Individuals desiring to become pool and spa operators shall attend a training course approved by the Department of Health.

300.4 Course training shall include the following study topics:

- (a) Swimming pool and spa pool calculations;
- (b) Filter type and filtration circulation;
- (c) Water chemistry – balancing & testing;
- (d) Spa pools and warm water pools;

- (e) Swimming pool and spa pool maintenance;
- (f) Operational and safety requirements; and
- (g) Aquatic Facilities Regulations: Swimming Pools, Spa Pools, and Saunas, Title 25-C of the District of Columbia Municipal Regulations (DCMR).

300.5 A pool and spa operator shall demonstrate knowledge of public pools, which includes but is not limited to:

- (a) Swimming pool and spa pool cleaning;
- (b) General pool maintenance;
- (c) Make-up water supply; and
- (d) Bacteriological, chemical, and physical quality of water and water purification, testing, treatment, and disinfection procedures.

300.6 Certification does not imply any licensure as a contractor regulated by the Department of Consumer and Regulatory Affairs.

300.7 A pool and spa operator may not affect the structural integrity of the pool or equipment, and shall not delegate work to others, including employees that are not themselves certified under these regulations.

300.8 The Department shall issue Pool and Spa Operators' Registration Cards that are renewed every three (3) years.

301 LIFEGUARDS – DUTIES*

301.1 Where required, lifeguards shall be on the deck and shall observe the pool whenever bathers are in the water or on the pool deck.

301.2 Lifeguards shall be properly attired and readily identifiable as members of the lifeguard staff.

301.3 Lifeguards shall not leave their post for any reason without ensuring that all bathers are out of the water and that they will not return to the water during the lifeguard's absence.

302 LIFEGUARDS AND SWIMMING INSTRUCTORS – TRAINING AND CERTIFICATIONS*

- 302.1 Lifeguards and swimming instructors shall receive first aid training, including but not limited to:
- (a) Basic treatment of bleeding, shock, sudden illness, and muscular/skeletal injuries as per the guidelines of the National First Aid Science Advisory Board;
 - (b) Knowing when and how to contact the District of Columbia Fire and Emergency Medical Services Department (DCFEMS);
 - (c) Rescue and emergency care skills to minimize movement of the head, neck and spine until DCFEMS arrives for a person who has suffered a suspected spinal injury on land or in the water; and
 - (d) Use and the importance of universal precautions and personal protective equipment in dealing with body fluids, blood, and preventing contamination according to current OSHA guidelines.
- 302.2 Lifeguards and swimming instructors' training in and use of Cardio-Pulmonary Resuscitation and Automated External Defibrillator (CPR/AED), Automated External Defibrillator (AED) and other resuscitation skills shall be professional level skills that follow treatment protocols consistent with the current Emergency Cardiovascular Care Update (ECCU) and/or, the International Liaison Committee on Resuscitation (ILCOR) guidelines for cardiac compressions, foreign body restriction removal, and rescue breathing for infants, children, and adults.
- 302.3 Lifeguards and swimming instructors shall maintain current certifications in lifeguarding or swimming instruction by:
- (a) The American Red Cross;
 - (b) The YMCA or other equivalent nationally recognized aquatic training organization that meets the established standards, objectives and standards of care provided in the American Red Cross or YMCA programs; or
 - (c) Other nationally recognized aquatic training organizations adopted and recognized by the D.C. Department of Health.
- 302.4 Lifeguards and swimming instructors shall possess current certificates in First Aid; and Adult, Child and Infant Cardio-Pulmonary Resuscitation and Automated External Defibrillator (CPR/AED) through the American Red Cross, the American Heart Association, the National Safety Council, the American Academy of Orthopedic Surgeons, or other nationally recognized aquatic training organizations adopted and recognized by the D.C. Department of Health.

302.5 Swimming coaches are exempted from the swimming instructor certification requirement when training advanced level swimmers for competition.

303 LIFEGUARD REQUIREMENTS — SWIMMING POOL, RESTRICTED USE

303.1 Except as provided in Sections 303.2 and 305, a lifeguard shall not be required for a swimming pool that is:

- (a) Open for use only to persons who hold membership or other paid association in the facility where the pool is located;
- (b) Open for use only to persons who are permanent or temporary residents or guests of residents at the facility where the pool is located;
- (c) Open for use to persons who are lodging for a fee at the facility where the pool is located; or
- (d) A spa pool or sauna.

303.2 The exemptions identified in Subsection 303.1 shall not apply if a swimming pool has:

- (a) A diving board;
- (b) A depth of at least five feet (5 ft.) (one and one-half meters (1.5 m)) for non-municipal pools;
- (c) An expected bather population of fifty percent (50%) or more children under the age of fifteen (15); or
- (d) New construction occurring from the date of adoption of these regulations for any aquatic facility deeper than five feet (5 ft.) (one and one-half meters (1.5 m)) at any point.

304 ADDITIONAL LIFEGUARD REQUIREMENTS — BATHER LOAD, POOL SIZE, VISUAL OBSTRUCTIONS, AND DIMENSIONS

304.1 Except as specified in Section 303, there shall be a minimum of one (1) lifeguard on duty capable of observing the swimming pool for every fifty (50) bathers permitted in the water as specified in Table 403.1 of the 2012 International Swimming Pool and Spa Code (ISPSC).

**TABLE 403.1
MAXIMUM BATHER LOAD**

POOL / DECK AREA	SHALLOW INSTRUCTIONAL OR WADING AREAS	DEEP AREA (NOT INCLUDING THE DIVING AREA)	DIVING AREA (PER EACH DIVING BOARD)
Pools with minimum deck area	15 sq. ft. per user	20 sq. ft. per user	300 sq. ft.
Pools with deck area at least equal to water surface area	12 sq. ft. per user	15 sq. ft. per user	300 sq. ft.
Pools with deck area at least twice the water surface area	8 sq. ft. per user	10 sq. ft. per user	300 sq. ft.

304.2 In addition to Subsection 304.1, when lifeguards are used, the aquatic facility’s staffing plans shall include diagrammed zones of patron surveillance that:

- (a) Ensures qualified lifeguards are capable of viewing the entire area of the assigned zone of patron surveillance;
- (b) Ensures qualified lifeguards are able to reach the furthest extent of the assigned zone of patron surveillance within twenty (20) seconds;
- (c) Identifies whether qualified lifeguards are in an elevated stand, walking, in-water, and/or other approved position;
- (d) Identifies any additional responsibilities for each zone;
- (e) All areas of an aquatic facility are assigned a zone of patron surveillance; and
- (f) Lifeguard zones of patron surveillance are required in aquatic facility plans submitted for review.

304.3 Pool management shall increase the number of lifeguards based on the number of bathers in the swimming pool.

304.4 The Department of Health may require a lifeguard to be on duty if none exists, or require additional lifeguards to be on the deck, or restrict swimming to one (1) portion of any swimming pool because of the following:

- (a) The number of lifeguards is inadequate to safely guard the swimming pool due to the number of bathers using the swimming pool;
- (b) The shape, dimension, and layout of the swimming pool and filter room locations;
- (c) The existence of an obstruction to vision; or

(d) The capability of the bathers using the swimming pool.

304.5 Swimming pools over eighteen hundred square feet (1800 sq. ft.) of water surface area shall have at least one (1) elevated lifeguard chair for each three thousand square feet (3000 sq. ft.) of swimming pool surface or fraction thereof. A deck-level lifeguard may be used in a designated area on the deck adjacent to shallow water instead of an elevated lifeguard chair.

304.6 Swimming pools with a width of forty-five feet (45 ft.) or more shall have more than one (1) lifeguard chair located on each side of the swimming pool.

304.7 The Department shall accept dimensional standards for competition type pools as published by the National Collegiate Athletic Association (NCAA), 2012 - 2013 or most recent addition; Fédération Internationale De Natation Amateur (FINA), 2015-2017 Handbook or most recent addition; 2015 - 2017 Official Technical Rules of United States Diving Inc. or most recent addition; 2015 United States Swimming Rules and Regulations or most recent addition, and National Federation of State High School Associations, 2015 - 2016 or most recent addition.

305 CHILD SAFETY PLAN

305.1 A swimming pool or spa that does not have a lifeguard on duty shall follow a Child Safety Plan that has been reviewed and approved by the Department during a preoperational inspection.

305.2 The Child Safety Plan shall contain the following information:

- (a) The name, address and telephone number of the facility;
- (b) The name, address and telephone number of the owner of the facility;
- (c) The facility's swimming season (the months of the year that the pool is open);
- (d) The expected number of bathers when the spa is open (daily average for the operating months);
- (e) The expected number of bathers who are over the age of fourteen (14) when the spa is open (daily average for the operating months);
- (f) The percentage of the expected bathers who are under the age of fourteen (14) when the spa is open (daily average for the operating months);

- (g) Specific measures that the facility will undertake (in addition to the posting of signs) to ensure that children under the age of fourteen (14) do not use the spa without adult supervision; and
- (h) Specific measures that the facility will undertake to monitor the spa when the spa is open.

CHAPTER 4 WATER QUALITY, CIRCULATION SYSTEMS, AND REPORTING REQUIREMENTS

400 WATER QUALITY – APPROVED SOURCE*

- 400.1 The only approved system for pool water shall be potable water from the District of Columbia public water system.
- 400.2 Existing aquatic facilities shall have at least one (1) drinking fountain directly plumbed and maintained in good repair or shall have at least one (1) water cooler inside the facility.
- 400.3 If a drinking fountain cannot be provided inside the aquatic facility, it shall be provided in a common use building or area adjacent to the aquatic facility entrance and on the normal path of bathers going to the aquatic facility entrance.

401 WATER QUALITY – STANDARDS, DRINKING WATER*

- 401.1 Potable water shall be used to supply water to all pools and shall meet the requirements of the applicable provisions of 40 CFR Part 141 – National Primary Drinking Water Regulations, and the District of Columbia drinking water quality standards.

402 WATER QUALITY – STANDARDS, CLARITY, DEPTH MARKERS, AND TEMPERATURE*

- 402.1 The pool water shall be 0.5 or less NTU and the main drain grate shall be readily visible from the pool deck.
- 402.2 The water in an aquatic facility shall be sufficiently clear such that the bottom is visible while the water is static at all times the aquatic facility is open or available for use.
- 402.3 Depth markers shall be not less than four inches (4 in.) (one hundred and two millimeters (102 mm)) in height. The color of the numbers shall contrast with the background on which they are applied and the color shall be of a permanent nature. The lettering shall spell out the words “feet” and “inches” or abbreviate them as “Ft.” and “In.” respectively. Where displayed in meters in addition to feet and inches, the word meter shall be spelled out or abbreviated as “M”.

- 402.4 Swimming pools built after adoption of these regulations, shall add a four inch by four inch square (4 in. x 4 in.) (10.2 cm x 10.2 cm) marker tile in a contrasting color to the swimming pool floor, and/or shall add a main suction cover outlined in a contrasting color to the swimming pool floor which are located at the deepest part of the swimming pool floor.
- 402.5 Swimming pools over ten feet (10 ft.) (3.0 m) deep, an eight inch by eight inch square (8 in. x 8 in.) (20.3 cm x 20.3 cm) marker tile in a contrasting color to the swimming pool floor or main suction outlet shall be located at the deepest part of the swimming pool.
- 402.6 Spa pools and swimming pools with heaters shall have a maximum water temperature of one hundred and four degrees Fahrenheit (104° F) (forty degrees Celsius (40° C)).

403 WATER QUALITY – STANDARDS, BACTERIOLOGICAL*

- 403.1 The pool water shall be free of coliform bacteria contamination.

404 WATER QUALITY – STANDARDS, CHEMICAL QUALITY*

- 404.1 The Department may collect water samples and examine them as necessary to determine compliance with these regulations.
- 404.2 Chemicals used in controlling the quality of the pool water shall be tested and approved using the National Sanitation Foundation (NSF-ANSI) Standard 60, 2005, which is incorporated by reference into these rules and shall be compatible with other accepted chemicals used in pools. The following parameters shall be adhered to when treating water for swimming pools, spa pools or saunas:
- (a) Maintain water pH between 7.2 to 7.8; however:
 - (1) Water pH shall not be below 6.5; or
 - (2) Water pH shall not be above 8.0;
 - (b) Use the following disinfectants –
 - (1) Free chlorine residual shall be 1 milligram per liter (mg/L) to 10 mg/L, inclusive, in conventional swimming pools.
 - (2) Free chlorine residual shall be 2 mg/L to 10 mg/L, inclusive, in all other type pools such as spa-type pools, except spa-type pools which shall be at the minimum of 3 mg/L.

- (3) Bromine residual shall be 1.5 mg/L to 8 mg/L, inclusive, in conventional swimming pools and 4 mg/L to 8 mg/L, inclusive, in all spa-type pools.
- (4) Except that, the following maximum disinfectant levels shall apply to indoor conventional swimming pools: 5 mg/L free chlorine or 6 mg/L bromine;
- (c) The level of combined Chlorine (Chloramines) use shall not exceed 0.4 ppm (mg/L) – Water with combined chlorine (chloramines) levels in excess of 0.4 ppm (mg/L) shall be reduced by the following actions:
 - (1) Super-chlorination; or
 - (2) Water exchange;
- (d) When oxidation reduction potential controllers are used – Water potential shall be kept between six hundred to nine hundred millivolts (600 – 900 mv). Use of these units does not negate the manual daily testing requirement of Section 412;
- (e) Use of cyanuric acid – shall remain between 30 and 50 mg/L and shall not exceed 100 ppm in swimming pools and in spa pools; and
- (f) Use of quaternary ammonium – 5 mg/L maximum.

404.3 Irrigation water that wets the deck area of a pool and the water in the pool shall be potable water. Non-potable irrigation water shall not be applied within ten feet (10 ft.) of the wet deck area.

404.4 Manual addition of chemicals will be allowed under special conditions and requires the pool to be closed prior to addition and for at least one (1) hour after addition, or a longer period as necessary, for sufficient and safe distribution of the chemical. After treatment for breakpoint chlorination and algae prevention, use of the pool can be resumed when the free chlorine levels drop to 10 mg/L, or in compliance with the Safety Data Sheets.

405 WATER QUALITY – TEST KITS

405.1 Water quality test kits such as colorimetric, titrimetric, turbidimetric, or electronic are required to be on the premises of all swimming pools and spa pools to determine free active chlorine and total chlorine using N,N-Diethyl-p-Phenylenediamine (DPD), or bromine level, total alkalinity, calcium hardness, and pH.

405.2 Water quality test kits shall be provided if the corresponding chemicals are used:

- (a) Cyanuric acid;
- (b) Sodium chloride;
- (c) Quaternary ammonium;
- (d) Ozone; and
- (e) Copper.

405.3 A single water quality test kit may be used for multiple pools, provided the pools have common ownership and they are located on contiguous property.

405.4 A water quality test kit shall be capable of measuring disinfectant levels in the normal operating range.

406 WATER QUALITY – CONTAMINATION

406.1 A swimming pool, spa pool, or sauna shall be deemed contaminated when one (1) of the following conditions exists:

- (a) More than one (1) ten milliliter (10 ml) portion of a sample shows a positive test for coliform organisms when multi-tube fermentation technique is used; or more than one (1) coliform per fifty milliliters (50 ml) when the membrane filter test is used; or
- (b) Two (2) consecutive samples show a positive test for coliform organisms in any ten milliliter (10 ml) portion of a sample when the multi-tube fermentation technique is used or more than one (1) coliform per fifty milliliters (50 ml) when the membrane filter test is used; or
- (c) Two (2) of any ten (10) consecutive samples show a positive test for coliform organisms in any of the ten milliliter (10 ml) portions of a sample when the multi-tube fermentation technique is used or more than one (1) coliform per fifty milliliters (50 ml) when the membrane filter test is used; or
- (d) When performing diarrheal/*Cryptosporidium* decontamination in aquatic venues, the maximum allowable cyanuric acid concentration shall be 15 ppm.

407 RECIRCULATION AND TREATMENT SYSTEM – CROSS-CONNECTION PREVENTION

- 407.1 An atmospheric break or approved back flow prevention device shall be provided in each pool water supply line that is connected to a public water supply.
- 407.2 Vacuum breakers shall be installed on all hose bibbs.
- 408 RECIRCULATION AND TREATMENT SYSTEM — SPA POOL AND SAUNA TURNOVER RATES, & PLUMBING SYSTEM***
- 408.1 The pool recirculation system shall be operated at all times when the pool is open for use. The recirculation system may be shut off three (3) hours after the pool closes and shall be turned back on three (3) hours before opening the pool. Shut down time shall be controlled by a time clock.
- 408.2 Recirculation and treatment equipment such as filters, recessed automatic surface skimmers, water ionizers, ozone generators, disinfection feeders and chlorine generators shall be tested and approved using the NSF/ANSI Standard 50-2007, Circulation System Components and Related Materials for Swimming Pool and Spas/Hot Tubs.
- 408.3 The recirculation system shall be designed to provide a minimum of four (4) turnovers of the pool volume per day. Pools that are less than one thousand square feet (1000 sq. ft.) shall be required to provide eight (8) turnovers per day.
- 408.4 The design pattern of recirculation flow shall be one hundred percent (100%) through the main drain piping and one hundred percent (100%) through the perimeter overflow or sixty percent (60%) through the skimmer system.
- 408.5 All swimming pools including wading pools and spa pools that are open to the public and that are built without a main drain collector tank shall be retrofitted with a properly sized and piped collector tank to eliminate direct suction through the main drain.
- 408.6 All existing public swimming pools with direct suction shall install a main drain cover that meets the ANSI/ASME A112.19.8-2007 standard for drain covers.
- 408.7 Public pools and spas with a single main drain (other than an unblockable drain) shall be equipped with a device or system such as a safety vacuum release system to prevent entrapment.
- 408.8 Public pools and spas that are not in operation do not need to meet the requirements specified in sections 408.5 and 408.6 until they resume operations.
- 408.9 A construction permit shall be obtained from the Department of Consumer and Regulatory Affairs prior to installation of a collector tank.

- 408.10 Any pool that cannot be retrofitted as required in Subsections 408.5 and 408.6 shall be closed.
- 408.11 Newly constructed swimming pools and spas built after the effective date of these regulations shall be built with either:
- (a) More than one (1) drain;
 - (b) One (1) or more unblockable drains; or
 - (c) No main drain.
- 408.12 Hot water facilities shall be disinfected with automatic chemical feed equipment as specified in Subsection 607.3 of these regulations.
- 408.13 The turnover rate shall not exceed thirty (30) minutes.
- 408.14 The whirlpool shall be designed and the hydraulic analysis calculated to provide a thirty (30)-minute turnover rate when the filter is at maximum pressure and ready to be cleaned or backwashed.
- 408.15 The filter shall be cleaned or backwashed when the filter pressure and the flow meter indicate it is necessary.
- 408.16 The plumbing system shall be designed to preclude entrapment in main drains.
- 408.17 Return fitting(s) shall be provided and arranged to facilitate a uniform circulation of water and maintain a uniform sanitizer residual throughout the entire spa or exercise spa.
- 408.18 Suction fittings shall be sized and installed in accordance with the manufacturer's specifications. Spas and exercise spas shall not be used or operated if the suction outlet cover is missing, damaged, broken or loose.
- 408.19 Submerged vacuum fittings shall be prohibited.
- 409 CIRCULATION SYSTEMS – PUBLIC SWIMMING POOLS, TURNOVER RATES***
- 409.1 Circulation systems for pools shall comply with Section 311 of the 2012 International Swimming Pool and Spa Code (ISPSC) and this section.
- 409.2 Circulation equipment shall be sized to turn over the entire water capacity of the pool as specified in Table 407.2 of the 2012 International Swimming Pool and Spa Code (ISPSC). The system shall be designed to provide the required turnover

rate based on the maximum pressure and flow rate recommended by the manufacturer for the filter and clean filter media.

**TABLE 407.2
TURNOVER RATE**

Swimming Pool Category	Turnover rate In hours
Class A, B, and C pools	Hours equal 1-1/2 times the average depth of pool in feet not to exceed 6 hours
Wading pools	1

410 CIRCULATION SYSTEM – AQUATIC RECREATION FACILITIES’ TURNOVER RATES, AND SKIMMING SYSTEMS*

410.1 A circulation system consisting of pumps, piping, return inlets and suction outlets, filters, and other necessary equipment shall be provided for complete circulation of water within the swimming pool, spa pool, or sauna.

410.2 Circulation system equipment shall be designed to turnover one hundred percent (100%) of the nominal pool water volume in the amount of time specified in Table 604.2 of the 2012 International Swimming Pool and Spa Code (ISPSC). The system shall be designed to give the required turnover time based on the manufacturer’s recommended maximum pressure and flow of the filter in clean media condition.

**TABLE 604.2
TURNOVER TIME**

CLASS OF POOL	MAXIMUM TURNOVER TIME ^a (hours)
D-1	2
D-2 with less than 24 inches water depth	1
D-2 with 24 inches or greater water depth	2
D-3	1
D-4	2
D-5	1
D-6	1

^a Pools with a sand bottom require a one (1) hour turnover time.

410.3 Circulation systems shall circulate treated and filtered water for twenty-four (24) hours a day.

410.4 The circulation rate shall be permitted to be reduced during periods that the pool is closed to the public, provided that acceptable water clarity conditions are met

prior to reopening the pool for public use. At no time shall the circulation rate be zero.

410.5 Surface skimming systems shall be in accordance with Table 604.3 of the 2012 International Swimming Pool and Spa Code (ISPSC).

**TABLE 604.3
SURFACE SKIMMING SYSTEMS**

CLASS OF POOL	SURFACE SKIMMING SYSTEM
D-1	Zero-depth trench located at static water level or other skimming systems
D-2	Auto skimmer, zero depth trench or gutters
D-3	Auto skimmer, zero depth trench or perimeter device
D-4	Single or multiple skimmer devices for skimming flow
D-5	Skimmers prohibited in side area
D-6	Auto skimmer, zero depth trench, or gutter

410.6 The installation of skimmers in the side areas of D-5 pools is prohibited.

411 WATER SUPPLY AND WASTEWATER DISPOSAL – CONTAMINANTS, REMOVAL

411.1 No direct mechanical connection shall be made between the potable water supply and the swimming pool or spa, chlorinating equipment, or the system of piping for the swimming pool or spa, unless it is protected against backflow and back-siphonage.

411.2 Backwash water or drainage waters of a swimming pool or spa shall be discharged into a sanitary sewer through an approved air gap, or by other means approved by the District Government.

411.3 When necessary, filter backwash water and drainage water shall be treated chemically or through the use of settling tanks to eliminate or neutralize chemicals, diatomaceous earth, and contaminants in the water that exceeds the limits set by the District Government.

412 REPORTING REQUIREMENTS – DAILY WATER QUALITY & SAFETY LOGS

412.1 Each swimming pool, spa pool, or sauna shall record the following information on a daily basis, unless otherwise required:

- (a) Name of each swimming pool or spa operator on duty;

- (b) Name of each lifeguard on duty;
- (c) Rate of flow readings;
- (d) Weather;
- (e) Temperature;
- (f) Attendance;
- (g) The time of filter backwash or cleaning;
- (h) Injuries or accidents at the swimming pool or spa;
- (i) Chemicals added to the waters;
- (j) Malfunctioning or broken equipment;
- (k) pH readings, taken at a minimum of three (3) hour intervals;
- (l) Free chlorine residual readings, taken at a minimum of three (3) hour intervals;
- (m) Total bromine residual readings, taken at a minimum of three (3) hour intervals; and
- (n) Cyanuric acid, if used, residual readings, taken prior to opening the swimming pool or spa for bathers.

412.2 The information required in Subsection 412.1 shall be recorded a minimum of three (3) times per day, unless otherwise required, and in conformance with the following schedule:

- (a) The first recording of the day shall be made prior to opening the swimming pool or spa opens to bathers;
- (b) The second recording shall be completed between 12 p.m. and 2 p.m.; and
- (c) The final recording shall be completed two (2) hours before closing.

412.3 The Department may require more frequent recordings than those specified in this section if conditions, including high bather load, high temperatures, bright sunlight, or inadequate water quality exist.

- 412.4 The daily operational log must be easily readable, dated and signed, and available on the premises for inspection by the Department for a minimum of three (3) years.
- 412.5 Pool owners, pool and spa operators, and lifeguards shall be responsible for maintaining the daily report logs required in Subsection 412.1.
- 412.6 Complete reports shall reflect manually conducted pool water tests for pH and disinfectant levels at least as specified in Subsections 412.1(i), (k), (l), (m), and (n).
- 412.7 Pool owners, pool and spa operators, or lifeguards shall comply with Standard Operating Procedures for accidents involving bodily fluid as specified in Sections 6.0.1.8, 6.0.1.9, 6.1.2.1.4.1, 6.1.2.1.4.5, 6.1.2.1.4.14, 6.1.2.1.4.15, 6.4.1.1.2(4), 6.4.1.3.1(15), 6.4.1.8, and 6.5 of The Model Aquatic Health Code 2nd Edition (July 2016).

413 REPORTING REQUIREMENTS – EMERGENCY NOTIFICATIONS

- 413.1 A pool owner, pool and spa operator, lifeguard, or swimming instructor shall report any death, serious injury, or injury that requires resuscitation or admission to a hospital occurring at a swimming pool, spa pool, sauna to the Department within twenty-four hours (24 hrs.) of the incident.
- 413.2 A pool owner, pool and spa operator, lifeguard, or swimming instructor shall report a complaint of illness attributed by a bather to use of a swimming pool, spa pool, or sauna to the Department within twenty-four (24) hours of the incident.
- 413.3 The report to the Department shall include the following:
- (a) Name and telephone number or address of the person injured or making a complaint;
 - (b) Date of the incident or onset of illness;
 - (c) Description of the type of injury or complaint;
 - (d) Name and telephone number of the person rendering assistance or first aid;
 - (e) The name of any known hospital, rescue squad or physician providing medical assistance;
 - (f) Names and telephone numbers of available witnesses to the incident; and
 - (g) All physical security breaches.

**CHAPTER 5 EQUIPMENT, EQUIPMENT ROOM, STORAGE AND
MAINTENANCE, AND SAFETY****500 EQUIPMENT ROOMS – SECURITY ACCESS***

- 500.1 Equipment designated by the manufacturer for outdoor use may be located in an equipment area. All other equipment shall be located in an equipment room.
- 500.2 Plastic pipe subject to a period of prolonged sunlight exposure area shall be surrounded with a fence at least four feet (4 ft.) high on all sides and not confined by a building or equivalent structure.
- 500.3 A self-closing and self-latching gate with a locking device shall be provided, if necessary for access.
- 500.4 An equipment room shall be protected on at least three (3) sides and overhead. The fourth side may be a gate, fence, or open if otherwise protected from unauthorized access.
- 500.5 An equipment room shall be lockable or otherwise protected from unauthorized access.
- 500.6 Security access shall be installed on all pool equipment rooms for those that do not presently have a similar level of security.

501 EQUIPMENT ROOMS – FLOOR COVERING*

- 501.1 The equipment room floor shall be of concrete or other nonabsorbent material having a smooth slip resistant finish and shall have positive drainage, including a sump pump if necessary.
- 501.2 Ancillary equipment, such as a heater, shall be stored in an equipment room as specified in Subsection 500.1.

502 EQUIPMENT ROOMS – VENTILATION AND ACCESS*

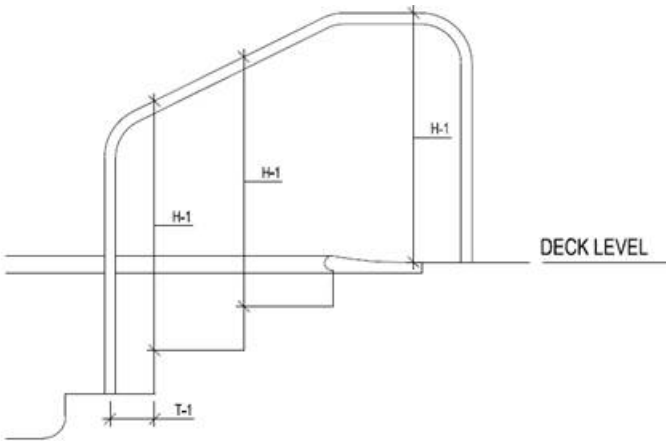
- 502.1 Equipment rooms shall have either forced draft or cross ventilation.
- 502.2 All below grade equipment rooms shall have a stairway access with forced draft ventilation or a fully louvered door and louvered vent on at least one other side.
- 502.3 Where stairway access is not necessary to carry heavy items into the below grade room or vault, a “ship’s ladder” may be used if approved by the Department.

- 502.4 The opening to an equipment room shall be a minimum of three feet by six feet (3 ft. x 6 ft.) and shall provide easy access to the equipment.
- 502.5 A hose bibb with vacuum breaker shall be located in the equipment room.
- 502.6 A carbon monoxide detector with local alarming, listed and labeled in accordance with UL Standard 2075, shall be installed in all equipment rooms and rooms adjacent to spaces containing fuel-burning equipment or vents carrying the products of combustion.
- 503 EQUIPMENT AND EQUIPMENT ROOMS — SIZE, LIGHTING, MAINTENANCE AND GOOD REPAIR, & PROHIBITED ITEMS***
- 503.1 All equipment and appurtenances shall be kept in good repair.
- 503.2 Skimmers and returns shall be adjustable and functioning.
- 503.3 Filter and pump rooms shall be kept clean and reasonably dry at all times.
- 503.4 Decks, coping, and fencing shall be in good condition.
- 503.5 Guard chairs, rails, ladders, steps, ADA deck-mounted equipment, and diving equipment shall be firmly secured to its base in accordance with Table 4.5.5.7 and Figure 4.5.5.7.1 of the 2nd Edition of the Aquatic Model Health Code.

**TABLE 4.5.5.7
STAIR HANDRAIL DIMENSIONS**

Dimensions	T-1	H-1
Minimum	3 inches (7.6 cm)	3.4 inches (86.4 cm)
Maximum	N/A	38 inches (96.5 cm)

FIGURE 4.5.5.7.1



- 503.6 The pool and pool deck shall be kept free from sediment, floating debris, visible dirt and algae. Pools shall be refinished when the pool surfaces cannot be maintained in a safe and sanitary condition.
- 503.7 The pool water level shall be maintained at an elevation suitable for continuous skimming without flooding during periods of non-use.
- 503.8 Face plates and main grates shall be intact, in place, and secured so that they cannot be removed without the use of tools.
- 503.9 Hose bibbs shall be in functioning order and vacuum breakers shall be on all hose bibbs.
- 503.10 Weirs shall be present and functioning.
- 503.11 Scum gutters shall be free flowing.
- 503.12 The room housing the swimming pool or spa shall contain adequate ceiling intake vents and shall be exhausted at floor level.
- 503.13 All other facilities and equipment shall be operable and in good condition.
- 503.14 The size of an equipment room shall provide working space to perform routine operations.
- 503.15 Clearance shall be provided for all equipment as prescribed by the manufacturer to allow normal maintenance operation and removal without disturbing other piping or equipment.

- 503.16 In rooms with fixed ceilings, the minimum ceiling height shall be eight feet (8 ft.).
- 503.17 Equipment rooms shall be lighted to provide thirty foot (30 ft.) candles of illumination at floor level.
- 503.18 Equipment rooms shall not be used to store chemical emitting corrosive fumes, and shall be clear of unnecessary or discarded items.
- 503.19 All chemical tubing that runs through areas where staff works shall be routed in PVC piping to support the tubing and to prevent the supported tubing from leaking.

504 GENERAL AND EMERGENCY POOL LIGHTING REQUIREMENTS

- 504.1 When a swimming pool, spa pool, or sauna is open during periods of low natural illumination, artificial lighting shall be provided so that all areas of the pool, including the bottom main drains are visible.
- 504.2 Overhead or underwater lighting shall be provided to illuminate the pool and adjacent deck areas. Such lighting shall be installed in accordance with the National Fire Protection Association (NFPA 70) National Electrical Code (2014), as specified in Subsection 102.1(1)(7).
- 504.3 For outdoor pools, overhead lighting shall provide not less than three (3) foot-candles of illumination at the pool water surface and on adjacent deck areas. For indoor pools, overhead lighting shall provide not less than ten (10) foot-candles of illumination at the pool water surface.
- 504.4 Underwater lighting shall provide a minimum of eight (8) lumens per square foot of pool water surface area, except when overhead lighting provides not less than fifteen (15) foot-candles of illumination at the pool surface.
- 504.5 Aquatic facilities that operate during periods of low illumination shall be provided with sufficient emergency lighting to permit evacuation of the pool and to secure the area in the event of power failure. The emergency lighting intensity shall not be less than half ($\frac{1}{2}$) foot-candle.
- 504.6 Branch circuits that supply underwater lights operating at more than the Low Voltage Contact Limit as defined in NEC 680.2 shall be Ground-Fault Circuit Interrupter (GFCI) protected.

505 FIRST AID AND SAFETY EQUIPMENT

- 505.1 Safety equipment shall be mounted in a conspicuous place and be readily available for use.

505.2 All public and semi-public swimming pools shall be provided with the following first aid safety equipment that is quickly accessible:

- (a) Automated External Defibrillators (AEDs) shall be located:
 - (1) On the deck near the pool's perimeter; or
 - (2) Inside the facility in a room that cannot be locked.
- (b) A shepherd's hook securely attached to a one (1) piece pole not less than sixteen feet (16 ft.) in length;
- (c) A minimum of one-fourth ($\frac{1}{4}$) inch diameter throwing rope as long as one and one-half ($1\frac{1}{2}$) times the maximum width of the pool or fifty feet (50 ft.), whichever is less, attached to a U.S. Coast Guard approved ring buoy. A rescue-tube shall be accepted as a substitute for the ring buoy where it is accompanied by a lifeguard who has been trained to use it properly;
- (d) First aid supplies consisting of:
 - (1) Splints;
 - (2) One (1) roll of $\frac{1}{2}$ inch adhesive tape;
 - (3) Five (5) four inch by four inch (4 in. x 4 in.) gauze pads;
 - (4) Five (5) two inch by two inch (2 in. x 2 in.) gauze pads;
 - (5) Twenty-five (25) one inch (1 in.) Band-Aids;
 - (6) Two (2) one inch (1 in.) roller bandages;
 - (7) Tape tongue depressors;
 - (8) Two (2) eye pads;
 - (9) One (1) Triangular bandage;
 - (10) Two (2) bee sting swab kits;
 - (11) One (1) elastic bandage;
 - (12) One bag instant ice packs or ice Bag with readily available ice;

- (13) One (1) bottle of eyewash;
 - (14) One (1) container of liquid soap;
 - (15) One (1) facemask for cardiopulmonary resuscitation (CPR) with one-way valve;
 - (16) One (1) pair of scissors;
 - (17) Safety pins;
 - (18) Single-use, sterilized tweezers; and
 - (19) Disposable gloves;
- (e) Two (2) cots or equivalent and two (2) blankets for emergency use only;
 - (f) A backboard with properly spaced handholds, head immobilizer, and proper straps to secure the victim;
 - (g) A blood borne pathogen control kit;
 - (h) A rescue tube designed for lifesaving for each required lifeguard;
 - (i) A hard-wired, non-cordless telephone available to individuals using a pool or spa that:
 - (1) Can directly reach a 911 emergency service without the use of a coin and without connection to an internal switchboard unless the internal switchboard is monitored at all times;
 - (2) Is posted with the 911 emergency number and the name and location of the pool or spa; and
 - (3) Is located within the pool enclosure or in an immediately adjacent room, which cannot be locked.
- 505.3 Pools greater than fifty feet (50 ft.) in length shall have multiple first aid safety equipment with at least one (1) shepherd's hook and one (1) lifesaving ring located along each of the longer sides of the pools.
- 505.4 All pools with a slope transition shall have a safety line. The safety line shall be in place at all times unless a lifeguard or swimming instructor is present.
- 505.5 Pool safety covers required in Subsection 610.10, shall be installed in a track, rail, guides, or secured to the deck, and shall provide a continuous union with the deck,

with no passage. In the case of a pool with a width or diameter greater than eight (8) feet (2.4 m) from the periphery, the cover should be able to hold a weight of four hundred and eighty-five (485) pounds (220.0 kg). If the pool width or diameter is less than eight (8) feet (2.4 m) the cover should hold a weight of two hundred and seventy-five (275) pounds (125 kg).

CHAPTER 6 PLUMBING SYSTEMS, PHYSICAL STRUCTURE, DESIGN, ACCOMODATIONS, FACILITY MAINTENANCE, AND PEST CONTROL

600 PHYSICAL STRUCTURE — BUILDING MATERIALS AND WORKMANSHIP

600.1 The licensee of a newly constructed, remodeled or renovated swimming pool, spa pool, or sauna shall ensure that the design, construction, building materials, and workmanship complies with the most recent version of the District's Construction Codes Supplements, as specified in Subsection 102.1(l) of this chapter, or later construction codes.

600.2 The licensee of an existing swimming pool, spa pool, or sauna shall maintain the facility in good condition by repairing or replacing structural or design defects, operating systems, or fixtures in use before the effective date of these regulations in accordance with the most recent version of the District's Construction Codes Supplements, as specified in Subsection 102.1(l) of this chapter.

600.3 At least thirty (30) days before beginning construction or remodeling of a swimming pool, spa pool, or sauna, the licensee shall submit construction plans with all schedules, including but not limited to floor plans, elevations, and electrical schematics, to the Department for review and approval, as specified in Sections 706 and 707.2.

601 PLUMBING SYSTEMS — DESIGN, CONSTRUCTION, INSTALLATION, AND CLEANABLE FIXTURES*

601.1 All plumbing systems and hoses that convey water shall be designed, constructed, installed and repaired with approved materials in accordance with the International Plumbing Code (2012 edition), Subtitle F (Plumbing Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations.

601.2 All toilet facilities shall be easily cleanable.^N

602 PLUMBING SYSTEMS — WATER TEMPERATURE & FLOW, NUMBERS, AND PROHIBITION*

- 602.1 Toilet facilities located on the premises of an aquatic facility shall be deemed conveniently located and accessible to staff; except, toilet facilities located outside of an aquatic facility do not meet this requirement.
- 602.2 All handwashing sinks in multiple-stall toilet rooms and single-stall toilet rooms shall be equipped to provide water at a temperature of at least one hundred degrees Fahrenheit (100° F) (thirty-eight degrees Celsius (38°C)) through a mixing valve, a combination faucet, or tempered water and a single faucet.
- 602.3 A steam mixing valve shall not be used at a handwashing sink.
- 602.4 A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.
- 602.5 Automatic handwashing sinks shall be installed in accordance with the manufacturer's instructions.
- 602.6 Each showerhead shall have a water flow of not less than two gallons per minute (2 gpm) or seven point six one liter per minute (7.61 l/min).
- 602.7 The water temperature at each showerhead shall not exceed one-hundred and ten degrees Fahrenheit (110° F) (forty-three degrees Celsius (43°C)) and shall not be less than ninety degrees Fahrenheit (90° F) (thirty-two degrees Celsius (32°C)).
- 602.8 Where there is heated water provided to showers, the shower water supply shall be controlled by an anti-scald device.
- 602.9 Bathers access to water heaters and thermostatically controlled mixing valves for showers is prohibited.
- 602.10 The number of toilets and urinals shall be based upon the anticipated maximum attendance of bathers and their gender as follows:
- (a) A minimum of one (1) toilet facility (restroom), one (1) toilet stall, and one (1) urinal for the first one hundred (100) male bathers. A minimum of one (1) additional toilet facility, one (1) toilet stall, and one (1) urinal for each additional two (2) hundred male bathers or major fraction thereof; and
 - (b) A minimum of two (2) toilet facilities and two (2) toilet stalls for the first one hundred (100) female bathers. A minimum of one (1) additional toilet facility and one (1) toilet stall for each additional one hundred (100) female bathers or major fraction thereof.
- 602.11 All swimming pools and spas shall have at a minimum the following number of shower facilities:

- (a) One (1) shower for female bathers;
- (b) One (1) shower for male bathers; and
- (c) A minimum of two (2) shower heads for each sex. A minimum of one (1) additional shower head shall be required for each sex, and for each additional fifty (50) male or female bathers.

602.12 There shall be not less than one (1) shower and not greater than half ($\frac{1}{2}$) of the total number of showers required by Subsection 602.11 shall be located on the deck or at the entrance of each pool.

602.13 Shower facilities and dressing rooms shall be provided at all swimming pools unless these facilities are provided in the building housing the swimming pool, spa pool, or sauna.

602.14 Subsection 602.13 does not apply to semi-public swimming pools at hotels, motels, condominiums, and apartments where the:

- (a) Pool's use is restricted to residents and guests; and
- (b) Farthest unit in the hotel, motel, condominium, or apartment is less than three hundred feet (300 ft.) from the pool area, as measured along walkways provided for access by residents and guests to the pool area.

603 TOILET FACILITIES – REQUIRED SIGNAGE

603.1 All single-stall toilet rooms shall display gender-neutral signs on the door that read “Restroom,” or have a universally recognized picture/symbol indicating that persons of any gender may use each restroom, in accordance with Section 301(c) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.* (2012 Repl.)); and Section 802 of Chapter 8 (Compliance Rules and Regulations Regarding Gender Identity or Expression), Title 4 (Human Rights and Relations), of the District of Columbia Municipal Regulations (DCMR).

603.2 Aquatic facilities employing:

- (a) A staff of five (5) or less may provide a single toilet facility with a gender-neutral sign on the door in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.* (2012 Repl.)); or
- (b) A staff of five (5) or more shall have multiple toilet facilities that are either:

- (1) Single-stall toilet rooms with a gender-neutral sign on each door as specified in Subsection 3101.2 in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.* (2012 Repl.)); or
- (2) Multiple-stall toilet rooms with gender-specific signs on the doors that read “Men” and “Women” or contain gender-specific, universally recognized pictorials of “Men” and “Women”.

603.3 Facilities which have multiple-stall toilet rooms with gender-specific signs on the doors shall allow individuals the right to use the gender-specific toilet room that is consistent with their gender identity or expression pursuant to 4 DCMR § 802.1.

604 SHOWER FACILITIES, DRESSING ROOMS — REASONABLE ACCOMODATIONS

604.1 All shower facilities shall be constructed and designed for individual privacy enclosures in accordance with Section 301(c) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.* (2012 Repl.)); and Sections 804 and 805 of Chapter 8 (Compliance Rules and Regulations Regarding Gender Identity or Expression), Title 4 (Human Rights and Relations) DCMR.

604.2 Facilities shall make reasonable accommodations to allow an individual access to and the use of the facility that is consistent with that individual's gender identity or expression pursuant to 4 DCMR § 805.1.

605 FACILITY MAINTENANCE — PHYSICAL STRUCTURE, MATERIALS, CLEANABILITY, AND PROHIBITION

605.1 Toilet room floors shall be constructed of sealed concrete or other nonabsorbent materials with a smooth, slip-resistant surface to insure thorough cleaning.

605.2 The intersection of floors, walls, panels, stalls, or barriers shall be covered or sealed with waterproof materials.

605.3 Walls, panels, stalls, or barriers between toilet facilities, shower facilities, and dressing rooms, shall be made of durable materials not subject to water damage, and shall be designed so that a waterway is provided between the wall, panel, stall, barrier and the floor to permit thorough cleaning of the wall, panel, stall, barrier and floor areas with hoses and brooms.

605.4 Dressing room floors shall be made of the durable materials, not subject to water damage throughout.

- 605.5 Floor drains shall be provided, and floors shall be sloped not less than $\frac{1}{4}$ inch per foot toward the drains to ensure positive drainage.
- 605.6 Carpets, duckboards and footbaths are prohibited in toilet facilities, shower facilities, and dressing rooms.
- 606 FACILITY MAINTENANCE — TOILET FACILITIES (RESTROOMS), SHOWER FACILITIES, DRESSING ROOMS, HANDWASHING SINKS, ACCESS, AND PROHIBITIONS***
- 606.1 Each aquatic facility's plumbing systems, including but not limited to toilet facilities (restrooms), shower facilities, and handwashing sinks shall be maintained in good repair at all times.
- 606.2 Each licensee shall provide sufficient toilet facilities (restrooms) that are:
- (a) Kept in clean and sanitary conditions, free of solid waste, and litter; and
 - (b) Enclosed with tight-fitting, self-closing doors or locking doors.
- 606.3 Toilet facility (restroom) doors shall be kept closed except during cleaning and maintenance operations.
- 606.4 At no time shall consumers or staff enter toilet facilities (restrooms), shower facilities, or dressing rooms during routine cleaning or maintenance emergency.
- 606.5 Each handwashing sink and shower facility shall be conveniently equipped with soap dispensers with either liquid or powdered soap. The dispensing unit shall be made of metal or plastic, glass materials are prohibited.
- 606.6 Liquid or powder soap dispensers shall be provided in each toilet facility (restroom) and shower facility. Reusable cake soap is prohibited.
- 606.7 Mirrors shall be shatter resistant, where provided.
- 606.8 Baby-changing tables shall be provided in toilet facilities (restrooms) having two (2) or more toilet stalls.
- 606.9 A hose bibb with vacuum breaker shall be provided in or within fifty feet (50 ft.) of each toilet facility (restroom) to allow for ease of cleaning.
- 606.10 Toilet paper holder, a supply of toilet tissue, and a waste receptacle shall be provided in each stall of a multiple-stall toilet room, and in every single-stall toilet room. A covered waste receptacle for feminine hygienic products shall be provided in each toilet stall designated for female staff and/or bathers.

606.11 Feminine hygiene products shall be supplied in dispensing units installed in toilet facilities (restrooms) and shower areas designated for female staff and/or bathers.

607 FACILITY MAINTENANCE – EQUIPMENT, CHEMICAL SUPPLIES, USE, LABELING, AND ACCESS*

607.1 Filter and pump rooms shall be kept clean and reasonably dry at all times.

607.2 Controls, valves, and gauges shall be accessible and shall not be blocked by extraneous materials. Valves and gauges shall function properly and be labeled in accordance with a posted backwash procedures chart.

607.3 Disinfectant and chemical feeders, capable of precisely introducing a sufficient quantity of an approved disinfecting agent to maintain the appropriate disinfectant residuals, shall be used at swimming pools and spa pools.

607.4 No person shall use chemical products or pesticides in a manner that is inconsistent with the product's labeling, or that is in violation of any restrictions imposed on the product's use by the United States Environmental Protection Agency or the Department.

607.5 All chemical products used in swimming pools, spa pools, or sauna waters shall be used in accordance with:

- (a) Sections 2208 and 2209 of the D.C. Pesticide Operations Regulations, effective March 20, 2015 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*);
- (b) Manufacturer's use directions included in labeling; and
- (c) The conditions of certification, if certification is required for use of pest control materials.

607.6 The Department may approve disinfectant products other than chlorine or bromine that:

- (a) Are labeled with clear directions for its use;
- (b) Provide satisfactory residual effects that are easily measured;
- (c) Are as effective as chlorine or bromine; and
- (d) Do not impart toxic properties into the water that could create a danger to public health or that could create objectionable physiological and environmental effects.

- 607.7 Non-staff persons shall not have unsupervised access to machinery, electric panels, or chemicals used for the swimming pool, spa pool, or sauna.
- 608 FACILITY MAINTENANCE – CHEMICALS, HANDLING, STORAGE, AND SAFETY***
- 608.1 Chemicals shall be labeled and stored in a cool, dry, and well-ventilated area under a roof and the area shall be inaccessible to the public.
- 608.2 Chemicals which emit corrosive fumes shall not be stored in the equipment room as specified in Subsection 503.18.
- 608.3 An aquatic facility's use of compressed chlorine gas is prohibited in:
- (a) Newly constructed facilities; and
 - (b) Existing facilities undergoing any renovations or retrofitting that require DCRA to issue a Building Permit.
- 608.4 The Department shall prohibit a facility from using chlorine gas if the Department determines through an inspection (preoperational, routine or complaint) that safety equipment and/ or training requirements cannot be met as required by the manufacturer, or as directed by the Department.
- 608.5 A licensee shall ensure chlorine gas equipment and containers are:
- (a) Located out of direct sunlight;
 - (b) Chained or fastened in place to prevent tipping;
 - (c) Equipped with a shut-off wrench when in use; and
 - (d) The installed power exhaust system of such equipment operates properly and that a bottle of ammonia is available to test for leaks.
- 608.6 Empty chemical containers shall be stored and disposed of in such a manner that they are not accessible to the public.
- 608.7 Solutions and dry chemical spills, waste material, excess water, and debris shall be cleaned and removed promptly.
- 608.8 Safety Data Sheets (SDS) for all potentially hazardous chemicals shall be provided to the aquatic facility's pool and spa operator by the licensee or Pool Management Company.

- 608.9 All chemicals shall be handled, used, stored, and disposed of in accordance with the Safety Data Sheets, all applicable federal and District laws, and Sections 607.3, 607.4, 607.5, 607.6, 607.7, and Section 608.
- 608.10 All chemicals shall be stored in an area that has:
- (a) Protection against weather, excess heat and moisture;
 - (b) A lockable door;
 - (c) Continuous ventilation sized at a minimum of two cubic feet per minute (2 cfm) per square foot of floor area and exhausts to the open air;
 - (d) A minimum of thirty (30) foot-candles (323 lux) of illumination to allow operators to read labels on containers throughout the chemical storage area and pump room;
 - (e) Adequate room to separate potentially reactive chemicals;
 - (f) Storage and or filter room door permanently labeled:
“DANGER – CHEMICAL STORAGE AREA – DO NOT ENTER”
 - (g) Safety Data Sheets posted; and
 - (h) Availability of personal safety gear for all chemicals on site as required by the Safety Data Sheets (SDS), including:
 - (1) Goggles for eye protection;
 - (2) Splash-guard aprons;
 - (3) Neoprene gloves or other gloves as specified in the Safety Data Sheets;
 - (4) Respirators that are required by the Safety Data Sheets; and
 - (5) Proper training for handling procedures, which are posted in the filter room and chemical storage areas.

609 FACILITY MAINTENANCE – EYE WASH STATIONS, INSTALLATION, ACCESSIBILITY, MAINTENANCE, AND TRAINING

- 609.1 Eye wash stations capable of delivering low-pressure tepid potable water to both eyes simultaneously for at least ten (10) minutes shall be installed in all chemical storage rooms and work areas with corrosive substances.

- 609.2 Eye wash stations shall:
- (a) Be located within a ten (10) second walking distance in the installed area with a path that is free of obstructions, without having to pass through any doors;
 - (b) Use potable water and shall be equipped with stay-open valves that are easy to find and use and that remain open until manually closed;
 - (c) Well-lit, with signs that are easily identifiable and highly visible;
 - (d) Be directly plumbed; and
 - (e) Be inspected on a weekly basis and documented in a log book to ensure proper maintenance and working condition.

609.3 Licensees, pool and spa operators, lifeguards, and swimming instructors are required to know where the eye wash stations are located and are trained on how to use them in the event of an emergency.

610 FACILITY MAINTENANCE – EFFECTIVE BARRIERS, FENCES*

610.1 All outdoor public swimming pools and spa pools shall be surrounded by a minimum seventy-two inch (72 in.) high fence or other substantial barrier approved by the Department.

610.2 The fence shall be continuous around the perimeter of the pool area that is not otherwise blocked or obstructed by adjacent buildings or structures and shall adjoin with itself or abut to the adjacent members.

610.3 All aquatic venues shall be through self-closing, self-latching lockable gates in which the self-latching mechanisms shall be located not less than four and a half feet (4½ ft.) (1.4 m) above finished grade.

610.4 Door access points from public rooms such as lobbies or club houses need not be through gates.

610.5 Gates shall open outward away from the pool area.

610.6 A latched, lockable gate shall be placed in the fence within ten feet (10 ft.) of the equipment area for service access.

610.7 Screened pool enclosures shall be hardened on the bottom three feet (3 ft.)

- 610.8 Fencing consideration shall be given to the U.S. Consumer Product Safety Commission (CPSC) Publication No. 362 Guidelines.
- 610.9 Safety Covers shall meet strict performance standards as set by the American Society for Testing and Materials in ASTM Standard F1346-91, Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs.
- 610.10 All public and semi-public pools shall be installed or secured with pool safety covers as specified in Subsection 505.5, during the following occurrence:
- (a) At the end of the outdoor swimming season;
 - (b) An in-door or out-door pool is taken out of service for more than thirty (30) days; or
 - (c) When a pool is experiencing a mechanical failure that prevents proper recirculation of water for more than seventy-two (72) hours.
- 610.11 All standing water shall be substantially drained from the cover with a pump within thirty (30) minutes after cessation of normal rainfall.

611 FACILITY MAINTENANCE — CONTROLLING PESTS*

- 611.1 The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:
- (a) Routinely inspecting the premises for evidence of pests;^N
 - (b) Using methods, if pests are found, such as trapping devices or other means of pest control, such as covered, tamper-resistant bait stations; and
 - (c) Eliminating harborage conditions.^N
- 611.2 The licensee shall maintain a copy of the establishment's professional service contract and service schedule, which documents the following information:
- (a) Name and address of its D.C. licensed pest exterminator/contractor in accordance with Sections 2300 and 2400 of the D.C. Pesticide Operations Regulations, effective March 20, 2015 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*);
 - (b) Frequency of pest extermination services provided under the contract; and
 - (c) Date pest extermination services were last provided to the establishment.

612 FACILITY MAINTENANCE — REMOVING DEAD OR TRAPPED BIRDS, INSECTS, RODENTS, & OTHER PESTS, AND ANIMAL PROHIBITION*

612.1 Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition or the attraction of pests.

612.2 Animals shall not be allowed in aquatic facilities.

**CHAPTER 7 APPLICATION & LICENSING REQUIREMENTS,
AND DEFINITIONS**

700 LICENSES, REGISTRATIONS, & CERTIFICATIONS, AND CERTIFICATE OF OCCUPANCY REQUIREMENTS*

700.1 No person shall own, operate, or manage a public swimming pool, spa pool, or sauna without a valid license issued by the Mayor.

700.2 No person shall own, operate, or manage a public swimming pool, spa pool, or sauna with an expired or suspended license issue.

700.3 No person shall operate, or manage a public swimming pool, spa pool, or sauna without a current Certificate of Occupancy.

700.4 No person shall serve as a pool and spa operator without a current Pool and Spa Operator's Registration Card issued by the Department in violation of Subsection 301.4.

700.5 No person shall serve as a lifeguard or swimming instructor without a current lifeguard or instructor certification issued by the American Red Cross or the YMCA, or other nationally recognized aquatic training organizations adopted and recognized by the D.C. Department of Health in violation of Subsections 302.3 and 302.4.

700.6 No person shall serve as a lifeguard or swimming instructor without a current certification in First Aid, and in adult, child and infant Cardio-Pulmonary Resuscitation and Automated External Defibrillator (CPR/AED) issued by the American Red Cross, the American Heart Association, the National Safety Council, the American Academy of Orthopedic Surgeons, or other nationally recognized aquatic training organization adopted and recognized by the D.C. Department of Health in violation of Subsection 302.4.

700.7 No person shall construct, install, renovate or retrofit any public swimming pool, spa pool, or sauna without first having received written approval from the Department of Consumer and Regulatory Affairs and the Department of Health.

701 APPLICATION PROCEDURES FOR FACILITY LICENSE – FORM OF SUBMISSION, NOTICE

- 701.1 An applicant shall submit a written application for a swimming pool, spa pool, or sauna on a form provided by the Department.
- 701.2 An applicant shall submit an application to license a newly constructed or newly renovated swimming pool, spa pool, or sauna at least thirty (30) calendar days before the proposed opening date of the swimming pool, spa pool, or sauna.
- 701.3 An applicant shall submit an application to renew a license at least thirty (30) calendar days before the expiration date of the current license for an existing swimming pool, spa pool, or sauna.
- 701.4 A new application shall be filed with the Department within thirty (30) calendar days of any change in ownership or location. An applicant shall also notify the Department immediately if the applicant decides not to open, sell, or transfers the aquatic facility at the location identified in the application.
- 701.5 The Department shall accept completed plans and specifications approved by the Department of Consumer and Regulatory Affairs that meet the requirements of these regulations, and shall report its findings to the applicant within thirty (30) calendar days of the date the completed plans are received.
- 701.6 Plans and specifications that are not approved as submitted shall be changed to comply with these regulations or shall be returned as disapproved.

702 APPLICATION PROCEDURES FOR FACILITY LICENSE – CONTENT OF THE APPLICATION PACKET

- 702.1 The Department shall not process an application for a new license, license renewal, or change in ownership or location where administrative actions are pending against the licensee of a new or existing aquatic facility.
- 702.2 The Department shall accept completed plans and specifications approved by the Department of Consumer and Regulatory Affairs that meet the requirements of these regulations, and shall report its findings to the applicant or licensee within thirty (30) days of the date the completed plans are received.
- 702.3 The Department application for a public swimming pool, spa pool, or sauna license shall include the name, address, and signature of the applicant, and the following information:
- (a) Name, mailing address and telephone number of the licensee;

- (b) Trade name, if applicable;
- (c) Name and address of corporate officers, if applicable;
- (d) Name and address of registered agent in the District, pursuant to the “District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2009”, as amended, effective July 2, 2011 (D.C. Law 18-378; D.C. Official § 29-104.02 (2013 Repl.)), if applicable;
- (e) Address of the swimming pool, spa pool, or sauna facility and hours of operation;
- (f) Type of aquatic facility; and
- (g) Required application fee.

702.4 The following documents shall be submitted with the Department application for review:

- (a) Current Certificate of Occupancy and required approvals issued by DCRA;
- (b) A complete set of construction plans including all schedules, including floor plans, elevations, and electrical schematics, as specified in Section 705;
- (c) Passing Pre-operational Inspection Report for compliance with these Regulations from the Department (no cost for the first Pre-operation Inspection Report);
- (d) Copies of current registrations issued by the Department to the facility’s Pool and Spa Operators, including the individuals’ names, addresses, and cell phone numbers;
- (e) Copies of current lifeguards and swimming instructors’ training certifications and First Aid certifications as specified in Section 302; and
- (f) Copies of the facility’s D.C. licensed Pest Exterminator/Contractor as specified in Subsection 611.2.

703 APPLICATION PROCEDURES – DENIAL OF FACILITY LICENSE, NOTICE

703.1 If an application for a new license or renewal license is denied, the Department shall provide the applicant with written notice that includes:

- (a) The specific reasons and legal authority for denial of the license;
- (b) The actions, if any, that the applicant must take to qualify for a new license or to renew an existing license; and
- (c) Notice of the applicant's or licensee's right to a hearing as prescribed in sections 812.2 and 812.3.

704 ISSUANCE OF POOL AND SPA OPERATORS' REGISTRATION CARDS

704.1 To qualify for a Pool and Spa Operator's Registration Card an applicant shall:

- (a) Complete a registration form provided by the Department of Health;
- (b) Submit proof of certifications specified in Section 300; and
- (c) Pay the required fee.

704.2 A Pool and Spa Operator's Registration Card shall be valid for a three (3) year period, as specified in Subsection 301.4.

705 ISSUANCE OF FACILITY LICENSE — REQUIRED PLAN REVIEWS AND APPROVALS

705.1 The following plans and specifications for a swimming pool, spa pool, or sauna shall be submitted to the Department of Consumer & Regulatory Affairs for review and approval as specified in this section and Subsection 706.1:

- (a) Proposed layout, mechanical schematics, construction materials, and finish schedules;
- (b) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
- (c) A complete set of elevations and drawings for all custom fabricated equipment; and
- (d) Other information that may be required before the Department of Consumer & Regulatory Affairs may approve proposed plans for the construction, or renovation, or retrofits, including approvals by other District agencies, when necessary.

706 ISSUANCE OF NEW AND RENEWAL FACILITY LICENSES — EXISTING FACILITY, NEW CONSTRUCTION, RENOVATION, AND RETROFITTING OF SWIMMING POOLS, SPA POOLS, OR SAUNAS FACILITIES

706.1 An applicant or licensee shall submit properly prepared plans and specifications to the Department of Health for review and approval, as specified in Section 705, at least thirty (30) calendar days before:

- (a) Opening a new or existing swimming pool, spa pool, or sauna;
- (b) Building a new swimming pool, spa pool, or sauna facility;
- (c) Renovating or retrofitting an existing swimming pool, spa pool, or sauna; or
- (d) Changing the type of swimming pool, spa pool, or sauna facility's operation.

706.2 The Department shall issue an aquatic facility license after an applicant has:

- (a) Submitted a properly completed application provided by the Department;
- (b) Paid all required fees;
- (c) Obtained required approvals of documents specified in Sections 701.5, 701.6, 702.4, and 705; and
- (d) Passed a preoperational inspection required in Subsection 710.1.

707 ISSUANCE OF FACILITY LICENSE — EXISTING FACILITIES, AND CHANGE IN OWNERSHIP, OR LOCATION

707.1 The Department shall renew a license to a swimming pool, spa pool, or sauna facility after a properly completed application is submitted, reviewed and approved, applicable fees are paid, and the Department has determined through an inspection that the facility is in compliance with this Regulation.

707.2 The Department shall issue a new license to a swimming pool, spa pool, or sauna facility that has changed ownership or changed location after a properly completed application is submitted, reviewed and approved, applicable fees are paid, and an inspection shows that the facility is in compliance with this Regulation.

708 REQUIRED POSTINGS

708.1 A public swimming pool, spa pool, or sauna shall provide notice to the Department of its intent to shut down permanently or temporarily at least thirty (30) calendar days before discontinuing operations.

708.2 All licenses, Certificate of Occupancy, certifications, Department posted warnings, and current inspection results shall be conspicuously posted near a public entrance within the swimming pool, spa pool, or sauna facility in accordance with Sections 201, 202, and 901.1(b).

709 LICENSES AND PERMITS NOT TRANSFERABLE

709.1 A facility license or permit to operate a swimming pool, spa pool, or sauna facility shall not be transferred from one person to another person, from one facility to another facility, or from one location to another location even if owned, leased or operated by the same person.

710 ACCESS & INSPECTIONS — DEPARTMENT’S RIGHT OF ENTRY, DENIAL, AND INSPECTORS’ COMPETENCY*

710.1 The Department shall determine an aquatic facility’s compliance with these regulations by conducting the inspections:

- (a) Preoperational and follow-up inspections, as necessary to obtain a new license for indoor or seasonal outdoor swimming pools, spa pools, and saunas.
- (b) For indoor swimming pools, spa pools, and saunas with existing valid licenses:
 - (1) Two (2) unannounced, routine inspections; and
 - (2) Follow-up inspections, as necessary.
- (c) For seasonal outdoor swimming pools, spa pools, and saunas with existing valid licenses:
 - (1) Mandatory preopening inspections. Preopening inspections shall be requested in writing at least thirty (30) days prior to opening;
 - (2) One (1) unannounced, routine inspection; and
 - (3) Follow-up inspections, as necessary.
- (d) Unannounced, complaint-generated inspections.

710.2 After representatives of the Department present official credentials and provide notice of the purpose and intent to conduct an inspection in accordance with these regulations, the applicant, licensee, pool and spa operator, or lifeguard shall allow the Department access to any part, portion, or area of a swimming pool, spa pool, or sauna facility.

- 710.3 The Department may enter and inspect all aspects of a swimming pool, spa pool, or sauna facility, including, but not limited to its physical facilities, operations, equipment, records, chemicals and other operational supplies, at any time for one or more of the following purposes:
- (a) To determine if the swimming pool or spa facility is in compliance with these regulations;
 - (b) To investigate an emergency affecting the public health if the swimming pool or spa is or may be involved in the matter causing the emergency;
 - (c) To investigate, examine and sample water quality and testing for biological contaminants, as specified in Subsection 403.1; or
 - (d) To obtain information, and examine and copy all records on the premises relating to reporting requirements as specified in Section 412.
- 710.4 If a person denies the Department access to any part, portion, or area of a swimming pool, spa pool, or sauna facility, the Department shall inform the individual that:
- (a) The applicant or licensee is required to allow access to the District agencies as specified in Subsections 710.2 and 710.3;
 - (b) If access is denied, an inspection order allowing access may be obtained in accordance with District law; and
 - (c) The Department is making a final request for access.
- 710.5 If the Department presents credentials and provides notice as specified in Subsection 710.2, explains the authority upon which access is requested, and makes a final request for access as specified in Subsection 710.4, and the applicant or licensee continues to refuse access, the Department shall provide details of the denial of access on the inspection report.
- 710.6 If the Department is denied access to a swimming pool or spa facility for an authorized purpose, after complying with Subsection 710.5, the Department may:
- (a) Summarily suspend a license issued to the swimming pool, spa pool or sauna in accordance with Subsection 807.1;
 - (b) Revoke or suspend a license issued to the swimming pool spa pool or sauna facility in accordance with Subsection 812; or

- (c) Request that the Office of the Attorney General for the District of Columbia commence an appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief from the court, to enforce these regulations.

710.7 Authorized representatives of the Department who are responsible for conducting inspections, plan reviews, and approvals of aquatic facilities shall be properly trained and certified as specified in Sections 300 and 302 of these regulations.

711 REPORT OF FINDINGS – SPECIFYING TIME FRAME FOR CORRECTIONS

711.1 The Department shall specify on its inspection report the time frame for correction of violations as specified in Sections 717 and 719.

712 REPORT OF FINDINGS – ISSUING REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT

712.1 At the conclusion of an inspection, the Department shall provide a copy of its completed inspection report and the notice to correct violations to the licensee, and request a signed acknowledgment of receipt. The inspection report shall contain a listing of violations by area in the facility's operation and inspection item with corresponding citations to applicable regulatory provisions.

713 REPORT OF FINDINGS – REFUSAL TO SIGN ACKNOWLEDGMENT

713.1 The Department shall inform a person who declines to sign an acknowledgment of receipt of inspection findings that:

- (a) An acknowledgment of receipt is not an agreement with the finding;
- (b) Refusal to sign an acknowledgment of receipt will not affect the licensee's or dealer's obligation to correct the violations noted in the inspection report within the time frames specified; and
- (c) A refusal to sign an acknowledgment of receipt will be noted in the inspection report for the swimming pool, spa pool, or sauna facility.

714 REPORT OF FINDINGS – PUBLIC INFORMATION, RECORDS RETENTION

714.1 The Department shall keep and maintain in-office as an active record a copy of each inspection report, complaint, inspector's sample reports, license suspension, and other correspondence regarding a public swimming pool, spa pool, or sauna facility within the District for a period of one (1) year, and then as an inactive

record for a period of two (2) additional years. Inactive records shall be destroyed in-house at the end of the two (2)-year inactive period.

714.2 In the case of an audit or investigation, the Department shall keep all records until the audit or investigation has been completed.

714.3 The Department shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §§ 2-501 *et seq.* (2012 Repl.)).

715 IMMEDIATE HEALTH HAZARDS – CEASING FACILITY OPERATIONS AND EMERGENCY REPORTING*

715.1 The Department shall summarily suspend operations, or, a licensee shall immediately discontinue operations and notify the Department, whenever a swimming pool, spa pool, or sauna facility is operating with any of the following conditions:

- (a) Operating an aquatic facility without a clock in violation of Subsection 202.2;
- (b) Operating an aquatic facility with improper water temperatures in violation of Subsections 202.1(b), and 402.5;
- (c) Operating an aquatic facility with a total absence of or improper depth markings in violation of Subsections 201.1(e), 402.3, and 402.4;
- (d) Operating an aquatic facility with an unapproved or contaminated water supply source for potable water use in violation of Sections 400 and 401;
- (e) Operating an aquatic facility without proper water clarity from the pool deck in violation of Subsections 402.1, 402.2, and 410.1;
- (f) Operating an aquatic facility with water quality pH level below 6.5 in violation of Subsection 404.2(a)(1);
- (g) Operating an aquatic facility with water quality pH level above 8.0 in violation of Subsection 404.2(a)(2);
- (h) The disinfectant level is below the minimum or above the maximum in violation of Subsection 404.2(b);
- (i) Operating an aquatic facility with contaminated water not treated or improperly treated with disinfectants in violation of Sections 406 and 411;

- (j) Failing to continuously operate the aquatic facility's filtration equipment in violation of Sections 408.1, 408.3, 408.12, 409, and 410.3;
- (k) Operating an aquatic facility that is not retrofitted with a properly sized and piped collector tank to eliminate direct suction through the main drain in violation of Subsection 408.5;
- (l) Operating an aquatic facility with direct suction without installing a main drain cover that meets the ANSI/ASME A112.19.8-2007 standard for drain covers in violation of Subsection 408.6;
- (m) Operating an aquatic facility with a single main drain (other than an unblockable drain) without being equipped with a device or system such as a safety vacuum release system to prevent entrapment in violation of Subsection 408.7;
- (n) Operating an aquatic facility in violation of Subsection 408.11;
- (o) Operating an aquatic facility with broken, unsecured, improperly secured, damaged or missing main drain grate or any submerged suction outlet grate in violation of Subsections 408.16 and 408.18;
- (p) Operating an aquatic facility in violation of Sections 500, 501, 502, 503, and 504;
- (q) Operating an aquatic facility without an emergency lighting source, or failing to maintain an emergency lighting source in violation of Subsection 504.5;
- (r) Operating an aquatic facility without required first aid and safety equipment on deck as specified in Section 505;
- (s) Operating an aquatic facility with improper plumbing cross-connections between the drinking water supply and aquatic facility water or between sewage system and the aquatic facility including filter backwash facilities in violation of Subsection 601.1;
- (t) Operating an aquatic facility without hot water in violation of Subsections 602.2 and 602.7;
- (u) Failing to properly handle, use, label, store, or ventilate chemicals in an aquatic facility in violation of Sections 607 or 608;
- (v) Using unapproved chemicals or applying chemicals by unapproved methods to an aquatic facility's water in violation of Subsection 607.3;

- (w) Failing to prevent unauthorized access to an aquatic facility's machinery, electric panels, or chemicals used for the swimming pool, spa pool, or sauna in violation of Subsection 607.7;
- (x) Operating an aquatic facility without the required personal protective equipment (ppe) to handle chemicals in violation of Subsection 608.10(h);
- (y) Operating an aquatic facility with safety covers that do not meet strict performance standards as set by the American Society for Testing and Materials in ASTM Standard F1346-91, Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs in violation of Subsection 610.10; or
- (z) Operating an aquatic facility with safety covers that are improperly installed, or secured with continuous union to the deck in violation of Subsection 505.5.

715.2

In addition to the imminent health hazards identified in Subsection 715.1, the Department shall summarily suspend operations if it determines through an inspection, or examination of records or other means as specified in Section 710, the existence of the following conditions, including but not limited to:

- (a) Operating an aquatic facility with a bather load in violation of Subsections 201.1(b), 202.1(d), and 304.1;
- (b) Serving as a lifeguard or swimming instructor without a current lifeguard or instructor certification issued by the American Red Cross, the YMCA, or other nationally recognized aquatic training organizations adopted and recognized by the D.C. Department of Health in violation of Subsections 302.3 and 302.4;
- (c) Serving as a lifeguard or swimming instructor without a current certification in First Aid, and in adult, child and infant Cardio-Pulmonary Resuscitation and Automated External Defibrillator (CPR/AED) issued by the American Red Cross, the American Heart Association, the National Safety Council, the American Academy of Orthopedic Surgeons, or other nationally recognized aquatic training organizations adopted and recognized by the DC Department of Health in violation of Subsections 302.3 and 302.4;
- (d) Operating a swimming pool, spa pool, or sauna without the required number of lifeguards in violation of Section 304;

- (e) Operating an aquatic facility without an approved Child Safety Plan, if applicable, or failing to provide copies of the facility's Child Safety Plan to the Department for review and approval in violation of Section 305;
- (f) Operating an aquatic facility in violation of a Notice of Closure/Summary Suspension, Revocation, Suspension, warnings, or other directives issued by the Department as specified in Sections 408.10, 607.4, 716, 801, 807, 811, and 812;
- (g) Using, selling, moving, or destroying equipment, chemicals, or other operational supplies subject to a Condemnation Order by the Department in violation of Subsection 804.1;
- (h) Operating an aquatic facility without a Water Quality Test Kit in violation of Section 405;
- (i) Operating an aquatic facility without maintaining daily water quality and safety logs in violation of Section 412;
- (j) Failing to report a death, serious injury, or injury that requires resuscitation or admission to a hospital occurring at a swimming pool, spa pool, sauna to the Department within twenty-four hours (24 hrs.) of the incident in violation of Subsection 413.1;
- (k) Failing to report a complaint of illness attributed by a bather to use of a swimming pool, spa pool, or sauna to the Department within twenty-four (24) hours of the incident in violation of Subsection 413.2;
- (l) Owning, operating, or managing a swimming pool, spa pool, or sauna without a valid license issued by the Department in violation of Subsection 700.1;
- (m) Failing to maintain plumbing systems, including but not limited to toilet facilities (restrooms), shower facilities, and handwashing sinks in good repair in violation of Subsection 606.1;
- (n) Using compressed chlorine gas or chlorine gas in violation of Subsections 608.3 and 608.4;
- (o) Owning, operating, or managing a swimming pool, spa pool, or sauna without required barriers and/or fencing; or, with barriers and/or fencing not approved by the Department in violation of Section 610;
- (p) Owning, operating, or managing a swimming pool without a pool safety cover in violation of Subsection 610.10;

- (q) Owning, operating, or managing a swimming pool, spa pool, or sauna with an expired or suspended license issue in violation of Subsection 700.2;
- (r) Operating, or managing a public swimming pool, spa pool, or sauna without a valid Certificate of Occupancy in violation of Subsection 700.3;
- (s) Serving as a pool and spa operator without a current Pool and Spa Operator's Registration Card issued by the Department in violation of Subsection 700.4;
- (t) Constructing, installing, renovating or retrofitting, or operating any public swimming pool, spa pool, or sauna without first having received written approved from the Department of Health and the District Government in violation of Sections 705 and 706;
- (u) Failing to allow the Department access to a swimming pool, spa pool, or sauna in violation of Section 710;
- (v) Failing to post licenses, Certificate of Occupancy, certifications, and current inspection reports in violation of Subsection 708.2;
- (w) Failing to post required signs in violation of Sections 201 and 202;
- (x) Removing required signs or Department posted warnings or closures in violation of Sections 715.3, 720.3, 805.1, and 901.1(b); or
- (y) Operating an aquatic facility with conditions dangerous to the health, safety, or welfare of bathers or patrons at the swimming pool, spa pool, or sauna, including but not limited to:
 - (1) Accidents involving bodily fluids in violation of Subsection 412.7;
 - (2) Failing to keep swimming pool, spa pool or sauna, or pool deck free of sediment, floating debris, visible dirt and algae in violation of Subsection 504.6;
 - (3) Violations of recent editions of the District of Columbia's Construction Codes Supplements, as specified in Subsection 102.1(l) and Chapter 6;
 - (4) A drowning hazard;
 - (5) Broken glass, sharp edged or broken tile, metal, or other abrasion hazards in the water or deck area;
 - (6) Operating an aquatic facility with a fire;

- (7) Operating an aquatic facility with a flood;
- (8) Operating an aquatic facility with an interruption of municipal water service;
- (9) Operating an aquatic facility with a sewage backup;
- (10) Operating an aquatic facility with an onset of a confirmed waterborne illness;
- (11) An unapproved modification to a swimming pool, spa pool, or sauna determined by the Department to be unsanitary or dangerous to the public health, safety, or welfare;
- (12) Operating an aquatic facility with unprotected, overhead electrical wires within twenty (20) feet horizontally of the water of a swimming pool, spa pool, or sauna;
- (13) Operating an aquatic facility without a ground-fault circuit interrupter (GFCI) within twenty (20) feet of the inside wall of the aquatic facility designed to shut off electric power to protect people against electric shock from an electrical system or outlet; or
- (14) Operating an aquatic facility with a recirculation system or automatic disinfectant chemical feeding equipment is missing, malfunctioning, or not functioning.

715.3 When any of the conditions listed in Subsections 715.1 or 715.2 of these regulations exist, the Department shall attach a sign that states:

AQUATIC FACILITY CLOSED. This facility is closed until further notice by the Department of Health for imminent health hazard(s) in violation of Section 715 of the District's Aquatic Facilities Regulations (Swimming Pools, Spa Pools, and Saunas in Subtitle C, Title 25 of the District of Columbia Municipal Regulations).

716 IMMEDIATE HEALTH HAZARD — RESUMPTION OF FACILITY OPERATIONS*

716.1 If the facility is closed as specified in Section 715, the licensee shall obtain approval from the Department as specified in Section 811 before resuming operations.

717 CRITICAL VIOLATIONS — TIME FRAME FOR CORRECTION

717.1 A licensee shall, at the time of inspection, correct a critical violation of these regulations immediately, except as specified in Subsection 717.2.

717.2 The Department may consider the nature of the potential hazard involved and the complexity of the corrective action needed and agree to specify a longer timeframe, not to exceed five (5) calendar days after the inspection, for the licensee to correct a critical violation of this Regulation.

717.3 Failure to correct violations in accordance with this section may subject a licensee to summary suspension of license pursuant to Section 807, revocation or suspension of a license pursuant to Section 812, and the issuance of Notice of Infractions pursuant to Section 1000, and civil penalties pursuant to Section 1001.

718 CRITICAL VIOLATIONS – VERIFICATION AND DOCUMENTATION OF CORRECTION

718.1 After observing at the time of inspection a correction of a critical violation, the Department shall enter the violation and information about the corrective action on its inspection report.

718.2 After receiving notification that the licensee has corrected a critical violation, the Department shall verify correction of the violation, document the information on an inspection report, and enter the report in its records.

719 NONCRITICAL VIOLATIONS – TIME FRAME FOR CORRECTION

719.1 The licensee shall correct noncritical violations by a date and time agreed to or specified by the Department but no later than fourteen (14) calendar days after the inspection, except as specified in Subsection 719.2.

719.2 The Department may approve a compliance schedule that extends beyond the time limits specified in Subsection 719.1 if the licensee submits a written schedule of compliance and no health hazard exists or will result from allowing an extended schedule for compliance.

719.3 Failure to correct violations in accordance with this section may result in the revocation or suspension of a license pursuant to Section 812, and the issuance of Notice of Infractions pursuant to Section 1000, and civil penalties pursuant to Section 1001.

720 REQUEST FOR REINSPECTION

720.1 If a license is summarily suspended pursuant to Section 807 or suspended or revoked pursuant to Section 812 because of violations of this Regulation, the licensee shall submit to the Department a written request for reinspection.

- 720.2 Upon receipt of a request for reinspection, the Department shall perform the reinspection of the public swimming or spa facility within three (3) business days of receipt of the request.
- 720.3 A swimming pool, spa pool, or sauna facility shall not resume operations, use of equipment, chemicals or supplies, or remove from public view any Department posted closures, warnings, inspection reports, or orders until the Department has reinspected the swimming pool, spa pool, or sauna facility and certified that it is in compliance with these Regulations, as specified in Sections 716.1, 720.1, 720.2, 804, and 805.

CHAPTER 8 ADMINISTRATIVE ENFORCEMENT ACTIONS AND ORDERS

800 ADMINISTRATIVE ENFORCEMENT ACTION – REMEDIES

- 800.1 The Department may use one or more of the remedies listed in this chapter simultaneously to address a violation of this Regulation.

801 ADMINISTRATIVE ENFORCEMENT ACTION – CONDEMNATION ORDER, JUSTIFYING CONDITIONS AND REMOVAL OF EQUIPMENT, CHEMICALS, OR OTHER OPERATIONAL SUPPLIES

- 801.1 A duly authorized agent of the Department may condemn and cause to be removed any equipment, chemicals, or other operational supplies found in a swimming pool, spa pool, or sauna facility the use of which does not comply with these regulations.

802 ADMINISTRATIVE ENFORCEMENT ACTION – CONDEMNATION ORDER, CONTENTS

- 802.1 The condemnation order shall:
- (a) State that the equipment, chemicals, or other operational supplies subject to the order may not be used, sold, moved from the swimming pool, spa pool, or sauna facility or destroyed without a written release of the order from the Department;
 - (b) State the specific reasons for placing the equipment, or other operational supplies under the condemnation order with reference to the applicable provisions of these regulations and the hazard or adverse effect created by the observed condition;
 - (c) Completely identify the equipment, chemicals, or other operational supplies subject to the condemnation order by the common name, the manufacturer's information, description of the item, the quantity, the Department's tag or identifying information, and location;

- (d) State that the Department of Health may order the destruction, replacement or removal of the equipment, chemicals, or other operational supplies; and
- (e) That the licensee may request an informal conference in accordance with Subsection 803.2. A request for an informal conference does not stay the Department's imposition of the condemnation order.

803 ADMINISTRATIVE ENFORCEMENT ACTION — CONDEMNATION ORDER, OFFICIAL TAGGING OR MARKING OF EQUIPMENT, CHEMICALS, OR OTHER OPERATIONAL SUPPLIES

- 803.1 The Department of Health shall place a tag, label, or other appropriate marking to indicate the condemnation of equipment, chemicals, or other operational supplies that do not meet the requirements of this Regulation.
- 803.2 The tag or other method used to identify the equipment, chemicals, or other operational supplies that are the subject of a condemnation order shall include a summary of the provisions specified in Section 802 and shall be signed and dated by the Department.

804 ADMINISTRATIVE ENFORCEMENT ACTION — CONDEMNATION ORDER, EQUIPMENT, CHEMICALS, OR OTHER OPERATIONAL SUPPLIES MAY NOT BE USED OR MOVED

- 804.1 Equipment, chemicals, or other operational supplies that are subject to a condemnation order may not be used, sold, moved, or otherwise destroyed by any person, except as specified in Subsection 804.2.
- 804.2 The Department may allow the licensee to store the equipment, chemicals, or other operational supplies in an area of the swimming pool, spa pool, or sauna that does not restrict the facility's operations.

805 ADMINISTRATIVE ENFORCEMENT ACTION — CONDEMNATION ORDER, REMOVING THE OFFICIAL TAG OR MARKING

- 805.1 No person shall remove Department posted tags, labels, or other appropriate markings except under the direction of the Department as specified in Subsection 805.2.
- 805.2 The Department of Health shall issue a notice of release from a condemnation order and shall remove condemnation tags, labels, or other appropriate markings from equipment, chemicals, or other operational supplies if:

- (a) The condemnation order is vacated; or

- (b) The licensee notifies the Department that the equipment, chemicals, or other operational supplies have been modified to meet NSF/ANSI or ASME/ANSI standards and the requirements of this Regulation, and the Department has conducted a re-inspection.

806 ADMINISTRATIVE ENFORCEMENT ACTION — CONDEMNATION ORDER, WARNING OR INFORMAL CONFERENCE NOT REQUIRED

806.1 The Department may issue a condemnation order to a licensee without prior warning, or informal conference on the condemnation order.

806.2 A condemnation order shall be reviewed by a Department program manager or supervisor prior to it being issued to an operator. A request by email, certified mail, or fax may be submitted by the licensee requesting an informal conference with the Department within fifteen (15) business days of receiving the condemnation order.

807 ADMINISTRATIVE ENFORCEMENT ACTION — SUMMARY SUSPENSION OF LICENSE, CONDITIONS WARRANTING ACTION

807.1 The Department may summarily suspend a license to operate a swimming pool, spa pool, or sauna facility, when the Department is denied access to a facility in violation of Section 710, or when the Department determines through an inspection, examination of records, or other means as specified in the Regulations that an imminent health hazard exists.

808 ADMINISTRATIVE ENFORCEMENT ACTION — CONTENTS OF SUMMARY SUSPENSION NOTICE

808.1 A summary suspension notice shall state:

- (a) That the license of a swimming pool, spa pool, or sauna facility is immediately suspended and that all operations shall immediately cease;
- (b) The reasons for summary suspension with reference to the provisions of this Regulation that are in violation;
- (c) The name and address of the Department's representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and
- (d) State that the licensee may request an informal conference in accordance with Subsection 809.2. A request for an informal conference does not stay the Department's imposition of the condemnation order;

809 ADMINISTRATIVE ENFORCEMENT ACTION — SUMMARY SUSPENSION, WARNING OR INFORMAL CONFERENCE NOT REQUIRED

809.1 The Department may summarily suspend a license as specified in Section 807 by providing written notice as specified in Section 808 of the summary suspension to the licensee, without prior warning or informal conference.

809.2 A Notice of Summary Suspension shall be reviewed by a Department program manager or supervisor prior to being issued to a licensee. A request by email, certified mail, or fax may be submitted by a licensee requesting an informal conference with the Department.

810 ADMINISTRATIVE ENFORCEMENT ACTION — SUMMARY SUSPENSION, TIME FRAME FOR REINSPECTION

810.1 After receiving a request by email, certified mail, or fax from the licensee stating that the conditions cited in the summary suspension order no longer exist, the Department shall conduct a reinspection of the aquatic facility for which the license was summarily suspended within three (3) business days of receiving the licensee's request.

811 ADMINISTRATIVE ENFORCEMENT ACTION — SUMMARY SUSPENSION, TERM OF SUSPENSION, REINSTATEMENT

811.1 A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and the Department has confirmed, through reinspection or other appropriate means that the conditions cited in the notice of suspension have been corrected, as specified in Section 716 and 720.

812 ADMINISTRATIVE ENFORCEMENT ACTION — REVOCATION OR SUSPENSION OF LICENSE, OR DENIAL OF APPLICATION OR RENEWAL OF LICENSE

812.1 Failure to comply with any of the provisions of these regulations shall be grounds for the revocation or suspension of any license issued to an aquatic facility pursuant to the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2012 Repl.)). The Department may revoke a license of a swimming pool, spa pool, or sauna where there is a record of subsequent violations and a history of summary suspensions within a three (3) year period.

812.2 Before a license is revoked, or suspended, a licensee shall be given an opportunity to answer and to be heard on the violations before the Office of Administrative Hearings in accordance with the Office of Administrative Hearings Rules of Practice and Procedure in Section 2808, Title 1 DCMR, as amended.

- 812.3 Before the Department denies an application for license, or denies the renewal of a license as specified in Section 703, an applicant or licensee shall be given an opportunity to answer and to be heard on the violations before the Office of Administrative Hearings in accordance with the Office of Administrative Hearings Rules of Practice and Procedure in Section 2808, Title 1 DCMR, as amended.

CHAPTER 9 SERVICE OF PROCESS

900 SERVICE OF PROCESS – NOTICE, PROPER METHODS

- 900.1 A notice issued in accordance with these regulations shall be deemed properly served if it is served by one (1) of the following methods:
- (a) A Department representative, a law enforcement officer, or a person authorized to serve a civil process, personally services the notice to the licensee, or the person operating a swimming pool, spa pool, or sauna without a license;
 - (b) The Department sends the notice to the last known address of the licensee or person operating a swimming pool, spa pool, or sauna without a license, in accordance with Section 205 of 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 § 2-1802.05 (2012 Repl.)), or by other public means so that a written acknowledgment of receipt may be acquired; or
 - (c) In accordance with the Office of Administrative Hearings Rules of Practice and Procedure in Section 2811, Title 1 DCMR, as amended.

901 SERVICE OF PROCESS – DEPARTMENT ISSUED NOTICES OF SUMMARY SUSPENSION, NOTICES OF INFRACTION, AND OTHER DIRECTIVES

- 901.1 Notices of Summary Suspension, Notices of Infraction, and other directives issued by the Department shall be:
- (a) Served as specified in Subsection 900.1; or
 - (b) Posted by the Department at a public entrance to the swimming pool, spa pool, or sauna.

902 SERVICE OF PROCESS – NOTICE, EFFECTIVENESS

902.1 Service is effective at the time of the notice's receipt as specified in Subsection 901.1(a), or if service is made as specified in Subsection 901.1(b) at the time of the notice is posted.

903 SERVICE OF PROCESS – PROOF OF PROPER SERVICE

903.1 Proof of proper service may be made by certificate of service signed by the person making service or by admission of a return receipt, certificate of mailing, or a written acknowledgment signed by the licensee or person operating a swimming pool, spa pool, or sauna without a license or an authorized agent.

CHAPTER 10 ADMINISTRATIVE AND CIVIL PENALTIES, AND JUDICIAL REVIEW

1000 NOTICE OF INFRACTIONS

1000.1 The Department may impose civil infraction fines penalties for violations of any provision of these regulations pursuant to the Department of Consumer & Regulatory Affairs Civil Infractions Act of 1985, (Civil Infraction Act), effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.* (2012 Repl.)).

1000.2 A licensee who receives a Notice of Infraction as specified in Subsection 900.1(c), may pay the assessed fine or appear before the Office of Administrative Hearings as directed on the reverse side of the Notice of Infraction in accordance with the “Office of Administrative Hearings Rules of Practice and Procedure” in Section 2808, Title 1 DCMR, as amended.

1001 CIVIL FINES AND PENALTIES

1001.1 Civil fines, penalties, or related costs may be imposed against any aquatic facility owner, or licensee for violation of any provision of this Regulation.

1002 JUDICIAL REVIEW – APPEALS

1002.1 Any person aggrieved by a final order or decision of the Department may seek judicial review in accordance with the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2012 Repl.)).

1003 [RESERVED – FEE AND SERVICE SCHEDULE]

CHAPTER 99 DEFINITIONS

9900 GENERAL PROVISION AND DEFINITIONS

9900.1 The terms and phrases used in this title shall have the meanings set forth in this chapter, unless the text or context of the particular chapter, section, subsection, or paragraph provides otherwise.

9900.2 DEFINITIONS

Abrasion hazard – a sharp or rough surface that would scrape the skin by chance during normal use.

Accessible – easy exposed for inspection and the replacement of materials and/or parts with the use of tools.

Agitated water – an aquatic venue with mechanical means (aquatic features) to discharge, spray, or move the water's surface above and/or below the static water line of the aquatic venue. Where there is no static water line, movement shall be considered above the deck plane.

Algae – a marine plant classified along with Fungi and Bacteria in the group *Thallophyta*; thrives in sunny places on land or water utilizing photosynthesis for energy production; and can be destroyed easily with chlorine sanitizers.

Alteration – any change in equipment or materials used in the construction of a public swimming pool, spa pool, or sauna that does not conform to DCRA or DOH-approved plans, specifications, and change orders. Or, any act which changes or alters the original characteristics of the pool that requires a Building Permit issued by DCRA or DOH-approval, including but not limited to: pool or deck resurfacing, painting, equipment changes, structural additions or deletions, including but not limited to changes in the recirculation systems, decking, treatment systems, disinfection system, or pool shape modifications.

ASME/ANSI – a safety standard accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

Aquatic feature – an individual component within an aquatic facility, such as slides, structures designed to be climbed or walked across, and structures that create falling or shooting water.

Aquatic facility – an artificially constructed structure or modified natural structure where the general public is exposed to water intended for recreational or therapeutic purpose. Such structures do not necessarily contain standing water, so water exposure may occur via contact, ingestion, or aerosolization. Examples include swimming pools, wave pools, lazy rivers, surf pools, spas (including spa pools and hot tubs),

therapy pools, waterslide landing pools, spray pads, and other interactive water venues.

Barrier – a fence, safety cover, wall, building wall or a combination thereof, which completely surrounds or covers the swimming pool or spa and obstructs access to the swimming pool, or spa pool, including a natural or constructed topographical feature that prevents unpermitted access by bathers to a swimming pool, and with respect to a hot tub, a lockable cover. All access through the barrier shall have (1) one or more of the following safety features: alarm, key lock or self-locking or self-latching doors and gates.

Bather – any person using a swimming pool, spa pool, or sauna and adjoining deck area for the purpose of water sports, recreation therapy or related activities.

Bather load – the maximum number of persons allowed in the pool / spa area at one time.

Beginners' areas – water depths of three feet (3 ft.) or zero point nine one four four meter (0.9144 m) or less.

Breakpoint Chlorination – elimination of inorganic chloramines by adding enough Free Chlorine to destroy the inorganic chloramines that contribute to combined chlorine. Ten times the Combined Chlorine minus the existing Free Chlorine is used.

Bromine – a chemical sanitizing agent that is not as effective as chlorine in normal conditions and is not affected by heat, and continues disinfecting after combining making it great for spas.

Chemical feeder – a mechanical device used for applying chemicals to the water in swimming pools, spa pools, and saunas.

Chloramine – a compound formed when chlorine combines with nitrogen or ammonia causing eye and skin irritations and has a strong, objectionable odor.

Chlorination – the process of introducing chlorine to water to remove undesired contaminants and acts as a sanitizer, algaecide and strong oxidizer.

Circulation equipment – the mechanical components that are part of a circulation system in a swimming pool, spa pool, or sauna. Circulation equipment includes but is not limited to categories of pumps, hair and lint strainers, filters, valves, gauges, meters, heaters, surface skimmers, inlet/outlet fittings, and chemical feeding devices. The components have

separate functions, but when connected to each other by piping, perform as a coordinated system for purposes of maintaining swimming pool, spa pool, or sauna in a clear, sanitary and desirable condition.

Circulation system – an arrangement of mechanical equipment or components, connected by piping to a swimming pool, spa pool, or sauna in a closed system. The function of a circulation system is to direct water from the pool or spa, causing it to flow through the various system components for purposes of clarifying, heating, purifying, and returning the water back to the original body of water.

Clarifier – a chemical that coagulates and neutralizes suspended particles in water. There are two (2) types: inorganic salts of aluminum or iron and water-soluble organic polyelectrolyte polymers, also called coagulant or flocculent.

Coliform – a group of naturally-occurring bacteria that are present in all surface water and are in the intestinal tract of human and other warm-blooded animals. The presence of coliforms in a swimming pool, spa pool, or sauna indicates possible deficiencies in chlorine residuals, water clarity, filter backwashing or cleaning, pool cleanliness, swimmer adherence to showering rules and/or proper sample collection technique.

Colorimetric – one of four (4) test methods used to determine the concentration of a chemical element or chemical compound in a solution with the aid of a color reagent.

Competition pool – a swimming pool designed to be routinely used to host organized swim competitions such as those sponsored by colleges, universities, swim leagues, and swim clubs.

Coping – edge between deck of pool and water.

Critical item – a provision of these regulations that, if in noncompliance, is more likely than other violations to serve as a vector for a waterborne illness, or an environmental health hazard. A critical item is denoted with an asterisk (*).

Critical limit – the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate or reduce to an acceptable level the occurrence of a waterborne illness, or an environmental health hazard.

Critical violation – a condition or practice that violates these regulations and results in a waterborne illness, or endangers the public health, safety, or welfare.

Cyanuric – a chemical that helps reduce the excess loss of chlorine in water due to the ultraviolet rays of the sun. It is also called stabilizer, isocyanuric acid conditioner or triazinetrione.

Dark – a Munsell Color Value from zero (0) to four (4).

DCRA – Department of Consumer and Regulatory Affairs

Decks – those areas immediately adjacent to or attached to a swimming pool, spa pool, or sauna that are specifically constructed or installed for use by users sitting, standing or walking.

Deep areas – water depths in excess of five feet (5 ft.) or one point five two four meters (1.524 m).

Department or DOH – Department of Health.

D.E. – the Diatomaceous Earth that is used as a filter aid in DE type filters, including alternative filter aids that have been approved under NSF / ANSI Standard 50-2007, and accepted by the filter manufacturer.

Disinfectant – energy or chemicals used to kill undesirable or pathogenic (disease-causing) organisms that have a measurable residual at a level adequate to make the desired kill.

Diving board – a recreational mechanism for entering a swimming pool, consisting of a semi-rigid board that derives its elasticity through the use of a fulcrum mounted below the board.

Duckboard – a boardwalk laid across a muddy ground or flooring; made of non-porous easily cleanable material when used in pool deck area.

Electronic – one of four (4) test methods used to determine the concentration of a chemical using a portable/hand held test meter for pool-side use.

Ground-fault circuit interrupter (GFCI) – a fast-acting circuit breaker designed to shut off electric power in the event of a ground-fault (a break in the low-resistance grounding path from a tool or electrical system) within as little as 1/40 of a second, as defined by the U.S. Department of Labor Occupational Safety & Health Administration (OSHA) in publication OSHA 3007 1998 (Revised), an informational booklet.

Hose bibb – any connection to a potable water supply.

Imminent health hazard – a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operations to prevent injury based on the number of potential injuries, and the nature, severity and duration of the anticipated injury.

Inaccessible – enclosed by an effective barrier.

Jump board – a recreational mechanism that has a coil spring, leaf spring or comparable device located beneath the board which is activated by the force exerted in jumping on the board.

Licensee – the owner of an aquatic facility.

Lifeguard – a person having the qualifications of and possessing a current American Red Cross, YMCA, or other Lifeguard Certifications, current First Aid Certificates, current CPR (which includes adult, child, and infant), Certificates issued by nationally recognized aquatic training organizations, such as the International Lifeguard Training Program™ (ILTP™), that are adopted and recognized by the D.C. Department of Health; and is responsible for the safety of the users of a public swimming pool, spa pool, and sauna.

Main drain – a submerged suction outlet typically located at the bottom of a swimming pool, spa pool, and sauna to conduct water to a re-circulating pump.

Marking or Markings – the placement and installation of visual marking cues to help patrons identify step, bench and swim out outlines, slope break location, depth designations, and NO ENTRY and NO DIVING warnings. When markings are specified to be dark the term “dark” shall have the meaning defined in this Regulation.

Membrane filter test – a swab sample taken from any hard surface.

N,N-Diethyl-p-Phenylenediamine (DPD) – pH indicator in liquid or tablet form is the most common chlorine/bromine testing reagent; the indicator turns pink in the presence of disinfectant residual and the pinker the sample, the higher the chlorine/bromine reading.

NTU (Nephelometric Turbidity Unit) – a means of measuring water clarity.

Oxidation reduction potential (ORP) controller – device used to measure sanitizer effectiveness and to control ozone generators, chlorine

generators, and ionizers (in combination with chlorine). ORP is the only practical method to electronically monitor sanitizer effectiveness.

Oxidation reduction potential (ORP) – a measure of the tendency for a solution to either gain or lose electrons; higher (*more positive*) oxidation reduction potential indicates a more oxidative solution.

Pool safety cover – a manually or power-operated safety pool cover that conforms to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard regulating swimming pools or drain covers.

Pool and Spa Operator – an individual directly responsible for the operation of a swimming pool, spa pool, and sauna facility with certifications that are registered by the National Swimming Pool Foundation, and who are in possession of a current District of Columbia Pool and Spa Operator's Registration Card.

Precoat – the layer of diatomaceous earth deposited on the filter septa at the start of a filter run with D.E. filters.

Precoat feeder – a chemical feeder designed to inject diatomaceous earth into a filter in sufficient quantity to coat the filter septa at the start of a filter run.

Private residential swimming pools, spa pools, and saunas – residential swimming pool, spa pool, or sauna built in conjunction with a single family residence used or intended to be used solely by the owner or lessee, and the owner or lessee's immediate family and guests invited to use it without payment of a fee.

Public pool – any public pool or pools serving multi-family units, as classified and defined within this definition that are used for swimming or bathing and are operated by an owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for use. Public pools shall be further classified and defined as follows:

- (a) Class A, Competition Pool – any pool intended for use for accredited competitive aquatic events such as Federation Internationale De Natation (FINA), USA Swimming, USA Diving, USA Synchronized Swimming, USA Water Polo, National Collegiate Athletic Association (NCAA), or National Federation of State High School Associations (NFHS). The use of the pool is not limited to competitive events.
- (b) Class B, Municipal Pool – any pool intended for public recreational use.

- (c) Class C, Semi-Public Pool – any pool operated solely for and in conjunction with lodgings such as hotels, motels, apartments, condominiums.
- (d) Class D-1, Wave Action Pool – a pool designed to simulate breaking or cyclic waves for purposes of general play or surfing.
- (e) Class D-2, Activity Pool – a pool designed for casual water play ranging from simple splashing activity to the use of attractions placed in the pool for recreation.
- (f) Class D-3, Catch Pool – a body of water located at the termination of a manufactured waterslide attraction. The body of water is provided for the purpose of terminating the slide action and providing a means for exit to a deck or walkway area.
- (g) Class D-4, Leisure River – a manufactured stream of water of near-constant depth in which the water is moved by pumps or other means of propulsion to provide a river-like flow that transports bathers over a defined path that may include water features and play devices.
- (h) Class D-5, Vortex Pool – a circular pool equipped with a method of transporting water in the pool for the purpose of propelling riders at speeds dictated by the velocity of the moving stream of water.
- (i) Class D-6, Interactive Play Attraction – a manufactured water play device or a combination of water-based play devices in which water flow volumes, pressures, or patterns can be varied by the bather without negatively influencing the hydraulic conditions for other connected devices. These attractions incorporate devices or activities such as slides, climbing and crawling structures, visual effects, user-actuated mechanical devices and other elements of bather-driven and bather-controlled play.
- (j) Class D-7, Amusement Park Attraction – an attraction or ride traditionally found in amusement parks that are designed to permit bather contact with water.
- (k) Class D-8, Natural Body of Water – a natural or man-made aquatic play area normally regarded as oceans, lakes, ponds, streams, quarries, or bodies of water that the local jurisdiction has designated as natural bodies of water.

- (l) Class E – pools used for instruction, play or therapy and with temperatures above eighty-six degrees Fahrenheit (86° F) or (thirty degrees Celsius (30.0 ° C). Public pools are either a diving or non-diving type. Diving types of public pools are classified into types as an indication of the suitability of a pool for use with diving equipment.
- (m) Type VI-IX – public pools suitable for the installation of diving equipment by type.
- (n) Type O – a non-diving public pool.

Qualified lifeguards – individuals who have successfully completed nationally recognized aquatic training organizations adopted and recognized by the D.C. Department of Health, hold current certificates for such training, have met the pre-service requirements, and are participating in continuing in-service training requirements of the aquatic facility.

Quaternary ammonium (quats) – a compound derived from ammonium with hydrogen atoms replaced by organic groups; used as surface-active agent and disinfectant.

Recirculation system – a system consisting of pumps, motors, piping, filters, inlets, outlets, disinfecting and other water conditioning equipment and necessary accessories.

Return – pool water that is going back into the filtration system and chemical feeding cycle, usually from the gutters, skimmer or return lines.

Safety vacuum release system – a vacuum release system capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to a suction outlet flow blockage.

Sauna – aquatic feature including but not limited to the application of water vapor from hot water facilities such as Jacuzzis, hot tubs and steam baths.

Scum gutter - overflow line along the sides of the swimming pool, spa pool, and sauna that takes water to the return lines in the filtration system.

Shallow end of pool – the portion of a pool where the water's depth is four feet (4 ft.) or less.

Shepherd's hook – a pole twelve (12) to sixteen (16) feet in length with a loop on the end to grasp a person in the water who is in distress without entering the water.

Ship's ladder – the entry and exit ladders found on the pool sides and ends.

Showers – baths where the bather's body is sprayed with a fine stream of water from small jets.

Skimmer or surface skimmer – overflow water line that traps debris in the weir basket and returns the water to the filtration system for treatment.

Slip resistant – having a textured surface which is not conducive to slipping under contact of bare feet unlike glazed tile or masonry terrazzo and non-textured plastic materials. Manufactured surface products shall be designed by the manufacturer as suitable for walking surfaces in wet areas. Minimum acceptable static coefficient of friction to determine slip resistance is 0.7 on horizontal wet walking surfaces in the pool and for the wet deck area.

Spa pool – a structure intended for either warm or cold water where prolonged exposure is not intended. Spa structures are intended to be used for bathing or other recreational uses and are not usually drained and refilled after each use. It may include, but is not limited to, hydrotherapy, air induction bubbles, and recirculation.

Stationary diving platform – used for diving and are constructed or located on site, and may be natural or artificial rocks, pedestals or other items.

Super-chlorination – the addition of large quantities of chlorine-based chemicals that kills algae, destroys odor, or improves the ability to maintain a disinfectant residual.

Titrimetric – one of four (4) test methods used to determine the unknown concentration of a chemical by using a standard concentration of a known reagent.

Turbidimetric – one of four (4) test methods used to measure the amount of solid particles that are suspended in water and that cause light rays shining through the water to scatter and appear cloudy.

Turnover time – the period of time (usually hours) required to circulate the complete volume of water in a pool through the recirculation system.

Unblockable drain – a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

UL Standard – a document published by UL, a global independent safety science company, detailing construction, performance, environmental, sustainability or other requirements utilized for certification.

Vacuum breakers – a plumbing device that prevents the pool’s recirculation pumps from being damaged by shutting the system down when there is a drop in air pressure.

Water Ionizer – an appliance that filters and converts water into ions; separates *water* into an alkaline fraction and an acid fraction by exploiting the *electric charge* of the *calcium* and *magnesium ions* present in nearly all sources of *drinking water*. In the case of water chemistry sodium hypochlorite (liquid bleach) is converted into hypochlorous acid (HClO), the active sanitizing agent in pool water.

Water recreation attraction – a facility with design and operational features that provide patron recreational activity and purposefully involves immersion of the body partially or totally in the water. Water recreation attractions include water slides, water activity pools, interactive water features, wave pools and any additional pool within the boundaries of the attraction.

Water-safe – a bather who is able to swim and capable of exercising proper judgment in taking action for self-preservation under emergency conditions.

Water therapy facilities – swimming pools, spa pools, or saunas used exclusively for water therapy to treat a diagnosed injury, illness, or medical condition, wherein the medical treatment or physical therapy is provided under the direct supervision of medical personnel licensed pursuant to the Health Occupations Revision Act of 1985 Amendment Act of 1994, effective March 23, 1995 (D.C. Law 10-247; D.C. Official Regulation § 3-1205.01 (2016 Repl.)); and the prescribing physician authorizes a plan of treatment justifying use of a pool for health care purposes.

Weir – baskets found at the skimmer line that trap and prevent debris from entering the filtration system in the return lines which could damage the pumps or obstruct the filters.

Wet deck area – the four foot wide unobstructed pool deck area around the outside of the pool water perimeter, curb, ladders, handrails, diving boards, diving towers, pool slides, waterfalls, water features, starting blocks, planters, or lifeguard chairs.

Zones of patron surveillance – when qualified lifeguards are used, the staffing plan shall include diagrammed “zones of patron surveillance” for each aquatic facility where:

- (a) A qualified lifeguard is capable of viewing the entire area of the assigned “zones of patron surveillance”;
- (b) A qualified lifeguard is able to reach the furthest extent of the assigned “zones of patron surveillance” within 20 seconds;
- (c) Identify whether a qualified lifeguard is in an elevated stand, walking, in-water and/or other approved position;
- (d) Identifying any additional responsibilities for each zone; and
- (e) All areas of each aquatic venue are assigned a “zones of patron surveillance”.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING**AND****Z.C. ORDER NO. 04-33G(1)****Z.C. Case No. 04-33G****(Text Amendment – 11 DCMR)****(Location of Inclusionary Units in Inclusionary Developments)****Subject to 11-C DCMR § 1001.4)****January 30, 2017**

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.), hereby gives notice of its adoption of an amendment to Subtitle C (General Rules) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

The Inclusionary Zoning (IZ) Regulations contained in Chapter 10 of Title 11-C DCMR establish mandatory affordable housing requirements for developments subject to its provisions, while also granting bonus density and providing for modifications to certain development standards. Subsection 1001.2(b) of Chapter 10 subjects developments located in the zone districts identified in § 1002.1(a) to IZ if the development is proposing to add new gross floor area that would result in ten (10) or more dwelling units. Subsection 1001.4 further provides that if the new gross floor area comprising ten (10) or more units would result in an increase of fifty percent (50%) or more in the floor area of an existing building, IZ applies to both the existing and the increased gross floor area.

Dwelling units resulting from IZ are defined by 11-B DCMR § 100.2 as “inclusionary units.” The development standards for inclusionary units are set forth in § 1005 of Subtitle C. The proposed amendment would add a new § 1005.6 to allow inclusionary units in developments subject to § 1001.4 to be located solely in the new addition provided all the existing units were occupied at the application for the addition's building permit and all other requirements of Chapter 10 are met.

The text of this amendment was advertised in the notice of public hearing for this case, but was inadvertently omitted from the notice of proposed rulemaking published in the *D.C. Register* on September 9, 2016, at 63 DCR 11434. When the Commission took final action on the proposed amendments, it authorized the publication of a notice of proposed rulemaking for this amendment. That notice of proposed rulemaking was published in the December 16, 2016 edition of the *D.C. Register* at 63 DCR 15508. No comments were received and no changes made to the text as proposed.

Because the other amendments made in this case were to become effective on June 5, 2017, this amendment shall also become effective on that date or upon the publication of this notice in the *D.C. Register* whichever is the last to occur.

Chapter 10, INCLUSIONARY ZONING, of Title 11-C DCMR, GENERAL RULES, is amended as follows:

§ 1005, DEVELOPMENT STANDARDS REGARDING INCLUSIONARY UNITS, is amended by adding a new § 1005.6 to read as follows:

1005.6 In an inclusionary development subject to § 1001.4 of Subtitle C, inclusionary units may be located solely in the new addition provided all the existing units were occupied at the application for the addition's building permit and all other requirements of this chapter are met.

At their public meeting on October 16, 2016, upon the motion of Vice Chairman Miller as seconded by Commissioner May, the Zoning Commission **APPROVED** the publication of the proposed rulemaking at the same time it approved final action of the previously-approved amendments in this case by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull, and Peter G. May to approve; Third Mayoral Appointee position vacant, not voting).

On January 30, 2017, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission **APPROVED** final action its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, having not participated, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become effective upon publication in the *D.C. Register*; that is on June 9, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Insurance, Securities and Banking, pursuant to the authority set forth in Section 14 of the Risk Retention Act of 1993, effective October 21, 1993 (D.C. Law 10-46; 40 DCR 6082 (August 20, 1993)), hereby gives notice of the intent to adopt the following amendments to Chapter 37 (Captive Insurance Companies), of Title 26 (Insurance, Securities, and Banking), Subtitle A (Insurance), of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of these rules is to implement corporate governance standards for risk retention groups licensed in the District of Columbia. Specifically, the rules mandate that the boards of directors of risk retention groups shall adopt standards that, among other things, establish the qualifications of directors, including whether directors qualify as independent, a code of business conduct and ethics, and a requirement to establish an audit committee.

Chapter 37, CAPTIVE INSURANCE COMPANIES, of Title 26-A DCMR, INSURANCE, is amended as follows:

A new Section 3775 is added to read as follows:

3775 GOVERNANCE STANDARDS FOR RISK RETENTION GROUPS

- 3775.1 The board of directors shall adopt and make available governance standards, which shall include:
- (a) A process by which the directors are elected by the owner/insureds;
 - (b) Director qualification standards;
 - (c) Director responsibilities;
 - (d) Director access to management and, as necessary and appropriate, independent advisors;
 - (e) Director compensation;
 - (f) Director orientation and continuing education;
 - (g) The policies and procedures that are followed for management succession;
 - (h) The policies and procedures that are followed for annual performance evaluation of the board; and

- (i) The policies and practices that must be followed by any audit committee required by this section, including compliance with Subsections 3775.7 and 3775.8 of this section or, if no audit committee is required, the policies and practices to be followed by the board of directors to satisfy the requirements of Subsection 3775.9 of this section.

3775.2

The board of directors shall adopt and make available a code of business conduct and ethics for directors, officers and employees and promptly disclose to the board of directors any waivers of the code granted to a director or officer regarding one or more of the following topics:

- (a) Conflicts of interest;
- (b) Matters covered under the corporate opportunities doctrine under the state of domicile;
- (c) Confidentiality;
- (d) Fair dealing;
- (e) Protection and proper use of risk retention group assets;
- (f) Compliance with applicable laws, rules and regulations; and
- (g) The mandatory reporting of any illegal or unethical behavior that otherwise affects the operation of the risk retention group.

3775.3

The risk retention group shall require in one or more of its organizational documents that the board of directors shall have a majority of independent directors. The board shall determine at least annually whether a director is independent and the risk retention group shall maintain a record of such determinations and report such determinations to the Commissioner promptly upon request. No director qualifies as “independent” unless the board of directors affirmatively determines that the director has no “material relationship” with the risk retention group. If the risk retention group is a reciprocal, then the attorney-in-fact shall adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group’s board of directors; and, to the extent permissible under District law, service providers of a reciprocal risk retention group should contract with the risk retention group and not the attorney-in-fact.

3775.4

The board of directors shall adopt a written policy in the plan of operation as approved by the board that requires the board to:

- (a) Assure that all owners/insureds/subscribers of the risk retention group receive evidence of ownership interest;

- (b) Develop a set of governance standards applicable to the risk retention group;
- (c) Oversee the evaluation of the risk retention group's management including but not limited to the performance of the captive manager, managing general underwriter or other party or parties responsible for underwriting, determination of rates, collection of premium, adjusting or settling claims or the preparation of financial statements;
- (d) Review and approve the amount to be paid for all material service providers, and ensure that material service provider contracts comply with this section; and
- (e) Review and approve, at least annually:
 - (i) Risk retention group's goals and objectives relevant to the compensation of officers and service providers;
 - (ii) The officers' and service providers' performance in light of those goals the and objectives; and
 - (iii) The continued engagement of the officers and material service providers.

3775.5 The term of any material service provider contract with the risk retention group shall not exceed five (5) years. Any such contract, or its renewal, shall require the approval of the majority of the independent directors. The board of directors shall have the right to terminate any service provider, audit or actuarial contracts at any time for cause after providing notice as defined in the contract.

3775.6 A material service provider contract, which is deemed by this rule to be a material transaction, shall not be entered into until after notice has been provided to the Commissioner in writing by the risk retention group of its intention to enter into such transaction at least thirty (30) days prior to the effective date and the contract has not been disapproved within thirty (30) days after such notice.

3775.7 The risk retention group shall have an audit committee composed of at least three independent board members. If invited by the members of the audit committee, a non-independent board member may participate in the activities of the audit committee but may not serve as a member of the audit committee.

Alternatively, in lieu of the audit committee provisions in this section, the risk retention group shall have an audit committee similar to that required in Section 4D of the NAIC *Annual Financial Reporting Model Regulation* (#205).

- 3775.8 (a) The audit committee shall have a written charter that defines the committee's purpose, which, at a minimum, must include to:
- (1) Assist board oversight of the integrity of the financial statements, the compliance with legal and regulatory requirements, and the qualifications, independence and performance of the independent auditor and actuary;
 - (2) Discuss the annual audited financial statements and quarterly financial statements with management;
 - (3) Discuss the annual audited financial statements with its independent auditor and, if advisable, discuss its quarterly financial statements with its independent auditor;
 - (4) Discuss policies with respect to risk assessment and risk management;
 - (5) Meet separately and periodically, either directly or through a designated representative of the committee, with management and independent auditors;
 - (6) Review with the independent auditor any audit problems or difficulties and management's response;
 - (7) Set clear hiring policies of the risk retention group as to the hiring of employees or former employees of the independent auditor;
 - (8) Require the external auditor to rotate the lead (or coordinating) audit partner having primary responsibility for the risk retention group's audit as well as the audit partner responsible for reviewing that audit so that neither individual performs audit services for more than five (5) consecutive fiscal years or alternatively, require the external auditor to adhere to the partner rotation requirements similar to Section 7D of the NAIC *Annual Financial Reporting Model Regulation* (#205); and
 - (9) Report regularly to the board of directors.
- (b) Alternatively, in lieu of the audit committee requirements in this section, the risk retention group shall adhere to the audit committee requirements similar to those required in Section 14 of the NAIC *Annual Financial Reporting Model Regulation* (#205).
- 3775.10 The Commissioner may waive the requirement to establish an audit committee composed of independent board members if the risk retention group is able to

demonstrate that it is impracticable to do so and the board of directors is otherwise able to accomplish the purposes of the audit committee.

3775.11 The captive manager, president or chief executive officer of the risk retention group shall promptly notify the Commissioner in writing if any becomes aware of any material non-compliance with a governance standard mandated in this section.

3775.99 As used in this section:

Board of directors means the governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions.

Director means a natural person designated in the articles of the risk retention group, or designated, elected or appointed by any other manner, name or title to act as a director.

Independent director means a director who does not have a material relationship with the risk retention group. Any person that is a direct or indirect owner of or subscriber in a risk retention group (or is an officer, director and/or employee of such an owner and insured, unless such other position of such officer, director and/or employee constitutes a material relationship), that is a risk retention group described in 15 USC § 3901(a)(4)(E)(ii), is considered to be “independent”.

Material relationship means a relationship between a director and the risk retention group, if the director, a member of his or her immediate family, or any business with which such person is affiliated:

- (1) In any twelve (12)-month period, receives compensation or payment of any other item of value from the risk retention group or a consultant or service provider to the risk retention group in an amount greater than or equal to five percent (5%) of the risk retention group’s gross written premium for such 12-month period or two percent (2%) of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in such a 12-month period. Such person or immediate family member of such person is not independent until one (1) year after his/her compensation from the risk retention group falls below the threshold established in this section, as applicable;
- (2) Is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group. Such material relationship shall continue for one year after

the end of the affiliation, employment or auditing relationship ends; or

- (3) Is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors. Such material relationship shall continue for one year after such employment or service ends.

Make available means making such information available through electronic (*e.g.*, posting such information on the risk retention group's website) or other means, and providing such information to members/insureds upon request.

Material service provider contract means a service provider contract is deemed material if the amount to be paid for such contract is greater than or equal to five percent (5%) of the risk retention group's annual gross written premium or two percent (2%) of its surplus, whichever is greater. A service provider may include captive managers, auditors, accountants, actuaries, investment advisors, lawyers, managing general underwriters or other party responsible for underwriting, determination of rates, collection of premium, adjusting and settling claims and/or the preparation of financial statements. Lawyers acting as defense counsel retained by the risk retention group to defend claims shall be excluded from the definition of service provider unless the amount of fees paid are material, as defined.

Organizational documents means documents setting forth the establishment, structure, and standards for governing and operating a risk retention group, including governance standards, a code of business conduct and ethics, and plan of operations for a risk retention group.

Persons desiring to comment on these proposed rules should submit comments in writing to Dana Sheppard, Acting Deputy Commissioner, Department of Insurance, Securities and Banking, 810 First Street, N.E., Suite 701, Washington, D.C. 20002, or by email at Dana.Sheppard@dc.gov. Comments must be received not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the Department at the address above.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

Z.C. Case No. 17-01

(Text Amendment – 11 DCMR)

(Continuing Care Retirement Community)

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.), hereby gives notice of its intent to amend Subtitles B (Definitions, Rules of Measurement, and Use Categories) and U (Use Permissions) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

The proposed text amendments would revise the definition of a Continuing Care Retirement Community (CCRC) to allow a CCRC to include independent living, assisted living, and skilled nursing care, or any combination thereof, and to add specific review criteria when special exception approval is required. The proposed text amendments also clarify that the inclusion of skilled nursing care is permissible but not required in a CCRC. Finally, new text is proposed to Subtitle U to expressly make the use a matter of right in the Residential Apartment (RA) zones (Subtitle F), except for RA-1 and RA-6 zones where special exception approval is required. This matter of right designation will carry through to the Mixed Use (Subtitle G) and the Special Purpose (Subtitle K) zones.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold underlined** text and deletions are shown in ~~strikethrough~~ text):

Title 11-B DCMR, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

Chapter 1, DEFINITIONS, is amended as follows:

The definition of “Continuing Care Retirement Community” in § 100.2 of § 100, DEFINITIONS, is amended to read as follows:

Continuing Care Retirement Community: A building or group of buildings providing a continuity of residential occupancy and health care for elderly persons. This facility includes dwelling units for independent living, assisted living facilities, ~~plus~~ **or** a skilled nursing care facility of a suitable size to provide treatment or care of the residents; it may **also** include ancillary facilities for the further enjoyment, service, or care of the residents. The facility is restricted to persons sixty (60) years of age or older or **married** couples **or domestic partners** where either the ~~husband or wife~~ **spouse or domestic partner** is sixty (60) years of age or older.

Title 11-U DCMR, USE PERMISSIONS, is amended as follows:

Chapter 2, USE PERMISSIONS RESIDENTIAL HOUSE (R) ZONES, is amended as follows:

Paragraph (f) of § 203.1 of § 203, SPECIAL EXCEPTION USES – R-USE GROUPS A, B, AND C, is amended to read as follows:

203.1 The following uses shall be permitted as a special exception in R-Use Groups A, B, and C, if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9 subject to applicable conditions of each paragraph section:

...¹

- (f) Continuing care retirement community, subject to the provisions of this paragraph.
 - (1) The use shall be for persons sixty (60) years of age or older or married or domestic partner couples where either spouse or domestic partner is sixty (60) years of age or older;
 - (2) The use shall include one or more of the following services:
 - (A) Dwelling units for independent living;
 - (B) Assisted living facilities; or
 - (C) A licensed skilled nursing care facility;
 - (3) If the use does not include assisted living or skilled nursing facilities, the number of residents shall not exceed eight (8);
 - (4) The use may include ancillary uses for the further enjoyment, service, or care of the residents;
 - (5) The use and related facilities shall provide sufficient off-street parking spaces for employees, residents, and visitors;
 - (6) The use, including any outdoor spaces provided, shall be located and designed so that it is not likely to become objectionable to neighboring properties because of noise, traffic, or other objectionable conditions; and

¹ The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

- (7) The Board of Zoning Adjustment may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it deems necessary to protect adjacent and nearby properties.**

Chapter 4, USE PERMISSIONS RESIDENTIAL APARTMENT (RA) ZONES, is amended as follows:

A new subparagraph (3) is added to paragraph (d) of § 401.1 of § 401, MATTER-OF-RIGHT USES (RA), to read as follows:

401.1 The following uses shall be permitted as a matter of right subject to any applicable conditions:

(a) ...

(d) Except for the RA-1 and RA-6 zones:

(1) Multiple dwellings provided that in an apartment house, accommodations may be provided only to residents who stay at the premises a minimum of one (1) month; ~~and~~

(2) Hotel in existence as of May 16, 1980, with a valid certificate of occupancy or a valid application for a building permit; provided, that the gross floor area of the hotel may not be increased and the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodeled, or structurally altered; and

(3) A continuing care retirement community; and

(e) ...

Subsection 420.1 of § 420, SPECIAL EXCEPTION USES (RA), is amended as follows:

Subparagraph (7) of paragraph (g) is amended to read as follows:

(g) Nonresidential adjunct uses as an accessory use within an apartment house, consisting of the sale of foods, drugs, and sundries and personal services designed to serve the tenants' daily living needs subject to the following conditions:

...

- (7) In considering an application under this paragraph the Board of Zoning Adjustment shall give consideration to the following:
- (A) The proximity of MU and NC zones;
 - (B) The adequacy and convenience of parking spaces existing in or for the MU and NC zones;
 - (C) The adequacy and scope of commodities and services provided within those MU and NC zones; and
 - (D) The size and character of the apartment house, since the tenants of the apartment house will be expected to furnish all or substantially all of the financial support of the requested adjunct; ~~and~~

Subparagraph (4) of paragraph (h) is amended to read as follows:

- (h) A parking garage constructed as a principal use on a lot other than an alley lot in an RA-5 zone subject to the following conditions:
- ...
- (4) Before taking final action on an application for the use, the Board of Zoning Adjustment shall submit the application to the D.C. Department of Transportation for review and report-; **and**

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

- (i) In the RA-1 and RA-6 zones, a continuing care retirement community subject to the conditions of Subtitle U § 203.1(f), except for 203.1(f)(3).**

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

Z.C. Case No. 17-04

(Text Amendment – 11 DCMR)

(New MU-30 Zone and Missing Special Exceptions Uses in the MU Use Group F)

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Repl.), hereby gives notice of its intent to amend Subtitle B (Definitions, Rules of Measurement, and Use Categories), Subtitle G (Mixed-Use (MU) Zones) Subtitle U (Use Permissions), and Subtitle X (General Procedures) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking creates a new high-density mixed-use zone (MU-30) with development standards and use provisions, and adds special exceptions uses in the MU Use Group F in Subtitle U not carried over from the predecessor zones that existed in the Zoning Regulations of 1958.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold underlined** text and deletions are shown in ~~striketrough~~ text):

Title 11-B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES is amended as follows:

Chapter 3, GENERAL RULES OF MEASUREMENT, is amended as follows:

Subsection 318.7 of § 318, RULES OF MEASUREMENT FOR REAR YARDS, is amended to read as follows:

318.7 In the case of a corner lot in the MU-1, MU-2, MU-8, MU-9, MU-15, MU-16, MU-20, MU-21, MU-23, **MU-30**, NC-13, and CG-3 zones, a court complying with the width requirements for a closed court as applicable for each zone may be provided in lieu of a rear yard. For the purposes of this section, the required court shall be provided above a horizontal plan beginning not more than twenty feet (20 ft.) above the curb grade opposite the center of the front of the building and the width of the court shall be computed for the entire height of court.

Title 11-G, MIXED-USE (MU) ZONES, is amended as follows:

Chapter 4, MIXED-USE ZONES - MU-3, MU-4, MU-5, MU-6, MU-7, MU-8, MU-9, AND MU-10, is amended as follows:

The chapter's title is amended to read as follows:

CHAPTER 4 MIXED-USE ZONES – MU-3, MU-4, MU-5, MU-6, MU-7, MU-8, MU-9, AND MU-10, AND MU-30

Section 400, PURPOSE AND INTENT, is amended as follows:

Subsection 400.1 is amended to read as follows:

400.1 The MU-3 through MU-10 and the MU-30 zones are mixed-use zones that are intended to be applied throughout the city consistent with the density designation of the Comprehensive Plan. A zone may be applied to more than one (1) density designation.

A new § 400.10 is added to read as follows:

400.10 The MU-30 zone is intended to:

- (a) Permit high-density mixed-use development including office, retail, and housing, with a focus on employment; and
- (b) Be located in or near the downtown core that comprises the retail and office centers for both the District of Columbia and the metropolitan area.

New §§ 402.4 and 402.5 are added to § 402, DENSITY - FLOOR AREA RATIO (FAR) to read as follows:

402.4 In the MU-30 zone, the maximum permitted FAR shall be as set forth in the following table:

MU-30 Zone Height	Maximum FAR	
	Total Permitted	Maximum Non-Residential Use
<u>Buildings erected to a height of one hundred ten feet (110 ft.) or less</u>	<u>8.5</u>	<u>8.5</u>
	<u>10.2 (IZ)</u>	
<u>Buildings erected to a height in excess of one hundred ten feet (110 ft.) as permitted in Subtitle G § 403.2</u>	<u>10.0</u>	<u>10.0</u>
	<u>12.0 (IZ)</u>	

402.5 Residential density in the MU-30 zone shall be subject to the Inclusionary Zoning requirements and bonuses of Subtitle C, Chapter 10.

Section 403, HEIGHT, is amended to read as follows:

403 HEIGHT

403.1 The maximum permitted building height and number of stories, not including the penthouse, in the MU-3 through MU-10 zones **and the MU-30 zone** shall be as set forth in the following table, **except as provided in Subtitle G § 403.2:**

TABLE G § ~~303.1~~ **403.1**: MAXIMUM PERMITTED HEIGHT/STORIES

Zone	Maximum Height (Feet)	Maximum Stories
MU-3	40	3
MU-4	50	N/A
MU-5-A	65	N/A
	70 (IZ)	
MU-5-B	75	N/A
MU-6	90	N/A
MU-7	65	N/A
MU-8	70	N/A
MU-9	90	N/A
MU-10	90	N/A
	100 (IZ)	
<u>MU-30</u>	<u>110</u>	<u>NA</u>

403.2 **In the MU-30 zone, a building or other structure may be erected to a height not exceeding one hundred thirty feet (130 ft.); provided, that the building or other structure shall face or abut a street not less than one hundred ten feet (110 ft.) wide between building lines.**

403.3 The maximum permitted height of a penthouse, except as prohibited on the roof of a detached dwelling, semi-detached dwelling, rowhouse, or flat in Subtitle C § 1500.4, shall be as set forth in the following table:

TABLE G § ~~403.2~~ **403.3**: MAXIMUM PERMITTED PENTHOUSE HEIGHT AND STORIES

Zone	Maximum Penthouse Height	Maximum Penthouse Stories
MU-3 MU-4	12 ft. except 15 ft. for penthouse mechanical space	1; Second story permitted for penthouse mechanical space
MU-5-A MU-7	12 ft., except 18 ft. 6 in. for penthouse mechanical space	1; Second story permitted for penthouse mechanical space
MU-5B MU-8	20 ft.	1; Second story permitted for penthouse mechanical space
MU-6 MU-9	20 ft.	1 plus mezzanine; Second story permitted for

Zone	Maximum Penthouse Height	Maximum Penthouse Stories
MU-10 <u>MU-30</u>		penthouse mechanical space

Section 404, LOT OCCUPANCY, is amended as follows:

404 LOT OCCUPANCY

404.1 The maximum permitted lot occupancy for residential use in the MU-3 through MU-10 zones **and the MU-30 zone** shall be as set forth in the following table:

TABLE G § 404.1: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy for Residential Use
MU-3	60%
	60% (IZ)
MU-4	60%
	75% (IZ)
MU-5-A MU-5-B	80%
	80% (IZ)
MU-6	80%
	90% (IZ)
MU-7	75%
	80% (IZ)
MU-8	N/A
MU-9	N/A
MU-10	75%
	N/A (IZ)
<u>MU-30</u>	<u>N/A</u>

Subsections 405.3, 405.4, and 405.6 of § 405, REAR YARD, are amended to read as follows:

405.3 A minimum rear yard of two and one-half inches (2.5 in.) per one foot (1 ft.) of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than twelve feet (12 ft.) shall be provided in the MU-7, MU-8, MU-9, ~~and MU-10,~~ **and MU-30** zones.

405.4 In the MU-3 through MU-9 zones, a horizontal plane may be established at ~~twenty five feet (25 ft.)~~ **twenty feet (20 ft.)** above the mean finished grade at the middle of the rear of the structure for the purpose of measuring rear yards.

...¹
405.6 In the MU-8, ~~and MU-9,~~ **and MU-30** zones, rear yard shall be established subject to the following conditions:

¹ The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

- (a) A rear yard is not required to be provided below a horizontal plane as described in Subtitle G § 405.4;
- (b) Where a lot abuts an alley, the rear yard may be measured from the center line of the alley to the rear wall of the building or other structure; and
- (c) Where a lot does not abut an alley, the rear yard shall be measured from the rear lot line to the rear wall of the building or other structure.

Subsection 407.3 of § 407 GREEN AREA RATIO (GAR), is amended to read as follows:

407.3 The minimum required GAR for the MU-9, ~~and~~ MU-10, and MU-30 zones shall be 0.20.

Title 11-U, USE PERMISSIONS, is amended as follows:

Chapter 5, USE PERMISSIONS MIXED-USE (MU) ZONES, is amended as follows:

Subsection 500.2 of § 500 GENERAL USE PROVISION FOR MU ZONES, is amended to read as follows:

500.2 Use groups for the MU zones are as follows:

TABLE U § 500.2 MU-USE GROUPS:

MU-Use Group A	MU-Use Group B	MU-Use Group C	MU-Use Group D	MU-Use Group E	MU-Use Group F	MU-Use Group G
MU-1 MU-2 MU-15, MU-16 MU-23	MU-11	MU-12, MU-13 MU-14 CG-5 CG-6 CG-7	MU-3	MU-4, MU-5 MU-6 MU-17, MU-18 MU-19 MU-24, MU-25 MU-26, MU-27 CG-2	MU-7, MU-8 MU-9 MU-20, MU-21 MU-28 CG-3 <u>MU-30</u>	MU-10 MU-22 MU-29 CG-4

Subsection 515.1 of § 515 MATTER-OF-RIGHT USES (MU-USE GROUP F), is amended as follows:

Paragraph (l) is amended to read as follows:

- (l) In the MU-9 zone, any establishment that has as a principal use the administration of massages, provided that no portion of the establishment shall be located within two hundred feet (200 ft.) of a R, RF, or RA zone; ~~and~~

The existing text of paragraph (m) is designated as new paragraph (n) and new text is inserted into paragraph (m) so that both provisions read as follows:

- (m) In the MU-30 zone, a gasoline service station provided no portion of the structure or premises shall be located within twenty-five feet (25 ft.) of a R, RF or RA zone unless separated from that R, RF, or RA zone by a street or alley; and
- (n) Other accessory uses customarily incidental and subordinate to the uses permitted by this section.

Section 516 SPECIAL EXCEPTION USES (MU-Use Group F), is amended to read as follows:

516 SPECIAL EXCEPTION USES (MU-USE GROUP F)

516.1 The following uses shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section:

- (a) Retail, large format, subject to the conditions of Subtitle U § 511.1(j);
- (b) Sexually-oriented business establishment in the MU-9, ~~or~~ MU-21, or MU-30 zone, subject to the following conditions:
- (1) No portion of the establishment shall be located within six hundred feet (600 ft.) of an R, RF, RA, MU-1, MU-2, MU-15, MU-16, or MU-23 zone;
 - (2) No portion of the establishment shall be located within six hundred feet (600 ft.) of a church, school, library, playground, or the area under the jurisdiction of the Commission of Fine Arts pursuant to the Shipstead-Luce Act, approved May 16, 1930 (46 Stat. 366, as amended; D.C. Official Code § 6-611.01 (formerly codified at D.C. Official Code § 5-410 (1994 Repl.)));
 - (3) No portion of the establishment shall be located within three hundred feet (300 ft.) of any other sexually-oriented business establishment;
 - (4) There shall be no display of goods or services visible from the exterior of the premises;
 - (5) The establishment shall be compatible with other uses in the area;
 - (6) The use shall not become objectionable because of its effect on the character of the neighborhood or because of noise, traffic, or other conditions; and

(7) The establishment shall not have an adverse impact on religious, educational, or governmental facilities located in the area; and

(c) Public utility pumping station, subject to any requirements pertaining to setbacks or screening, or other requirements the Board of Zoning Adjustment deems necessary for the protection of adjacent or nearby property;

(d) Enlargement of an existing laundry or dry cleaning establishment that contains more than five thousand square feet (5,000 sq. ft.) of gross floor area, subject to the provisions of this paragraph:

(1) Any noise or odor shall not adversely affect the neighborhood;

(2) Dangerous or otherwise objectionable traffic conditions shall not be created; and

(3) The Board of Zoning Adjustment may impose additional requirements as to the location of the building and other structures, the location of equipment, and other requirements as the Board deems necessary to protect adjacent or nearby property;

(e) An Electronic Equipment Facility (EEF) that does not qualify as a matter-of-right use under Subtitle U § 515.1(k) subject to the requirements of this paragraph:

(1) An EEF shall not occupy more than fifty percent (50%) of the constructed gross floor area of the building, unless approved as part of a planned unit development pursuant to Subtitle X, Chapter 3;

(2) An applicant shall demonstrate, in addition to the requirements Subtitle X, Chapter 9 that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, inhibit future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement;

(3) In evaluating whether an EEF will have any of the adverse impacts described in Subtitle U § 516.1(e)(2), the Board of Zoning Adjustment shall consider, in addition to other relevant factors, the:

(A) Absence of retail uses or a design capable of accommodating retail uses in the future;

- (B) Presence of security or other elements in the design that could impair street life and pedestrian flow;
- (C) Inability of the EEF to be adapted in the future for permitted uses; and
- (4) The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, landscaping, parking, and other such requirements as it deems necessary to protect adjacent property and to achieve an active, safe, and vibrant street life;
- (f) Where not permitted as a matter of right, any establishment that has as a principal use the administration of massages, subject to the following conditions:
- (1) No portion of the establishment shall be located within two hundred feet (200 ft.) of an R, RF, or RA zone;
- (2) The establishment shall be compatible with other uses in the area;
- (3) The use shall not become objectionable because of its effect on the character of the neighborhood or because of noise, traffic, or other conditions; and
- (4) The establishment shall not have an adverse impact on religious, educational, or governmental facilities located in the area.
- (g) Where not permitted as a matter of right, a gasoline service station to be established or enlarged, or a repair garage not including body and fender work, subject to the following conditions:
- (1) The station shall not be located within twenty-five feet (25 ft.) of a residential zone;
- (2) The operation of the use shall not create dangerous or other objectionable traffic conditions; and
- (3) Required parking spaces may be arranged so that not all spaces are accessible at all times. All parking spaces provided under this subsection shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicles without moving any other vehicle onto public space; and

(h) Any use permitted as a matter of right in MU-Use Group F that does not comply with the required conditions for Use Group F may apply for permission as a special exception, except firearms retail sales establishments.

Title 11-X, GENERAL PROCEDURES, is amended as follows:

Chapter 3, PLANNED UNIT DEVELOPMENTS, is amended as follows:

Section 303, PLANNED UNIT DEVELOPMENT FLEXIBILITY, is amended as follows:

Table X § 303.7 in § 303.7 is amended as follows:

TABLE X § 303.7: MAXIMUM PERMITTED PUD BUILDING HEIGHT IN THE LEAST RESTRICTIVE ZONE DISTRICT

Zone	Maximum PUD Height (feet)
...	
MU-29 (CR/FT)	110
<u>MU-30</u>	<u>130</u>
PDR-7 (M/FT)	90
...	

Subsection 303.16 is amended to read as follows:

303.16 An electronic equipment facility (EEF) may occupy more than fifty percent (50%) of the gross floor area of a building in the MU-7, MU-8, MU-9, **MU-30** or any D zone, if approved as part of a PUD in accordance with the requirements of this chapter and subject to the following additional criteria:

...

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY & 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 (2016 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 50 (Medicaid Reimbursement for Personal Care Services), of Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR).

Personal Care Aide (PCA) services are health-related services that are provided to individuals who are unable to perform one or more activities of daily living such as bathing, dressing, toileting, ambulation, or feeding oneself, as a result of a medical condition or cognitive impairment causing a substantial disability.

These emergency and proposed rules will allow DHCF to: (1) provide reimbursement for safety monitoring tasks performed by PCAs in connection with assisting beneficiaries with activities of daily living; (2) align re-assessment requirements for beneficiaries receiving PCA services under the District of Columbia State Plan for Medical Assistance (State Plan) with requirements for beneficiaries receiving PCA services under the Home and Community-Based Services Waiver for the Elderly and Individuals with Physical Disabilities (EPD Waiver); and (3) impose alternative sanctions for providers of State Plan PCA services that mirror those for EPD Waiver providers. Emergency action is necessary in order to ensure that DHCF is able to administer the State Plan PCA services program in accordance with the federally approved requirements of the PCA services benefits under the EPD Waiver and deliver these critically important services to beneficiaries whose health and safety depend on the receipt of PCA services.

These rules correlate to a proposed amendment to the State Plan. The corresponding State Plan Amendment (SPA) requires approval by the Council of the District of Columbia (Council) and the Centers for Medicare and Medicaid Services (CMS). The Council approved the corresponding SPA through the Fiscal Year 2017 Budget Support Act of 2016, effective October 8, 2016 (D.C. Law 21-160; 63 DCR 10775 (August 26, 2016)). This rule is contingent upon approval of the corresponding SPA by CMS. If the corresponding SPA is approved, DHCF will publish a notice setting forth the effective date.

These emergency rules were adopted on May 25, 2017 and became effective on that date. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until September 22, 2017, 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 50, MEDICAID REIMBURSEMENT FOR PERSONAL CARE SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

The title for Chapter 50 is amended to read as follows: CHAPTER 50 MEDICAID REIMBURSEMENTS FOR PERSONAL CARE AIDE SERVICES

Section 5000, GENERAL PROVISIONS, is amended as follows:

5000 GENERAL PROVISIONS

5000.1 These rules establish the standards and conditions of participation for home care agencies providing Medicaid reimbursable personal care aide (PCA) services under the District of Columbia Medicaid Program's State Plan for Medical Assistance (Medicaid State Plan).

5000.2 Medicaid reimbursable PCA services support and promote the following goals:

- (a) To provide cueing, hands-on assistance, and safety monitoring related to activities of daily living to beneficiaries who are unable to perform one or more activities of daily living; and
- (b) To encourage home and community-based care as a preferred and cost-effective alternative to institutional care.

Section 5003, PCA SERVICE AUTHORIZATION REQUEST AND SUBMISSION, is amended as follows:

5003 PCA SERVICE AUTHORIZATION REQUEST AND SUBMISSION

5003.1 Except as provided in Subsection 5003.11, in order to be reimbursed by Medicaid, PCA services shall not be initiated or provided on a continuing basis by a Provider without a PCA Service Authorization from DHCF or its designated agent that, for each beneficiary, identifies the amount, duration and scope of PCA services authorized and the number of hours authorized.

5003.2 A Medicaid beneficiary who is seeking PCA services for the first time shall submit a request for a PCA Service Authorization to DHCF or its designated agent in writing, accompanied by a copy of the physician's or Advanced

Practice Registered Nurse's (APRN) written order for PCA services that complies with the requirements set forth under this chapter. The request may be submitted by the beneficiary, the beneficiary's representative, family member, physician or APRN.

- 5003.3 DHCF or its designated agent shall be responsible for conducting a face-to-face assessment of each beneficiary using a standardized assessment tool to determine each beneficiary's need for assistance with activities of daily living that the beneficiary is unable to perform. The assessment shall:
- (a) Confirm and document the beneficiary's functional limitations and personal goals with respect to long-term care services and supports;
 - (b) Be conducted in consultation with the beneficiary or the beneficiary's representative;
 - (c) Document the beneficiary's unmet need for services, taking into account the contribution of informal supports and other resources in meeting the beneficiary's needs for assistance; and
 - (d) Document the amount, frequency, duration, and scope of PCA services needed.
- 5003.4 Based upon the results of the face-to-face assessment conducted in accordance with Subsection 5003.3, DHCF or its authorized agent shall issue to the beneficiary a PCA Service Authorization that specifies the amount, duration, and scope of PCA services authorized to be provided to the beneficiary.
- 5003.5 Payment shall not exceed the maximum authorized units specified in the PCA Service Authorization and must be consistent with the plan of care in accordance with Section 5015.
- 5003.6 If authorized, PCA services may be provided up to eight (8) hours per day seven (7) days per week. Additional hours may be authorized if a person is deemed eligible under the Elderly or Individuals with Physical Disabilities (EPD Waiver) or Individuals with Intellectual and Developmental Disabilities Waiver (IDD Waiver).
- 5003.7 PCA services shall be provided in a manner consistent with the requirements of the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit. A beneficiary under the age of twenty-one (21) shall have access to all medically necessary Medicaid services, including PCA services, provided by any willing and qualified Medicaid provider of the beneficiary's choice.

- 5003.8 When total DHCF reimbursement for PCA services, in addition to other home care services, for a beneficiary exceeds the cost of institutional care over a six (6) month period, DHCF may limit or deny PCA services for the beneficiary on a prospective basis.
- 5003.9 The supervisory nurse employed by the home health agency shall conduct an evaluation of each beneficiary's need for the continued receipt of State Plan PCA services at least once every twelve (12) months or upon a significant change in the beneficiary's health status, as follows:
- (a) The evaluation shall determine whether there is a significant change in the beneficiary's health status;
 - (b) If the evaluation results in a determination that there is no significant change, the supervisory nurse shall take the following actions:
 - (1) The supervisory nurse shall complete the form provided by DHCF or its agent attesting that the beneficiary has had no significant change in health status and that a face-to-face re-assessment is not required; and
 - (2) The supervisory nurse shall obtain a new PCA Service Authorization for the beneficiary;
 - (c) If the evaluation results in a determination that there is a significant change, the supervisory nurse shall take the following actions:
 - (1) The supervisory nurse shall refer the beneficiary for a face-to-face re-assessment conducted in accordance with § 5003.3; and
 - (2) The supervisory nurse shall obtain a new physician's or APRN's written order in order to obtain a new PCA Service Authorization for the beneficiary.
- 5003.10 Requests to conduct a face-to-face re-assessment based upon a significant change in the beneficiary's health status may be made at any time by the beneficiary, the beneficiary's representative, family member, physician or APRN and shall be made in accordance with the requirements of Subsection 5003.2.
- 5003.11 An R.N. employed by DHCF or its agent shall conduct a face-to-face re-assessment in accordance with the requirements of Subsection 5003.3 of each beneficiary referred by the supervisory nurse as described in Subsection

- 5003.9 and for whom a re-assessment is requested pursuant to Subsection 5003.10 to determine PCA service needs.
- 5003.12 Through December 31, 2017, DHCF may authorize the face-to-face reassessment for a period not to exceed eighteen (18) months, if necessary, to align the assessment date with the Medicaid renewal date.
- 5003.13 If, based upon the assessment conducted pursuant to this section, a beneficiary is found to be eligible for PCA services, DHCF or its agent shall issue a Beneficiary Approval Letter informing the beneficiary of the assessment score, the amount, duration and scope of authorized PCA services, and the dates of the authorization period, as well as confirming the provider selected by the beneficiary during the assessment.
- 5003.14 If, based upon the assessment conducted pursuant to this section, a beneficiary is found to be ineligible for PCA services, or the amount, duration or scope of PCA services is reduced, DHCF or its agent shall issue a Beneficiary Denial, Termination or Reduction of Services Letter informing the beneficiary of the reasons for the intended action, the specific law and regulations supporting the action, his or her right to appeal the denial, termination, or reduction of services in accordance with federal and District law and regulations, and the circumstances under which PCA services will be continued if a hearing is requested (See 42 CFR §§ 431.200 *et seq.*, D.C. Official Code § 4-205.55).

Section 5006, PROGRAM REQUIREMENTS, is amended as follows:

5006 PROGRAM REQUIREMENTS

- 5006.1 PCA services shall be ordered, in writing, by a physician or APRN who is enrolled in the D.C. Medicaid program and has had a prior professional relationship with the beneficiary that included an examination(s) provided in a hospital, primary care physician's office, nursing facility, or at the beneficiary's home prior to the order for the PCA services. A written order for PCA services constitutes a certification that the beneficiary is unable to perform one (1) or more activities of daily living for which PCA services are needed.
- 5006.2 A written order for PCA services issued in accordance with § 5006.1 shall be renewed every twelve (12) months, with the exception of beneficiaries for whom the supervisory nurse attests that there has been no significant change in health status, in accordance with § 5003.9.
- 5006.3 Each written order for PCA services under this section shall include the prescriber's NPI number obtained from NPPES.

- 5006.4 A Provider has an ongoing responsibility to verify that each beneficiary that receives PCA services from the Provider has current eligibility for the District of Columbia Medicaid program and is eligible for and authorized to receive PCA services.
- 5006.5 An individual or family member other than a spouse, parent of a minor child, any other legally responsible relative, or court-appointed guardian may provide PCA services. Legally responsible relatives shall not include parents of adult children. Each family member providing PCA services shall comply with the requirements set forth in these rules.
- 5006.6 The Provider shall initiate services no later than twenty-four (24) hours after completing the plan of care unless the beneficiary's health or safety warrants the need for more immediate service initiation or the beneficiary or beneficiary's representatives agree to begin the services at a later date.
- 5006.7 PCA services shall include the following:
- (a) Cueing or hands-on assistance with performance of routine activities of daily living (such as, bathing, transferring, toileting, dressing, feeding, and maintaining bowel and bladder control);
 - (b) Assisting with incontinence, including bed pan use, changing urinary drainage bags, changing protective underwear, and monitoring urine input and output;
 - (c) Assisting beneficiaries with transfer, ambulation and range of motion exercises;
 - (d) Assisting beneficiaries with self-administered medications;
 - (e) Reading and recording temperature, pulse, blood pressure and respiration;
 - (f) Measuring and recording height and weight;
 - (g) Observing, documenting and reporting to the supervisory health professional, changes in the beneficiary's physical condition, behavior, and appearance and reporting all services provided on a daily basis;
 - (h) Preparing meals in accordance with dietary guidelines and assistance with eating;

- (i) Performing tasks related to keeping areas occupied by the beneficiary in a condition that promotes the beneficiary's safety;
- (j) Implementing universal precautions to ensure infection control;
- (k) Accompanying the beneficiary to medical or dental appointments or place of employment and recreational activities if approved in the beneficiary's plan of care;
- (l) Shopping for items that are related to promoting a beneficiary's nutritional status in accordance with dietary guidelines and other health needs;
- (m) Providing safety monitoring related to assisting the beneficiary with routine activities of daily living by performing tasks to prevent accidents and injuries to the beneficiary during these activities; and
- (n) Assistance with telephone use.

5006.8 PCA services shall not include:

- (a) Services that require the skills of a licensed professional as defined by the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*);
- (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the beneficiary, shopping for items not related to promoting the beneficiary's nutritional status and other health needs, and shopping for items not used by the beneficiary; and
- (c) Money management.

5006.9 PCA services shall not be provided in a hospital, nursing facility, intermediate care facility, or other living arrangement which includes personal care as part of the reimbursed service.

5006.10 PCA services may be provided at the beneficiary's place of employment.

5006.11 A PCA is not authorized to make decisions on behalf of a beneficiary.

5006.12 In accordance with Subsection 5006.7(g), a PCA shall immediately report to the R.N. any significant change in the beneficiary's health status in the case of

emergency, or within four (4) hours for other situations, unless indicated otherwise in the beneficiary’s plan of care.

5006.13 If the beneficiary seeks to change his or her Provider, the Provider shall assist the beneficiary in transferring to the new Provider. Until the beneficiary is transferred to a new PCA services Provider, the Provider shall continue providing PCA services to the beneficiary until the transfer has been completed successfully and the beneficiary is receiving PCA services from the new Provider.

5006.14 Each Provider shall immediately terminate the services of a PCA and instruct the PCA to discontinue all services to the beneficiary, in any case where the Provider believes that the beneficiary’s physical or mental well-being is endangered by the care or lack of care provided by the PCA, or that the beneficiary’s property is at risk. The Provider is responsible for assigning a new PCA and ensuring that the beneficiary’s needs continue to be met.

5006.15 Each Provider shall conduct annual performance assessments of all PCAs who deliver services to beneficiaries served by the Provider, regardless of whether the PCA is an employee or is secured through another staffing agency. The initial performance assessment shall be conducted no later than three (3) months after the PCA first provides services to any beneficiary served by the Provider.

5006.16 Each Provider shall develop contingency staffing plans to provide coverage for each beneficiary in the event the assigned PCA cannot provide the services or is terminated.

A new Section 5018, ALTERNATIVE SANCTIONS, is added as follows:

5018 ALTERNATIVE SANCTIONS

5018.1 DHCF may impose alternative sanctions against a Provider in response to receiving complaints or incident reports or upon a recommendation by the Department’s Division of Program Integrity or the Long Term Care Administration.

5018.2 DHCF shall determine the appropriateness of alternative sanctions against a Provider based on the following factors:

- (a) Seriousness of the violation(s);
- (b) Number and nature of the violation(s);

- (c) Potential for immediate and serious threat(s) to beneficiaries;
- (d) Potential for serious harm to beneficiaries;
- (e) Any history of prior violation(s) or sanction(s);
- (f) Actions or recommendations by the Department's Division of Program Integrity or the Long Term Care Administration; and
- (g) Other relevant factors.

5018.3 DHCF may impose one (1) or more alternative sanctions against a Provider, if the violation does not place the beneficiary's health or safety in immediate jeopardy, as set forth below:

- (a) Impose a corrective action plan (CAP);
- (b) Prohibit new admissions or place a cap on enrollment;
- (c) Place the Provider on an enhanced monitoring plan;
- (d) Withhold payments; or
- (e) Temporarily suspend the Provider from the DC Medicaid program.

5018.4 A Provider that also provides EPD Waiver services shall be subject to all alternative sanctions set forth in Chapter 42 of Title 29 DCMR.

5018.5 DHCF shall publicize the imposition of an alternative sanction on its website.

5018.6 A CAP may include actions such as publicizing information during regular provider meetings and posting provider performance cards on DHCF's website.

5018.7 DHCF shall issue a written notice of provider termination if DHCF determines that the sanctions listed under Subsection 5018.3 are not appropriate to address the incident(s) and/or complaint(s). DHCF shall reserve the right to terminate a Medicaid provider agreement without a sanction depending on the severity of the violations.

5018.8 If DHCF initiates an action to terminate a provider agreement, DHCF shall follow the procedures set forth in Chapter 13 of Title 29 DCMR governing termination of the Medicaid provider agreement.

- 5018.9 DHCF may also take actions in lieu of or in addition to an alternative sanction when appropriate. These include the following:
- (a) Referral of the incident to another entity, including but not limited to the Medicaid Fraud Control Unit of the Office of the Inspector General for investigation; or
 - (b) Referral to Adult Protective Services (APS).
- 5018.10 If DHCF initiates an action to impose an alternative sanction, DHCF shall issue a written notice to the Provider notifying the Provider of the imposition of an alternative sanction.
- 5018.11 The notice shall include the following:
- (a) The basis for the proposed action;
 - (b) The specific alternative sanction that DHCF intends to take;
 - (c) The Provider's right to dispute the allegations and to submit evidence to support his or her position; and
 - (d) Specific reference to the particular sections of the statutes, rules, provider's manual, and/or provider agreements involved in the sanction.
- 5018.12 The Provider may submit documentary evidence to DHCF's Long Term Care Administration, 441 4th St. N.W., Ste. 1000, Washington D.C. 20001 to refute DHCF's argument for imposition of an alternative sanction within thirty (30) days of the date of the notice described in Subsections 5018.10 and 5018.11.
- 5018.13 DHCF may extend the thirty (30) day period prescribed in Subsection 5018.12 for good cause on a case-by-case basis.
- 5018.14 If DHCF decides to impose an alternative sanction against the Provider after the Provider has submitted documentary evidence in accordance with Subsection 5018.12, DHCF shall send a written notice to the Provider at least fifteen (15) days before the imposition of the alternative sanction. The notice shall include the following:
- (a) The reason for the decision;
 - (b) The effective date of the sanction; and

- (c) The Provider's right to request a hearing by filing a notice of appeal with the District of Columbia Office of Administrative Hearings.
- 5018.15 If the Provider files a notice of appeal within fifteen (15) days of the date of the notice of the alternative sanction under Subsection 5018.14, then the effective date of the proposed action shall be stayed until the D.C. Office of Administrative Hearings has rendered a final decision.
- 5018.16 The Director of DHCF may consider modifying the alternative sanction upon occurrence of one of the following:
- (a) Circumstances have changed and resulted in changes to the programmatic requirement violation(s) in such a manner as to immediately jeopardize a beneficiary's health, safety, and welfare; or
- (b) The Provider makes significant progress in achieving compliance with the programmatic requirements through good faith efforts.
- 5018.17 A Provider shall be prohibited from submitting an application for participation in the DC Medicaid program for two (2) consecutive years from the date of receipt of the final notice of termination of a Medicaid Provider Agreement.
- 5018.18 A Provider that has been terminated from the DC Medicaid program shall not be paid for claims submitted for dates of service on or after the effective date of the termination decision after the provider exhausts all appeal rights and an official decision of termination has been made.

Section 5099, DEFINITIONS, is amended as follows:

5099 DEFINITIONS

- 5099.1 When used in this chapter, the following terms and conditions shall have the following meanings:

Activities of Daily Living - The ability to bathe, transfer, dress, eat and feed self, engage in toileting, and maintain bowel and bladder control (continence).

Advanced Practice Registered Nurse - A person who is licensed or authorized to practice as an advanced practice registered nurse 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.* (2016 Repl.)).

Authorized representative – Any person other than a provider:

- (a) Who is knowledgeable about a beneficiary’s circumstances and has been designated by that beneficiary to represent him or her; or
- (b) Who is legally authorized either to administer a beneficiary’s financial or personal affairs or to protect and advocate for his/her rights.

Cueing - Using verbal prompts in the form of instructions or reminders to assist persons with activities of daily living and instrumental activities of daily living.

Department of Health Care Finance – The executive agency of the government responsible for administering the Medicaid program within the District of Columbia, effective October 1, 2008.

Family - Any person related to the client or beneficiary by blood, marriage, or adoption.

Limited English Proficient- Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English.

Order – A formal, written instruction signed by a physician or APRN in the form of the Prescription Order Form or any successor document supplied by DHCF or its agent.

PCA Service Authorization Form – A form that has been developed or approved by DHCF that identifies the amount, duration and scope of PCA services and the number of hours authorized based upon a face-to-face assessment in accordance with § 5003.

Primary care physician - A person who is licensed or authorized to practice medicine 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.* (2016 Repl.)).

Registered Nurse - A person who is licensed or authorized to practice registered nursing 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.* (2016 Repl.)).

Significant change - Changes in a beneficiary's health status that warrants an increase or decrease of supports/services outlined in their plan of care.

Staffing Agency – Shall have the same meaning as set forth in the Nurse Staffing Agency Act of 2003, effective March 10, 2004 (D.C. Law 15-74; D.C. Official Code §§ 44-1051.01 *et seq.*).

Start of Care – The first date upon which a beneficiary receives or is scheduled to receive PCA services.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director and State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, N.W., Suite 900 South, Washington D.C. 20001, via telephone at (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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

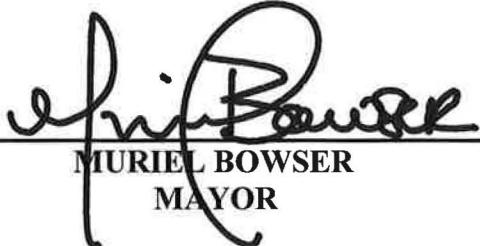
Mayor's Order 2017-136
June 1, 2017


SUBJECT: Appointment — Director, Child and Family Services Agency

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), pursuant to section 302a of the Prevention of Child Abuse and Neglect Act of 1977, effective April 4, 2001, D.C. Law 13-277; D.C. Official Code § 4-1303.02a (2013 Repl.), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), and pursuant to the Child and Family Services Agency Brenda Donald Confirmation Resolution of 2017, effective May 2, 2017, Res. 22-0099, it is hereby **ORDERED** that:

1. **BRENDA DONALD** is appointed Director, Child and Family Services Agency, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2017-008, dated January 10, 2017.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to May 2, 2017.


MURIEL BOWSER
MAYOR

ATTEST: 
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-137
June 1, 2017

SUBJECT: Appointment - State Rehabilitation Council


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with Mayor's Order 2001-173, dated November 30, 2001, it is hereby **ORDERED** that:

1. **DARREN E. MOORE** is appointed as a representative of individuals with disabilities who have difficulty representing themselves member of the State Rehabilitation Council, filling a vacant seat, for a term to end November 17, 2019.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST:  _____
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-138
June 1, 2017

SUBJECT: Appointments and Reappointments — Advisory Committee to the Office of Lesbian, Gay, Bisexual, Transgender, and Questioning Affairs

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), in accordance with section 3(b) of the Office of Gay, Lesbian, Bisexual, and Transgender Affairs Act of 2006, effective April 4, 2006, D.C. Law 16-89; D.C. Official Code § 2-1382(b) (2016 Repl.), and in accordance with Mayor's Order 2006-52, dated May 3, 2006, as amended by Mayor's Order 2015-262, dated December 22, 2015, it is hereby **ORDERED** that:


1. **JADE FOSTER** is appointed as a public member of the Advisory Committee to the Office of Lesbian, Gay, Bisexual, Transgender, and Questioning Affairs ("**Committee**"), replacing Thomas Sanchez, to serve the remainder of an unexpired term ending June 30, 2017, and for a new term ending June 30, 2019.
2. The following persons are appointed as public members of the Committee for terms ending June 30, 2019:
 - a. **DESIREE LUCKEY**, replacing Glen Ackerman
 - b. **MICHELLE PARKERSON**, replacing Sheldon Scott
3. **SAYMENDY LLOYD** is appointed as a public member of the Committee, replacing Julia Saladino, for a term ending June 30, 2018.
4. **LARRY RAY** is appointed as a public member of the Committee, replacing Joanna Cifredo, to serve the remainder of an unexpired term ending June 30, 2017, and for a new term ending June 30, 2019.
5. The following persons are reappointed as public members of the Committee for terms ending June 30, 2019:
 - a. **NICOLE ARMSTEAD**
 - b. **RUTH EISENBURG**
 - c. **ALEXANDER KING**
 - d. **VICTORIA KIRBY YORK**

- e. **CONSUELLA LOPEZ**
- f. **ANDREA SHARRIN**
- g. **JIM SLATTERY**

6. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-139
June 1, 2017

SUBJECT: Appointment — Concealed Pistol Licensing Review Board

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with section 908 of the Firearms Control Regulations Act of 1975, effective June 16, 2015, D.C. Law 20-279; D.C. Official Code § 7-2509.08 (2016 Supp.), it is hereby **ORDERED** that:

1. **BONNIE LOPER** is appointed as a District resident with the experience in the operation, care, and handling of firearms member of the Concealed Pistol Licensing Review Board, replacing Zach Stewart, to serve the remainder of an unexpired term ending November 21, 2019.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-140
June 1, 2017

SUBJECT: Appointments — Commission on Climate Change and Resiliency

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with the Commission on Climate Change and Resiliency Establishment Act of 2016, effective February 18, 2017, D.C. Law 21-185; 64 DCR 2694 (March 17, 2017), it is hereby **ORDERED** that:

1. The following persons are appointed as members of the Commission on Climate Change and Resiliency ("**Commission**") for terms to end May 5, 2020:
 - a. **RONDA CHAPMAN**, as an environmental justice member.
 - b. **ANTHONY KANE**, as a transportation member.
 - c. **SANDRA KNIGHT**, as an emergency preparedness member.
 - d. **KATHRYN ZYLA**, as an energy member.

2. The following persons are appointed as members of the Commission for terms to end May 5, 2019:
 - a. **KEVIN CLINTON**, as a natural resources member.
 - b. **MAUREEN HOLMAN**, as an environmental science member.

3. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 
LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-141

June 1, 2017


SUBJECT: Reappointment – Chief Financial Officer of the District of Columbia**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(2) and 424(b) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code §§ 1-204.22(2) and 1-204.24b (2016 Repl.), and pursuant to the Chief Financial Officer of the District of Columbia Jeffrey S. DeWitt Confirmation Resolution of 2017, effective March 7, 2017, Resolution 22-034, it is hereby **ORDERED** that:

1. **JEFFREY S. DEWITT** is reappointed as the Chief Financial Officer of the District of Columbia, for a term to end June 30, 2022.
2. This Order supersedes Mayor's Order 2013-250, dated December 31, 2013.
3. **EFFECTIVE DATE:** This Order shall be effective July 1, 2017.


MURIEL BOWSER
MAYOR

ATTEST:


LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2017-142
June 5, 2017

SUBJECT: Commitment to Adopt, Honor, and Uphold the Paris Agreement

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(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(11) (2016 Repl.), it is hereby **ORDERED** that:

I. BACKGROUND AND PURPOSE:

WHEREAS, the scientific community has reached an overwhelming consensus that the earth's climate is warming and human activity—specifically, burning fossil fuels that emit carbon dioxide and other greenhouse gases—is the primary cause of warming;

WHEREAS, large coastal cities such as Washington, DC are disproportionately vulnerable to the effects of climate change, including extreme heat, severe storms, and sea level rise;

WHEREAS, reducing carbon emissions will help protect Washington, DC residents and future generations—particularly those who are most economically and physically vulnerable—and mitigate the consequences of extreme weather that hurt the Washington, DC economy;

WHEREAS, reducing carbon emissions and preparing for climate change will reduce illnesses caused by air pollution, high heat, and extreme weather;

WHEREAS, Washington, DC is committed to the goal of reducing carbon emissions 50 percent by 2032 and 80 percent by 2050 from 2006 levels established in the Sustainable DC plan, increasing renewable energy and reducing energy consumption as envisioned in the Clean Energy DC plan, and preparing for the effects of climate change by implementing the Climate Ready DC plan;

WHEREAS, over the past two years, Washington, DC has launched Climate Ready DC, entered into one of the largest municipal onsite solar projects in the United States, and completed one of the largest wind power purchase agreement deals ever entered into by an American city;

WHEREAS, President Trump has committed to withdrawing the United States from the Paris Agreement, thereby retreating from the commitment to limit global warming to below two degrees Celsius; and


WHEREAS, Washington, DC and other state and local governments must commit to aggressive climate action in the absence of federal leadership.

II. COMMITMENT:

- A. The District of Columbia Government hereby commits to proportionally upholding the commitment made by the United States in the Paris Agreement to reduce greenhouse gas emissions between 26 and 28 percent by 2025 from 2005 levels, and further commits to reduce carbon emissions 50 percent by 2032 and 80 percent by 2050 below 2006 levels established in Washington, DC's Sustainable DC plan.
- B. The District of Columbia Government, led by the Department of Energy & Environment, shall implement the Clean Energy DC Plan, developed pursuant to the authority set out in D.C. Official Code § 8-171.04(e), and the Sustainable DC plan's authority, embodied in Mayor's Order 2013-209, dated November 5, 2013, and shall develop other plans as necessary, to achieve greenhouse gas reduction targets.
- C. The District of Columbia Government shall implement and regularly update the Climate Ready DC plan, which sets out Washington, DC's strategy to prepare for and adapt to the impacts of climate change.
- D. In accordance with the Global Covenant of Mayors for Climate & Energy, the District of Columbia Government shall report citywide carbon emissions annually.

III. 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, JUNE 14, 2017
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Jake Perry, Donald Isaac, Sr.

- Protest Hearing (Status)** **9:30 AM**
Case # 17-PRO-00022; Etete Ethiopian Cuisine, Inc., t/a Etete Ethiopian ,
Cuisine, 1942 9th Street NW, License #70728, Retailer CT, ANC 1B
Application to Renew the License
- Protest Hearing (Status)** **9:30 AM**
Case # 17-PRO-00021; Po Boy Jim, LLC, t/a Po Boy Jim 2, 1934 9th Street
NW, License #105468, Retailer CR, ANC 1B
Application for a New License
- Protest Hearing (Status)** **9:30 AM**
Case # 17-PRO-00020; Callister Technology & Entertainment, LLC, t/a Duffy's
Irish Restaurant, 2106 Vermont Ave NW, License #100438, Retailer CT, ANC
1B
Substantial Change (Request a Change of Hours to the Sidewalk Café)
- Show Cause Hearing (Status)** **9:30 AM**
Case # 16-CMP-00831; Getbri, Inc., t/a Cedar Hill Bar & Grill/Uniontown Bar
& Grill, 2200 Martin Luther King, Jr Ave SE, License #91887, Retailer CT
ANC 8A
Failed to Comply with Board Order, Failed to Follow Security Plan
- Show Cause Hearing (Status)** **9:30 AM**
Case # 17-CMP-00023; Triangle Group, LLC, t/a Buckeye + Bear, 1730 M
Street NW, License #89394, Retailer CN , ANC 2B
No ABC Manager on Duty (Two Counts)

Board's Calendar

June 14, 2017

Show Cause Hearing (Status) 9:30 AM

Case # 16-CC-00157; Argyle Market, LLC, t/a Argyle Market, 3220 17th Street NW, License #93257, Retailer B, ANC 1D

Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Show Cause Hearing* 10:00 AM

Case # 16-CC-00155; 1807 Corporation t/a Dupont Market, 1807 18th Street NW, License #21578, Retailer B, ANC 2B

Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age, No ABC Manager on Duty

Show Cause Hearing* 11:00 AM

Case # 16-CC-00156; Albo Corp, t/a Eleven Market, 1936 11th Street NW License #60236, Retailer B, ANC 1B

Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age, No ABC Manager on Duty

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Fact Finding Hearing* 1:30 PM

Case # 17-251-00025; 1215 CT, LLC, t/a Rosebar Lounge, 1215 Connecticut Ave NW, License #77883, Retailer CT, ANC 2B

Assault with Bodily Injuries

Fact Finding Hearing* 2:30 PM

Case # 17-CMP-00204; The Griffin Group, LLC, t/a Policy, 1904 14th Street NW, License #76804, Retailer CR, ANC 8A

Ownership Issues, Substantial Change without Boards Approval (Expansion of Operation)

Protest Hearing* 3:30 PM

Case # 17-PRO-00011; Green Island Café/Heaven & Hell, t/a Green Island Café/Heaven & Hell, 2327 18th Street NW, License #74503, Retailer CT, ANC 1C

Substantial Change (Request for a Summer Garden Endorsement with Seating for 40)

***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, JUNE 14, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, June 14, 2017 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# 17-CC-00059, Hawthorne, 1336 U Street N.W., Retailer CT, License # ABRA-099603

2. Case# 17-251-00100, Leopold’s Kafe Koditorei/L2, 3315 Cady’s Alley N.W., Retailer CR, License # ABRA-025268

3. Case# 17-CMP-00268, Paper Moon, 1069 31st Street N.W., Retailer CR, License # ABRA-008004

4. Case# 17-CC-00058, Alero Restaurant and Lounge, 1301 U Street N.W., Retailer CR, License # ABRA-071881

5. Case# 17-251-00093, Hache Lounge, 441 Kennedy Street N.W., Retailer CT, License # ABRA-090274

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JUNE 14, 2017 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Tasting Permit. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Bacchus Importers*, 2800 V Street NE, Wholesaler A, License No. 025022.

***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.**

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**DC Board of Accountancy
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**Friday, June 2, 2017
9:00 AM**

1. Call to Order – 9:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Accept Meeting Minutes,
7. Executive Session - Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session to receive advice from counsel, review application(s) for licensure and discuss disciplinary matters.
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – July 7, 2017 at 9:00 a.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Architecture and Interior Design
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**June 9, 2017
9:30 AM**

1. Call to Order – 9:30 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, April 28, 2017
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – TBD at 9:30 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

District of Columbia - Board of Barber and Cosmetology
1100 4th Street SW, Room E-300, Washington DC 20024
Monday, June 5, 2017
AGENDA

1. **CALL to ORDER- 10:00 a.m. (Public Session)**
2. **ATTENDANCE**
3. **COMMENTS** from the Public
4. **DRAFT MINUTES** – *May 9, 2017 - vote*
5. **CORRESPONDENCE**
6. **OLD BUSINESS**
 - A. Practitioners Forum Updates/Planning – June 26, 2017
 1. Program Review
 2. Award/Plaques Review
 3. Logistics & Setup
 - B. NIC 2017 Conference Dates (**August 3rd-7th**) **Charleston, WV** – *Travel submission deadline May 2017*
 - C. NABBA Conference (**September 17th – 21st**) **Charleston, SC** – *Travel submission deadline June 2017*
7. **NEW BUSINESS**
 - A. CLEAR Conference – Monday June 5, 2017
 - B. Introduction of New Board Members
8. **BOARD COMMITTEES**
 - A. Forum and Education Committee Meeting Planning and Meeting Dates
9. **EXECUTIVE SESSION - (CLOSED TO PUBLIC)**

Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session to receive advice from counsel, review application(s) for licensure and discuss disciplinary matters.
10. **FINAL RECOMMENDATIONS/ACTIONS**
11. **ADJOURN - vote**

Next Scheduled Regular Meeting is **Monday July 10, 2017 at 10am.**
1100 4th Street, SW, Room 300B, Washington, DC 20024

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Funeral Directors
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**June 1, 2017
1:00 PM.**

1. Call to Order – 1:00 p.m.
2. Board Members and Staff
3. Comments from the Public
4. Review of Correspondence
5. Draft Minutes, May 4, 2017
6. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b) (4) (A); D.C. Official Code § 2-575(b) (9) (13) (14) to discuss complaints/legal matters, applications and legal counsel report.
7. Old Business
8. New Business
9. Adjourn
10. Next Scheduled Board Meeting – July 6, 2017 at 1:00 p.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**District of Columbia Board of Industrial Trades
1100 4th Street, S.W., Room 300
Washington, D.C. 20024**

**AGENDA
June 20, 2017**

1. Call to Order – 1:00 p.m.
2. Introduction of New Board Members
3. Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b)(4)(A); D.C. Official Code 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.
4. Attendance (Start of Public Session) – 2:20 p.m.
5. Comments from the Public
6. Minutes - Draft, May 2017
8. Recommendations
9. Old Business
10. New Business
11. Adjourn

Next Scheduled Regular Board Meeting, July 18, 2017
1100 4th Street, SW, Room 300B, Washington, DC 20024

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**District of Columbia Board of Professional Engineers
1100 4th Street SW, Room 380
Washington, DC 20024**

AGENDA

**June 22, 2017 ~ Room 300
9:00 A.M. (Application Review by Board Members)**

11:00 A.M.

- 1) Call to Order – 11:00 a.m.
- 2) Attendance
- 3) Executive Session - **Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session – Closed to the Public**
 - Deliberation over applications for licensure
 - Review complaints and investigations
- 4) Comments from the Public
- 5) Review of Minutes
- 6) Recommendations
- 7) Old Business
- 8) New Business
- 9) Adjourn

Next Scheduled Meeting – July 27, 2017
Location: 1100 4th Street SW, Conference Room E300

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Real Estate Appraisers
1100 4th Street SW, Room E300
Washington, DC 20024**

MEETING AGENDA

**June 28, 2017
10:00 AM**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, April 20, 2017
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – June 21, 2017 at 10:00 a.m.

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION**

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

June 2017

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Grace Yeboah Ofori	Board of Accountancy	2	8:30 am-12:00pm
Patrice Richardson	Board of Appraisers	28	8:30 am-4:00 pm
Patrice Richardson	Board Architects and Interior Designers	9	8:30 am-1:00 pm
Andrew Jackson	Board of Barber and Cosmetology	5	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	15	7:00-pm-8:30 pm
Pamela Hall	Board of Funeral Directors	1	12:00pm-4:00 pm
Avis Pearson	Board of Professional Engineering	22	9:00 am-1:30 pm
Leon Lewis	Real Estate Commission	13	8:30 am-1:00 pm
Jennifer Champagne	Board of Industrial Trades	20	1:00pm-3:30 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4th St., SW, Suite E-300 A-B Washington, DC 20024. For further information on this schedule, please contact the front desk at 202-442-4320.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING ADMINISTRATION**

**D.C. BOXING AND WRESTLING COMMISSION
NOTICE OF PUBLIC MEETING
1100 4th Street, SW, Suite 200E, Washington, DC 20024**

**AGENDA
June 15, 2017
6:30 P.M.**

1. Motion - Executive Session (Closed to the Public) to consult with an attorney pursuant to D.C. Official Code § 2-575(b)(4)(A); D.C. Official Code § 2-575(b)(9) to discuss complaints/legal matters, applications and legal counsel report.
2. Call to Order
3. Attendance (Start of Public Session)
4. Comments from the Public
5. Applications
6. Minutes – May 18, 2017
7. Budget
8. Correspondence
9. Old Business
10. New Business
 - A. Upcoming Professional Events
 - B. Upcoming Amateur Events
11. Adjournment

NEXT MEETING SCHEDULED FOR SEPTEMBER 21, 2017

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**District of Columbia Real Estate Commission
1100 4th Street, S.W., Room 300
Washington, D.C. 20024**

**AGENDA
June 13, 2017**

1. Call to Order - 9:30 a.m. (Public Session)
2. Attendance (Public Session)
3. Executive Session (Closed to the Public) pursuant to the authority of D.C. Official Code Section 2-575(b)(4)(A) to seek the advice of counsel, D.C. Official Code Section 2-575(b)(9) to discuss disciplinary matters, and D.C. Official Code Section 2-775(b)(13) to deliberate upon a decision in an adjudication action or proceeding) – 9:30 am-10:00 am
 - A. Legal Committee Recommendations
 - B. Review – Applications for Licensure
4. (Public Session) – 10:00 a.m.
5. Comments from the Public
6. Minutes - Draft, May 9, 2017
7. Recommendations
 - A. Review - Applications for Licensure
 - B. Legal Committee Report
 - C. Education Committee Report
 - D. Budget Report
 - E. 2017 Calendar
 - F. Correspondence
8. Old Business
 - Recommendations to Councilmember Bonds – “Common Interest Community Manager Licensing Amendment Act of 2017”
9. New Business
 - Agenda – Real Estate Commission

Page Two

A. Report - Commission-sponsored Seminars – Historic Preservation and Core Courses, May 11 and 19, 201

10. Adjourn

Agenda – Real Estate Commission

Page Two

Next Scheduled Regular Meeting, July 11, 2017

1100 4th Street, SW, Room 300B, Washington, DC 20024

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CREATIVE MINDS INTERNATIONAL PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER INTO FOUR SOLE SOURCE CONTRACTS****SY 2017-18**

Creative Minds International Public Charter School (CMIPCS) is a District of Columbia public charter school that opened in August 2012. The school will be serving 442 students from preschool to 7th grade during school year 2017-18.

Pursuant to the School Reform Act, D.C. 38-1802 (SRA) and the D.C. Public Charter Schools procurement policy, CMIPCS hereby submits this notice of intent to award the following four sole source contracts:

- 1). The Achievement Network (A-NET) - CMIPCS intends to enter into a sole source firm fixed price contract with A-NET amounting to over \$25,000 during school year 2017-18. This fixed price contract with A-NET is entered into based on their role as a unique niche provider of interim assessments that give the school timely, actionable and student-specific data. This data combined with the professional development associated with A-NET creates unique support to teachers and students not found in other vendors.
- 2). Center for Inspired Teaching (Fellow Program) - CMIPCS intends to enter into a sole source firm fixed price contract with Inspired Teaching amounting to over \$25,000 during school year 2017-18. This fixed price contract with Center for Inspired Teaching is entered into based on their role as a unique niche provider of a nationally recognized intensive 2-year teacher-training program specific to Inspired Teaching in Washington, D.C.
- 3). Dell Inc. - CMIPCS intends to enter into a sole source contract with Dell Inc. for laptop and PC desktop computers (with 3 year extended warranties), and relevant accessories amounting to over \$25,000 during school year 2017-18. CMIPCS will use these products for administrative and instructional purposes. Dell Inc. constitutes the sole source for all Dell Inc. products with preferred pricing and available discounts for educational institutions.
- 4). Fieldwork Education - CMIPCS intends to enter into a sole source contract with Fieldwork Education for International Primary and International Middle School curricula, teacher and staff professional development and accreditation services amounting to over \$25,000 during school year 2017-18. CMIPCS will utilize the services listed above that are provided by Fieldwork Education in its elementary and middle school programs, and will use these products for administrative and instructional purposes. Fieldwork Education constitutes the sole source for all Fieldwork Education products.

For further information regarding these four notices please contact James Lafferty-Furphy no later than 1:00 pm June 22nd, 2017 - james.lafferty-furphy@creativemindspcs.org, 202-588-0370 x112.

CREATIVE MINDS INTERNATIONAL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****2017-2018****Information Technology Services**

Creative Minds International Public Charter School (CMIPCS) is a District of Columbia public charter school that opened in August 2012. The school will be serving 442 students from preschool to 7th grade during school year 2017-18.

CMIPCS, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, solicits proposals from all interested and qualified vendors for information technology services for SY2017-18.

Requested Services

The successful bidder will be responsible managing all aspects of our elementary and middle school I.T. provision including WIFI, computing, state testing infrastructure and telephone systems for CMIPCS. Ongoing on-site maintenance is required including supplying and installing dedicated chromebook laptop cart(s) for mobile classroom use. Please provide costs for this with this proposal. The school building is covered by WI-FI. Teachers and administrative staff use Macbooks and Dell laptops with the most up-to-date versions of OS and Microsoft Office. Classrooms are equipped with IMAC desktop computers (a working knowledge of set-up and maintenance is required). Please also include fee proposals for on-site, remote access, and on-call services, as well as time commitment. Contact

Assumptions and Agreements

Proposals will not be returned. CMIPCS reserves the right to dismiss a proposal without providing a reason. CMIPCS reserves the right to terminate a contract at any time. CMIPCS reserves the right to renew a contract if mutually agreed by both parties.

Basis for Award of Contract

Creative Minds International PCS reserves the right to award a contract as it determines to be in the best interest of the school.

Submission Information

Bids must include evidence of experience in the field, qualifications and estimated fees. Questions, walkthrough date(s) and site plans, please email james.lafferty-furphy@creativemindspcs.org, 202-588-0370 x112. Proposals are due no later than 1:00 pm June 22nd, 2017.

CREATIVE MINDS INTERNATIONAL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****2017-2018****Substitute Teacher Services**

Creative Minds International Public Charter School (CMIPCS) is a District of Columbia public charter school that opened in August 2012. The school will be serving 442 students from preschool to 7th grade during school year 2017-18.

CMIPCS, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, solicits proposals from all interested and qualified vendors for substitute teacher services for SY2017-18.

Requested Services

CMIPCS is seeking competitive bids for substitute teachers and related staffing provision to support teaching staff in the classroom including but not limited to, lead teachers, assistant and aide teachers. Substitute teachers are required to have knowledge of classroom SPED and inclusion requirements.

Substitute teachers will be required to work with students and staff at the school as assigned by the Director of Instruction or his/her appointee. These services are to be offered at CMIPCS during normal school hours.

Assumptions and Agreements

Proposals will not be returned. CMIPCS reserves the right to dismiss a proposal without providing a reason. CMIPCS reserves the right to terminate a contract at any time. CMIPCS reserves the right to renew a contract if mutually agreed by both parties.

Basis for Award of Contract

Creative Minds International PCS reserves the right to award a contract as it determines to be in the best interest of the school.

Submission Information

Bids must include evidence of experience in the field, qualifications and estimated fees. Questions and enquiries please email james.lafferty-furphy@creativemindspcs.org, 202-588-0370 x112. Proposals are due no later than 1:00 pm June 22nd, 2017.

DC SCHOLARS PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Assessment System, Coaching, and Professional Development**

DC Scholars Public Charter School intends to enter into a sole source contract with The Achievement Network (ANET) for a contracted Assessment system, Coaching, and Professional Development for approximately \$27,650 for the school year 2017-18. The decision to sole source is due to the fact that The Achievement Network provides a high-quality assessment platform and assessment materials with questions aligned to Common Core standards and in a format similar to the PARCC. The Achievement Network also provides training and coaching on teacher-friendly data analysis, creating targeted re-teach plans, and making instructional adjustments based on benchmark data. The Achievement Network previously trained DC Scholars Public Charter School teachers on the assessment platform and assessment materials and it would be most effective to continue these services through The Achievement Network. The Achievement Network has a proven history on creating standard-based assessment questions for informal and interim assessments with the appropriate level of rigor.

The Sole Source Contract will be awarded at the close of business on June 19, 2017. If you have questions or concerns regarding this notice, contact **Emily Stone** at [202-559-6138](tel:202-559-6138) or estone@dcscholars.org no later than **4:00 pm on June 19, 2017**.

DC SCHOLARS PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Drumming Workshops**

DC Scholars Public Charter School intends to enter into a sole source contract with Traditional Expressions for services in contemporary and traditional West African drumming for \$65,000 in school year 2017-18. The decision to sole source is due to the fact that Traditional Expressions has provided these workshops to students at DC Scholars Public Charter School for the last two school years and has a proven history of training students in rhythm and drumming. DC Scholars Public Charter School conducted a Request for Proposals for drumming services in July 2015 and selected Traditional Expressions. Since June 2016, DC Scholars Public Charter School remains satisfied with the level of instruction, service, and professionalism provided.

The Sole Source Contract will be awarded at the close of business on June 19, 2017. If you have questions or concerns regarding this notice, contact **Emily Stone** at [202-559-6138](tel:202-559-6138) or estone@dcscholars.org no later than **4:00 pm June 19, 2017**.

DC SCHOLARS PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Reading Instructional Materials**

DC Scholars Public Charter School intends to enter into a sole source contract with AKJ Education for contracted classroom reading materials for approximately \$26,000 for the school year 2017-18. The decision to sole source is due to the fact that AKJ Education provides leveled libraries for classrooms that are categorized based on Fountas and Pinnell reading levels. DC Scholars Public Charter School purchases books from AKJ Education each year because the books are already packed and sorted based on reading levels aligned to our Fountas and Pinnell reading assessment. DC Scholars Public Charter School needs to purchase several more sets of leveled texts for school year 2017-18 due to the expansion of our Middle School program.

The Sole Source Contract will be awarded at the close of business on June 19, 2017. If you have questions or concerns regarding this notice, contact **Emily Stone** at [202-559-6138](tel:202-559-6138) or estone@dcscholars.org no later than **4:00 pm on June 19, 2017**.

DC SCHOLARS PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Substitute and Afterschool Personnel**

DC Scholars Public Charter School intends to enter into a sole source contract with Enriched Schools DC for contracted substitute and afterschool instructional support for approximately \$160,000 for school year 2017-18. Enriched Schools is a national leader in recruiting, selecting, and providing ongoing professional development to individuals who serve as short-term or long-term substitute and/or full-time classroom teachers. DC Scholars Public Charter School will use the services of Enriched School to fill short- and long-term staffing needs for its afterschool program as well as provide ongoing support and development for these teachers during school year 2017-2018. The decision to sole source is due to the fact that Enriched has provided short and long-term substitutes and afterschool enrichment staff for the 21st Century Program at DC Scholars Public Charter School in previous school years. Substitutes and afterschool teachers trained by Enriched Schools DC receive weekly feedback and monthly site-visits.

The Sole Source Contract will be awarded at the close of business on June 19, 2017. If you have questions or concerns regarding this notice, contact **Emily Stone** at [202-559-6138](tel:202-559-6138) or estone@dcscholars.org no later than **4:00 pm on June 19, 2017**.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**NOTICE OF FUNDING AVAILABILITY (NOFA)****FISCAL YEAR (FY) 2017-18****PRE-KINDERGARTEN ENHANCEMENT AND EXPANSION FUNDING****Application Release Date: June 23, 2017**

The Office of the State Superintendent of Education (OSSE), Division of Early Learning, is soliciting applications for the allocation of Pre-K Enhancement and Expansion funding to be distributed by OSSE to community-based organizations (CBOs)¹ 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.*) and its implementing regulations (5-A DCMR Chapter 35).

The purpose of this allocation is to distribute funding, per student, as appropriate, in an amount not to exceed the uniform per student funding formula (“UPSFF”) 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), to CBOs providing pre-K education services² that meet the eligibility requirements and the high-quality standards set forth in section 201 of the Act (D.C. Code § 38-272.01) and its implementing regulations (5A DCMR § 3500.3 and 3501). A supplemental allocation equivalent to the at risk weight may be distributed for pre-K age students in foster care, who are homeless, or on TANF or SNAP pursuant to the Early Learning Equity in Funding Amendment Act of 2017 (B22-26), subject to its enactment.

The UPSFF rate for FY 2017-18 is \$13,363 for 3 year olds and \$12,964 for 4 year olds.³ The supplemental at-risk allocation is \$2,184 for pre-K age students in foster care, who are homeless, or on TANF or SNAP. The allocation of the Pre-K Enhancement and Expansion funding is currently not a competitive grant process; however, 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, OSSE may distribute the funds through a competitive grant process. (See below “*Competitive Grant, If Applicable*”)

In order to apply for an allocation of Pre-K Enhancement and Expansion funding, a CBO providing pre-K education services shall:

1. be licensed and maintaining compliance pursuant to 29 DCMR Chapter 29;
2. be currently accredited by a national accrediting body approved by OSSE;

¹ “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 Program.

² “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.

³ Rates will be final upon the legislative enactment of the Fiscal Year 2018 Budget Support Act of 2017 (B 22-244).

3. complete and timely submit a high-quality designation application, on a form furnished by OSSE, which demonstrates that the CBO meets each of the: (1) eligibility criteria pursuant to 5A DCMR 3500.3; and (2) high-quality standards pursuant to 5A DCMR 3501; and
4. attend the pre-application conference.

The aforementioned mandatory pre-application conference shall be facilitated by OSSE at the date, time, and location listed below. No one shall be admitted once a pre-application conference has begun, and attendance will be taken at the end of each conference. Failure to attend the pre-application conferences will disqualify a high-quality designation application. To attend the conferences, please RSVP in advance to Mahlet.Getachew@dc.gov or (202) 727-0545.

Date	Time	Location
June 30, 2017	10 -12:00 p.m.	Office of the State Superintendent of Education 810 First St. NE – Conference room 806 A&B

The high-quality designation application shall be available to all interested parties on June 23, 2017 on OSSE’s website, <http://osse.dc.gov/>, and by contacting mahlet.getachew@dc.gov.

Competitive Grant. If Applicable

If funds are allocated through a competitive grant process, a Request for Application (RFA) will be released on **Friday, August 11, 2017** on OSSE’s website, <http://osse.dc.gov/>, and by contacting Dr. Mahlet Getachew at Mahlet.Getachew@dc.gov.

For additional information regarding this NOFA, please contact:

Dr. Mahlet Getachew
 Education Research Analyst
 Policy, Planning and Research Unit
 Division of Early Learning
 Office of the State Superintendent of Education
 810 First Street, NE Ninth Floor
 Washington, DC 20002
Mahlet.Getachew@dc.gov
 Phone: (202) 727-0545

BOARD OF ELECTIONS**CERTIFICATION OF ANC/SMD VACANCY**

The District of Columbia Board of Elections hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 3C02 and 6E04

Petition Circulation Period: **Monday, June 12, 2017 thru Monday, July 3, 2017**
Petition Challenge Period: **Friday, July 7, 2017 thru Thursday, July 13, 2017**

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**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#7153) to Fairway Services, Inc. to operate one (1) B&R 5101 automotive paint spray booth at the facility located at 2405 22nd Street NE, Washington, DC 20018. The contact person for the facility is Shahid Q. Qureshi at (202) 832-4662.

Emissions Estimate:

AQD estimates that the potential to emit volatile organic compounds (VOC) from the automotive paint spray booth will not exceed 3.12 tons per year.

The proposed emission limits are as follows:

- a. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]
- b. The Permittee shall not use or apply to a motor vehicle, mobile equipment, or associated parts and components, an automotive coating with a VOC regulatory content calculated in accordance with the methods specified in this permit that exceeds the VOC content requirements of Table I below. [20 DCMR 718.3]

Table I. Allowable VOC Content in Automotive Coatings for Motor Vehicle and Mobile Equipment Non-Assembly Line Refinishing and Recoating

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Adhesion promoter	4.5	540
Automotive pretreatment coating	5.5	660
Automotive primer	2.1	250
Clear coating	2.1	250
Color coating, including metallic/iridescent color coating	3.5	420
Multicolor coating	5.7	680
Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.50	60
Truck bed liner coating	1.7	200

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Underbody coating	3.6	430
Uniform finish coating	4.5	540

*VOC regulatory limit as applied = weight of VOC per volume of coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents)

- c. Each cleaning solvent present at the facility shall not exceed a VOC content of twenty-five (25) grams per liter (twenty-one one-hundredths (0.21) pound per gallon), calculated in accordance with the methods specified in this permit, except for [20 DCMR 718.4]:
 - 1. Cleaning solvent used as bug and tar remover if the VOC content of the cleaning solvent does not exceed three hundred fifty (350) grams per liter (two and nine-tenths (2.9) pounds per gallon), where usage of cleaning solvent used as bug and tar remover is limited as follows:
 - A. Twenty (20) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with four hundred (400) gallons or more of coating usage during the preceding twelve (12) calendar months;
 - B. Fifteen (15) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with one hundred fifty (150) gallons or more of coating usage during the preceding twelve (12) calendar months; or
 - C. Ten (10) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with less than one hundred fifty (150) gallons of coating usage during the preceding twelve (12) calendar months;
 - 2. Cleaning solvents used to clean plastic parts just prior to coating or VOC-containing materials for the removal of wax and grease provided that non-aerosol, hand-held spray bottles are used with a maximum cleaning solvent VOC content of seven hundred eighty (780) grams per liter and the total volume of the cleaning solvent does not exceed twenty (20) gallons per consecutive twelve-month (12) period per automotive refinishing facility;
 - 3. Aerosol cleaning solvents if one hundred sixty (160) ounces or less are used per day per automotive refinishing facility; or
 - 4. Cleaning solvent with a VOC content no greater than three hundred fifty (350) grams per liter may be used at a volume equal to two-and-one-half percent (2.5%) of the preceding calendar year's annual coating usage up to a maximum of fifteen (15) gallons per calendar year of cleaning solvent.
- d. The Permittee may not possess either of the following [20 DCMR 718.9]:

1. An automotive coating that is not in compliance with Condition (b) (relating to coating VOC content limits); and
 2. A cleaning solvent that does not meet the requirements of Condition (c) (relating to cleaning solvent VOC content limits).
- e. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]
- f. Visible emissions shall not be emitted into the outdoor atmosphere from the paint booth. [20 DCMR 201.1, 20 DCMR 606, and 20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours, P.E.
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after July 10, 2017 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

EXCEL ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****School Security Services**

Excel Academy Public Charter School, a DC public charter school serving approximately 700 PreK-3 thru 8th graders, with 130 full and part-time staff, is seeking bids for school security services. Excel Academy is located at 2501 Martin Luther King, Jr. Avenue, SE Washington, DC 20020. Proposals must be received in PDF format no later than 5:00 pm (EST), Thursday, June 30, 2017. Request for full service requirements and questions should be emailed to: bids@excelpcs.org. No phone calls or late responses please. Interviews, etc. will be scheduled at our request after the review of the proposals only. Interested parties and vendors will state their credentials and qualifications and provide appropriate licenses, references, insurances, certifications, proposed costs, and work plan.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF FOR-HIRE VEHICLES**

NOTICE OF FOR HIRE VEHICLES ADVISORY COUNCIL MEETING

The Department of For-Hire Vehicles will hold a For-Hire Vehicles Advisory Council Meeting on Thursday, June 22, 2017 at 1:00 pm. The meeting will be held at 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 For-Hire Vehicles Advisory Council Meeting on the DFHV website at www.dfhv.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Council on any issue of concern; the Council 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 Council. To register, please call 202-645-6002 no later than 3:30 p.m. on June 21, 2017. 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 Advisory Council Recorder no later than the time they are called to the podium.**

DRAFT AGENDA

- I. Call to Order
- II. Advisory Council Communication
- III. Advisory Council Action Items
- IV. Government Communications and Presentations
- V. General Counsel's Report
- VI. Staff Reports
- VII. Public Comment Period
- VIII. Adjournment

**DISTRICT OF COLUMBIA
STATE HISTORIC PRESERVATION OFFICER**

**NOTICE OF INTENT TO NOMINATE HISTORIC DISTRICTS
TO THE NATIONAL REGISTER OF HISTORIC PLACES**

The State Historic Preservation Officer hereby provides public notice of his intent to nominate the following historic district to the National Register of Historic Places. The Historic Preservation Review Board recently designated these properties as a historic district after duly noticed public hearings. The Board designated the Emerald Street Historic District on May 25 2017. The properties were nominated by Advisory Neighborhood Commission

Under the provisions of the Historic Protection Act (D.C. Code §6-1102(5)(c)), this district become effective when the State Historic Preservation Officer nominates or issues a written determination to nominate the properties to the National Register of Historic Places. Thirty (30) days after the date of this notice, the properties will become subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 17-05

Emerald Street Historic District

1307-1377 and 1300-1368 Emerald Street NE; 517 and 519 13th Street NE; and 518 and 520 14th Street NE.

Also currently known as Square 1029, Lots 73-107, 116-150, 111, 112, 151, 200, and 201

**DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD**

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 17-08: Lafayette Elementary School

5701 Broad Branch Road NW (Square 2012, Lot 809)

Designated May 25, 2017.

Applicant: owner District of Columbia Government (Department of General Services)

Affected Advisory Neighborhood Commission: ANC 3G

Listing in the D.C. Inventory of Historic Sites and the National Register of Historic Places provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

INTERAGENCY COUNCIL ON HOMELESSNESS**NOTICE OF PUBLIC MEETING****Full Council**

The DC Interagency Council on Homelessness (ICH) will be holding a meeting on Tuesday, June 13, 2017 at 2:00 pm. The meeting will be held at the Department of Housing and Community Development's Housing Resource Center (Address: 1800 Martin Luther King Jr Ave SE, Washington, DC 20020).

Below is the draft agenda for this meeting.

For additional information, including updates on location, please visit the ICH calendar online at <http://ich.dc.gov/events>. You can also contact the ICH info line at (202) 724-1338 or ich.info@dc.gov.

Meeting Details

Date: Tuesday, June 13, 2017

Time: 12:30 – 1:30 pm Pre-Meeting for advocates, agencies, consumers, providers
2 – 3:30 pm Full Council

Location: DHCD's Housing Resource Center
1800 Martin Luther King Jr Ave SE, Washington, DC 20020

Updates will be available online <http://ich.dc.gov/events>

Draft Agenda

- I. Welcome and Opening Remarks
- II. Public Comments
- III. 2017 Point-in-Time (PIT) Results
- IV. FY18 Budget
- V. Affordable Housing in the District
- VI. Public Comments (*Time Permitting*)
- VII. Adjournment

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****Pay For Success Consulting Services**

KIPP DC is soliciting proposals from qualified vendors for Pay For Success (Social Impact Bonds) Consulting Services. The RFP can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded no later than 5PM EST on June 20th, 2017. Questions can be addressed to bonnie.bacon@kippdc.org.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-01**

October 26, 2016

VIA ELECTRONIC MAIL

Ms. Olivia Hampton

RE: FOIA Appeal 2017-01

Dear Ms. Hampton:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response of the Metropolitan Police Department ("MPD") to a request you submitted on September 12, 2016, for June 2, 2016, body worn camera footage of MPD officers.

This Office notified the MPD of your FOIA appeal on October 13, 2016. On October 17, 2016, the MPD provided this Office with a response to your appeal, stating that in accordance with MPD's retention policy, the videos you requested were deleted on September 7, 2016. This Office accepts MPD's representation that it does not possess the records you seek because the retention period for the videos ended before you submitted your request to MPD.

MPD is not obliged by DC FOIA to disclose documents it does not possess at the time of the request. *See United States DOJ v. Tax Analysts*, 492 U.S. 136, 145 (1989) ("the agency must be in control of the requested materials at the time the FOIA request is made."). Based on the foregoing, we affirm MPD's decision and dismiss your appeal.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-02**

November 9, 2016

VIA ELECTRONIC MAIL

Mr. Thomas McCally

RE: FOIA Appeal 2017-02

Dear Mr. McCally:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District of Columbia Child and Family Services Agency ("CFSA") failed to respond to a request you submitted on April 26, 2016, for records related to the reporting of allegations of certain categories of child sex abuse.

After you had subsequent conversations with CFSA about the status of your FOIA request but received no written response, you filed an appeal on October 21, 2016, of the constructive denial of your request. After you filed your appeal, CFSA provided you with a substantive response to your FOIA request on October 28, 2016. CFSA subsequently informed this Office that it had responded to your FOIA request.

As your appeal was based on CFSA's lack of response to your FOIA request, we consider your appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response CFSA sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Wendy Singleton, FOIA Officer, CFSA (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-03**

November 10, 2016

VIA EMAIL

Ms. Kathryn Erklauer

RE: FOIA Appeal 2017-03

Dear Ms. Erklauer:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) did not adequately respond to your request for records under the DC FOIA.

Background

On August 23, 2016, you submitted a FOIA request to DCRA seeking records related to “policies for designating authority to settle disputes on behalf of DCRA” and “documents indicating the extent and limitation of each person’s settlement authority.” On October 11, 2016, DCRA responded, stating that a search of its records revealed no responsive documents.

On appeal, you challenge DCRA’s assertion that no responsive records exist, citing a recent District of Columbia Court of Appeals decision, holding that those who contract with a government agent are constructively notified of the limits of that agent’s authority. *Perkins v. District of Columbia*, No. 14-CV-1125, 2016 D.C. App. LEXIS 305, at *10 (Aug. 11, 2016). You assert that as a result of the holding in *Perkins*, responsive documents must exist.

DCRA provided this Office with a response to your appeal.¹ In its response, DCRA describes additional searches conducted after your appeal was filed. DCRA’s response to your appeal includes one email chain identifying the settlement authority of certain individuals.²

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public

¹ A copy of DCRA’s response is attached.

² This responsive email chain is included in DCRA’s attached response.

Ms. Kathryn Erklauer
Freedom of Information Act Appeal 2017-03
November 10, 2016
Page 2

body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The primary issues in this appeal are whether DCRA conducted an adequate search for the records at issue and whether DCRA sufficiently described the search to you. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

DCRA’s description of its search in response to your initial request was brief and conclusory. In response to your appeal, however, DCRA conducted additional searches and provided a more detailed description of its search efforts. DCRA identified the relevant location for records responsive to your request as the electronic files of the agency’s Administrative Issuances, which returned no responsive records when searched. DCRA also queried its general counsel, who stated that to his knowledge DCRA had no documents outlining DCRA’s policies for designating settlement authority. Finally, DCRA contacted its Office of Civil Infractions, which resulted in

Ms. Kathryn Erklauer
Freedom of Information Act Appeal 2017-03
November 10, 2016
Page 3

the production of one responsive email chain describing individuals' settlement authority. Based on the description and documentation DCRA provided in response to your appeal, we find that the search it conducted was adequate.

Regarding your assertion that the decision in *Perkins* indicates more responsive records must exist, we note that *Perkins* states that individuals are "constructively notified" of settlement authority. There is a distinction between "constructive notice" and "actual notice." See *Shauer v. Alerton*, 151 U.S. 607, 618 (1894) (stating that "actual notice" consists of express information of a fact and "constructive notice" is imputed to a person not having actual notice). As a result, we do not find that *Perkins* has any bearing on whether additional documentation regarding DCRA's delegation of settlement authority exists here.

Conclusion

Based on the foregoing, we affirm DCRA's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Matthew Meyer, Attorney Advisor, DCRA (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-04**

November 8, 2016

VIA ELECTRONIC MAIL

Ms. Allyson Kitchel

RE: FOIA Appeal 2017-04

Dear Ms. Kitchel:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the failure of the Department of Parks and Recreation ("DPR") to respond to a request you submitted to DPR for records relating to a bid package.

Upon receiving your appeal on October 25, 2016, this Office notified DPR and requested that it provide us with a response. On November 1, 2016, DPR sent both you and this Office correspondence explaining that the records you seek are not typically maintained by DPR, but instead are more likely to be found at the Department of General Services. Since your appeal was based on DPR's failure to respond to your request and DPR subsequently responded to your request, we consider this appeal to be moot and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DPR's November 1, 2016 response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Jamarj Johnson, FOIA Officer, DPR (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-05**

November 10, 2016

VIA ELECTRONIC MAIL

Ms. Lauren Bateman

RE: FOIA Appeal 2017-05

Dear Ms. Bateman:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

You submitted a request to the MPD for photographs taken during the investigation of a domestic violence incident. The MPD responded to you on September 27, 2016, denying your request on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings.

On appeal, you challenge the MPD’s denial of your FOIA request based on Exemption 3(A)(i). While you do not contest that the photographs are investigatory records compiled for law enforcement purposes, you assert that disclosure of the photographs would not interfere with enforcement proceedings and that the MPD did not adequately describe how disclosure would interfere with enforcement proceedings to justify withholding. Further, you assert that rather than impairing the enforcement proceedings, you share the MPD’s goal of protecting women from domestic violence.

The MPD sent this Office a response to your appeal in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i).¹ The MPD clarified its application of Exemption 3(A)(i), stating that disclosure of the photographs would interfere with enforcement proceeding by allowing witnesses or defendants to modify their testimony based on the depictions in the photographs. The MPD also asserts that its FOIA staff contacted the Assistant United States Attorney supervising the criminal prosecution, who confirmed MPD’s position that disclosure of the photographs at issue here would result in harm to the criminal prosecution.

¹ The MPD’s response is attached for your reference.

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Com’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As previously discussed, Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent enforcement from being “jeopardized by the premature release of the evidence.” *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.* A type of harm to enforcement protected by Exemption 3(A)(i) includes the disclosure of information that would allow witnesses to modify, tailor, or construct their testimony in light of information learned from investigatory records. *Accuracy in Media v. United States Secret Serv.*, 1998 U.S. Dist. LEXIS 5798, *13 (D.D.C. Apr. 16, 1998)

Here, the threshold requirement for invoking Exemption 3(A)(i), that the records qualify as investigatory records, is clear and uncontested. Our analysis turns on whether disclosure of the photographs would interfere with pending enforcement proceedings. On appeal the MPD asserts that disclosure of the records would allow witnesses or the defendant to tailor their testimony to be consistent with the depictions in the photographs. Exemption 3(A)(i) is used to prevent the detrimental impact of modification and fabrication of testimony on enforcement. *See Accuracy in Media*, 1998 U.S. Dist. LEXIS 5798 at *13. While you assert that disclosure would not result in harm to enforcement because your interest of preventing domestic violence is aligned with the interest of MPD, this alignment does not overcome the purpose of Exemption 3(A)(i) of preventing harm to enforcement proceedings. As a result, the investigatory photographs have been properly withheld from disclosure pursuant to Exemption 3(A)(i).

Conclusion

Based on the foregoing, we affirm the MPD’s decision and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Ms. Lauren Bateman
Freedom of Information Act Appeal 2017-05
November 10, 2016
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Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-06**

November 29, 2016

Mr. Jason Leopold

RE: FOIA Appeal 2017-06

Dear Mr. Leopold:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly responded to a request for records you made under the DC FOIA.

Background

On August 11, 2016, you submitted a request under the DC FOIA to MPD seeking documents “discussing Julian Assange, Wikileaks, and/or the offered reward.” On October 14, 2016, MPD responded by denying your request, asserting that releasing records would interfere with a law-enforcement proceeding, pursuant to D.C. Code § 2-534(a)(3)(A)(i) (“Exemption 3”).

On appeal, you challenge MPD’s assertion of Exemption 3 and argue that MPD’s denial amounts to a “categorical denial.” Further, you challenge the adequacy of MPD’s search.

MPD provided this Office with a response to your appeal on November 18, 2016.¹ In its response, MPD no longer asserts that it is withholding records pursuant to Exemption 3. Instead, MPD states that it has searched for responsive records but has not found any. MPD provided us with a description of the searches the agency conducted to locate records responsive to your request. MPD further proffered that relevant staff were “not aware of any responsive documents ever having been received or created.”

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C.

¹ A copy of MPD’s response is attached for your reference.

Mr. Jason Leopold
Freedom of Information Act Appeal 2017-06
November 29, 2016
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Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Since MPD asserts that it has not withheld any responsive records from you, the primary issue in this appeal is your belief that more records exist and your contention that MPD conducted an inadequate search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Originally, in denying your request MPD claimed that the release of the requested records “would among other things, interfere with enforcement proceedings.” In response to your appeal, MPD now claims that no records exist. In making this assertion, MPD explains that it contacted MPD’s “homicide unit and public information office” and that both offices indicated that no responsive records could be located. MPD did not indicate why these offices would be the only locations likely to have records. MPD did not indicate if emails were searched or what search terms were used. Further, MPD did not articulate what circumstances led to MPD’s original claim that records that do not exist would “interfere with enforcement proceedings.”

Mr. Jason Leopold
Freedom of Information Act Appeal 2017-06
November 29, 2016
Page 3

The test is not whether any additional documents might conceivably exist, but whether MPD's search for responsive documents was adequate. *Weisberg*, 705 F.2d at 1351. Based on the letter MPD provided this Office in response to your appeal, we find that the search it conducted was not adequate. Inconsistencies in MPD's position in the existence of records and the minimal description provided of the search makes this matter appropriate for remand. Given the nature of your request, at a minimum, a search of MPD emails for the terms "Wikileaks," "Assange," and "\$20,000" would be appropriate.²

Conclusion

Based on the foregoing, we remand the MPD's decision and hereby dismiss your appeal. Within 5 business days, MPD shall commence a second search. If responsive records are located, MPD may redact or withhold such records as appropriate under DC FOIA. If no responsive records are located, MPD shall issue you a letter of denial with a more specific description of the search it conducted. This constitutes the final decision of this office. You may file a separate appeal to challenge MPD's subsequent substantive responsive.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

² We suggest these search terms because it appears that MPD may have narrowed the scope of your request to being solely about a "reward" – whereas this Office interprets your request to be for any document maintained by MPD that discusses either "Julian Assange, Wikileaks, and/or the offered reward."

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-07**

December 2, 2016

VIA ELECTRONIC MAIL

Mr. Hyun Kyu Kim

RE: FOIA Appeal 2017-07

Dear Mr. Kim:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the Metropolitan Police Department ("MPD") denied, in part, a request you submitted for records, pertaining to an enumerated case file. MPD's partial denial of records was made pursuant to D.C. Code § 2-534(a)(3)(A)(i), on the basis that the requested records were a part of an ongoing investigation.

This Office notified the MPD of your FOIA appeal on November 18, 2016. On November 22, 2016, via email, the MPD responded to the appeal and stated that upon review MPD had found that the criminal investigation had concluded. As a result, MPD proffered that it would process your request, and produce additional responsive records to you.

Based on the foregoing, we consider your appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the MPD's substantive response.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-08**

December 5, 2016

VIA ELECTRONIC MAIL

Ms. Qing Lu

RE: FOIA Appeal 2017-08

Dear Ms. Qing Lu:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you challenge the response made by the Office of the Inspector General (“OIG”) to a record request you submitted to the OIG under DC FOIA.

Background

On the dates of August 2, September 13, and October 5, 2016, you submitted a series of FOIA requests to OIG for records relating to OIG case number 2016-1103. OIG responded to your requests, denying each on the basis that the records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings.

On November 21, 2016, this Office processed your appeal. In your appeal, you proffer your beliefs that the investigation should not take long to conduct and that you are entitled to the records that you requested.

The OIG responded to your appeal in a letter to this Office in which it reasserted its position that the records are protected from disclosure by Exemption 3(A)(i). OIG provided this office with a signed affidavit explaining that the OIG investigation at issue, which is the subject of your records requests, is still ongoing.

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

Ms. Qing Lu
Freedom of Information Act Appeal 2017-08
December 5, 2016
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The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent “the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding.” *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). “[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies.” See *Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.*

Here, the records you seek were compiled for the law enforcement purpose of an OIG investigation, and OIG has asserted that the investigation pertaining to the matter is ongoing. As a result, OIG has clearly met the threshold requirements for invoking Exemption 3(A)(i), and our analysis turns on whether disclosure would interfere with enforcement proceedings. OIG asserts that disclosure of the records could reveal “nature, scope and direction of the investigation.” Further, disclosure could “unnecessarily taint the reputation of anyone associated with the matter if the allegations are unsubstantiated.” While your appeal raises several concerns regarding how long an investigation should take, these concerns do not overcome the purpose of Exemption 3(A)(i), which is to prevent interference of enforcement proceedings. As discussed, any investigatory details revealed would potentially interfere with enforcement efforts. Therefore at this point, the investigatory records have been properly withheld from disclosure pursuant to Exemption 3(A)(i).

Conclusion

Based on the foregoing, we affirm OIG’s decision and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Daniel W. Lucas, Inspector General, OIG (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-09**

December 16, 2016

VIA ELECTRONIC MAIL

Mr. Kahlill Palmer

RE: FOIA Appeal 2017-09

Dear Mr. Palmer:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the failure of the Department of Housing and Community Development ("DHCD") to respond to a July 18, 2016, request you submitted to DHCD for records relating to rent control exemptions from the beginning of 2010 to present.

Upon receiving your appeal on November 30, 2016, this Office notified DHCD and requested that it provide us with a response. On December 15, 2016, DHCD forwarded to this Office an email that purported to respond to your initial request by providing you with the information you requested for the time period of 2011 to present. The email also stated, without explanation for the 5-month delay, that records for the remaining time period you have requested are still being "collected."

Your appeal was based on DHCD's failure to respond to your request, and DHCD has subsequently responded in part to this request. As a result, we consider your appeal to be partially moot with respect to the documents you sought that DHCD provided you on December 15, 2016.

As to the outstanding records sought in your July 18, 2016 request, DHCD failed to provide them within the 15 days prescribed by D.C. Official Code § 2-532 (c)(1). Further, based on the record before this Office, it appears that DHCD did not seek an extension to respond to your request by "written notice . . . setting forth the reasons for extension and expected date for determination," as contemplated by D.C. Official Code § 2-532 (d)(1). Lastly, DHCD did not assert an exemption to justify withholding records at any point. As a result, this Office finds that DHCD constructively denied your request. D.C. Official Code § 2-532(e). Having denied your request, and having failed to offer an explanation to this Office for the reasons for such denial, this Office finds DHCD to be improperly withholding the records that it maintains it is "collecting."

In light of the above, this Office orders DHCD to, within 5 business days of the date of this decision: (1) provide you with the outstanding requested documents; or (2) provide you with a detailed explanation of all steps it has taken since your July 2016 request to retrieve and produce

Mr. Kahlill Palmer
Freedom of Information Act Appeal 2017-09
December 16, 2016
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the documents you are seeking¹ and continue to provide you and this Office with weekly updates on the status of your request until all responsive, non-privileged documents have been produced.

If you wish to assert a substantive challenge of the documents DHCD produced to you on December 15, 2016, or DHCD's subsequent responses made pursuant to this decision, you may do so by separate appeal to this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Timothy Wilson, FOIA Officer, DHCD (via email)
Julia Wiley, General Counsel, DHCD (via email)

¹ If DHCD sends you a detailed explanation of its search efforts, the agency shall send a copy to this Office of same.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-10**

December 20, 2016

VIA ELECTRONIC MAIL

Mr. Ben Emmel

RE: FOIA Appeal 2017-10

Dear Mr. Emmel:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you challenge the Metropolitan Police Department’s (“MPD”) response to your request under the DC FOIA.

Background

You submitted a request to the MPD for all record relating to a police presence at a certain address on November 21, 2016. The MPD responded to you on November 29, 2016, denying your request on the basis that your request was for “records containing information of presence of the police at [an address] and not to your exact address.” In follow up correspondence, MPD recommended that you submit a request to the Office of Unified Communications.

You subsequently filed an appeal of MPD’s response, which was received by this Office on December 2, 2016. This Office notified MPD that same day of your appeal. On appeal, you challenge the adequacy of MPD’s search on the basis that you received a final response 17 hours after MPD acknowledged your request, therefore MPD could not have conducted a reasonable search in that time.

MPD responded to your appeal by conducting a second search, which led to identification of one responsive record – an event report.¹ MPD has asserted, however, that the event report is exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of an investigatory record compiled for law enforcement purposes would interfere with enforcement proceedings. MPD proffers that even if an enforcement proceeding were not pending, the event report would be protected under D.C. Official Code § 2-534(a)(3)(C) because its disclosure would constitute an unwarranted invasion of privacy. Moreover, MPD asserts that reasonable redaction of the event report is not possible because “there is no reasonable way for it to be redacted without rendering the record meaningless to the requestor.”

¹ See MPD’s response to your appeal, a copy of which is attached.

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Com’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As previously discussed, Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent enforcement from being “jeopardized by the premature release of the evidence.” *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.* A type of harm to enforcement protected by Exemption 3(A)(i) includes the disclosure of information that would allow witnesses to modify, tailor, or construct their testimony in light of information learned from investigatory records. *Accuracy in Media v. United States Secret Serv.*, 1998 U.S. Dist. LEXIS 5798, *13 (D.D.C. Apr. 16, 1998)

Here, the threshold requirement for invoking Exemption 3(A)(i), that the records qualify as investigatory records, has been met. Our analysis turns on whether disclosure of the record would interfere with pending enforcement proceedings. In response to your appeal, the MPD asserts that disclosure of the record would “identify the victim and witnesses and would reveal the direction and progress of the investigation . . . [because] the record relates to a specific identified location and date.” Exemption 3(A)(i) is used to prevent the detrimental impact of modification and fabrication of testimony on enforcement. *See Accuracy in Media*, 1998 U.S. Dist. LEXIS 5798 at *13. As a result, MPD has properly withheld the event report in question pursuant to Exemption 3(A)(i).

Adequacy of Search

The crux of your appeal is that MPD did not conduct an adequate search for the records you requested, which you have surmised based on the expediency between MPD’s acknowledgement of your request and its denial of the existence of records. While this Office recognizes your concerns about MPD’s initial search, on appeal MPD has stated that it conducted a second search, which is the search that this Office will evaluate.

Mr. Ben Emmel
Freedom of Information Act Appeal 2017-10
December 20, 2016
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DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

MPD's second search produced a single responsive document. MPD proffers that the initial search did not produce this record because at the time of the request, the responsive record was still being processed. MPD further represents that responsive records generated from a call to service would have been uploaded into the record system MPD searched. Therefore, MPD has identified the relevant record repositories likely to contain responsive documents and has searched them. As a result, we conclude that MPD has conducted an adequate search.

Conclusion

Based on the foregoing, we affirm the MPD's decision and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-11**

December 29, 2016

VIA ELECTRONIC MAIL

Ms. Geneva Sands

RE: FOIA Appeal 2017-11

Dear Ms. Sands:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

You submitted a request to the MPD for all video footage from December 4, 2016, showing a named individual inside of Comet Ping Pong. Your request encompassed footage showing police responding to an incident that occurred at Comet Ping Pong on that date, video from any cameras inside the establishment, and any body-worn camera footage captured during the MPD’s response to the incident. The MPD denied your request on the basis that responsive records are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) (“Exemption 3(A)(i)”) because disclosure of the investigatory records compiled for law enforcement purposes would interfere with enforcement proceedings.

On appeal, you present several arguments. First, you assert that public safety benefits related to informing the public of the “true nature of the threats posed by ‘fake news’ far outweigh any potential concerns relating to the current enforcement proceedings.” Second, you contend that “it’s unclear how releasing the requested video could interfere with the proceedings in any way beyond the video, images and other information that have already become part of the public record.” Third, you note that you requested several specific types of video footage from the incident in question, yet MPD’s initial response to your request offers an explanation only as to the denial of footage from body-worn cameras.

We advised MPD of your appeal, and MPD responded by reasserting its position that the records in question are protected from disclosure by Exemption 3(A)(i).¹ In its response, MPD acknowledged that you are seeking video footage of an incident that took place inside of Comet Ping Pong on December 4, 2016, “as well as any video footage of police officers responding to

¹ The MPD’s response is attached for your reference.

this location.” MPD reiterated its position that the videos in question are investigatory records compiled for law enforcement purposes, and that disclosure of the videos would interfere with enforcement proceedings. The MPD further explained that the criminal investigation at issue is pending, and that releasing any video records would educate involved persons, such as suspects or witnesses, as to the nature or direction of the investigation. According to the MPD, this could lead to the tailoring of testimony to support a version of the event and escape criminal responsibility. Releasing any images of witnesses, the MPD maintains, would jeopardize their safety.

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2- 531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to examine public records is subject to various exemptions that may form the basis of a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Com’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As previously discussed, Exemption 3(A)(i) protects from disclosure investigatory records that are compiled for law enforcement purposes when disclosure would interfere with enforcement proceedings. A significant purpose of the exemption is to prevent enforcement from being “jeopardized by the premature release of the evidence.” *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to an ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency’s decision. *Id.* A type of harm to enforcement protected by Exemption 3(A)(i) includes the disclosure of information that would allow suspects or witnesses to modify, tailor, or construct their testimony in light of information learned from investigatory records. *Accuracy in Media v. United States Secret Serv.*, 1998 U.S. Dist. LEXIS 5798, *13 (D.D.C. Apr. 16, 1998).

Here, the threshold requirement for invoking Exemption 3(A)(i), that the video recordings qualify as investigatory records, is clear and uncontested. Our analysis turns on whether disclosure of the requested video footage would interfere with pending enforcement proceedings. On appeal the MPD asserts that disclosure of the records would allow a witness or suspect to tailor his or her testimony to be consistent with images in the video recordings. Exemption 3(A)(i) is used to prevent the detrimental impact of modification and fabrication of testimony on enforcement. *See Accuracy in Media*, 1998 U.S. Dist. LEXIS 5798 at *13. Consequently, the MPD has preliminarily satisfied both elements of Exemption 3(A)(i), and we consider your assertions on appeal to determine if disclosure should be ordered. First, you assert that disclosure would serve the public interest and benefit public safety by informing the public of the dangers

Ms. Geneva Sands
Freedom of Information Act Appeal 2017-11
December 29, 2016
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of fake news and outweighs any potential concerns relating to the enforcement proceedings. This balancing standard is not appropriate to Exemption 3(A)(i) but rather applies to FOIA exemptions involving personal privacy, such as D.C. Official Code §§ 2-534(a)(2) and (3)(C). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). Your second assertion, that disclosure of the video would not interfere with the enforcement proceedings because the information has already become part of the public record, if true would eliminate the protection of Exemption 3(C)(i). It is our understanding, however, based on the MPD's representation that the video footage in question is not part of the public record, and you have offered no evidence to the contrary. Third, the MPD's response to your request only addressed footage from body-worn cameras and not the other footage you requested. The MPD clarified on appeal and we agree that the application of Exemption 3(A)(i) is relevant to all forms of investigative video capturing the December 4th incident. As a result, the MPD properly withheld responsive video footage from disclosure pursuant to Exemption 3(A)(i) at this juncture based on a pending criminal investigation into events captured on the responsive video footage.

Conclusion

Based on the foregoing, we affirm the MPD's decision and hereby dismiss your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-12**

January 6, 2017

VIA ELECTRONIC MAIL

Ms. Katherine Wright

RE: FOIA Appeal 2017-12

Dear Ms. Wright:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the failure of the Department of Housing and Community Development ("DHCD") to respond to a request you submitted on September 23, 2016, to DHCD for records relating to low income housing tax credits.

DHCD acknowledged receipt of your request on September 23, 2016. Since that communication, despite your attempts to contact DHCD by phone and email, you have not received a response or an update from DHCD regarding your request. As a result, you are appealing DHCD's failure to respond as a constructive denial under D.C. Official Code § 2-532(e).

On December 28, 2016, this Office notified DHCD of your appeal and requested a response. DHCD responded by email on January 5, 2017, stating that an "undetermined portion" of the requested records are available online. DHCD offered no explanation for the several month delay or lack of communication with you. In addition, DHCD did not describe its search, stating only that it has "already begun but requires coordination." DHCD further requested a "10 day extension to respond to the original FOIA request."

DHCD has failed to provide you with records within the 15 business days prescribed by D.C. Official Code § 2-532(c)(1). Further, based on the record before this Office, it appears that DHCD did not seek an extension to respond to your request by "written notice . . . setting forth the reasons for extension and expected date for determination," as contemplated by D.C. Official Code § 2-532(d)(1). Lastly, DHCD did not assert an exemption to justify withholding records at any point. As a result, this Office finds that DHCD constructively denied your request pursuant to D.C. Official Code § 2-532(e). Having denied your request, and having failed to offer an explanation of the reasons for the denial, this Office finds DHCD to be improperly withholding the records at issue.

In light of the above, this Office orders DHCD to, within 5 business days of the date of this decision: (1) identify the documents you have requested that are available online; and (2) provide

Ms. Katherine Wright
Freedom of Information Act Appeal 2017-12
January 6, 2017
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you with any remaining responsive documents in DHCD's possession, subject to redaction or withholding in accordance with D.C. Official Code § 2-534.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Timothy Wilson, FOIA Officer, DHCD (via email)
Julia Wiley, General Counsel, DHCD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-13**

January 18, 2017

VIA US MAIL

Mr. Solomon Givens

RE: FOIA Appeal 2017-13

Dear Mr. Givens:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In this appeal, you assert that the Metropolitan Police Department ("MPD") failed to adequately respond to a FOIA request you submitted to MPD for documents related to complaints you allegedly filed concerning a "No Papered" arrest.

Attached to your appeal were two documents that purport to be initial FOIA requests that you submitted to MPD. Both are dated November 17, 2016, but one is addressed to the Internal Affairs Bureau and the other is addressed to the Internal Affairs Division. In your appeal, you assert that you have not received a response to these requests.

This Office notified MPD of your appeal on January 3, 2017, and MPD responded to us on January 10, 2017. In its response, MPD explained that your initial request prompted a search of records at the Third Police District and the Internal Affairs Division. This initial search resulted in finding no responsive records. MPD asserts that upon receipt of your appeal, it conducted a second search of arrest records and found responsive documents relating to a civil forfeiture. The MPD indicated that it will revise its response to you and provide you with the documents discovered in the second search.

Since your appeal was based on a lack of a response from MPD, and since MPD has represented to this Office that it conducted a second search and will provide you with the responsive documents retrieved in that second search, we consider this appeal to be moot, and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to MPD's substantive response.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-14**

January 18, 2017

VIA US MAIL

Mr. Solomon Givens

RE: FOIA Appeal 2017-14

Dear Mr. Givens:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In this appeal, you assert that the Office of Police Complaints ("OPC") failed to adequately respond to a FOIA request you submitted to OPC for documents related to complaints you allegedly filed concerning a "No Papered" arrest.

Attached to your appeal were two initial FOIA requests that you submitted to OPC. One is dated November 1, 2016, and the other is dated November 17, 2016. In your appeal, you assert that you have not received a response to these requests.

This Office notified OPC of your appeal on January 3, 2017, and OPC responded to us on January 4, 2017. In its response, OPC claims that it did not receive either of your FOIA requests. Nonetheless, upon receipt of your appeal, OPC conducted a search for the responsive documents. OPC's response represents that its thorough search produced no records containing the name "Solomon Givens."

Since your appeal was based on a lack of a response from OPC, and since OPC has represented to this Office that it conducted a thorough search, we consider this appeal to be moot, and it is dismissed; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OPC's substantive response.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Alicia Yass, Legal Counsel, OPC (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-15**

February 7, 2017

VIA ELECTRONIC MAIL

Ms. Charlotte Keenan

RE: FOIA Appeal 2017-15

Dear Ms. Keenan:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records requested under the DC FOIA.

Background

On March 9, 2016, the Network for Victim Recovery of DC, working on behalf of your client, submitted a request to MPD seeking the entire investigative record relating to a criminal investigation of alleged sexual assault. MPD partially granted and partially denied your client’s request. MPD granted the request in part by providing several documents from the investigative record after redacting personally identifiable information. MPD denied the request in part by withholding in their entirety statements of the suspect and a witness. MPD asserted that the redaction and withholding were necessary under DC FOIA exemptions set forth in D.C. Official Code §§ 2-534(a)(2), (3)(C) to protect personal privacy.

On appeal you challenge MPD’s withholding of the witness and suspect statements, contending that they should be released with redactions made to personally identifiable information rather than being entirely withheld. Further, you assert that there is an overriding public interest in the release of the statements to understand the application of prosecutorial discretion in sexual assault cases.

On January 31, 2017, MPD sent this Office its response to your appeal.¹ Therein, MPD reasserted that releasing the withheld statements would amount to an unwarranted invasion of the suspect’s and witness’s privacy. Further, MPD asserted that the public interest you raise relates to federal prosecutorial discretion and not the conduct of MPD; therefore, the unrelated public interest does not outweigh privacy interests in the withheld statements. In a follow-up email, on February 2, 2017, MPD clarified its position that the statements cannot be reasonably redacted because someone with knowledge of the underlying incident could identify the individuals who

¹ MPD’s response is attached to this decision.

Ms. Charlotte Keenan
Freedom of Information Act Appeal 2017-15
February 7, 2017
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made the statements. As a result, no reasonable amount of redaction would be sufficient to protect the privacy interests at issue.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this appeal is whether the witness and suspect statements you requested are exempt from disclosure under DC FOIA because releasing them would constitute an unwarranted invasion of personal privacy.

D.C. Official Code § 2-534(a)(2) (“Exemption 2”) provides an exemption from disclosure for “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis determining whether a sufficient privacy interest exists. *Id.*

D.C. Official Code § 2-534(a)(3)(C) (“Exemption 3”) is more expansive than Exemption 2, and protects from public disclosure information contained in an investigatory file that “would constitute an unwarranted invasion of privacy.” Exemption 3 lacks the key word “clearly” that is contained in Exemption 2, and therefore is a broader privacy privilege. Here, the broader standard of Exemption 3 applies because the records being withheld are located in an investigatory file.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep’t. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Moreover, there is a sufficient privacy interest in recorded witness statements. *See Fitzgibbon v. CIA*, 911 F.2d 755, 767 (1990) (finding a “‘strong interest’ of individuals, whether they be suspects, witnesses, or investigators, ‘in not being associated unwarrantedly with alleged criminal activity.’”). As a result, this Office finds that there is a substantial privacy interest in the suspect and witness statements. Further,

this Office agrees with MPD's assessment that redaction of personally identifiable information in the statements would not sufficiently protect privacy interests associated with the statements. As MPD asserted, due to the personal nature of the statements, redaction would not prevent someone with knowledge of the incident from identifying the individual who made the statement.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is

'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id.* "This inquiry . . . should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666. Typically, courts have held that public interest is not transferable from state to federal matters. *See Landano v. DOJ*, 956 F.2d 422, 430 (3d Cir. 1992) (discerning "no FOIA-recognized public interest in discovering wrongdoing by a state agency"); *Garcia v. DOJ*, 181 F. Supp. 2d 356, 374 (S.D.N.Y. 2002) ("The discovery of wrongdoing at a state as opposed to a federal agency . . . is not the goal of FOIA."); *Thomas v. Office of the United States Atty.*, 928 F. Supp. 245, 251 (E.D.N.Y. 1996) (recognizing that [federal] FOIA cannot serve as basis for requests about conduct of state agency). *But see Lissner v. U.S. Customs Serv.*, 241 F.3d 1220, 1223 (9th Cir. 2001) (finding that public interest exists in Custom Service's handling of smuggling incident despite fact that information pertained to actions of state law enforcement officers).

You argue that release of withheld documents would aid the public in understanding the exercise of prosecutorial discretion with regard to alleged sexual assaults. MPD distinguishes that a public interest involving the decision of federal prosecutors is not relevant to compel the disclosure of MPD records. *See Landano*, 956 F.2d at 430 (finding that public interest of state actions are not applicable to federal FOIA). Here, because federal prosecutors handle felonies and certain misdemeanors in the District, a sufficient nexus between the exercise of federal prosecutorial discretion and MPD investigatory records potentially exists.

Ms. Charlotte Keenan
Freedom of Information Act Appeal 2017-15
February 7, 2017
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Still, it is unclear that the public interest outweighs the privacy interests here. The government's broad discretion regarding the decision whether or not to prosecute is well established. *See e.g., Wayte v. United States*, 470 U.S. 598, 607 (1985) (finding that several factors are involved in the decision to prosecute and the process is ill-suited to judicial review). The record on appeal indicates that the federal decision to not prosecute was based on issues involving intoxication and consent. Specific details found in the suspect and witness statements would strongly implicate privacy concerns. *See Fitzgibbon* 911 F.2d at 767 (finding that individuals have a strong privacy interest in avoiding association with alleged criminal activity). It is not clear, however, that shedding light on these details would significantly advance the public's understanding of the government attorney's decision not to prosecute. As a result, MPD properly withheld the suspect and witness statements pursuant to Exemption 3.

Conclusion

Based on the foregoing, we affirm MPD's decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C 20004

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-16**

February 8, 2017

VIA U.S. MAIL

Mr. Paul Wagner

RE: FOIA Appeal 2017-16

Dear Mr. Wagner:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that videos you requested pertaining to arrests were improperly redacted by the Metropolitan Police Department (“MPD”).

Background

On January 16, 2017, you submitted a request under the DC FOIA to the MPD for videos that were used in certain prosecutions. MPD identified 10 videos that were responsive to your request, which MPD released in redacted form on its YouTube account. MPD informed you that the redactions were made pursuant to D.C. Official Code § 2-534(a)(3)(C) (“Exemption 3(C”).

On appeal you challenge MPD’s redactions, arguing that because the Office of the Attorney General played unredacted versions of the videos in court, the subjects of the videos have lost their privacy interests, therefore redaction is improper. You argue that the disparate policies regarding the use of video at trial of the District’s Attorney General and the U.S. Attorney are “unfair to the public.” Additionally, you contend that the records were not labeled with court case numbers, which rendered you unable to determine which video related to each case.¹

MPD sent this Office a response to your appeal on February 1, 2017². MPD reaffirmed its position, asserting authority from cases, statutes, and prior FOIA appeal determinations to support its decision that the redaction of records was proper under Exemption 3(C).

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who

¹ This Office does not consider MPD’s failure to label the records to have caused you to be “denied the right to inspect a public record.” D.C. Official Code § 2-537(a). As a result, this Office does not have the jurisdiction to review whether the labeling of the YouTube videos was proper.

² A copy of MPD’s response is attached to this determination.

represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemptions 2³ and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Exemption 3(C) provides an exemption for disclosure for “[i]nvestigatory records compiled for law-enforcement purposes, . . . to the extent that the production of such records would . . . constitute an unwarranted invasion of personal privacy.” While Exemption 2 requires that the invasion of privacy be “clearly unwarranted,” the word “clearly” is omitted from Exemption 3(C). Thus, the standard for evaluating a potential invasion of privacy under Exemption 3(C) is broader than under Exemption 2. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Records pertaining to investigations conducted by the MPD are exempt from disclosure under Exemption 3(C) if the investigations focus on acts that could, if proven, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep’t of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States Dep’t of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption “applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well.”). Since the records you seek relate to investigations that could result in civil or criminal sanctions, Exemption 3(C) applies to your request.

Under the applicable case law, your argument that the videos at issue should be released in unredacted form because they were played in court is not persuasive. *Long v. United States DOJ*, 450 F. Supp. 2d 42, 68 (D.D.C. 2006) (“the fact that some of the personal information contained in these records already has been made public in some form does not eliminate the privacy interest in avoiding further disclosure by the government.”). As a result, the fact that the videos were played in an unredacted form in court is not dispositive of the privacy analysis here.

Determining whether disclosure of a record would constitute an unwarranted invasion of personal privacy requires a balancing of one’s individual privacy interests against the public interest in disclosure. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756. On the issue of privacy interests, the D.C. Circuit has held:

[I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)⁴. “The 7(C) exemption recognizes the stigma potentially

³ D.C. Official Code § 2-534(a)(2)

⁴ Exemption 7(C) is the federal FOIA equivalent to DC FOIA’s Exemption 3(C).

Mr. Paul Wagner
Freedom of Information Act Appeal 2017-16
February 8, 2017
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associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.”

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep’t of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

As discussed in *Stern*, individuals have a strong interest in not being associated with alleged criminal activity, and protection of this privacy interest is a primary purpose of Exemption 3(C). As a result, we find that there is a sufficient privacy interest here associated with individuals captured on video by a body-worn camera during an arrest. The disclosure of an unredacted version of the videos you seek could have a stigmatizing effect for the subjects of the videos.

With regard to the balancing analysis under Exemption 3(C), we examine whether the privacy interests of the individuals recorded are outweighed by the public interest in disclosure. On appeal, you argue that MPD’s refusal to release an unredacted version of the video “is unfair to the public and must be corrected.” In order to for a document’s release to be in the public interest under DC FOIA, the document’s release must further the statutory purpose of DC FOIA:

This statutory purpose is furthered by disclosure of official information that “sheds light on an agency’s performance of its statutory duties.” *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that “reveals little or nothing about an agency’s own conduct” does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency’s own conduct.

Beck v. Department of Justice, et al., 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

You have not asserted how disclosing the records at issue in an unredacted form would shed light on MPD’s conduct or performance of its statutory duties, nor do we independently find a public interest in unredacted versions of the records. Having established that the subjects of the videos hold a privacy interest and that no countervailing public interest exists, we find that MPD properly redacted the videos. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993) (“In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure . . . In this case, however, where we find that the request implicates no public interest at all, ‘we need not linger over the balance; something . . . outweighs nothing every time.’”). *See also, Bartko v. United States Dep’t of Justice*, 79 F. Supp. 3d 167, 173 (D.D.C. 2015) (“In an ultimate balancing, something in the privacy bowl outweighs nothing in the public-interest bowl every time.”). Further, MPD’s disclosure is consistent with the requirements of reasonably redacted disclosure found in D.C. Official Code § 2-534 (b).

Conclusion

Based on the forgoing we affirm the decision issued by the MPD and dismiss your appeal.

**Mr. Paul Wagner
Freedom of Information Act Appeal 2017-16
February 8, 2017
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This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-17**

February 8, 2017

VIA ELECTRONIC MAIL

Ms. Lauren Wasserman

RE: FOIA Appeal 2017-17

Dear Ms. Wasserman:

This letter is in response to the appeal you sent to the Mayor concerning an unanswered request that you submitted to the United States Department of Housing and Urban Development ("HUD") under the federal Freedom of Information Act ("federal FOIA").

The Mayor has jurisdiction to review decisions issued by District agencies under the District of Columbia Freedom of Information Act. HUD is a federal agency subject only to federal FOIA. As a result, the Mayor has no authority to adjudicate your appeal. In order to appeal HUD's response to your FOIA request, you must pursue the appellate process established under the federal FOIA.

Based on the foregoing, we hereby dismiss your appeal. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-18**

February 16, 2017

VIA ELECTRONIC MAIL

Mr. Derek Kravitz

RE: FOIA Appeal 2017-18

Dear Mr. Kravitz:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Alcoholic Beverage Regulation Administration (“ABRA”) improperly redacted records you requested under the DC FOIA.

Background

On January 21, 2017, on behalf of ProPublica, you submitted a FOIA request to ABRA for records related to the Trump Old Post Office LLC’s license applications. On January 30, 2017, and February 2, 2017, ABRA disclosed responsive records. No records were withheld entirely, the records were redacted pursuant to D.C. Official Code §§2-534 (a)(1) (“Exemption 1”)¹ and (2) (“Exemption 2”).²

On appeal, you acknowledge and accept the redactions ABRA made based on personal privacy interests pursuant to Exemption 2; however, you challenge the redactions ABRA made pursuant to Exemption 1. You assert that, while the Exemption 1 redactions involve commercial or financial information, disclosure would not result in substantial competitive harm, particularly for information related to the percentage of ownership and details of ownership structure. Additionally, you argue that there is a public interest in the records sought; therefore, Exemption 1 should not be used to prevent disclosure.

On February 15, 2017, ABRA provided this Office with a response to your appeal, including four exhibits and a Vaughn index.³ ABRA’s response reaffirmed its use of Exemption 1, claiming that: the redacted information is commercial and financial; there is actual competition

¹ Exemption 1 exempts from disclosure “[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would results in substantial harm to the competitive position of the person from whom the information was obtained.”

² Exemption 2 exempts from disclosure “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

³ A copy of ABRA’s response is attached for your reference.

Mr. Derek Kravitz
Freedom of Information Act Appeal 2017-18
February 16, 2017
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in the hotel industry in the District; and release of the redacted information has been judicially recognized to result in competitive harm. Specifically, ABRA categorized the information redacted pursuant to Exemption 1 into four types⁴ and provided judicial precedent supporting the redaction of each category in the context of FOIA.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

To withhold information under Exemption 1, the information must be: (1) a trade secret or commercial or financial information; (2) that was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, “as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms “commercial” and “financial” used in the federal FOIA should be accorded their ordinary meanings. *Id* at 1290.

Exemption 1 has been “interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury.” *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *see also, Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, “actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply.” *Essex Electro Eng’rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also McDonnell Douglas Corp. v. United States Dep’t of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The

⁴ The four types are: (1) Amounts of money spent, amounts of money provided by various sources, and revenue estimates; (2) percentages and amounts of shares owned by each person or entity identified in the documents; (3) organizational information that identifies the lender and amount of interest each entity holds in the business; and (4) contractual terms that may identify ownership shares, profits, internal operations, and other financial information.

Mr. Derek Kravitz
Freedom of Information Act Appeal 2017-18
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exemption “does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would ‘likely’ do so. [citations omitted]”).

Statements of ownership percentages for commercial ventures have been protected under FOIA. *See Nadler v. F.D.I.C.*, 92 F.3d 93, 95, 97 (2d Cir. 1996); *see also, People for Ethical Treatment of Animals v. U.S. Dep't of Agric.*, No. CIV. 03 C 195-SBC, 2005 U.S. Dist. Lexis 10586, at *7 (D.D.C. May 24, 2005) (“insights into the company’s operations, give competitors pricing advantages over the company, or unfairly advantage competitors in future business negotiations.”); *Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). (finding that insights into the operational strengths and weaknesses of a business allow others to engage in “[s]elective pricing, market concentration, expansion plans, . . . take-over bids[,] . . . bargain[ing] for higher prices . . . unregulated competitors would not be similarly exposed.”). Additionally, details of an entities organizational structure have been protected in the context of FOIA. *See Prof'l Review Org. of Florida, Inc. v. U.S. Dep't of Health & Human Servs.*, 607 F. Supp. 423, 425 (D.D.C. 1985) (Upholding an agencies decision to withhold an organization structure).

Here, you acknowledge that the challenged redactions involve commercial and financial information; therefore, the threshold for protection under Exemption 1 has been met. Based on ABRA’s representation, we find that actual competition exists in the District’s hotel industry. Finally, we accept ABRA’s representation that disclosure of the commercial and financial information could cause substantial harm by allowing competitors unfair insights regarding the business’s assets and operations. *See* ABRA’s response at 14-16. Specifically, disclosure of the percentage of ownership and details of the ownership structure could allow competitors unfair advantages in future negotiations, pricing advantages, and potential take-over bids. Therefore, we find that ABRA properly redacted commercial and financial information pursuant to Exemption 1.

Conclusion

Based on the foregoing, we affirm ABRA’s decision.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor’s Office of Legal Counsel

cc: Jessie Cornelius, FOIA Officer, ABRA (via email)
Jonathan Berman, Assistant General Counsel, ABRA (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-19**

February 24, 2017

VIA REGULAR MAIL

Mr. Mike Eckel

RE: FOIA Appeal 2017-19

Dear Mr. Eckel:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Office of the Chief Medical Examiner (“OCME”) improperly withheld records responsive to your request under the DC FOIA.

Background

On January 10, 2017, you submitted a request to the OCME for autopsy photographs and a toxicology report of an individual as well as certain internal correspondence generated by the OCME in connection with its investigation of the death. OCME responded on January 30, 2017, and informed you that it would be withholding all responsive records pursuant to D.C. Official Code §§ 5-534(a)(2), (a)(6)(A).

In the instant appeal, you challenge the “withholding [of] the relevant autopsy materials.” In your appeal, you argue that the autopsy materials should be released and that the “public has a legitimate interest in obtaining the requested records.” In favor of this interest, you posit that “there are reasonable grounds to conclude that the investigation by the MPD was compromised.” You further speculate that the individual’s death “may have resulted from other potential causes, including the possible introduction of toxic, lethal substances” Finally, you conclude that “this case qualifies as a high-profile incident with broad, lasting international interest that goes beyond that of the U.S. public interest.”

On February 9, 2017, we notified OCME of your appeal and asked for a response. OCME responded on February 15, 2017. In its response, OCME reasserted that withholding the records was proper pursuant to D.C. Official Code §§ 5-534(a)(2) and (a)(6)(A). Further, OCME cited to FOIA Appeal 2009-13, a previous DC FOIA Appeal decision, which concluded that the release of autopsy reports would constitute an unwarranted invasion of privacy and that death does not extinguish an individual’s privacy rights. OCME did not interpret your appeal to challenge the withholding of the deliberative correspondence and did not brief the issue. OCME explained in its response that responsive documents were withheld pursuant to D.C. Official Code § 2-

Mr. Mike Eckel
Freedom of Information Act Appeal 2017-19
February 24, 2017
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534(a)(2) (“Exemption 2”)¹ and D.C. Official Code § 5-1412² under D.C. Official Code § 2-534(a)(6) (“Exemption 6”).³

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Under Exemption 2, determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). For the same reasons that personally identifiable information raises a substantial privacy interest for a citizen, the medical findings contained in an autopsy report raise a substantial privacy interest for a decedent. Indeed, in FOIA Appeal 2009-13 it was recognized that autopsy reports were properly withheld under DC FOIA pursuant to Exemption 2, and that a decedent still maintains privacy rights in death, as recognized by the federal Health Insurance Portability and Accountability Act.

The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. You contend that the named individual who is the subject of the autopsy report’s “case qualifies as a high-profile incident with broad, lasting international interest that goes beyond that

¹ Exemption 2 prevents disclosure for “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

² D.C. Official Code § 5-1412 limits disclosure of documents maintained by OCME.

³ Exemption 6 protects disclosure for information specifically protected by other statutes.

Mr. Mike Eckel
Freedom of Information Act Appeal 2017-19
February 24, 2017
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of the U.S. public interest.” This is not a cognizable public interest under DC FOIA. The “public interest” in DC FOIA has a narrow meaning, limited to furthering the statutory purpose of DC FOIA.

This statutory purpose is furthered by disclosure of official information that “sheds light on an agency’s performance of its statutory duties.” *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that “reveals little or nothing about an agency’s own conduct” does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency’s own conduct.

Beck v. Department of Justice, et al., 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

The other public interest that you advance is that an agency separate from OCME, MPD, did not conduct an appropriate investigation into an international conspiracy. This instant appeal involves a determination rendered by OCME concerning OCME records; it is not an appeal of an MPD decision concerning MPD records. Your speculation surrounding the propriety of MPD’s investigation does not constitute a public interest under DC FOIA that would compel OCME to release its records, as OCME’s statutory function is to determine causes of death – not to investigate conspiracies or review the performance of agencies that have this responsibility. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). As a result, we find that OCME has properly withheld autopsy records under Exemption 2.

Because we conclude that the documents were properly withheld pursuant to Exemption 2, we need not address whether the information is also protected under Exemption 6. Additionally, we agree with OCME that your appeal does not challenge the withholding of deliberative correspondence.

Conclusion

Based on the foregoing, we affirm OCME’s decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor’s Office of Legal Counsel

cc: Mikelle L. DeVillier, General Counsel, OCME (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-20**

February 28, 2017

VIA ELECTRONIC MAIL

Mrs. Kelechi Ahaghotu

RE: FOIA Appeal 2017-20

Dear Mrs. Ahaghotu:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") failed to respond to two requests you submitted for employment records in November and December of 2016.

Following conversations with MPD about your FOIA requests without receiving substantive responses, you filed an appeal based on the constructive denial of your requests in February. After you filed your appeal, MPD informed our Office that it provided its complete response to one of your requests and the first production in response to your other request with productions continuing on a rolling basis. Both responses were partially redacted to protect personal privacy pursuant to D.C. Official Code § 2-534(a)(2).

As your appeal was based on MPD's lack of response to your FOIA requests, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive responses MPD sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

MUNDO VERDE PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Site Work and Playground**

Mundo Verde PCS seeks bids for site work and custom playground equipment. The RFP with bidding requirements and supporting documentation can be obtained by contacting Tara McNerney at tmcnerney@mundoverdepcs.org or by calling 202-750-7060. **All bids not addressing all areas as outlined in the RFP will not be considered.**

The deadline for application submission is 12:00pm June 23, 2017.

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT**Urban Teachers**

Mundo Verde Public Charter School intends to enter into a sole source contract with Urban Teachers for recruitment, selection, training and support of teaching fellows for approximately \$150,000 over 3 years.

- Mundo Verde PCS has a need for assistance with recruitment, selection, training and support of teaching fellows. Urban Teachers is the only such organization combining national-scale recruitment with the small site cohorts and customized training that Mundo Verde requires.

For further information regarding this notice contact Sara Mosenkis at 202-750-7060 or smosenkis@mundoverdepcs.org no later than 4pm June 23, 2017.

**OFFICE OF THE DEPUTY MAYOR
FOR PLANNING AND ECONOMIC DEVELOPMENT**

NEIGHBORHOOD PROSPERITY FUND (NPF) FY17

TECHNICAL AMENDMENT

The Office of the Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of proposals for the Neighborhood Prosperity Fund (NPF) from the Economic Development Special Account pursuant to DC Official Code §2-1225.21.

In the DC Economic Strategy, the administrations vision is to become the “global model for inclusive prosperity”. The administration is guided by two measurable primary goals. One of the two goals is to reduce unemployment across wards, races and educational attainment levels, bringing rates below 10% in all segments by the end of 2021. The Office of the Deputy Mayor for Planning and Economic Development welcome submissions directly connected this this goal. DMPED will fund projects to fill the gaps in non-residential components of a mixed used project, real estate, or retail development project in targeted census tracts where there is 10% or greater unemployment. **The grant provides necessary gap funding only for the commercial component of development projects.**

The purpose of this technical amendment is to provide updates to the Request for Applications (RFA) that was issued for this grant program on Friday, May 5, 2017.

CLARIFICATION OF POST AWARD

On page 12 of the RFA, under Post Award. Certified Business Enterprises criteria has been modified. For post award the applicants must adhere to the following:

Certified Business Enterprises - The Applicant selected by the District to enter into a grant agreement shall comply with the requirements of the Small and Certified Business Enterprise Development and Assistance Act of 2005, D.C.Official Code §§ 2-218.01et seq.("CBE Act"). Pursuant to the CBE Act, the selected Applicant shall subcontract to Small Business Enterprises ("SBEs") at least 35% of the total development budget. If there are insufficient qualified SBEs to fulfill the 35% requirement,the requirement may be satisfied by subcontracting 35% to qualified Certified Business Enterprises ("CBEs").

The District's Department of Small and Local Business Development ("DSLBD") determines which entities qualify as SBEs and CBEs pursuant to the CBE Act. Applicants are encouraged to exceed the District's SBE/CBE subcontracting

requirements. Applicants must sign the Acknowledgement Form attached under NPF forms on dmped.dc.gov

CHANGE IN APPLICATION

Under Project Proposal I, Section 2.C. & D. will be collapsed into one request for information. Applicants must fill out the *Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements* form.

CHANGE IN LOGISTICS

On page 2, under Submission Guidelines, deadline will be **extended to Wednesday, June 14, 2017 at 12 noon.**

DISTRICT OF COLUMBIA RETIREMENT BOARD

INVESTMENT COMMITTEE

NOTICE OF CLOSED MEETING

June 22, 2017

10:00 a.m.

DCRB Board Room
900 7th Street, N.W.
Washington, D.C 20001

On Thursday, June 22, 2017, at 10:00 a.m., the District of Columbia Retirement Board (DCRB) will hold a closed investment committee meeting regarding investment matters. In accordance with D.C. Code §2-575(b)(1), (2), and (11) and §1-909.05(e), the investment committee meeting will be closed to deliberate and make decisions on investments matters, the disclosure of which would jeopardize the ability of the DCRB to implement investment decisions or to achieve investment objectives.

The meeting will be held in the Board Room at 900 7th Street, N.W., Washington, D.C 20001.

For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.Reaves@dc.gov.

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF OPEN PUBLIC MEETING

June 22, 2017

1:00 p.m.

900 7th Street, N.W.
2nd Floor, DCRB Boardroom
Washington, D.C. 20001

The District of Columbia Retirement Board (DCRB) will hold an Open meeting on Thursday, June 22, 2017, at 1:00 p.m. The meeting will be held at 900 7th Street, N.W., 2nd floor, DCRB Boardroom, Washington, D.C. 20001. A general agenda for the Open Board meeting is outlined below.

Please call one (1) business day prior to the meeting to ensure the meeting has not been cancelled or rescheduled. For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.Reaves@dc.gov.

AGENDA

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|-------|------------------------------------|--------------------|
| I. | Call to Order and Roll Call | Chair Clark |
| II. | Approval of Board Meeting Minutes | Chair Clark |
| III. | Chair's Comments | Chair Clark |
| IV. | Acting Executive Director's Report | Ms. Morgan-Johnson |
| V. | Investment Committee Report | Mr. Warren |
| VI. | Operations Committee Report | Ms. Collins |
| VII. | Benefits Committee Report | Mr. Smith |
| VIII. | Legislative Committee Report | Mr. Blanchard |
| IX. | Audit Committee Report | Mr. Hankins |
| X. | Other Business | Chair Clark |
| XI. | Adjournment | |

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)

DC MAIN STREETS

(Georgetown, Lower Georgia Avenue, and Minnesota Avenue Target Areas)

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to operate a DC Main Streets program (“the Program”) in three service areas (listed below). **The submission deadline is Friday, August 4, 2017 at 2:00 p.m.**

Through this grant, DSLBD will designate and fund three DC Main Streets programs (organizations), which will develop the following programs and services.

- Assist business districts with the retention, expansion and attraction of neighborhood-serving retail stores.
- Unify and strengthen the commercial corridor.

Eligible applicants are DC-based nonprofit organizations which are current on all taxes.

DSLBD will **award** one grant for **each** of the following **service areas** (i.e., a total of three grants).

- Georgetown (Ward 2)
- Lower Georgia Avenue (Ward 1)
- Minnesota Avenue (Ward 7)

Each designated Program will receive \$175,000 in grant funding and technical assistance to support commercial revitalization initiatives.

The DC Main Streets grant award is a recurring grant, which can be renewed annually as long as the grantee continues to meet the standards for accreditation by the National Main Street Center. The FY 2018 **grant performance period** is October 1, 2017 through September 30, 2018.

The **Request for Application** (RFA) includes instructions and guidance regarding application preparation. DSLBD will post the RFA on or before **Friday, June 23, 2017** at www.dslbd.dc.gov. Click on the *Our Programs* tab, then *Neighborhood Revitalization*, and then *Solicitations and Opportunities* on the left navigation column. DSLBD will host an Information Session on Thursday June 29, 2017 at 3:00 p.m. at DSLBD’s office (441 4th Street, NW, #805 South Washington DC 20001). A photo ID is required to enter the building.

Application Process: Interested applicants must complete an online application on or before **Friday, August 4, 2017 at 2:00 p.m.** Applicants submitting incomplete applications will be notified by Monday, August 7, 2017 and will have two business days to upload missing information. Corrected applications are due on Wednesday August 9, 2017 at 2 p.m. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.**

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant's eligibility, experience, and capacity. DSLBD will determine grant award selection and notify all applicants of their status via email on or before Wednesday September 7, 2017.

Funding for this award is contingent on continued funding from the DC Council. The RFA does not commit the Agency to make an award.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

All applicants must attest to executing DSLBD grant agreement as issued (sample document will be provided with the online application) and to starting services on October 1, 2017.

For more information, contact Cristina Amoruso, DC Main Streets Coordinator, at the Department of Small and Local Business Development at (202) 727-3900 or cristina.amoruso@dc.gov.

**DEPARTMENT OF SMALL AND LOCAL BUSINESS
DEVELOPMENT**

REVISED NOTICE OF FUNDING AVAILABILITY

(NOFA) CLEAN TEAM GRANTS

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to manage a **DC Clean Team Program** (“the Program”) in seventeen service areas (listed below). This revised NOFA includes newly added clean team programs for Alabama Avenue, SE (Ward 8), Mid-City (Ward 2) and Upper 14th Street, NW, and fund amounts for each program; new submission deadline; and newly added pre-application meeting.

The submission deadline is Wednesday, July 5, 2017, 10:00 AM.

Through this grant, DSLBD will fund clean teams, which will achieve the following objectives.

- Improve commercial district appearance to help increase foot traffic, and consequently, opportunity for customer sales.
- Provide jobs for DC residents.
- Reduce litter, graffiti, and posters, which contribute to the perception of an unsafe commercial area.
- Maintain a healthy tree canopy, including landscaping, along the corridor.
- Support Sustainable DC goals by recycling, mulching street trees, using eco-friendly supplies, and reducing stormwater pollution generated by DC’s commercial districts.

Eligible applicants are DC-based nonprofit organizations which are incorporated in the District of Columbia and which are current on all taxes. Applicants should have a demonstrated capacity with the following areas of expertise.

- Providing clean team services or related services to commercial districts or public spaces.
- Providing job-training services to its employees.
- Providing social support services to its Clean Team employees.

DSLBD will **award** one grant for **each** of the following **service areas** (i.e., a total of fourteen grants). The size of grant is noted for each district.

- 12th Street, NE - \$100,618
- Alabama Avenue, SE (Ward 8) - \$100,000
- Bellevue - \$100,000
- Benning Road - \$107,000
- Connecticut Avenue, NW - \$101,982
- Georgia Avenue - \$101,982
- Glover Park - \$125,000
- Kennedy Street, NW - \$100,618
- Lower Georgia Avenue - \$100,000
- Mid-City (Ward 2) - \$100,000

- Minnesota Avenue, NE - \$101,982
- New York Avenue, NE - \$113,521
- Pennsylvania Avenue, SE - \$107,000
- Upper Georgia Avenue - \$100,000
- Upper 14th Street, NW - \$100,000
- Ward 1 - \$100,618
- Wisconsin Avenue - \$113,521

The **grant performance period** to deliver clean team services is October 1, 2017 through September 30, 2018. Grants may be renewed for a second performance period of October 1, 2018 through September 30, 2019.

The **Request for Application** (RFA) includes a detailed description of clean team services, service area boundaries, and selection criteria. DSLBD will post the RFA on or before **Wednesday, June 7, 2017** at www.dslbd.dc.gov. Click on the *Our Programs* tab, then *Neighborhood Revitalization*, and then *Solicitations and Opportunities* on the left navigation column.

DSLBD will hold a **pre-application meeting on Friday, June 16 at 10:00 AM** at 441 4th Street, NW, Washington, DC 20001, Room 1116.

Application Process: Interested applicants must complete an online application on or before **Wednesday, July 5, 2017 at 10:00 AM**. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.**

The online application is live. To open an application, applicants must complete and submit an **Expression of Interest** via the website address included in the Request for Applications. DSLBD will activate their online access within two business days and notify them via email. **Selection Criteria** for applications will include the following criteria.

- Applicant Organization's demonstrated capacity to provide clean team or related services, and managing grant funds.
- Proposed service delivery plan for basic clean team services.
- Proposed service delivery plan for additional clean team services.

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant's eligibility, experience, capacity, service delivery plan, and, budget. Applicants may apply for one or more service areas by noting the number of service areas for which the applicant would like to be considered. DSLBD will determine grant award selection and notify all applicants of their status via email on or before July 31, 2017.

Funding for this award is contingent on continued funding from the DC Council. The RFA does not commit the Agency to make an award.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

All applicants must attest to executing a DSLBD grant agreement as issued (sample document will be provided in online application) and to starting services on October 1, 2017.

For more information, contact Saba Fassil at the Department of Small and Local Business Development at (202) 578-1057 or saba.fassil2@dc.gov.

SUSTAINABLE FUTURES PUBLIC CHARTER SCHOOL**INVITATION FOR BID****Food Service Management Services**

Sustainable Futures Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2017-2018 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **June 9, 2017** from **Kevin Days**, kdays@sfpcsd.org or [571-339-9562](tel:5713399562).

Proposals must be submitted by **12 noon on July 3, 2017** to the following address:

:

Sustainable Futures Public Charter School
ATT: Kevin Days
910 17th Street NW, Suite 1100,
Washington, DC 20009

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

WASHINGTON GLOBAL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Speech & Language Services**

The Washington Global Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for the following service for SY16.17:

- Special Education-Speech & Language Services

Please email your submissions via e-mail to bids@washingtonglobal.org Proposals shall be received no later than 4:00 P.M., Tuesday, June 20, 2017.

WASHINGTON YU YING PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Accounting Services**

RFP for Accounting Services: Washington Yu Ying is seeking the a firm to provide financial and accounting services, including developing budgets, performing bookkeeping and accounting services, preparing financial statements and reports, providing analysis and insight on Yu Ying's fiscal performance, supporting Yu Ying with financial aspects of federal grants management, acting as the interface for Yu Ying's annual audit, and providing other support as needed.

For more information, please request a full RFP packet from Annie Schleicher at RFP@washingtoneyu.org.

Deadline for submissions is close of business June 21, 2017. Please e-mail proposals and supporting documents to RFP@washingtoneyu.org. Please specify "RFP for Accounting Services" in the subject line."

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, June 15, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com.

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

DRAFT AGENDA

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|-----|-------------------------------|---|
| 1. | Call to Order | Committee Chairperson |
| 2. | AWTP Status Updates | Assistant General Manager,
Plant Operations |
| | 1. BPAWTP Performance | |
| 3. | Status Updates | Chief Engineer |
| 4. | Project Status Updates | Director, Engineering &
Technical Services |
| 5. | Action Items | Chief Engineer |
| | - Joint Use | |
| | - Non-Joint Use | |
| 6. | Water Quality Monitoring | Assistant General Manager,
Consumer Services |
| 7. | Action Items | Assistant General Manager,
Consumer Services |
| 8. | Emerging Items/Other Business | |
| 9. | Executive Session | |
| 10. | Adjournment | Committee Chairperson |

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

Application No. 19304 of 320 Webster St LLC, as amended,¹ pursuant to 11 DCMR § 3104.1, for a special exception under § 336 to allow an addition to and conversion of a two-story one-family dwelling into a three-story, three-unit apartment house in the R-4 District at premises 320 Webster Street, N.W. (Square 3310, Lot 68).

HEARING DATE: July 19, 2016

DECISION DATE: July 19, 2016

DECISION AND ORDER²

This self-certified application was submitted on April 27, 2016 by 320 Webster St LLC, the owner of the property that is the subject of the application (the “Applicant”). The application requested a special exception under § 336 to allow an addition to and conversion of a two-story one-family dwelling into a three-story, three-unit apartment house in the R-4 District at 320 Webster Street, N.W. (Square 3310, Lot 68). 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 11, 2016, 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 4; Advisory Neighborhood Commission (“ANC”) 4C, the ANC in which the subject property is located; and Single Member District/ANC 4C10. Pursuant to 11 DCMR § 3112.14, on May 26, 2016 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 4C, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on May 27, 2016 (63 DCR 7973).

Party Status. The Applicant and ANC 4C were automatically parties in this proceeding. The Board received a request for party status in opposition to the application from Cyrus Zarraby, who lived near the subject property; however, party status was not granted because Mr. Zarraby did not appear at the public hearing.

¹ The caption has been modified to reflect a change in the relief initially requested. A request for a special exception under § 411 for a planned penthouse was withdrawn by the Applicant. (See Exhibit 29.)

² This order refers to provisions and zone districts in effect under the Zoning Regulations of 1958 when the decision was made. The 1958 Regulations were repealed as of September 6, 2016 and replaced by the 2016 Regulations; however, the repeal and adoption of the replacement text has no effect on the validity of the Board’s decision in this case or of this order.

Applicant's Case. The Applicant provided testimony and evidence describing the planned enlargement of the row building at the subject property and its conversion from a one-family dwelling to a three-unit apartment house. The Applicant asserted that the proposal satisfied the applicable requirements of the Zoning Regulations under § 336.

OP Report. By memorandum dated July 12, 2015, the Office of Planning recommended approval of the zoning relief requested by the Applicant. (Exhibit 33.)

DDOT. By memorandum dated July 12, 2016, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 34.)

ANC Report. By report dated June 8, 2016, ANC 4C indicated that, at a properly noticed public meeting on the same date, with a quorum present, the ANC voted 9-0 to oppose the application. The ANC asserted that “there is opportunity for the owner to increase housing stock and find profitability within the existing regulations,” which allow a two-unit building as a matter of right. According to ANC 4C, “the ability to maximize financial gain by the addition of ... a third unit should not be a reason to allow the conversion to apartment houses” when the “creation of two units by right has tremendous opportunity in this neighborhood and is encouraged to allow responsible growth.” (Exhibit 31.)

Persons in support. The Board received letters in support of the application from the owners of the two properties adjoining the subject property, at 318 and 322 Webster Street, N.W. Both letters indicated support for the proposed enlargement of the Applicant's building with a one-story addition to a maximum height of 35 feet and a rear addition extending 18 feet past the existing building.

Persons in opposition. The Board received a letter in opposition to the application from two residents of the 300 block of Webster Street. They opposed the conversion on grounds of aesthetics, stating that “an additional story will tower over the neighboring properties...”; density, as a three-unit apartment house would “contribute to overcrowding in the neighborhood” and increase demand for parking; and neighborhood character in an area that is “mostly a family neighborhood” while an apartment house would “not provide the space for a family with children” but would accommodate “more transient” renters without “a vested interest” in the neighborhood.

FINDINGS OF FACT

1. The subject property is located on the south side of Webster Street near the middle of the block between 3rd and 4th Streets, N.W. (Square 3310, Lot 68).
2. The subject property is a rectangular parcel 20 feet wide and 140 feet deep, with a lot area of 2,800 square feet. The rear lot line abuts a public alley 20 feet wide.

3. The subject property is improved with a two-story row building that was constructed before the effective date of the Zoning Regulations of 1958. The row building, which was previously used as a one-family dwelling, has a partial width front porch and a front dormer window.
4. The properties adjacent to the subject property are also developed with two-story row buildings similar to the Applicant's building. The surrounding neighborhood is primarily residential with a mix of row dwellings and small apartment buildings.
5. The Applicant proposes to enlarge the row building with both a new third-floor addition and a three-story rear addition, and to convert the building from a one-family dwelling to use as a three-unit apartment house.
6. The addition will be 35 feet in height, the maximum permitted under § 336.2 as a matter of right. The existing building is 30 feet in height.
7. At 2,800 square feet, the lot area of the subject property exceeds the minimum lot area requirement of 2,700 square feet (*i.e.* 900 square feet per dwelling unit) as required pursuant to § 336.5.
8. No adjacent property has a solar energy system installed on its roof. The Applicant was unaware of any permitted solar energy system on any property adjacent to the subject property.
9. The planned addition will not entail the removal of or significant alteration to any existing rooftop architectural element original to the house. The new third-floor addition will be set back a few feet from the front of the building, approximately 10 feet above the existing flat roof line with a four-foot parapet wall around a roof deck and stairs. The front form of the roof with a dormer window will be retained, and the addition will be built behind it, on the flat roof.
10. The new addition will enlarge the Applicant's existing building by 18 feet at the rear, and thus will also extend 18 feet beyond the buildings on the adjacent properties to the east and west. The addition will not contain any windows facing east or west.
11. Construction of the new rear addition will decrease the depth of the rear yard from 90.5 feet to 72.3 feet, where a minimum of 20 feet is required. (11 DCMR § 404.1.) The rear yard is currently paved. Under the Applicant's proposal, the rear yard will contain an area of 670 square feet with a pervious surface, with a concrete walkway along the western property line to provide access between the building and a parking pad at the rear of the lot. The parking pad, accessible from the public alley, will provide parking spaces for two vehicles.

12. The new construction will increase the lot occupancy at the subject property from 29% to 45%. A maximum of 60% is permitted as a matter of right. (11 DCMR § 403.2.)
13. The shadow study provided by the Applicant demonstrates that the addition will not unduly affect light available to neighboring properties.
14. 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.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 336 to allow an addition to and conversion of a two-story one-family dwelling into a three-story, three-unit apartment house in the R-4 District at 320 Webster Street, N.W. (Square 3310, Lot 68). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Pursuant to § 336, an existing residential building, which is located in an R-4 District and was in existence as a residential building before May 12, 1958, may be converted to an apartment house if the conversion complies with certain requirements and is approved by the Board as a special exception. The requirements *inter alia* impose a limit of 35 feet on the maximum height of the building and any addition (§ 336.2); mandate at least 900 square feet of land area per dwelling unit (§ 336.5); and specify that any addition to the building, including a roof structure or penthouse, must not block or impede the functioning of a chimney or other external vent on any adjacent property (§ 336.6) or interfere with the operation of a solar energy system on an adjacent property (§ 336.7). A roof-top architectural element original to the house (such as a turret, tower, or dormers) must not be removed or significantly altered, including changes in the shape of the architectural element or increases in its height, elevation, or size. (§ 336.8.) An addition to a residential building that is undergoing conversion to apartment house use must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, especially with respect to the light and air available to neighboring properties as well as the privacy of use and enjoyment of neighboring properties. (§ 336.10(a), (b).) The conversion, including any addition, as viewed from a street, alley, or other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the street or alley. (§ 336.10(c).)

Based on the findings of fact, the Board concludes that the application satisfies the requirements for special exception relief in accordance with § 336 and § 3104.1. The building, including the

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new rear addition, will not exceed the maximum permitted height, and the land area of the subject property, at 2,800 square feet, exceeds the minimum requirement of 900 square feet per dwelling unit for the planned three-unit apartment house. The plans submitted with the application demonstrate that the addition will not impede any chimney or other external vent on any adjacent property. The Board finds that no adjacent property has an existing or a permitted solar energy system. The Applicant's plans for the addition and conversion project also demonstrate that no rooftop architectural element original to the house will be moved or significantly altered.

The Board concludes that the planned addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, considering especially the light, air, and privacy available to nearby properties. The rear addition will extend the Applicant's building 18 feet from its current dimensions, as well as 18 feet from the rear of the abutting buildings. However, the subject property will continue to comply with the area requirements prescribed by the Zoning Regulations for height, lot occupancy, and rear yard. The Applicant provided a shadow study to demonstrate that the addition will not unduly affect light available to neighboring properties. The absence of windows on the sides of the addition will avoid creating any adverse effects on privacy.

The planned conversion, including the new third-floor and rear addition, will not substantially visually intrude on the character, scale, and pattern of houses along the street or alley. The plans do not depict any significant changes in the appearance of the front of the existing residence, and the new construction will be set back from the front of the building so that the addition will not be visible from the street level. (*See* Transcript of July 19, 2016 at 143-144.) The rear addition will be visible from the public alley at the rear of the subject property, but will not result in any visual intrusion on the character, scale, or pattern of houses. The addition will maintain the residential appearance of the property and will be built at a size permitted as a matter of right under the Zoning Regulations.

The Board also concludes that approval of the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Applicant's proposal satisfies the area requirements for the conversion of a residential building to apartment house use in the R-4 zone. As discussed above, the conversion and enlargement of the building will not tend to create adverse effects on the use of neighboring properties.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) For the reasons discussed above, the Board concurs with OP's recommendation that the application should be approved in this case.

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

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case ANC 4C's principal issue and concern was the "opportunity for the owner to increase housing stock and find profitability within the existing regulations," which allow a two-unit building as a matter of right, and asserting that "the ability to maximize financial gain by the addition of ... a third unit should not be a reason to allow the conversion to apartment houses." For the reasons discussed above, the Board disagrees with the ANC in concluding that the application satisfies the requirements for conversion of a residential building to an apartment house in the R-4 zone under § 336. Such conversions are permitted under the Zoning Regulations so long as the applicable requirements are met, and approval of the Applicant's proposal is not dependent on profitability or the Applicant's "ability to maximize financial gain." As the Applicant noted, "[i]n reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements [and if] the prerequisites are satisfied, the Board ordinarily must grant the application," citing *e.g. Nat'l Cathedral Neighborhood Ass'n v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under § 336 to allow an addition to and conversion of a two-story one-family dwelling into a three-story, three-unit apartment house in the R-4 District at 320 Webster Street, N.W. (Square 3310, Lot 68). Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 30 – REVISED PLANS.**

VOTE: 4-0-1 (Anita Butani D'Souza, Jeffrey L. Hinkle, Frederick L. Hill, and Marcie I. Cohen voting to APPROVE; Marnique Y. Heath not present, not voting).

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

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

FINAL DATE OF ORDER: May 25, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST

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IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19404 of Bellview Development Inc., pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the lot area requirements of Subtitle E § 201.1, the lot occupancy requirements of Subtitle E § 504, and the rear yard requirements of Subtitle E § 506, to permit the construction of a three-story flat in the RF-3 Zone at premises 434 3rd Street N.E. (Square 755, Lot 816).

HEARING DATES: January 11, February 22, and May 10, 2017
DECISION DATE: May 17, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 8.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 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 timely report dated February 7, 2017, recommending approval of the application. The ANC's report which indicated that at a regularly scheduled, properly noticed public meeting on December 14, 2016, at which a quorum was present, the ANC voted 6-0 to support the application, subject to considerations. The ANC expressed concerns related to construction, not zoning.¹ (Exhibit 46.)

The Office of Planning ("OP") submitted a timely report in support of the application with conditions. (Exhibit 37.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application, subject to one condition. (Exhibit 36.)

¹ The Applicant entered into a separate Construction Management Agreement ("CMA") with the adjacent neighbors who withdrew their opposition to the application. (See, Exhibits 59 and 57.)

Prior to the hearing, the owners of 436 3rd Street, N.E., Alfred and Velesia Burris, requested party status in opposition to the application. At the January 11th hearing, the Board granted a request for party status in opposition from the adjacent property owners of 436 3rd Street, N.E. and waived the timely filing requirement for making such a request. At the hearing, both Velesia Burris and Julie Steward, the owner of 432 3rd Street, N.E., the adjacent neighbor to the north, testified as to their concerns over the application and possible impacts to their respective properties. The Board completed the hearing procedures and closed the record, aside from requesting additional documents based on concerns raised by the Opposition Party and the issues raised by OP and DDOT. The Board requested any MOU reached with the adjacent neighbors; revised plans based on comments from OP and DDOT, together with a written submission regarding the changes made; and a shadow study. In response to the concerns raised at the hearing and requests by the Board, the Applicant submitted updated plans which removed the trellis, moved the roof deck away from the rear, and moved the trash storage to the cellar. In its deliberations, the Board indicated that the conditions proposed by OP and DDOT have been met by the Applicant's revised plans. In its submission, the Applicant had indicated it had drafted a Construction Management Agreement ("CMA") for each of the adjacent property owners and was continuing to work with them to reach a resolution. Also, the Applicant stated that it had conducted a shadow study that showed there would be minimal impact on light and air to the adjacent property at 436 3rd Street, N.E. (Exhibits 48, 49.) At the February 22nd hearing, the Board granted the Applicant's request for a postponement to allow more time for the Applicant to work with the neighbors on the CMA. At the May 10th hearing, the Board granted the request from the party in opposition for additional time to work on a resolution with the Applicant, a request to which the Applicant consented. At the May 17th meeting, the Opposition Party testified that she withdrew her request for party status in opposition as an agreement was reached with the Applicant that is incorporated in a separate CMA. The Opposition Party submitted written confirmation of that withdrawal to the record. (Exhibit 57.) A signed copy of the CMA also was submitted to the record. (Exhibits 58 and 59.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for variances from the lot area requirements of Subtitle E § 201.1, the lot occupancy requirements of Subtitle E § 504, and the rear yard requirements of Subtitle E § 506, to permit the construction of a three-story flat in the RF-3 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle E §§ 201.1, 504, and 506, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 54.**

VOTE: **3-0-2** (Frederick L. Hill, Lesylleé M. White, and Carlton E. Hart, to APPROVE; no Zoning Commissioner participating; 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: May 30, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

BZA APPLICATION NO. 19404

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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. 19455 of Wacap LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle F § 5201, from the lot occupancy requirements of Subtitle F § 304.1, to permit the addition to an existing three-story condominium building in the RA-2 Zone at premises 2464 Ontario Road N.W. (Square 2563, Lot 850).

HEARING DATE: May 17, 2017¹

DECISION DATE: May 17, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 11.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1C, which is automatically a party to this application. The ANC submitted a resolution that expressed no objection to the application being approved, but raised concerns about setting a precedent. The ANC's resolution indicated that at a regularly scheduled, properly noticed public meeting on May 3, 2017, at which a quorum was present, the ANC voted 7-0-1 for a resolution that stated that while the ANC did not object to this application, it did not endorse the request, so as not to set a precedent for developers seeking to exceed lot occupancy. (Exhibit 47.)

The Office of Planning ("OP") submitted a timely report, dated March 31, 2017, in support of the application. (Exhibit 41.) The District Department of Transportation ("DDOT") submitted a timely report, dated March 31, 2017, expressing no objection to the approval of the application. (Exhibit 42.)

Three letters in support of the application were submitted by residents of the building. (Exhibits 37-39.)

¹ The application was postponed from the hearing dates of March 22, 2017 and April 12, 2017, at the Applicant's request to allow time for the Advisory Neighborhood Commission to review the application. (Exhibits 31 and 43.)

Alan Gambrell testified in opposition to the application.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle F § 5201, from the lot occupancy requirements of Subtitle F § 304.1, to permit the addition to an existing three-story condominium building in the RA-2 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle F §§ 5201 and 304.1, 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 9 – ARCHITECTURAL PLANS AND ELEVATIONS**

VOTE: **4-0-1** (Frederick L. Hill, Peter A. Shapiro, Lesylleé M. White, and Carlton E. Hart to APPROVE; one Board seat vacant.)

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

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

FINAL DATE OF ORDER: May 30, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE

BZA APPLICATION NO. 19455

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APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19464 of Denis Medvedev, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the penthouse requirements of Subtitle C § 1500.4, the uniform enclosure height requirement of Subtitle C § 1500.9, and the penthouse setback requirements of Subtitle C §§ 1502.1(b) and 1502.1(c), to permit the location of a new penthouse and roof deck on an existing one-family dwelling in the ARTS-4 Zone at premises 1205 V Street N.W. (Square 272, Lot 853).

HEARING DATE: April 19, 2017
DECISION DATES: May 10 and May 17, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 9 (original), 10, 36, 43, 61 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on February 3, 2017, at which a quorum was present, the ANC voted 12-0-0 to support the application. (Exhibit 26.)

The Office of Planning ("OP") submitted two timely reports regarding this application. The first OP report dated April 7, 2017, indicated that OP recommended approval of the relief needed for the penthouse use, penthouse wall heights, penthouse 1:1 setbacks. OP also recommended

¹ The Applicant initially requested special exception relief under the penthouse requirements of Subtitle C §§ 1500.4 and 1502.1, to permit the location of a new penthouse and roof deck on an existing one-family dwelling in the ARTS-4 Zone. Subsequently, the Applicant amended the application to add special exception relief from the uniform enclosure height requirements of Subtitle C § 1500.9 and clarified the relief being sought for penthouse setback under Subtitle C §§ 1502.1(c)(1)(A). (See revised self-certifications, Exhibits 36 and 43.) At the May 10th meeting in response to OP's recommendation, the Applicant testified that he intended to withdraw a request for relief for the north penthouse setback and submitted revised plans and a revised self-certification that reflected that change. (Exhibits 61 and 67.) The caption has been modified accordingly.

approval of the deck and guardrail 1:1 setback relief on the west side. OP did not believe that the Applicant provided enough evidence to support relief from the 1:1 setback on the north and east sides. (Exhibit 47.) The Board requested that the Applicant work with OP further to provide additional evidence for the requested relief on those sides. In a supplemental report dated May 3, 2017, OP stated that it now is recommending approval of the request for east wall setback relief, but still recommended denial of the request for north wall setback relief. (Exhibit 55.) In response to OP's recommendation, the Applicant revised his plans and withdrew the request for relief for the north wall setback.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 46.)

Two letters of support for the application from the adjacent neighbors were submitted to the record. (Exhibits 29 and 30.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the penthouse requirements of Subtitle C § 1500.4, the uniform enclosure height requirement of Subtitle C § 1500.9, and the penthouse setback requirements of Subtitle C §§ 1502.1(b) and 1502.1(c), to permit the location of a new penthouse and roof deck on an existing one-family dwelling in the ARTS-4 Zone. The only parties to the case were the Applicant and the ANC. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle C §§ 1500.4, 1500.9, 1502.1(b), and 1502.1(c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 67.**

VOTE: **3-0-2** (Frederick L. Hill, Carlton E. Hart, and Lesylleé M. White, to APPROVE; no Zoning Commission member participating and one Board seat vacant.)

BZA APPLICATION NO. 19464

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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: May 26, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19465 of Nicholas Burger, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, to add a two-story addition to an existing one-family dwelling in the RF-1 Zone at premises 1336 E Street S.E. (Square 1042, Lot 828).

HEARING DATE: May 17, 2017¹
DECISION DATE: May 17, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on February 14, 2017, at which a quorum was present, the ANC voted 10-0-0 to support the application. (Exhibit 12.)

The Office of Planning ("OP") submitted a timely report, dated May 5, 2017, in support of the application. (Exhibit 35.) The District Department of Transportation ("DDOT") submitted a timely report, dated April 27, 2017, expressing no objection to the approval of the application. (Exhibit 33.)

The Capitol Hill Restoration Society ("CHRS") submitted a letter dated May 16, 2017, stating that the CHRS Zoning Committee voted to support the application. (Exhibit 36.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X §

¹ The Applicant originally filed for Expedited Review (Exhibit 2) without a hearing, but later requested to be scheduled for a public hearing. (Exhibit 31.)

901.2, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, to add a two-story addition to an existing one-family dwelling in the RF-1 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E §§ 5201 and 304.1, 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 8 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro 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: May 25, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING

BZA APPLICATION NO. 19465

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THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, NUISANCE 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. 19482 of Mary's House for Older Adults, Inc., as amended¹, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception from the R-use requirements of Subtitle U § 203.1(f), and variances from the driveway width requirement of Subtitle C § 711.6, the lot occupancy requirement of Subtitle D § 304.2, and the side yard requirement of Subtitle D § 307.4, to replace an existing one-family dwelling with a continuing care retirement community for 15 individuals in the R-3 Zone at premises 401 Anacostia Road, S.E. (Parcel 0203, Lot 9).

HEARING DATES: April 26, 2017 and May 10, 2017²
DECISION DATE: May 10, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6 (original), Exhibit 53, Tab A (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 7F and to owners of property located 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. The Applicant submitted into the record an unsigned ANC 7F resolution sent to him by the SMD Commissioner for ANC 7F01. The ANC's resolution indicated that at a regularly scheduled, properly noticed public meeting on April 18, 2017, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 56.) The ANC noted that its support was conditioned upon the Applicant's good faith efforts to hire residents of Ward 7 for approximately 25% of labor during construction for the Project.

¹ The Applicant amended the application (Exhibit 53, Tab A) by changing the lot occupancy relief (Subtitle D § 304.2) and side yard relief (Subtitle D § 307.4) in the original request from special exceptions to variances based on the recommendation of the Office of Planning. The amended relief is reflected in the caption above.

² The case was administratively rescheduled from the public hearing of April 26, 2017 to May 10, 2017.

The Office of Planning (“OP”) submitted a timely report dated April 28, 2017 recommending approval of the proposed use and the variance for the drive aisle width. (Exhibit 49.) OP noted that after the application was filed, it was determined that variance relief is needed from the lot occupancy and side yard requirements, not special exception relief as originally thought. OP stated that it would provide further analysis and recommendation before or at the hearing based on the Applicant’s variance test information. After the Applicant submitted the revised self-certification and statement revising the relief (Exhibit 53), OP filed a supplemental report, dated May 5, 2017, recommending approval of the application as amended by the Applicant. (Exhibit 52.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application, with one condition – that the proposed curb cut and driveway be moved to the south side of the lot to meet the minimum requirement of 32 feet between driveways. (Exhibit 50.) The Applicant’s counsel stated that the design was revised and the driveway was flipped to the southern side of the property for compliance with this requirement. The Applicant’s counsel noted that the driveway issue raised by DDOT in the condition has been resolved, and the condition is no longer necessary.

Eighteen letters of support were submitted by neighbors in favor of the application. (Exhibits 30-47.)

One witness representing the adjacent property – 405 Anacostia Road, S.E., located to the south of the site, testified in support of the application but raised concerns about water runoff in the area and how the Applicant will handle it. A written comment raising concern about runoff was also submitted by Paul Holland, of 405 Anacostia Road, S.E. (Exhibit 27.) The Applicant testified that runoff issues will be addressed at the subject site.

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the driveway width requirement of Subtitle C § 711.6, the lot occupancy requirement of Subtitle D § 304.2, and the side yard requirement of Subtitle D § 307.4 in the R-3 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board, and having given great weight to the OP reports³ filed in this case, the Board concludes that in seeking variances from 11 DCMR Subtitle C § 711.6 and Subtitle D §§ 304.2 and 307.4, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition

³ While the Board did take notice of the ANC’s support for the application, the ANC’s report, being unsigned, did not meet the requirements for giving it great weight.

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 Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 203.1(f) – the R-use provisions. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 203.1(f), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 53, TAB B - ARCHITECTURAL PLANS & ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Anthony J. Hood, Lesylleé M. White, and Carlton E. Hart to APPROVE; one Board seat vacant.)

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

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

FINAL DATE OF ORDER: May 24, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

BZA APPLICATION NO. 19482

PAGE NO. 3

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19487 of Chris Cox, as amended¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, to construct a one-story rear addition to an existing one-family dwelling in the RF-1 Zone at premises 328 8th Street, S.E. (Square 924, Lot 827).

HEARING DATE: May 17, 2017

DECISION DATE: May 17, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 8 – original relief; Exhibit 34 – supplemental statement, revised relief.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report dated March 16, 2017, recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 14, 2017, at which a quorum was present, the ANC voted 10-0-0 to support the application. (Exhibits 11 and 24 (duplicate).)

The Office of Planning ("OP") submitted a timely report in which it recommended approval of the relief requested and also recommended adding a request for special exception relief from the requirements of Subtitle C § 202.2. (Exhibit 36.) The Applicant amended the application to

¹ At the hearing, the Applicant amended the application by adding to the original request a special exception under Subtitle C § 202.2 to allow an addition to a non-conforming structure, based on the recommendation from the Office of Planning. (See Exhibit 34 – Applicant's supplemental statement; Exhibit 36 – OP report.) The amended relief is reflected in the caption above.

include the suggested additional relief. (See footnote 1.) OP recommended approval of the amended application at the hearing.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 35.)

The Capitol Hill Restoration Society filed a letter noting that its Zoning Committee heard the case on April 13, 2017 and voted in support of the application. (Exhibit 38.)

The adjacent neighbor at 330 8th Street, S.E. submitted a letter addressed to the Historic Preservation Review Board at OP expressing support for the project. (Exhibit 28.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and the nonconforming structure requirements of Subtitle C § 202.2, to construct a one-story rear addition to an existing one-family dwelling in the RF-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle E §§ 5201 and 304.1, and Subtitle C § 202.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter A. Shapiro to APPROVE; one Board seat vacant.)

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

BZA APPLICATION NO. 19487
PAGE NO. 2

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

FINAL DATE OF ORDER: May 31, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BZA APPLICATION NO. 19487

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

Application No. 19490 of Logan-Shaw Child Care, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 513.1(n)¹ for a daytime care use not meeting the requirements of Subtitle U § 512.1(c), to establish a daytime care use for 51 children in the ARTS-2 Zone at premises 1700 7th Street, N.W. (Square 419, Lot 37).

HEARING DATE: May 17, 2017

DECISION DATE: May 17, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated March 6, 2017, from the Zoning Administrator (“ZA”), certifying the required relief. (Exhibit 1 (original); Exhibit 16 (revised).²)

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 located 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. The ANC submitted a report recommending approval of the application. The ANC’s report indicated that at a regularly scheduled, properly noticed public meeting on April 4, 2017, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 38.)

The Office of Planning (“OP”) submitted a timely report citing the correct zoning provision for relief in this case (see footnote 1), and recommending approval of the application with conditions regarding the maximum number of children and staff, and the hours of operation – all of which were adopted by the Board in this order. (Exhibit 35.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 36.)

¹ The caption was revised to correct the reference to the zoning regulation under which relief is sought. The correct provision is Subtitle U § 513.1(n), not Subtitle U § 513.1(m) as reflected in the ZA’s memorandums. (See Exhibit 35 – Office of Planning report.)

² The revised ZA’s memo dated March 7, 2017 notes that the maximum number of children proposed has been changed to 51. (Exhibit 16.) The original memorandum (Exhibit 6) noted 54 children.

Two neighbors residing adjacent to the site at 1710 7th Street, N.W. testified in opposition to the application, expressing concerns about adequate parking and the well-being of the children at the center, given the unsavory activity that occurs nearby. Regarding parking, the Applicant noted that the area is well-served by metro and that the designated drop-off and pick-up times will keep congestion down. Regarding safety, the Applicant testified that the children will be well-supervised and in the constant care of staff. The Applicant plans to work with the community to resolve any problems that arise.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 513.1(n) for a daytime care use not meeting the requirements of Subtitle U § 512.1(c). The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle U §§ 513.1(n), and 512.1(c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 – ARCHITECTURAL PLANS AND ELEVATIONS, WITH THE FOLLOWING CONDITIONS:**

1. The maximum number of children shall be 51.
2. The maximum number of staff shall be 21.
3. Hours of operation shall be from 7:00 a.m. to 6:00 p.m., Monday through Friday.

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro 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.

BZA APPLICATION NO. 19490

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FINAL DATE OF ORDER: May 26, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL

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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. 19495 of Eric and Susan Meyers, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1504.1, from the penthouse setback requirements of Subtitle C § 1502.1, and special exceptions under Subtitle K § 813, from the penthouse height requirement of Subtitle K § 803.3, the 45-degree angle setback requirement of Subtitle K § 803.4, and the rear yard requirements of Subtitle K § 805.1, to construct a seven-story retail and residential building in the ARTS-3 Zone at premises 1341 and 1345 14th Street, N.W. (Square 242, Lots 840 and 831).

HEARING DATE: May 17, 2017

DECISION DATE: May 17, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 6 (original) and 16 (duplicate).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 8, 2017, at which a quorum was present, the ANC voted unanimously to support the application. (Exhibit 34.) The Single Member District commissioner testified in support of the application at the hearing as well.

The Office of Planning ("OP") submitted a timely report dated May 5, 2017, in support of the application. (Exhibit 38.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 37.)

Letters in support of the application was submitted by several neighbors, including the owners of 1316 Rhode Island Avenue, N.W. (Exhibit 41), 1320 Rhode Island Avenue, N.W. (Exhibit 42), 1345 14th Street, N.W. (Exhibit 43), and 1322 Rhode Island Avenue, N.W. (Exhibit 44.)

Testimony was given by Mark Crawford, an attorney on behalf of Jacqueline Reed who is the adjacent neighbor to the south. Mr. Crawford confirmed that the conditions proposed by the Applicant would be acceptable and noted that his client is working with the Applicant on other, non-zoning related issues. The Applicant also testified that they were working with the neighbor to the south on these issues.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle C § 1504.1, from the penthouse setback requirements of Subtitle C § 1502.1, and special exceptions under Subtitle K § 813, from the penthouse height requirement of Subtitle K § 803.3, the 45-degree angle setback requirement of Subtitle K § 803.4, and the rear yard requirements of Subtitle K § 805.1, to construct a seven-story retail and residential building in the ARTS-3 Zone. The only parties to the case were the Applicant and the ANC. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle C §§ 1504.1 and 1502.1, and Subtitle K §§ 813, 803.3, 803.4, and 805.1, 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 36A AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall have the flexibility to modify the designs to address final design comments from the Historic Preservation Review Board or respond to building code issues, provided that the modifications do not increase the area of zoning relief granted or create new areas of zoning relief.

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter A. Shapiro to APPROVE; one Board seat vacant.)

BZA APPLICATION NO. 19495
PAGE NO. 2

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: May 26, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION,

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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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

AND

Z.C. ORDER NO. 04-33G(1)

Z.C. Case No. 04-33G

(Text Amendment – 11 DCMR)

(Location of Inclusionary Units in Inclusionary Developments

Subject to 11-C DCMR § 1001.4)

January 30, 2017

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

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