

***District of Columbia***

**REGISTER**

---

---

**HIGHLIGHTS**

- D.C. Council schedules a public hearing on Bill 22-203, Infant and Toddler Developmental Health Services Act of 2017
- D.C. Council schedules public roundtables on the “Education for Students During and After Detention, Commitment, or Incarceration” and the “District of Columbia Public Schools’ Strategic Plan”
- Office on Aging announces funding availability for the Fiscal Year 2018 Senior Villages Competitive Grant
- Department of Energy and Environment solicits applicants to analyze the 2013 Sustainable DC Plan
- Department of Health Care Finance modifies standards for services provided to participants in the EPD Waiver
- Executive Office of the Mayor issues Mayor's Order 2017-158, Limitations Regarding Out-of-Boundary Transfers
- Executive Office of the Mayor announces funding availability for the FY 2018 Immigrant Justice Legal Services Grant
- Office of the Deputy Mayor for Planning and Economic Development and the Department of Housing and Community Development release the Inclusionary Zoning 2017 Maximum Income, Rent and Purchase Price Schedule

# DISTRICT OF COLUMBIA REGISTER

## Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 *et seq.* (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative Issuances (1 DCMR §§300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at [dcregs.dc.gov](http://dcregs.dc.gov). Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-501 *et seq.* (2012 Repl.).

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

## Deadlines for Submission of Documents for Publication

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

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

## Viewing the DC Register

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

## Legal Effect of Publication - Certification

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

## DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER  
MAYOR

VICTOR L. REID, ESQ.  
ADMINISTRATOR

CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. LAWS

L22-5 Electric Company Infrastructure Improvement Financing Amendment Act of 2017 ..... 006711

L22-6 Defending Access to Women's Health Care Services Temporary Amendment Act of 2017 ..... 006712

D.C. ACTS

A22-100 Closing of a Public Alley in Square 2960, S.O. 15-53893, Act of 2017 [B22-57] ..... 006713 - 006714

A22-101 Medical Marijuana Certified Business Enterprise Preference Temporary Amendment Act of 2017 [B22-305]..... 006715 - 006716

A22-102 Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, L.L.C. and Open Video System from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. Emergency Act of 2017 [B22-277] ..... 006717 - 006718

A22-103 Southwest Waterfront Exemption Emergency Amendment Act of 2017 [B22-362]..... 006719 - 006720

RESOLUTIONS

Res 21-636 Interagency Council on Homelessness Robert Warren Confirmation Resolution of 2016..... 006721

Res 21-637 Interagency Council on Homelessness Donald L. Brooks Confirmation Resolution of 2016..... 006722

Res 21-638 Interagency Council on Homelessness Albert Townsend Confirmation Resolution of 2016..... 006723

Res 21-639 Interagency Council on Homelessness Margaret Riden Confirmation Resolution of 2016..... 006724

Res 21-640 Director to End Homelessness Kristy Greenwalt Confirmation Resolution of 2016..... 006725

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

**RESOLUTIONS CONT'D**

Res 21-670 Collective Bargaining Agreement between the Not-For-Profit Hospital Corporation (United Medical Center) and 1199 SEIU Healthcare Workers East Approval Resolution of 2016..... 006726

Res 21-701 Office of Employee Appeals Pamela Victoria Williams Confirmation Resolution of 2016..... 006727

Res 21-703 Office of Employee Appeals Patricia Hobson Wilson Confirmation Resolution of 2016..... 006728

Res 22-147 Contract Appeals Board Monica Parchment Confirmation Resolution of 2017..... 006729

Res 22-148 Public Charter School Board Stephen Bumbaugh Confirmation Resolution of 2017..... 006730

Res 22-149 Contract No. CW51370 Approval Emergency Declaration Resolution of 2017..... 006731

Res 22-150 Contract No. CW51370 Emergency Approval Resolution of 2017 ..... 006732

Res 22-153 Not-For-Profit Hospital Corporation Board of Directors Brenda Donald Confirmation Resolution of 2017..... 006733

Res 22-154 Chief Tenant Advocate of the Office of the Tenant Advocate Johanna Shreve Confirmation Resolution of 2017 ..... 006734

Res 22-155 Rent Administrator Lauren Pair Confirmation Resolution of 2017 ..... 006735

Res 22-156 District of Columbia Housing Finance Agency Board of Directors Sheila Miller Confirmation Resolution of 2017 ..... 006736

Res 22-157 District of Columbia Housing Finance Agency Board of Directors Buwa Binitie Confirmation Resolution of 2017 ..... 006737

Res 22-158 District of Columbia Housing Finance Agency Board of Directors Bryan Scottie Irving Confirmation Resolution of 2017..... 006738

Res 22-159 District of Columbia Housing Finance Agency Board of Directors Stanley Jackson Confirmation Resolution of 2017 ..... 006739

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

**RESOLUTIONS CONT'D**

Res 22-160 District of Columbia Housing Authority Board of Commissioners Jose Ortiz Gaud Confirmation Resolution of 2017 ..... 006740

Res 22-161 District of Columbia Housing Authority Board of Commissioners Nakeisha Neal Jones Confirmation Resolution of 2017 ..... 006741

Res 22-162 District of Columbia Housing Authority Board of Commissioners Neil Albert Confirmation Resolution of 2017 ..... 006742

Res 22-163 Commission on the Arts and Humanities Emergency Declaration Resolution of 2017..... 006743

Res 22-164 Fiscal Year 2018 Budget Support Emergency Declaration Resolution of 2017..... 006744

Res 22-165 Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, LLC, and Open Video System from Yankee Cable Partners, LLC, to Radiate Holdings, LP, Emergency Declaration Resolution of 2017 .....006745 - 006747

Res 22-166 Second Amendment to the Washington Metropolitan Area Transit Authority Capital Funding Agreement Emergency Declaration Resolution of 2017 .....006748 - 006749

Res 22-167 Second Amendment to the Washington Metropolitan Area Transit Authority Local Capital Funding Agreement Emergency Declaration Resolution of 2017 .....006750 - 006751

**BILLS INTRODUCED AND PROPOSED RESOLUTIONS**

**Notice of Intent to Act on New Legislation -**  
 Bills B22-394 through B22-412 and Proposed Resolutions PR22-422 through PR22-425.....006752 - 006755

**COUNCIL HEARINGS**

**Notice of Public Hearings -**  
 B22-203 Infant and Toddler Developmental Health Services Act of 2017 (Joint) .....006756 - 006757  
 B22-355 Bolstering Early Growth Investment Amendment Act of 2017 (Joint) .....006756 - 006757

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

**COUNCIL HEARINGS CONT'D**

**Notice of Public Hearings - cont'd**

B22-313 Healthy Students Amendment Act of 2017 and  
the State of School Food Services ..... 006758

B22-382 Union Market Tax Increment Financing Act of 2017 ..... 006759

**Notice of Public Roundtables -**

Education for Students During and After Detention,  
Commitment, or Incarceration ..... 006760

The District of Columbia Public Schools' Strategic Plan ..... 006761

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES**

**PUBLIC HEARINGS**

**Alcoholic Beverage Regulation Administration -**

Cantina Bambina - ANC 6D - New ..... 006762

Church - ANC 2E - New ..... 006763

Porrón - ANC 6B - Renewal ..... 006764

Trump Gift Shop - ANC 2C - New ..... 006765

**Zoning Adjustment, Board of - September 6, 2017 - Public Hearings**

18383A Barbara Chambers Children's Center - ANC 1A ..... 006766 - 006769

19538 Avamere 3317 16<sup>th</sup> LLC - ANC 1A ..... 006766 - 006769

19544 Denis Hobson - ANC 5E ..... 006766 - 006769

19546 Oluseyi Ademiluyi - ANC 1B ..... 006766 - 006769

19548 Tara Guelig and Yuri Horwitz - ANC 2E ..... 006766 - 006769

19553 Servant's Office, LLC - ANC 4C ..... 006766 - 006769

**FINAL RULEMAKING**

**Education, Office of the State Superintendent of (OSSE) -**

Amend 5 DCMR (Education), Subtitle A (Office of the State  
Superintendent of Education), Ch. 35 (Pre-K Enhancement  
and Expansion Funding), Sec. 3501 (High Quality Standards),  
to authorize OSSE to grant community-based organization  
pre-K programs a temporary waiver from certain high quality  
standards ..... 006770 - 006771

**Health Care Finance, Department of - Amend 29 DCMR**

(Public Welfare), Ch. 9 (Medicaid Program),  
Sec. 989 (Long Term Care Services and Supports  
Assessment Process), to establish standards governing  
the Medicaid assessment process for beneficiaries ..... 006772 - 006783

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

**FINAL RULEMAKING CONT'D**

Health Care Finance, Department of - Amend 29 DCMR (Public Welfare), to amend Ch. 42 (Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities) Sections 4200 - 4256 and Sec. 4299 (Definitions: Waiver Services), to modify standards for existing services and establish standards for new services provided to participants in the EPD Waiver .....006784 - 006868

**PROPOSED RULEMAKING**

Child and Family Services Agency (CFSA) - Amend 29 DCMR (Public Welfare), Ch. 60 (Foster Homes), Sec. 6002 (Foster Parent Responsibilities) and Sec. 6003 (Agency Responsibility to Foster Parent), to establish the responsibilities of foster parents in the CFSA system and CFSA’s responsibilities to foster parents.....006869 - 006874

**EMERGENCY AND PROPOSED RULEMAKING**

Health, Department of - Amend 22 DCMR (Health), Subtitle C (Medical Marijuana), Ch. 54 (Registration Applications), Sections 5402 and 5404 and Ch. 60 (Director Approval Procedures), Sections 6001 and 6002, to facilitate the process for registering a marijuana dispensary in Ward 7 and in Ward 8.....006875 - 006880

**NOTICES, OPINIONS, AND ORDERS**

**MAYOR’S ORDERS**

2017-158 Limitations Regarding Out-of-Boundary Transfers.....006881 - 006882

**NOTICES, OPINIONS, AND ORDERS CONT'D**

**BOARDS, COMMISSIONS, AND AGENCIES**

Aging, Office on - Funding Availability - Fiscal Year 2018 Senior Villages Competitive Grant.....006883

Alcoholic Beverage Regulation Administration - ABC Board's Calendar - July 26, 2017 .....006884 - 006886

Breakthrough Montessori Public Charter School - Intent to Enter a Sole Source Contract - Renovation Services.....006887

Carlos Rosario Public Charter School - Request for Quotes - Cleaning Services for Kitchen Equipment.....006888

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

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

Cesar Chavez Public Charter Schools -  
Request for Proposals - Substitute Staffing.....006889

Creative Minds International Public Charter School -  
Request for Proposals - 2017-2018 Professional  
Employer Organization (P.E.O.) Contract .....006890

DC International Public Charter School -  
Invitation for Bid – Internal and External Signs .....006891

Eagle Academy Public Charter School -  
Request for Proposals - Solar Electric PV System.....006892

Elections, Board of -  
Certification of ANC/SMD Vacancy in 2B07 .....006893

Monthly Report of Voter Registration Statistics  
as of June 30, 2017.....006894 - 006903

Energy and Environment, Department of -  
Intent to Issue Air Quality Permits -  
#6545-R1 Gelberg Signs,  
6511 Chillum Place NW .....006904 - 006905

#6554-R2 Washington Metropolitan Area Transit  
Authority (WMATA),  
2 DC Village Lane SW .....006906 - 006908

Notice of Funding Availability - Analysis of 2013  
Sustainable DC Plan.....006909

EW Stokes Community Freedom Public Charter School -  
Request for Proposals - Food Distributor.....006910

Friendship Public Charter School -  
Request for Proposals - Professional Development .....006911

Harmony DC Public Charter Schools -  
Request for Proposals - Student Transportation Services .....006912



**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

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

Health, Department of -  
 Board of Medicine - Notice of Meeting - July 26, 2017 .....006913

Board of Pharmacy 2017 Meeting Schedule  
 (August - December).....006914 - 006915

Insurance, Securities and Banking, Department of -  
 Financial Literacy Council - Public Meeting -  
 August 17, 2017 .....006916

Judicial Disabilities and Tenure, Commission on -  
 Judicial Tenure Commission Begins Reviews  
 of D.C. Superior Court Judges Zoe Bush,  
 Thomas J. Motley, and Susan R. Winfield.....006917 - 006918

KIPP DC Public Charter Schools -  
 Invitation for Bid - Food Service Management Services .....006919

Latin American Montessori Bilingual Public Charter School -  
 Request for Proposals - Architect Services .....006920

Maya Angelou Public Charter School -  
 Request for Proposals - Heating, Ventilation &  
 Air Conditioning (HVAC) and Plumbing .....006921 - 006922

Mayor, Executive Office of the -  
 Notice of Funding Availability - FY 2018  
 Immigrant Justice Legal Services Grant (IJLS) .....006923

Mundo Verde Public Charter School -  
 Request for Proposals - General Contracting  
 for Kitchen Installation.....006924

Planning and Economic Development, Office of the Deputy Mayor for -  
 Department of Housing and Community Development -  
 Inclusionary Zoning 2017 Maximum Income, Rent and  
 Purchase Price Schedule .....006925 - 006929

Public Service Commission -  
 Notice of Final Tariff - Gas Tariff 00-2 -  
 Washington Gas Light Company's  
 Rights-of-Way Surcharge General Regulations  
 Tariff, P.S.C.-D.C. No. 3.....006930 - 006931

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

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

Public Service Commission - cont'd

Notice of Final Tariff - Gas Tariff 95-3 -  
Washington Gas Light Company's Application  
for Authority to Withdraw Watergate Tariff.....006932 - 006934

Washington Latin Public Charter School -

Request for Proposals - Cleaning Services,  
Bus Services, Tutoring Services, and  
Occupational Therapy Services..... 006935

Zoning Adjustment, Board of - Cases -

19360 Southwest Business Improvement District -  
ANC 6D - Order (Appeal) .....006936 - 006937

19361 ANC 6D - Order (Appeal) .....006938 - 006939

19514 Hector Burgos - ANC 6E - Order .....006940 - 006943

19516 Daniel Hines - ANC 1B - Order .....006944 - 006946

Zoning Commission - Cases -

15-27 KF Morse, LLC - Order .....006947 - 007013

16-18 Georgetown University - Order .....007014 - 007031

## COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE

## D.C. LAW 22-5

**"Electric Company Infrastructure Improvement  
Financing Amendment Act of 2017"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-184 on first and second readings April 4, 2017, and May 2, 2017, respectively. Following the signature of the Mayor on May 19, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-67 and was published in the May 26, 2017 edition of the D.C. Register (Vol. 64, page 4943). Act 22-67 was transmitted to Congress on May 26, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-67 is now D.C. Law 22-5, effective July 11, 2017.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

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

## COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE

## D.C. LAW 22-6

**"Defending Access to Women's Health Care Services  
Temporary Amendment Act of 2017"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-225 on first and second readings April 4, 2017, and May 2, 2017, respectively. Following the signature of the Mayor on May 17, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-54 and was published in the May 26, 2017 edition of the D.C. Register (Vol. 64, page 4905). Act 22-54 was transmitted to Congress on May 26, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-54 is now D.C. Law 22-6, effective July 11, 2017.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

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

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 22-100**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JULY 13, 2017**

To order the closing of a portion of the public alley system in Square 2960, bounded by Eastern Avenue, N.W., Georgia Avenue, N.W., Alaska Avenue, N.W., Kalmia Road, N.W., and 12th Street, N.W., in Ward 4.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 2960, S.O. 15-53893, Act of 2017".

Sec. 2. (a) Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds a portion of the public alley system in Square 2960, as shown on the Surveyor's plat filed in S.O. 15-53893, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

(b) The approval of the Council of this alley closing is contingent upon the satisfaction of all conditions set forth in the official file for S.O. 15-53893 before the recordation of the alley-closing plat.

Sec. 3. Transmittal.

The Council shall transmit a copy of this act, upon its effective date, to the Office of the Surveyor.

Sec. 4. 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. 5. Effective date.

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

ENROLLED ORIGINAL

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

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
July 13, 2017

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 22-101**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JULY 13, 2017**

To amend, on a temporary basis, the Legalization of Marijuana for Medical Treatment Initiative of 1999 to establish a preference for certified business enterprises that apply for the registration of a dispensary, cultivation center, or testing laboratory.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Marijuana Certified Business Enterprise Preference Temporary Amendment Act of 2017".

Sec. 2. Section 7(d) of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.06(d)), is amended by adding a new paragraph (5) to read as follows:

“(5)(A) Any application for registration of a dispensary, cultivation center, or testing laboratory submitted by a certified business enterprise pursuant to this subsection after the effective date of the Medical Marijuana Certified Business Enterprise Preference Emergency Amendment Act of 2017, enacted on June 28, 2017 (D.C. Act 22-83; 64 DCR \_\_), shall be awarded a preference equal to 20 points or 7.5% of the available points, whichever is more.

“(B) For the purposes of this paragraph, the term “certified business enterprise” shall have the same meaning as provided in section 2302(1D) of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.02(1D)).”.

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.

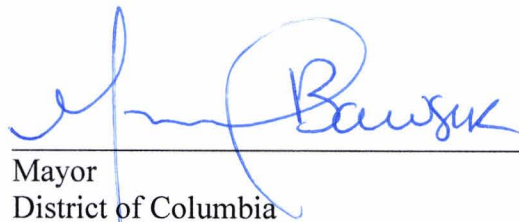
(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813;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

ENROLLED ORIGINAL

(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  
July 13, 2017



ENROLLED ORIGINAL

AN ACT

**D.C. ACT 22-102**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JULY 13, 2017**

To approve, on an emergency basis, the transfer of control of the open video system franchisee, Starpower Communications, L.L.C., and its District of Columbia cable television system, from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, L.L.C. and Open Video System from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P. Emergency Act of 2017”.

Sec. 2. (a) The Council approves the transfer from Starpower Communications, L.L.C. (“Franchisee”) and its open video system serving the District from Yankee Cable Partners, L.L.C. to Radiate Holdings, L.P., a company controlled by the private equity investment firm TPG Advisors through its ownership of Radiate Holdings, GP, LLC, in accordance with the Cable Television Reform Amendment Act of 2002, effective October 9, 2002 (D.C. Law 14-193; D.C. Official Code § 34-1255.01 *et seq.*), and the franchise agreement between the Franchisee and the District dated June 28, 2005.

(b) The Council’s approval of this transfer is subject to the following conditions:

(1) That the District and the Franchisee, RCN Telecom Services, L.L.C., and Radiate Holdings, GP, LLC, on behalf of itself and Radiate Holdings, L.P., enter into a transfer agreement substantially in the form of the document titled “Transfer Agreement” that was submitted by the Mayor to the Council on April 28, 2017 (“Transfer Agreement”);

(2) That Radiate Holdings GP, LLC, provide a signed guarantee of performance substantially in the form of Exhibit 1 to the Transfer Agreement; and

(3) That the transfer conform to all terms and conditions described in the Transfer Agreement, in the Transfer Petition filed with the Office of Cable Television, Film, Music and Entertainment on September 7, 2016, as supplemented by responses to all subsequent information requests, and in the Warranty Letter from TPG Advisors.

(c) If any of the conditions specified in subsection (b) of this section are not satisfied, the Council’s approval of the transfer is null and void.

(d) The Mayor is authorized to execute the Transfer Agreement on behalf of the District.

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
July 13, 2017

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 22-103**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JULY 13, 2017**

To amend, on an emergency basis, section 25-314 of the District of Columbia Official Code to create an exemption to the 400-foot restriction for taverns, multipurpose facilities, and off-premises retailers located in the Southwest Waterfront area.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Southwest Waterfront Exemption Emergency Amendment Act of 2017”.

Sec. 2. Section 25-314(b) of the District of Columbia Official Code is amended as follows:

(a) Paragraph (1) is amended by striking the phrase “paragraphs (2) through (5)” and inserting the phrase “paragraphs (2) through (8)” in its place.

(b) Paragraph (3) is amended as follows:

(1) Designate the exist text as subparagraph (A).

(2) A new subparagraph (B) is added to read as follows:

“(B) The exception in subparagraph (A) of this paragraph shall not apply if the currently functioning establishment holding a license of the same class is exempt from the 400-foot restriction under paragraph (8) of this subsection.”.

(c) A new paragraph (8) is added to read as follows:

“(8) The 400-foot restriction shall not apply to an application for an on-premises retailer’s license, class CT, DT, CX, or DX, or an off-premises retailer’s license, class A or B, located in the Mixed Use-12 Zone, Square 473 according to the official atlases of the Zoning Commission of the District of Columbia.”.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
July 13, 2017

ENROLLED ORIGINAL

## A RESOLUTION

21-636

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 1, 2016

To confirm the appointment of Mr. Robert Warren to the Interagency Council on Homelessness.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Interagency Council on Homelessness Robert Warren Confirmation Resolution of 2016”.

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

Mr. Robert Warren  
1309 T Street, S.E.  
Washington, D.C. 20020  
(Ward 8)

as a formerly homeless representative member of the Interagency Council on Homelessness, established by section 4 of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-752.01), for a term to end May 1, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-637

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 1, 2016

To confirm the reappointment of Mr. Donald L. Brooks to the Interagency Council on Homelessness.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Interagency Council on Homelessness Donald L. Brooks Confirmation Resolution of 2016”.

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

Mr. Donald L. Brooks  
1649 Franklin Street, N.E.  
Unit 1  
Washington, D.C. 20018  
(Ward 5)

as a formerly homeless representative member of the Interagency Council on Homelessness, established by section 4 of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-752.01), for a term to end May 1, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-638

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 1, 2016

To confirm the reappointment of Mr. Albert Townsend to the Interagency Council on Homelessness.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Interagency Council on Homelessness Albert Townsend Confirmation Resolution of 2016”.

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

Mr. Albert Townsend  
860 S. Greenbrier Street  
Arlington, VA 22204

as a formerly homeless representative member of the Interagency Council on Homelessness, established by section 4 of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-752.01), for a term to end May 1, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-639

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 1, 2016

To confirm the reappointment of Ms. Margaret Riden to the Interagency Council on Homelessness.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Interagency Council on Homelessness Margaret Riden Confirmation Resolution of 2016”.

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

Ms. Margaret Riden  
1443 Monroe Street, N.W.  
Washington, D.C. 20010  
(Ward 1)

as an advocate for the District of Columbia’s homeless population member of the Interagency Council on Homelessness, established by section 4 of the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-752.01), for a term to end May 1, 2018.

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

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

## A RESOLUTION

21-640

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 1, 2016

To confirm the appointment of Ms. Kristy Greenwalt as the Director to End Homelessness.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Director to End Homelessness Kristy Greenwalt Confirmation Resolution of 2016”.

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

Ms. Kristy Greenwalt  
2420 14th Street, N.W.  
Washington, D.C. 20009  
(Ward 1)

as the Director to End Homelessness, pursuant to section 31a of the Homeless Services Reform Act of 2005, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 4-756.03), to serve at the pleasure of the Mayor.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-670

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 6, 2016

To approve the negotiated compensation collective bargaining agreement submitted by the Mayor between the Not-for-Profit Hospital Corporation and 1199 SEIU Healthcare Workers East.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Collective Bargaining Agreement between the Not-For-Profit Hospital Corporation (United Medical Center) and 1199 SEIU Healthcare Workers East Approval Resolution of 2016”.

Sec 2. Pursuant to section 1717(j) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-617.17(j)), the Council of the District of Columbia approves the collective bargaining agreement, including compensation provisions, between the not-for-Profit Hospital Corporation and 1199 SEIU Healthcare Workers East that was transmitted to the Council on November 8, 2016. The Council further approves that the agreement be effective as of October 1, 2014, which constitutes a change to the previously applicable pay schedule and wage increases for the period beginning on October 1, 2014.

Sec. 3. Transmittal.

The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Not-For-Profit Hospital Corporation, the Office of the Mayor, and 1199 SEIU Healthcare Workers East.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-701

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2017

To confirm the appointment of Ms. Pamela Victoria Williams to the Office of Employee Appeals.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Office of Employee Appeals Pamela Victoria Williams Confirmation Resolution of 2016.”

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

Ms. Pamela Victoria Williams  
1990 Retta Gilliam Court, S.E.  
Washington, D.C. 20020  
(Ward 8)

as a member of the Office of Employee Appeals, established by section 601 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-606.01), to finish an unexpired term to end April 6, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-703

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 20, 2016

To confirm the reappointment of Ms. Patricia Hobson Wilson to the Office of Employee Appeals.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Office of Employee Appeals Patricia Hobson Wilson Confirmation Resolution of 2016”.

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

Ms. Patricia Hobson Wilson  
1412 Primrose Road, N.W.  
Washington, D.C. 20012  
(Ward 4)

as a member of the Office of Employee Appeals, established by section 601 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-606.01), for a term to end April 6, 2022.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-147

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Ms. Monica Parchment as a member of the Contract Appeals Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract Appeals Board Monica Parchment Confirmation Resolution of 2017”.

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

Ms. Monica Parchment  
3805 East Bexhill Drive  
Kensington, MD 20895

as a member of the Contract Appeals Board, established by section 1001 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-360.01), for a term to end July 28, 2021.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-148

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Mr. Stephen Bumbaugh to the Public Charter School Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Public Charter School Board Stephen Bumbaugh Confirmation Resolution of 2017”.

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

Mr. Stephen Bumbaugh  
2619 Garfield Street, N.W. #4  
Washington, D.C. 20020  
(Ward 3)

as a member of the Public Charter School Board, established by section 2214 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.14), for a term to end February 24, 2021.

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

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-149

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. CW51370 with See Forever Foundation to provide an education program for committed youth.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CW51370 Approval Emergency Declaration Resolution of 2017".

Sec. 2. (a) The Office of Contracting and Procurement, on behalf of the Department of Youth Rehabilitation Services, proposes to enter into multiyear Contract CW51370 with See Forever Foundation to provide an education program for committed youth.

(b) The estimated price under this multiyear contract with See Forever Foundation is \$9,756,986.

(c) Approval is necessary to allow the District to continue to receive the benefit of these vital services from See Forever Foundation without interruption.

(d) These critical services can only be obtained through an award of Contract No. CW51370 with See Forever Foundation.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CW51370 Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-150

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To approve, on an emergency basis, multiyear Contract No. CW51370 with See Forever Foundation to provide an education program for committed youth.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. CW51370 Emergency Approval Resolution of 2017”.

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), the Council approves multiyear Contract No. CW51370 with See Forever Foundation to provide an education program for committed youth in the amount of \$9,756,986.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.



ENROLLED ORIGINAL

A RESOLUTION

22-153

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the appointment of Ms. Brenda Donald to the Not-For-Profit Hospital Corporation Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Not-For-Profit Hospital Corporation Board of Directors Brenda Donald Confirmation Resolution of 2017”.

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

Ms. Brenda Donald  
5511 Colorado Avenue, N.W.  
Washington, D.C. 20011  
(Ward 4)

as a member of the Not-For-Profit Hospital Corporation Board of Directors, pursuant to section 5115 of the Not-For-Profit Hospital Corporation Establishment Amendment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 44-951.04), replacing Virgil McDonald, for a term to end July 9, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-154

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Ms. Johanna Shreve as the Chief Tenant Advocate of the Office of the Tenant Advocate.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Chief Tenant Advocate of the Office of the Tenant Advocate Johanna Shreve Confirmation Resolution of 2017”.

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

Ms. Johanna Shreve  
1719 Taylor Street, N.W.  
Washington, D.C. 20011  
(Ward 4)

as the Chief Tenant Advocate of the Office the Tenant Advocate, in accordance with section 2066(b) of the Chief Tenant Advocate Establishment Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 42-3531.06(b)), for a term to end June 3, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-155

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the appointment of Ms. Lauren Pair as the Rent Administrator.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Rent Administrator Lauren Pair Confirmation Resolution of 2017”.

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

Ms. Lauren Pair  
1309 Farragut Street, N.W.  
Washington, D.C. 20011  
(Ward 4)

as the Rent Administrator, in accordance with section 203a of the Rental Housing Act of 1985, effective March 25, 2009 (D.C. Law 17-366; D.C. Official Code § 42-3502.03a), for a term of 3 years.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-156

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Ms. Sheila Miller as a member of the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Finance Agency Board of Directors Sheila Miller Confirmation Resolution of 2017”.

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

Ms. Sheila Miller  
117 R Street, N.E.  
Washington, D.C. 20002  
(Ward 5)

as a member, with experience in home building, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), for a term to end June 28, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-157

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Mr. Buwa Binitie as a member of the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Finance Agency Board of Directors Buwa Binitie Confirmation Resolution of 2017”.

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

Mr. Buwa Binitie  
7409 16th Street, N.W.  
Washington, D.C. 20012  
(Ward 4)

as a member, with experience in finance, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42- 2702.02), for a term to end June 28, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-158

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Mr. Bryan Scottie Irving as a member of the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Finance Agency Board of Directors Bryan Scottie Irving Confirmation Resolution of 2017”.

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

Mr. Bryan Scottie Irving  
1204 Fairmont Street, N.W.  
Washington, D.C. 20009  
(Ward 1)

as a member, with experience in planning, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42- 2702.02), for a term to end June 28, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-159

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Mr. Stanley Jackson as a member of the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Finance Agency Board of Directors Stanley Jackson Confirmation Resolution of 2017”.

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

Mr. Stanley Jackson  
52 Brandywine Street, S.W.  
Washington, D.C. 20032  
(Ward 8)

as a member, representing community interests, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), for a term to end June 28, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-160

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Mr. Jose Ortiz Gaud to the District of Columbia Housing Authority Board of Commissioners.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Authority Board of Commissioners Jose Ortiz Gaud Confirmation Resolution of 2017”.

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

Mr. Jose Ortiz Gaud  
3389 Stephenson Place, N.W.  
Washington, D.C. 20015  
(Ward 4)

as a public member of the District of Columbia Housing Authority Board of Commissioners, established by section 12 of the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-211), for a term to end July 12, 2020.

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

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

## A RESOLUTION

22-161

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the reappointment of Ms. Nakeisha Neal Jones to the District of Columbia Housing Authority Board of Commissioners.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Authority Board of Commissioners Nakeisha Neal Jones Confirmation Resolution of 2017”.

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

Ms. Nakeisha Neal Jones  
32 Burns Street, N.E.  
Washington, D.C. 20019  
(Ward 8)

as a public member of the District of Columbia Housing Authority Board of Commissioners, established by section 12 of the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-211), for a term to end July 12, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-162

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To confirm the appointment of Mr. Neil Albert to the District of Columbia Housing Authority Board of Commissioners.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Authority Board of Commissioners Neil Albert Confirmation Resolution of 2017”.

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

Mr. Neil Albert  
1358 Locust Road, N.W.  
Washington, D.C. 20012  
(Ward 4)

as a public member of the District of Columbia Housing Authority Board of Commissioners, established by section 12 of the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-211), for a term to end July 12, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-163

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To declare the existence of an emergency with respect to the need to amend the Commission on the Arts and Humanities Act to establish the duration of specified terms for members of the commission for the purpose of maintaining the staggered expiration of terms required by the act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Commission on the Arts and Humanities Emergency Declaration Resolution of 2017”.

Sec. 2. (a) Pursuant to the section 203(b) of the Commission on the Arts and Humanities Act, effective October 21, 1975 (D.C. Law 1-22; D.C. Official Code § 39-203(b)) (“act”), members are to have staggered terms with the terms of 6 members of the 18-member commission expiring each year.

(b) Ten nominees to the Commission on the Arts and Humanities have been transmitted to the Council for confirmation. Of those 10 proposed resolutions, 5 provide for the nominee to have a term of less than the 3 years, as provided under the act, in order to reconstitute the staggered term format.

(c) Emergency legislation is necessary to have this amendment to the act in effect as soon as possible so that the proposed resolutions for these nominees can be timely voted on by the Council, the nominees appointed by the Mayor, and the Commission can have a the full complement of members as it prepares for the upcoming fiscal year.

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 Commission on the Arts and Humanities Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-164

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To declare the existence of an emergency with respect to the need to approve measures that are necessary to support action taken on the District's Fiscal Year 2018 Budget and Financial Plan.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as "Fiscal Year 2018 Budget Support Emergency Declaration Resolution of 2017".

Sec. 2.(a) The Fiscal Year 2018 Budget Support Act of 2017 contains various measures necessary to support the Fiscal Year 2018 Budget and Financial Plan.

(b) There are several time-sensitive provisions contained in the Fiscal Year 2018 Budget Support Act of 2017 that need to be in place in advance of October 1, 2017.

(c) Other provisions in the emergency bill will retain the October 1, 2017 applicability date as provided in the permanent legislation, but should be enacted before October 1, 2017, to allow agencies and stakeholders to prepare for implementation.

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 Fiscal Year 2018 Budget Support Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-165

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To declare the existence of an emergency with respect to the need to approve the transfer of control of the open video system franchisee Starpower Communications, LLC, and its District of Columbia open video system from Yankee Cable Partners, LLC, to Radiate Holdings, LP.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, LLC, and Open Video System from Yankee Cable Partners, LLC, to Radiate Holdings, LP, Emergency Declaration Resolution of 2017”.

Sec. 2. (a) Starpower Communications, LLC, (“Starpower”) is a wholly-owned subsidiary of RCN Telecom Services, LLC, which is a wholly-owned subsidiary of Yankee Cable Acquisition, LLC, which in turn is a wholly-owned subsidiary of Yankee Cable Partners, LLC.

(b) The District and Starpower entered into an Open Video Systems Franchise Agreement (“OVS Agreement”) which was approved by both the Mayor and the Council of the District of Columbia and which commenced on June 28, 2005, for a term of 5 years, with a one-time and conditional 6-month extension.

(c) The original term of the OVS Agreement expired on June 28, 2010.

(d) On or about January 1, 2010, Starpower requested from the District, through the District’s Office of Cable Television, Film, Music and Entertainment (“OCTFME”), a renewal of Starpower’s District Open Video Systems franchise (“OVS franchise”), in accordance with applicable law.

(e) Starpower is currently engaged in good-faith negotiations with the District regarding the requested renewal of its OVS franchise.

(f) The District has neither denied nor granted a renewal of the Starpower franchise, as of the expiration of the term of the franchise.

(g) The District and Starpower have agreed that Starpower will continue to operate under the expired OVS Agreement subject to the same terms and conditions until such time as the parties may reach an agreement on a new OVS Agreement, for the purposes of:

- (1) Preserving the status quo with respect to the existing OVS Agreement;
- (2) Permitting the parties to complete their negotiations regarding a new

## ENROLLED ORIGINAL

long-term OVS franchise; and

(3) Permitting action by the Council to review and approve, modify, or disapprove a negotiated franchise renewal agreement, or otherwise reach a final decision on the franchise renewal.

(h) On September 7, 2016, Starpower filed with the District a Transfer of Control Petition (“Petition”) wherein it requested that the District approve the proposed transfer of control of OVS franchisee Starpower from Yankee Cable Partners, LLC, to Radiate Holdings, LP, (“Radiate”) pursuant to the Membership Interest Purchase Agreement by and among Yankee Cable Partners, LLC, and Radiate Holdings, LLC, dated August 12, 2016. Radiate will be ultimately controlled by the private equity and investment management firm, TPG Advisors through its ownership of Radiate Holdings, GP, LLC.

(i) In accordance with section 501 of the Cable Television Communications Act of 1981, effective October 9, 2002 (D.C. Law 14-193; D.C. Official Code § 34-1255.01) (“communications act”), section 10.2 of Starpower’s OVS Agreement provides that the Council must approve any proposed transfer of control (as that term is defined in section 10 of the OVS Agreement) of franchisee Starpower before that proposed transfer may be lawfully effectuated.

(j) In accordance with section 502 of the communications act (D.C. Official Code § 34-1255.02), sections 10.5 and 10.6 of the OVS Agreement provide that, for the purpose of assisting the Council with its task of deciding whether it should approve or deny Starpower’s Petition, OCTFME must analyze that Petition and then make a recommendation to the Council for action on the basis of OCTFME’s conclusions regarding the issues of whether the entity that will own or control Starpower and its District-based facilities has:

(1) Been properly certified by the Federal Communications Commission (“FCC”) to operate an open video system within the franchise area;

(2) Agreed to accept and fully comply with all terms of the OVS Agreement; and

(3) Provided reasonable assurances that it is able to and will comply with the terms of the OVS Agreement and applicable law.

(k) The OCTFME conducted the required comprehensive analysis of the Petition and related supporting materials and concluded that the prospective new owners of Starpower, Radiate Holdings, L.P., have accepted, and are willing and able to fully comply with, all of the terms of Starpower’s OVS Agreement, in addition to all the other District and federal laws that are applicable to Starpower as a District open video system franchisee.

(l) The OCTFME noted that Radiate has been certified by the FCC to operate the open video system. Further, OCTFME has also negotiated with the companies involved a transfer agreement, including a parental guarantee of performance to be provided by Radiate Holdings, GP, L.L.C., and a Warranty Letter from TPG Advisors.

(m) On the basis of the foregoing, OCTFME recommended to the Council that it approve Starpower’s Petition for consent to transfer control of the open video system operator.

(n) The Council reviewed Starpower’s Petition, the materials submitted in support of the Petition, and OCTFME’s recommendation that it approve the Petition, including execution of the related Transfer Agreement.

**ENROLLED ORIGINAL**

(o) In light of the above statements, the Council's approval of Starpower's Petition would be in the best interest of the District and its residents.

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 Approval of the Transfer of Control of Open Video System Franchisee Starpower Communications, LLC, and Open Video System from Yankee Cable Partners, LLC, to Radiate Holdings, LP, Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

22-166

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To declare the existence of an emergency with respect to the need to approve the Second Amendment to a multiyear Capital Funding Agreement with the Washington Metropolitan Area Transit Authority to provide capital funding for a capital improvement program for the Washington Metro System from July 1, 2017, to June 30, 2018.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Second Amendment to the Washington Metropolitan Area Transit Authority Capital Funding Agreement Emergency Declaration Resolution of 2017”.

Sec. 2. (a) There exists an immediate need to approve the Second Amendment to the Capital Funding Agreement with the Washington Metropolitan Area Transit Authority (“WMATA”) to provide additional capital funding for a one-year extension to a capital improvement program for the Washington Metro System from July 1, 2017, to June 30, 2018.

(b) On July 1, 2010, the Office of Contracting and Procurement (“OCP”), on behalf of the District Department of Transportation, executed a multiyear Capital Funding Agreement with the Washington Metropolitan Area Transit Authority to provide capital funding for a capital improvement program from July 1, 2010, through June 30, 2016, in the ceiling amount of \$397,314,000.

(c) On July 1, 2016, the OCP, on behalf of the District Department of Transportation, executed a multiyear Capital Funding Agreement with the Washington Metropolitan Area Transit Authority to increase the amount for Fiscal Year 2017 by \$92.1 million for a total ceiling amount of \$489,414,000.

(d) The Second Amendment is now necessary to increase the amount for Fiscal Year 2018 by \$76.1 million, for a total ceiling amount of \$565,514,000, excluding Passenger Rail Investment and Improvement Act funding.

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

(f) Council approval is necessary to allow the continuation of these vital services and for WMATA to be paid for services provided in excess of \$1 million for the contract period July 1, 2017, through June 30, 2018.



**ENROLLED ORIGINAL**

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 Second Amendment to the Washington Metropolitan Area Transit Authority Capital Funding Agreement Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

22-167

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 27, 2017

To declare the existence of an emergency with respect to the need to approve the Second Amendment to a multiyear Local Capital Funding Agreement with the Washington Metropolitan Area Transit Authority to provide capital funding for a capital improvement program for the Washington Metro System from July 1, 2017, to June 30, 2018.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Second Amendment to the Washington Metropolitan Area Transit Authority Local Capital Funding Agreement Emergency Declaration Resolution of 2017”.

Sec. 2. (a) There exists an immediate need to approve the Second Amendment to the Local Capital Funding Agreement with the Washington Metropolitan Area Transit Authority (“WMATA”) to provide additional capital funding for a one- year extension to a capital improvement program for the Washington Metro System from July 1, 2017, to June 30, 2018.

(b) On July 1, 2010, the Office of Contracting and Procurement (“OCP”), on behalf of the District Department of Transportation, executed a multiyear Local Capital Funding Agreement with the Washington Metropolitan Area Transit Authority to provide capital funding for a capital improvement program from July 1, 2010, through June 30, 2016, in the ceiling amount of \$397,314,000.

(c) On July 1, 2016, the OCP, on behalf of the District Department of Transportation, executed a multiyear Local Capital Funding Agreement with the Washington Metropolitan Area Transit Authority to increase the amount for Fiscal Year 2017 by \$92.1 million for a total ceiling amount of \$489,414,000.

(d) The Second Amendment is now necessary to increase the amount for Fiscal Year 2018 by \$76.1 million, for a total ceiling amount of \$ 565,514,000, excluding Passenger Rail Investment and Improvement Act funding.

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

(f) Council approval is necessary to allow the continuation of these vital services and for WMATA to be paid for services provided in excess of \$1 million for the contract period July 1, 2017, through June 30, 2018.

**ENROLLED ORIGINAL**

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Second Amendment to the Washington Metropolitan Area Transit Authority Local Capital Funding Agreement Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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

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

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

---

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

- |         |  |
|---------|--|
| B22-394 | Delegate Voting Rights Amendment Act of 2017<br><br>Intro. 7-11-17 by Councilmembers Cheh, Nadeau, Todd, Grosso, Allen, and R. White and referred to the Committee of the Whole  |
| <hr/>   |  |
| B22-395 | Accessible and Transparent Procurement Amendment Act of 2017<br><br>Intro. 7-11-17 by Councilmembers McDuffie, R. White, Silverman, Grosso, T. White, Nadeau, Allen, Bonds, and Cheh and referred to the Committee of the Whole    |
| <hr/>   |  |
| B22-396 | Property Manager Licensing Amendment Act of 2017<br><br>Intro. 7-11-17 by Councilmembers Bonds and T. White and referred to the Committee of the Whole with comments from the Committee on Housing and Neighborhood Revitalization |
-

- B22-397 Michael A. Stoops Anti-Discrimination Amendment Act of 2017  
Intro. 7-11-17 by Councilmembers Grosso, Cheh, Nadeau, and R. White and referred to the Committee on Judiciary and Public Safety
- 
- B22-398 Instant Runoff Voting Amendment Act of 2017  
Intro. 7-11-17 by Councilmembers Grosso, Cheh, Nadeau, and Silverman and referred to the Committee on Judiciary and Public Safety
- 
- B22-399 Infant Mortality Reduction Program Act of 2017  
Intro. 7-11-17 by Councilmembers Nadeau, R. White, Bonds, Cheh, Grosso, McDuffie, Silverman, and Allen and referred to the Committee on Judiciary and Public Safety
- 
- B22-400 Extreme Risk Civil Protection Order Amendment Act of 2017  
Intro. 7-11-17 by Councilmembers Nadeau, Bonds, and Grosso and referred to the Committee on Judiciary and Public Safety
- 
- B22-401 Workforce Development System Transparency Act of 2017  
Intro. 7-11-17 by Councilmembers Silverman, McDuffie, T. White, R. White, Cheh, and Chairman Mendelson and referred to the Committee on Labor and Workforce Development
- 
- B22-402 Elder Abuse Public Information Campaign Act of 2017  
Intro. 7-11-17 by Councilmembers Todd and Bonds and referred to the Committee on Housing and Neighborhood Revitalization
-

- B22-403      Broadband Internet Privacy Act of 2017
- Intro. 7-11-17 by Councilmembers Todd, Cheh, Bonds, Evans, R. White, Silverman, and Chairman Mendelson and referred to the Committee on Business and Economic Development with comments from the Committee on Government Operations
- 
- B22-404      Criminal Record Accuracy Assurance Act of 2017
- Intro. 7-11-17 by Councilmembers R. White, McDuffie, Todd, Bonds, Grosso, Nadeau, and T. White and referred to the Committee on Judiciary and Public Safety with comments from the Committee on Housing and Neighborhood Revitalization
- 
- B22-405      East End Federally Qualified Health Center Certificate of Need Maximum Fee Establishment Amendment Act of 2017
- Intro. 7-11-17 by Councilmembers Gray and R. White and referred to the Committee on Health
- 
- B22-406      Joy Evans Therapeutic Recreation Center Designation Act of 2017
- Intro. 7-11-17 by Councilmembers Gray, Bonds, Silverman, McDuffie, Nadeau, and Grosso and referred to the Committee of the Whole
- 
- B22-407      D.C Statehood Federal District Electoral College Clarification Act of 2017
- Intro. 7-11-17 by Councilmember Gray and referred to the Committee of the Whole
- 
- B22-408      Fare Evasion Decriminalization Act of 2017
- Intro. 7-11-17 by Councilmembers T. White, Cheh, Silverman, Bonds, R. White, Nadeau, Grosso, and McDuffie and referred to the Committee on Judiciary and Public Safety with comments from the Committee on Transportation and the Environment and the Committee on Finance and Revenue
- 
- B22-409      Burial Assistance Program Increase Amendment Act of 2017
- Intro. 7-11-17 by Councilmembers T. White, Todd, Cheh, Gray, Evans, Bonds, Silverman, and McDuffie and referred to the Committee on Human Services
-

B22-410            Parking and Moving Violation Amnesty Act of 2017  
Intro. 7-11-17 by Councilmember T. White and referred to the Committee on  
Transportation and the Environment

---

B22-411            DPR Parks Adoption and Sponsorship Amendment Act of 2017  
Intro. 7-11-17 by Chairman Mendelson and Councilmembers Evans and Cheh  
and referred sequentially to the Committee on Business and Economic  
Development and the Committee on Transportation and the Environment

---

B22-412            Closing of a Public Alley in Square 5196, S.O. 17-05785, Act of 2017  
Intro. 7-14-17 by Councilmember Gray and referred to the Committee of the  
Whole

---

### **PROPOSED RESOLUTIONS**

PR22-422           Contract Interference Mitigation Resolution of 2017  
Intro. 7-11-17 by Councilmembers Grosso, McDuffie, Cheh, and Bonds and  
referred to the Committee of the Whole

---

PR22-423           Science Advisory Board Danielle O'Neill Confirmation Resolution of 2017  
Intro. 7-12-17 by Chairman Mendelson at the request of the Mayor and referred  
to the Committee on Judiciary and Public Safety

---

PR22-424           Science Advisory Board John Paul Jones Confirmation Resolution of 2017  
Intro. 7-12-17 by Chairman Mendelson at the request of the Mayor and referred  
to the Committee on Judiciary and Public Safety

---

PR22-425           District of Columbia Judicial Nomination Commission Marie Johns  
Appointment Resolution of 2017  
Intro. 7-13-17 by Chairman Mendelson and referred to the Committee of the  
Whole

---

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON EDUCATION &  
COMMITTEE ON HEALTH  
NOTICE OF JOINT PUBLIC HEARING  
1350 Pennsylvania Avenue, NW, Washington, DC 20004**

---

**COUNCILMEMBER DAVID GROSSO  
COMMITTEE ON EDUCATION**

**AND**

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

**ANNOUNCE A JOINT PUBLIC HEARING**

on

**B22-203, the Infant and Toddler Developmental Health Services Act of 2017  
B22-355, the Bolstering Early Growth Investment Amendment Act of 2017**

on

**Wednesday, September 27, 2017  
10:00 a.m., Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Councilmember David Grosso and Councilmember Vincent C. Gray announce the scheduling of a joint public hearing on B22-203, the Infant and Toddler Developmental Health Services Act of 2017, and B22-355, the Bolstering Early Growth Investment Amendment Act of 2017. The hearing will be held at 10:00 a.m. on Wednesday, September 27, 2017 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of B22-203 is to require the Deputy Mayor for Health and Human Services to expand and coordinate health care for infants and toddlers under the age of 3 in the District of Columbia. Chairman Phil Mendelson referred this legislation sequentially to the Committee on Education until December 1, 2017, for Title II only, and then to the Committee on Health.

The stated purpose of B22-355 is to increase the child care subsidy payment rates for providers to align with the cost of care for infants and toddlers. Chairman Phil Mendelson referred this legislation to the Committee on Education. Bill 22-355 pertains to the same general topic of early childhood care and development, the Committee on Education will receive testimony from the public and government witnesses on this legislation during this joint hearing.

The Committee invites the public to testify or submit written testimony. Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm Monday, September 25. Persons wishing to testify are encouraged to bring 10 copies of their written testimony.



If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, [astrange@dccouncil.us](mailto:astrange@dccouncil.us), or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, October 11, 2017.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON EDUCATION  
NOTICE OF PUBLIC HEARING**  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

---

**COUNCILMEMBER DAVID GROSSO  
COMMITTEE ON EDUCATION  
ANNOUNCES A PUBLIC HEARING**

on

**B22-313, Healthy Students Amendment Act of 2017 and  
The State of School Food Services**

on

**Monday, October 16, 2017  
10:00 a.m., Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Councilmember David Grosso announces the scheduling of a public hearing on B22-313, the Healthy Students Amendment Act of 2017 and the state of school food services. The hearing will be held at 10:00 a.m. on Monday, October 16, 2017 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of B22-313 is to make changes to nutrition and wellness policies in District Schools. The legislation proposes to change nutrition-content requirements; expand breakfast after the bell and alternate serving models for breakfast participation programs; encourage schools to purchase food in a manner consistent with the Good Food Purchasing Program's core values; require OSSE to submit a report to the Mayor and Council regarding best practices for developing a central kitchen; and require that DCPS and public charter school students participate in specified amounts of age-appropriate physical education per week. The hearing will also serve as an opportunity for the Committee to receive testimony on the broader topic of school food services.

The Committee invites the public to testify or submit written testimony. Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm Thursday, October 12. Persons wishing to testify are encouraged to bring 10 copies of their written testimony.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, [astrange@dccouncil.us](mailto:astrange@dccouncil.us), or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, October 30, 2017.

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

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 HEARING ON:**

**Bill 22-382, "Union Market Tax Increment Financing Act of 2017"**

**Tuesday, September 26, 2017**

**11:00 a.m.**

**Room 500 - 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 hearing to be held on Tuesday, September 26, 2017 at 11:00 a.m. in the Council Chamber, Room 500, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 22-382, "Union Market Tax Increment Financing Act of 2017" would authorize the issuance of tax increment financing bonds to support certain infrastructure and site costs for a portion of the land located within the Union Market District. Bill 22-382 proposes tax increment financing (TIF) in the aggregate amount of \$82.4 million to support these necessary components of the project. Of this total sum, \$46.4 million will be issued as a TIF note to support needed infrastructure, including wet and dry utilities, streetscaping, and related design and development costs. \$36 million will be issued as a TIF bond to fund necessary retail parking pools in the TIF area. Union Market is located at 1309 5<sup>th</sup> Street, NE.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or [sloy@dccouncil.us](mailto:sloy@dccouncil.us), and provide your name, organizational affiliation (if any), and title with the organization by 11:00 a.m. on Monday, September 25, 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 [sloy@dccouncil.us](mailto: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  
COMMITTEE ON EDUCATION  
NOTICE OF PUBLIC ROUNDTABLE**  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

---

**COUNCILMEMBER DAVID GROSSO  
COMMITTEE ON EDUCATION  
ANNOUNCES A PUBLIC ROUNDTABLE**

on

**Education for Students During and After Detention, Commitment, or Incarceration**

on

**Wednesday, October 4, 2017  
10:00 a.m., Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on Education for Students During and After Detention and Incarceration. The roundtable will be held at 10:00 a.m. on Wednesday, October 4, 2017 in Hearing Room 412 of the John A. Wilson Building.

The purpose of this roundtable is to engage the public and government witnesses in discussing the provision of education for students during and after periods of detention, commitment, or incarceration.

Those who wish to testify may sign-up online at [bit.do/EducationHearings](http://bit.do/EducationHearings) or call the Committee on Education at (202) 724-8061 by 5:00pm Monday, October 2. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. Witnesses appearing on their own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, [astrange@dccouncil.us](mailto:astrange@dccouncil.us), or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday October 18, 2017.

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

---

**COUNCILMEMBER DAVID GROSSO  
COMMITTEE ON EDUCATION  
ANNOUNCES A PUBLIC ROUNDTABLE**

on

**The District of Columbia Public Schools' Strategic Plan**

on

**Thursday, September 21, 2017  
10:00 a.m., Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on The District of Columbia Public Schools' Strategic Plan. The roundtable will be held at 10:00 a.m. on Thursday, September 21, 2017 in Hearing Room 412 of the John A. Wilson Building.

The purpose of this roundtable is to discuss the new strategic plan for the District of Columbia Public Schools.

Those who wish to testify may sign-up online at [bit.do/EducationHearings](http://bit.do/EducationHearings) or call the Committee on Education at (202) 724-8061 by 5:00pm Tuesday, September 19. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. Witnesses appearing on their own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, [astrange@dccouncil.us](mailto:astrange@dccouncil.us), or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, October 15, 2017.

## ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

## NOTICE OF PUBLIC HEARING

Placard Posting Date: July 21, 2017  
 Protest Petition Deadline: September 5, 2017  
 Roll Call Hearing Date: September 18, 2017  
 Protest Hearing Date: November 15, 2017

License No.: ABRA-106781  
 Licensee: Cantina Bambina, LLC  
 Trade Name: Cantina Bambina  
 License Class: Retail Class "CT"  
 Address: 960 Wharf Street S.W.  
 Contact: Michael Fonseca: (202) 625-7700

WARD 6

ANC 6D

SMD 6D04

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 September 18, 2017 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 November 15, 2017 at 4:30 p.m.**

**NATURE OF OPERATION**

New Class "C" Tavern. \* First floor concession stand, no seating or occupant load; Second floor rooftop bar summer garden, 50 seats, 150 occupancy load; Park and Pier Summer Garden, 600 occupant load. It will service the Transit Pier at The Wharf and adjacent park as Summer Gardens. A total of (2) Summer Gardens. The licensee has requested an Entertainment Endorsement to provide Live Entertainment in the Park and Pier areas.

**HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION\*\* INDOOR CONCESSION AREA\*\***

Monday – Thursday 8:00 am – 12: 00 am and Friday – Saturday 8:00 am – 1:00 am

**HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SUMMER GARDEN\*\*ROOFTOP BAR\*\***

Monday – Thursday 8:00 am -1:00 am and Friday – Saturday 8:00 am- 2:00 am

**HOURS OF OPERATION\*\*PARK AND PIER**

Sunday-Saturday 24 Hours

**HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION\*\*PARK AND PIER\*\***

Sunday – Thursday 8:00 am- 12:00 am and Friday – Saturday 8:00 am- 1:00 am

**ENTERTAINMENT ENDORSEMENT\*\*PARK AND PIER ONLY\*\***

Sunday- Saturday 12:00 pm – 10:00 pm

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

Placard Posting Date: July 21, 2017  
Protest Petition Deadline: September 5, 2017  
Roll Call Hearing Date: September 18, 2017  
Protest Hearing Date: November 15, 2017

License No.: ABRA-106963  
Licensee: Church DC, LLC  
Trade Name: Church  
License Class: Retailer's Class "C" Restaurant  
Address: 3222 M Street, N.W.  
Contact: Matt Minora, Esq.: (202) 625-7700

WARD 2

ANC 2E

SMD 2E05

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 September 11, 2017 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 November 8, 2017 at 4:30 p.m.**

**NATURE OF OPERATION**

New Class "C" Restaurant with 255 seats and a Total Occupancy Load of 278. Daytime restaurant will serve as a full coffee shop selling sandwiches and pastries. Evening Restaurant will serve American cuisine and have board games, wine, cocktails and craft beer.

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

Sunday through Thursday 8 am - 2 am, Friday and Saturday 8 am - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
7/21/2017

Notice is hereby given that:

License Number: ABRA-106740

License Class/Type: C Tavern

Applicant: Anxo Pop-Up LLC

Trade Name: Porron

ANC: 6B03

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

**525 8th ST SE, WASHINGTON, DC 20003**

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

**9/5/2017**

A HEARING WILL BE HELD ON:

**9/18/2017**

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

ENDORSEMENT(S): Cover Charge Dancing Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	7 pm - 2 am	7 pm - 2 am	7 pm - 2 am
Monday:	7 pm - 2 am	7 pm - 2 am	7 pm - 2 am
Tuesday:	7 pm - 2 am	7 pm - 2 am	7 pm - 2 am
Wednesday:	7 pm - 2 am	7 pm - 2 am	7 pm - 2 am
Thursday:	7 pm - 2 am	7 pm - 2 am	7 pm - 2 am
Friday:	7 pm - 3 am	7 pm - 3 am	7 pm - 3 am
Saturday:	7 pm - 3 am	7 pm - 3 am	7 pm - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: July 21, 2017
Protest Petition Deadline: September 5, 2017
Roll Call Hearing Date: September 18, 2017
Protest Hearing Date: November 15, 2017

License No.: ABRA-106969
Licensee: Trump Old Post Office, LLC
Trade Name: Trump Gift Shop
License Class: Retailer's Class "B" 25%
Address: 1100 Pennsylvania Avenue, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 2 ANC 2C SMD 2C01

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 September 18, 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 November 15, 2017 at 4:30 p.m.

NATURE OF OPERATION

A gift shop that will serve food, alcoholic beverages, and non-alcoholic beverages. The gift shop is requesting a tasting permit.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE CONSUMPTION/SALES/SERVICE

Sunday through Saturday 7:00 am - 12:00 am

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
WEDNESDAY, SEPTEMBER 6, 2017  
441 4<sup>TH</sup> 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 ONE**

18383A      **Application of Barbara Chambers Children’s Center**, pursuant to 11 DCMR  
ANC 1A      Subtitle X, Chapter 9, for a special exception from the use conditions of Subtitle  
                 U § 401.1(c), to permit the expansion (285 students and 55 staff) of an existing  
                 daytime care use in the RA-2 Zone at premises 1470 Irving Street N.W. (Square  
                 2672, Lot 881).

**WARD ONE**

19546      **Application of Oluseyi Ademiluyi**, pursuant to 11 DCMR Subtitle X, Chapter 9,  
ANC 1B      for special exceptions under Subtitle E § 5201 from the rear yard requirements of  
                 Subtitle E § 205.4, under Subtitle E § 5203.3 from the roof top architectural  
                 element requirements of Subtitle E § 206.1(a), and from the penthouse  
                 requirements of Subtitle C § 1500.4, to construct a rear addition to an existing  
                 one-family dwelling in the RF-1 Zone at premises 2521 12<sup>th</sup> Street N.E. (Square  
                 2865, Lot 140).

**WARD FIVE**

19544      **Application of Denis Hobson**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a  
ANC 5E      special exception under Subtitle U § 301.1(g), to add a second floor to an existing  
                 detached garage for residential space in the RF-1 Zone at premises 55 V Street  
                 N.W. (Square 3118, Lot 72).

**WARD FOUR**

19553      **Application of Servant’s Office, LLC**, pursuant to 11 DCMR Subtitle X,  
ANC 4C      Chapter 9, for a special exception under Subtitle H § 1200.1 from the floor-to-  
                 ceiling height requirements of Subtitle H § 809.1(f), to permit a four-story mixed-  
                 use building in the NC-7 Zone at premises 4009 Georgia Avenue N.W. (Square  
                 3026, Lot 45).

## BZA PUBLIC HEARING NOTICE

SEPTEMBER 6, 2017

PAGE NO. 2

WARD TWO

19548            **Application of Tara Guelig and Yuri Horwitz**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 1206.4, to construct a rear addition to a one-family dwelling in the R-20 Zone at premises 2716 O Street N.W. (Square 1239, Lot 143).  
ANC 2E

WARD ONE

19538            **Application of Avamere 3317 16<sup>th</sup> LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle F § 5201 from the lot occupancy requirements of F-304.1, and pursuant to Subtitle X, Chapter 10, for variances from the court requirements of Subtitle F § 202.1 and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a third story rear addition and convert the existing three-story one-family dwelling into a four-unit apartment house in the RA-2 zone at premises 3317 16<sup>th</sup> Street N.W. (Square 2676, Lot 473).  
ANC 1A

**PLEASE NOTE:**

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

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.**\* This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: [www.dcoz.dc.gov](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> 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?**

BZA PUBLIC HEARING NOTICE  
SEPTEMBER 6, 2017  
PAGE NO. 3

Amharic

ለሙሳ ተፍ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም)

ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-

0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነኚህ አገልግሎቶች የሚሰጡት 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](mailto: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](mailto:Zelalem.Hill@dc.gov) cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면,

회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 [Zelalem.Hill@dc.gov](mailto: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](mailto: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](mailto: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,**

BZA PUBLIC HEARING NOTICE  
SEPTEMBER 6, 2017  
PAGE NO. 4

**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**

## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Sections 102, 106 and 501 of the Pre-k Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code §§ 38-271.02, 38-271.06, and 38-271.05 (2012 Repl.)); and Mayor's Order 2009-44, dated March 27, 2009, hereby gives notice of the adoption of new subsections 3501.3 through 3501.6 to Chapter 35 (Pre-K Enhancement and Expansion Funding) of Title 5 (Education), Subtitle A (Office of the State Superintendent of Education) of the District of Columbia Municipal Regulations ("DCMR").

The purpose of this rulemaking is to further support the community-based organizations providing high quality pre-K programs across the District ("pre-K CBO") by providing the Office of the State Superintendent of Education ("OSSE") authority to grant a temporary waiver, not to exceed twelve (12) months, from certain high quality standards if the pre-K CBO demonstrates hardship and that they are meeting the intent of the high quality standard(s) on which they seek the waiver.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* for a thirty (30) day public comment period on August 12, 2016, at 63 DCR 010497. The comment period officially closed on September 12, 2016, with the State Superintendent having received no comments. The final rules are being adopted in the same form as the emergency and proposed rule.

The Pre-k Enhancement and Expansion Waiver Rulemaking Approval Resolution of 2016 (PR21-0880), was deemed approved on September 16, 2016 by the Council of the District of Columbia, pursuant to section 501(a) of the Pre-k Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008 (D.C. Official Code § 38-275.01(a)). The rules will become effective upon publication of this notice in the *D.C. Register*.

**Chapter 35 PRE-K ENHANCEMENT AND EXPANSION FUNDING, Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended as follows:**

**Section 3501, HIGH QUALITY STANDARDS, by adding a new Subsection 3501.3 to read as follows:**

- 3501.3 The Office of the State Superintendent of Education ("OSSE") may waive compliance with one or more of the high quality standards in Subsection 3501.1 for no more than twelve (12) months if:
- (a) The pre-K CBO seeking a waiver received pre-K enhancement and expansion funding from OSSE previous to its request for a waiver;
  - (b) OSSE determines that the immediate economic impact on the pre-K CBO is sufficiently great to make immediate compliance temporarily

impractical;

- (c) OSSE determines that the pre-K CBO is meeting or exceeding the intent of the high quality standard(s) for which waiver is requested; and
- (d) OSSE determines that granting a waiver to the pre-K CBO is in the best interest of children receiving care at the pre-K CBO.

3501.4 A pre-K CBO may apply for a waiver by submitting a written request to OSSE that shall include the following:

- (a) The pre-K CBO's name, address, and its assigned license number;
- (b) Citation of each standard for which a waiver is being sought;
- (c) Explanation and description of the extent to which the pre-K CBO seeks to be waived from the standard;
- (d) Timeframe in which the pre-K CBO anticipates coming into compliance with the standard;
- (e) Proof of the immediate economic impact of compliance on the pre-K CBO;
- (f) Proof that the intent of the specific standard shall be achieved in a manner other than that prescribed by the standard; and
- (g) All other relevant information regarding the alleged hardship.

3501.5 Any waiver of a standard shall be at the discretion of OSSE and may be revoked by OSSE at any time, either upon violation of any condition attached to it or upon the determination of OSSE that continuance of the waiver is no longer in the best interest of children receiving care at the pre-K CBO.

3501.6 A determination by OSSE that the pre-K CBO is not in compliance with the terms of the waiver shall void the waiver, require the pre-K CBO to become compliant with the standard, and may be the basis of additional enforcement action.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (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 of an amendment to Section 989, entitled “Long Term Care Services and Supports Assessment Process” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing the assessment process for the level of need for beneficiaries who receive Long Term Care Services and Supports (LTCSS), with the exception of Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities (ICF/IID) services, and Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities (IDD Waiver). This includes nursing facility services, services offered through the Home and Community-Based Services Waiver for the Elderly and Persons with Physical Disabilities (EPD Waiver), Personal Care Aide (PCA) services available under the District’s Medicaid State Plan, Adult Day Health Program (ADHP) services offered under the 1915(i) Home and Community-Based State Plan Option, and other LTCSS not intended to serve individuals with intellectual and developmental disabilities such as the Program of All Inclusive Care for the Elderly (PACE).

Under the assessment process, a nurse employed by DHCF or its designated agent conducts face-to-face assessments and reassessments using a standardized needs-based assessment tool to determine a person’s support needs for LTCSS.

An initial Notice of Proposed Rulemaking was published in the *D.C. Register* on June 6, 2014 at 61 DCR 005781. Comments were received and incorporated into the Notice of Second Proposed Rulemaking, which was published in the *D.C. Register* on March 18, 2016 at 63 DCR 004086. Additional comments were received and incorporated into the Notice of Emergency and Third Proposed Rulemaking, which was published in the *D.C. Register* on March 24, 2017 at 64 DCR 002989. No comments were received in response to the Notice of Emergency and Third Proposed Rulemaking, and no changes have been made for these final rules.

The Director adopted these rules on July 11, 2017, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

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

**Section 989, LONG TERM CARE SERVICES AND SUPPORTS ASSESSMENT PROCESS, is amended to read as follows:**



**989 LONG TERM CARE SERVICES AND SUPPORTS ASSESSMENT PROCESS**

- 989.1 The purpose of this section is to establish the Department of Health Care Finance (DHCF) standards governing the Medicaid assessment process for Long Term Care Services and Supports (LTCSS) and to establish numerical scores pertaining to the level of need necessary to establish eligibility for a range of LTCSS.
- 989.2 LTCSS are designed to assist persons with a range of services and supports including assistance with basic tasks of everyday life over an extended period of time. These include, but are not limited to, the Home and Community-Based Services Waiver for the Elderly and Persons with Physical Disabilities (EPD Waiver), Personal Care Aide (PCA) services offered under the Medicaid State Plan, nursing facility services, Adult Day Health Program (ADHP) services under the 1915(i) Home and Community-Based State Plan Option, and other services not intended to serve individuals with intellectual and developmental disabilities.
- 989.3 A Registered Nurse (R.N.) employed by DHCF or its designated agent shall conduct an initial face-to-face assessment following the receipt of a request for an assessment for LTCSS made by any individual identified in Subsection 989.5.
- 989.4 Individuals identified in Subsection 989.5 may request an assessment for LTCSS by submitting a Prescription Order Form (POF). The POF is available on the DHCF website at <http://dhcf.dc.gov>.
- 989.5 The request shall include any supporting documentation established by the respective long term care program's regulations. An initial request for an assessment or a subsequent request for re-assessment based upon a change in the person's condition or acuity level may be made by the person seeking services, the person's representative, the person's EPD Waiver case manager, a family member, or health care or social services professional.
- 989.6 With the exception of hospital discharge timelines, which are referenced under Subsection 989.15, the R.N. employed by DHCF or its designated agent shall be responsible for conducting the face-to-face assessment of each person using a standardized needs-based assessment tool within five (5) calendar days of the receipt of a request for an assessment, unless:
- (a) The person's condition requires that an assessment be conducted sooner to expedite the provision of LTCSS to that person;
  - (b) The person has requested an assessment at a later date;

- (c) DHCF or its designated agent is unable to contact the person to schedule the assessment after making three (3) attempts to do so within five (5) calendar days of receipt of the assessment request; or
- (d) DHCF determines that an extension is necessary due to extenuating circumstances.

989.7 The assessment shall:

- (a) Confirm and document the person's functional limitations, cognitive/behavioral and skilled care support needs;
- (b) Be conducted in consultation with the person and his/her representative and/or support team;
- (c) Determine and document the person's unmet need for services taking into account the current utilization of informal supports and other non-Medicaid resources required to meet the person's need for assistance; and
- (d) Determine the person's level of need for LTCSS.

989.8 The standardized needs-based assessment tool shall be available on DHCF's website at [www.dhcf.dc.gov](http://www.dhcf.dc.gov).

989.9 The face-to-face assessment using the standardized needs-based assessment tool to determine each person's level of need for LTCSS shall result in a total numerical score which includes three (3) separate scores pertaining to his/her assessed functional, cognitive/behavioral, and skilled care needs. The functional assessment score includes an assessment and corresponding score correlated to the person's ability to manage medications. The three (3) separate assessment scores are used to determine eligibility for specific LTCSS as follows:

- (a) For State Plan PCA services, only the functional score, without consideration of the medication management assessment and corresponding score, is used to determine eligibility; and
- (b) For all other LTCSS, eligibility is based on the sum of the scores for functional, cognitive/behavioral, and skilled care needs, and includes medication management.

989.10 The total numerical score consists of a value from zero to thirty-one (0-31), which may include a score of up to twenty-three (23) on the functional assessment, a score of up to three (3) on the cognitive/behavioral assessment, and a score of up to five (5) on the skilled care needs assessment.

989.11 Each of the assessments that comprise the total numerical score contains the following components:

- (a) The functional assessment evaluates the type and frequency of assistance the person requires for each of the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs) based on typical experience under ordinary circumstances within the last seven (7) days prior to assessment:
- (1) Bathing;
  - (2) Dressing;
  - (3) Eating/Feeding;
  - (4) Transfer;
  - (5) Mobility;
  - (6) Toileting;
  - (7) Urinary Continence and Catheter Care;
  - (8) Bowel Continence and Ostomy Care; and
  - (9) Medication Management, for which the score is not considered for State Plan PCA service eligibility in accordance with § 989.9(a);
- (b) The cognitive/behavioral assessment evaluates the presence of and frequency with which the following conditions and behaviors occur:
- (1) Serious mental illness or intellectual disability;
  - (2) Difficulty with receptive or expressive communication;
  - (3) Hallucinations;
  - (4) Delusions;
  - (5) Physical behavioral symptoms directed toward others (*e.g.*, hitting, kicking, pushing, grabbing, sexual abuse of others);
  - (6) Verbal behavioral symptoms directed toward others (*e.g.*, threatening, screaming, cursing at others);
  - (7) Other physical behaviors not directed toward others (*e.g.*, self-injury, pacing, public sexual acts, disrobing in public, throwing food or waste);

- (8) Rejection of assessment or health care; and
- (9) Eloping or wandering;
- (c) The skilled care needs assessment evaluates whether and how frequently the following skilled services and therapies were required during the past thirty (30) days and during the seven (7) days prior to assessment:
  - (1) Occupational therapy;
  - (2) Physical therapy;
  - (3) Respiratory therapy;
  - (4) Speech therapy;
  - (5) Ventilator care;
  - (6) Tracheal suctioning or tracheostomy care;
  - (7) Total parenteral nutrition;
  - (8) Complex wound care;
  - (9) Wound care of moderate complexity;
  - (10) Early or preventive wound care;
  - (11) Hemodialysis;
  - (12) Peritoneal dialysis;
  - (13) Enteral tube feeding;
  - (14) Intravenous fluid or medication administration;
  - (15) Intramuscular or subcutaneous injections;
  - (16) Isolation precautions; and
  - (17) Patient-controlled analgesia pump.

989.12 The total numerical scores reflect a person's eligibility for LTCSS as follows:

- (a) A score of four (4) or higher on the functional assessment, as described in § 989.9(a), is needed for State Plan PCA services;
- (b) A score of four (4) or five (5) is needed for ADHP acuity level 1 services;
- (c) A score of six (6) or higher is needed for ADHP acuity level 2 services; and
- (d) A score of nine (9) or higher is needed for nursing facility, EPD Waiver, or other programs/services that require a nursing facility level of care.

989.13 Based upon the results of the face-to-face assessment, DHCF or its authorized agent shall issue to the person an assessment determination that specifies his/her level of need for a range of LTCSS for which the person is eligible.

989.14 The assessment determination shall include the types of LTCSS available to the person based on the scores received and shall be issued to the person no later than forty-eight (48) hours after the assessment is completed, unless the person's condition necessitates that services be authorized and provided earlier.

989.15 For hospital discharges, the timeline for completing the LTCSS assessment, including the issuance of an assessment determination referenced in Subsection 989.13 and the authorization of services included in the determination, shall be forty eight (48) hours from the receipt of a request for an assessment.

989.16 An R.N. employed by DHCF or its designated agent shall conduct a face-to-face re-assessment of each person's need for the receipt of LTCSS as follows:

- (a) For ADHP services, a re-assessment shall be conducted at least every twelve (12) months or upon a significant change in the person's health status or acuity level;
- (b) For State Plan PCA services, the supervisory nurse employed by the home health agency shall conduct an evaluation of each person's need for the continued receipt of PCA services at least once every twelve (12) months or upon a significant change in the person's health status, as follows:
  - (1) The evaluation shall determine whether there is a significant change in the person's health status;
  - (2) If the evaluation results in a determination that there is no significant change, the supervisory nurse shall attest that a face-to-face re-assessment is not required and services shall continue to be provided at the level set forth in the current assessment determination; and

- (3) If the evaluation results in a determination that there is a significant change, the supervisory nurse shall request that a face-to-face re-assessment be conducted in accordance with § 989.5; and
- (c) For all EPD Waiver services, effective April 1, 2018, the case manager shall conduct an evaluation of each person's health status at least once every twelve (12) months or upon a significant change in the person's health status, as follows:
    - (1) The evaluation shall determine whether there is a significant change in the person's health status;
    - (2) If the evaluation results in a determination that there is no significant change, the case manager shall attest that the person continues to require a nursing facility level of care and that a face-to-face re-assessment is not required; and
    - (3) If the evaluation results in a determination that there is a significant change, the case manager shall request that a face-to-face re-assessment be conducted in accordance with § 989.5;

989.17 For nursing facility services, DHCF or its designated agent shall conduct periodic continued stay reviews to evaluate a person's continued eligibility for nursing facility services, as follows:

- (a) The evaluation shall determine whether the person continues to meet nursing facility level of care; and
- (b) If the evaluation results in a determination that the person does not meet nursing facility level of care, DHCF or its designated agent shall request that a face-to-face re-assessment be conducted in accordance with policy guidance issued by DHCF.

989.18 For EPD Waiver services, DHCF may extend the level of need reauthorization period pursuant to the face-to-face reassessment for a timeframe not to exceed eighteen (18) months to align the level of need assessment date with the person's Medicaid renewal date.

989.19 Requests to conduct re-assessments shall be made in accordance with the requirements under Subsection 989.5.

989.20 If the person meets the level of need as determined by a numerical score affiliated with each long-term care service in accordance with Subsection 989.12, and chooses to participate in a long-term care program, DHCF or its authorized agent shall refer the person to the long-term care service provider of his/her choice.

- 989.21 The person shall choose a provider based upon the level of need, availability, and the ability of the provider to safely care for him/her in the setting of the person's choice.
- 989.22 DHCF or its authorized agent shall maintain the completed standardized assessment tool and documentation reflecting that the person was given a free choice of providers from a list of qualified providers.
- 989.23 If the person has not made a choice, or needs further assistance, DHCF or its authorized agent shall refer the person to the Aging and Disability Resource Center for additional assistance, options counseling, and person-centered planning as appropriate.
- 989.24 If the R.N. employed by DHCF or its agent is unable to conduct the face-to-face assessment or re-assessment described in this section after making three (3) attempts to do so within five (5) calendar days, an initial Administrative Denial Letter shall be issued to the person. The initial Administrative Denial Letter shall contain the following information:
- (a) A clear statement of the administrative denial of the assessment request;
  - (b) An explanation of the reason for the administrative denial, including documentation of the three (3) attempts that were made to conduct the assessment;
  - (c) Citation to regulations supporting the administrative denial;
  - (d) A clear statement that the person has twenty-one (21) days from the date the letter was issued to contact DHCF or its agent to request the assessment, including all necessary contact information; and
  - (e) For re-assessment requests, a clear statement that if the person fails to contact DHCF or its agent within twenty-one (21) days of the date the letter was issued, the person's current LTCSS shall be terminated.
- 989.25 If a person currently receiving LTCSS receives an initial Administrative Denial Letter in accordance with § 989.24 and fails to contact DHCF or its agent to request a re-assessment within twenty-one (21) days of the date the letter was issued, a subsequent Administrative Denial Letter shall be issued to the person. The subsequent Administrative Denial Letter shall contain the following information:
- (a) A clear statement of the intended termination of the person's current LTCSS due to administrative denial of the re-assessment request;

- (b) An explanation of the reason for the administrative denial, including documentation of the three (3) attempts that were made to conduct the assessment and reference to the Administrative Denial Letter;
- (c) Citation to regulations supporting the administrative denial and intended termination;
- (d) Information regarding the right to appeal the decision by filing a hearing request with the Office of Administrative Hearings (OAH) and the timeframe for filing a hearing request, as well as an explanation that a reconsideration request is not required prior to filing a hearing request;
- (e) An explanation of the circumstances under which the person's current level of LTCSS will be continued if the person files a timely hearing request with OAH; and
- (f) Information regarding legal resources available to assist the person with the appeal process.

989.26

DHCF, or its agent, shall issue a Beneficiary Denial or Change of Services Letter if, based upon the assessment or re-assessment conducted pursuant to this section, a person is found to be ineligible for, or does not meet the level of need for, LTCSS. The Beneficiary Denial or Change of Services Letter shall contain the following information:

- (a) A clear statement of the intended denial, reduction, or termination of LTCSS;
- (b) An explanation of the reason(s) for the intended denial, reduction, or termination of LTCSS;
- (c) Citation to regulations supporting the intended denial, reduction, or termination of LTCSS;
- (d) Information regarding the right to request that DHCF reconsider its decision and the timeframe for making a reconsideration request;
- (e) Information regarding the right to appeal the decision by filing a hearing request with OAH and the timeframe for filing a hearing request, as well as an explanation a reconsideration request is not required prior to filing a hearing request;
- (f) An explanation of the circumstances under which the person's current level of LTCSS will be continued if the person files a timely hearing request with OAH; and



- (g) Information regarding legal resources available to assist the person with the appeal process.

989.27 A request for reconsideration of a person's level of need as determined by the assessment tool, pursuant to § 989.26(d), must be submitted in writing, by mail, fax, or in person, to DHCF's Office of the Senior Deputy Director/Medicaid Director, within twenty-one (21) calendar days of the date of the notice of denial, termination, or reduction of LTCSS services. The request for reconsideration shall include information and documentation as follows:

- (a) A written statement by the person, or the person's designated representative, describing the reason(s) why the decision to deny, terminate, or reduce LTCSS services should not be upheld;
- (b) A written statement by a physician familiar with the person's health care needs; and
- (c) Any additional, relevant documentation in support of the request.

989.28 For beneficiaries currently receiving services, a timely filed request for reconsideration will stay the reduction or termination of services until a reconsideration decision is issued.

989.29 DHCF shall issue a reconsideration decision no more than forty-five (45) calendar days from the date of receipt of the documentation required in § 989.27.

989.30 If DHCF decides to uphold the assessment determination, the reconsideration decision shall contain the following:

- (a) A description of all documents that were reviewed;
- (b) The justification(s) for the intended action(s) and the effective date of the action(s);
- (c) An explanation of the beneficiary's right to request a fair hearing; and
- (d) The circumstances under which Medicaid LTCSS is provided during the pendency of a fair hearing.

989.31 A request to appeal the reconsideration decision, pursuant to § 989.30, must be submitted within ninety (90) calendar days of the date of issuance of the reconsideration decision by requesting a fair hearing with OAH in writing, in person, or by telephone, in accordance with 1 DCMR § 2971.

989.32 A request to appeal the denial, reduction, or termination of services, pursuant to § 989.26(e), must be submitted within ninety (90) calendar days of the date of the

Beneficiary Denial or Change of Services Letter by requesting a fair hearing with OAH in writing, in person, or by telephone, in accordance with 1 DCMR § 2971.

989.33 DHCF shall not reduce or terminate LTCSS services while a fair hearing is pending if a beneficiary who was receiving services files the hearing request prior to the effective date of the proposed action to reduce or terminate LTCSS.

## 989.99 DEFINITIONS

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

**Acuity level** - The intensity of services required for a Medicaid beneficiary wherein those with a high acuity level require more care and those with lower acuity level require less care.

**Beneficiary** - A person deemed eligible to receive Medicaid services.

**Face-to-face assessment** - An assessment that is conducted in-person by a registered nurse to determine an applicant's need for long-term care services.

**Informal supports** - Assistance provided by the person's family member or another individual who is unrelated to the person, and the frequency of supports provided.

**Level of Need** - A determination used to assess a person's need for supports for the purposes of allocating Medicaid resources or services.

**Non-Medicaid Resources** - The person's utilization of resources including but not limited to, housing assistance, vocational rehabilitation or job help, and transportation.

**Person** - An applicant who submits a service assessment request to DHCF and/or its designated agent to determine his/her level of need for long-term care services and supports.

**Person-centered Planning Process** - A process used to assess a person's needs and options for choices of services that focuses on the person's strengths, weaknesses, needs, and goals.

**Provider** - The individual, organization, or corporation, public or private, that provides long-term care services and seeks reimbursement for providing those services under the Medicaid program.

**Representative** - Any person other than a provider:

- (a) Who is knowledgeable about the applicant's circumstances and has been designated by that applicant to represent him or her with his/her express consent or those with appropriate legal authority; or
- (b) Who is legally authorized either to administer an applicant's financial or personal affairs or to protect and advocate for his/her rights.

**Support Team** - A team chosen by the beneficiary that includes, including, but is not limited to, the person's family, friends, community social worker, and/or medical providers.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2012 Repl. & 2016 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Chapter 42 entitled, “Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities” (EPD Waiver) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The current EPD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for an initial five-year period beginning January 4, 2012. An amendment to the EPD Waiver was approved by the Council through the Medical Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(A) (2016 Repl.)). The amendment was approved by CMS, with an effective date of October 20, 2015. Subsequently, the renewal of the EPD Waiver was approved by the Council through the Department of Health Care Finance and Department on Disability Services Medical Assistance Program Amendment Act of 2016, effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 1-307.02(a)(10)(A) (2016 Repl.)). CMS granted a brief, temporary extension of the EPD Waiver on December 19, 2016 and approved the renewal with an effective date of April 4, 2017. These final rules modify standards for existing services and establish standards for new services provided to participants in the EPD Waiver.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 4, 2016 at 63 DCR 013719. The initial emergency and proposed rules incorporated all changes in the approved amendment to the EPD Waiver, as detailed in the Notice of Emergency and Proposed Rulemaking.

A Notice of Second Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 14, 2017 at 64 DCR 003563. As discussed in detail in the Notice of Second Emergency and Proposed Rulemaking, the second emergency and proposed rules were promulgated in order to make changes in response to comments received from Disability Rights DC at University Legal Services, as well as to reflect updated content in the waiver renewal.

DHCF received one set of comments on the Notice of Second Emergency and Proposed Rulemaking from Legal Counsel for the Elderly (LCE). DHCF carefully considered the comments submitted by LCE, as discussed below, and determined that no substantive changes were required in response to the comments. Minor technical corrections have been made for these final rules, as noted below.

LCE's initial comment was that combination of the person-centered service plan (PCSP) and the four plans of care contemplated in the rule for EPD Waiver beneficiaries will be confusing and difficult for case managers to administer. LCE stated that because the case manager is responsible for coordinating and overseeing the provision of services and assessing the progress of beneficiaries, including through the development and administration of the PCSP, it is important to ensure the case manager has clear information about the beneficiaries' interests.

However, LCE raised a concern that the rule's contemplation of up to four (4) separate care plans in addition to the PCSP creates the potential for competing plans, with no mechanism for resolving a conflict among the care plans. Additionally, LCE asserted that under the rule as drafted, beneficiaries lose the benefit of having a single, centralized care plan administered by an independent case manager. To support this concern, LCE noted that the rule requires any additional care plans to be drafted by respective healthcare providers and that only one (1) of the additional care plans is expressly required to take account of and be consistent with the case manager's PCSP.

LCE reported that other jurisdictions do not contemplate multiple care plans for a single beneficiary and instead provide for a multidisciplinary approach in developing a single, comprehensive care plan. LCE urged DHCF to adopt such a multidisciplinary approach, and reported that it has received complaints that providers of personal care aide (PCA) services do not consider the PCSP in their service delivery.

DHCF acknowledges LCE's concern regarding the creation of multiple plans of care and integration of these plans into the PCSP created by the case manager. However, DHCF believes that the rules as written clearly require all plans of care created for specific EPD Waiver services to align with the PCSP and for the case manager to ensure all EPD Waiver services being delivered to the beneficiary by different providers are appropriately coordinated and reflected in the PCSP.

The Department of Health (DOH) requires a home care agency to create a plan of care for all services provided to a patient, as described in 22-B DCMR § 3914. Therefore, all home care agencies providing EPD Waiver services to beneficiaries are required under DOH regulations to create a plan of care for those services, such as physical therapy, occupational therapy, and personal care aide services. For each EPD Waiver service provided by a home care agency, DHCF has required the agency to ensure that all plans of care are consistent with the PCSP and to furnish the plans of care to the case manager (see, *e.g.*, §§ 4228.2, 4244.4, and 4246.4). Furthermore, D.C. Code § 44-106.04 requires all assisted living providers to create an individualized service plan for each resident. As reflected in § 4237.2, DHCF requires the assisted living provider to furnish the individualized service plan to the beneficiary's case manager to ensure that the plan aligns with the PCSP. Also, under 42 C.F.R. § 441.725, providers of adult day health services under the State Plan are required to develop a service plan. As DHCF anticipated that several of the same providers would furnish adult day health services under the State Plan and under the EPD Waiver, the federal care plan requirements for State Plan services were replicated for EPD Waiver services in order to create parity in the delivery of adult day health services to all Medicaid beneficiaries and subject providers to a uniform set of requirements.

As set forth in § 4223.13, case managers are required to coordinate a beneficiary's care by sharing information with all other health care and service providers identified in the PCSP to ensure that the beneficiary's care is organized. Case managers are also required to perform all of the care coordination activities described in § 4224.8 to ensure that all of the beneficiary's EPD Waiver services addressed in service-specific plans of care are provided in an integrated manner, that service utilization is appropriate, and that the services provided are maintaining the beneficiary in a home and community-based setting.

The creation of separate plans of care for certain EPD Waiver services is required under DOH and federal regulations. Therefore, DHCF cannot eliminate the requirements for these plans of care. The rules as currently drafted require each service-specific plan of care to align with the PCSP and to be shared with the case manager. The rules also require case managers to share information among all the beneficiary's service providers and perform a variety of care coordination activities to ensure that all the beneficiary's services detailed in the plans of care are provided in a manner that reflect the goals and preferences outlined in the PCSP. Therefore, DHCF believes that the rules as currently drafted clearly indicate that the PCSP is the central, overarching document that governs the provision of EPD Waiver services for each beneficiary and that all service-specific plans of care must align with the PCSP and provided to the case manager to ensure that each plan is integrated into the PCSP. As such, no substantive changes to the current regulatory language are required.

LCE's second comment was regarding provider-initiated discharges and transfers. LCE asserted that the rule generally contemplates three (3) ways a beneficiary's services could be discontinued or altered: (i) a beneficiary does not meet objective eligibility factors to receive services under the EPD Waiver (*e.g.*, death, moves out of the District of Columbia, no longer needs care, reasonable therapeutic goals at home is no longer attainable, etc.); (ii) a beneficiary requests a change in services, or (iii) a discretionary decision by the provider to discharge, terminate, or transfer the beneficiary to another provider, which may be based upon a determination by the provider that (a) beneficiary is unsatisfied with services, or (b) the provider is unable to meet the needs of the beneficiary. LCE stated that while the objective eligibility factors are generally consistent with other jurisdictions' regulations, the organization is concerned that the rule affords providers too much discretion with respect to discharging or requesting a transfer of a beneficiary.

LCE stated that in other jurisdictions, provisions regarding non-objective bases for the discontinuation of services under a waiver program focus on the beneficiary's right to transfer to another provider and do not give the provider broad discretion to unilaterally discharge or transfer a beneficiary. For example, LCE reported, in Maryland, a beneficiary receiving waiver services may choose to voluntarily disenroll from the program, but the provider does not have the authority to discharge or transfer a beneficiary at its own discretion. LCE also reported that in California, providers only have discretion to terminate services if the beneficiary is unable to receive the services and the provider has "made every effort to remove possible obstacles." LCE asserted that the approach taken in California and Maryland, which either withholds or substantially restricts a provider's discretion to unilaterally discharge or transfer a beneficiary,

best protects a beneficiary from unfair discharge or transfer for justifiable dissatisfaction with a provider.

LCE went on to report that the organization is aware of a home health agency that is attempting to discharge beneficiaries based on the agency's failure to follow the PCSP and provide culturally competent care to the beneficiary. LCE strongly recommended that the regulations be revised to specify that a provider may not discharge the beneficiary when it fails to provide proper care as mandated by other provisions in the regulations.

DHCF initially notes that the regulations do not afford a provider the discretion to unilaterally discharge or transfer an EPD Waiver beneficiary. As set forth in Subsection 4205.10, a provider may request that DHCF authorize a discharge, which will only be done if the conditions set forth in Subsection 4205.11 are met. DHCF notes that there was an apparent oversight in the current rules as transfers were not explicitly mentioned in Subsection 4205.10, as transfers are also subject to authorization. Therefore, transfers have been added to this provision to reflect current practice and DHCF's intent.

DHCF has had prior discussions with LCE regarding Subsection 4205.11 and proposed modifications to clarify the conditions under which a discharge or transfer may be authorized. DHCF has taken LCE's suggestions into consideration for these rules, and although DHCF believes that the rules as currently drafted set forth all necessary safeguards to ensure that providers do not improperly discharge beneficiaries, DHCF has used the language previously proposed by LCE to modify this provision, clarifying the requirements that must be met prior to requesting that DHCF authorize a discharge.

In sum, as noted above DHCF has made three (3) minor technical corrections for these final rules. The first technical correction is the explicit inclusion of transfers in Subsection 4205.10. The second technical correction is the modification of Subsection 4205.11 to clarify that a provider must meet all requirements set forth in Subsection 4205.12 prior to requesting that DHCF authorize a discharge or transfer. The third and final technical correction is that verb tenses have changed for dates or deadlines that have now passed.

The Director adopted these rules on July 11, 2017, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 42, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety and amended to read as follows:**

**CHAPTER 42            HOME AND COMMUNITY-BASED SERVICES WAIVER  
FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS  
WITH PHYSICAL DISABILITIES**

**4200 GENERAL PROVISIONS: IDENTIFICATION OF SERVICES; PROGRAM RESPONSIBILITIES; AND SERVICE SETTING REQUIREMENTS**

4200.1 The following Home and Community-Based (HCB) Waiver services are included in this chapter, consistent with the regulations set forth herein:

- (a) Case management services;
- (b) Personal Care Aide (PCA) services;
- (c) Personal Emergency Response System (PERS) services;
- (d) Respite services;
- (e) Homemaker services;
- (f) Chore aide services;
- (g) Assisted living services;
- (h) Environmental Accessibility Adaptation (EAA) services;
- (i) Adult Day Health services;
- (j) Physical Therapy services;
- (k) Occupational Therapy services;
- (l) Individual-Directed Goods and Services;
- (m) Participant-Directed Community Supports services; and
- (n) Community transition services.

4200.2 DHCF or its designee shall be the first point of contact for applicants who choose to receive EPD Waiver Services. DHCF or its designee shall assist an applicant with the completion of all documents and processes needed to apply for the EPD Waiver including, but not limited to, assisting the applicant with obtaining a face-to-face assessment and obtaining a determination of financial eligibility from DHCF's designee.

4200.3 DHCF or its designee shall conduct face-to-face assessments to determine if the applicant meets the level of care requirements in accordance with Section 4201 of this chapter.



4200.4 DHCF or its designee shall perform the following operational functions:

- (a) Review the Person-Centered Service Plan (PCSP) and prior-authorize the services recommended in the PCSP; and
- (b) Review requests for change in services and determine if they should be approved; and
- (c) Prior-authorize approved changes in services.

4200.5 The EPD Waiver services described in this chapter shall be administered by the Department of Health Care Finance (DHCF), Long-Term Care Administration.

4200.6 All Adult Day Health, Assisted Living, and Community Residence Facility settings shall meet the HCB Setting Requirements pursuant to 42 CFR § 441.301(c)(4) which require that settings:

- (a) Be chosen by the beneficiary receiving EPD Waiver services;
- (b) Ensure the beneficiary's right to privacy, dignity, and respect, and freedom from coercion and restraint;
- (c) Be physically accessible to the beneficiary and allow him or her access to all common areas;
- (d) Support the beneficiary's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;
- (e) Provide opportunities for the beneficiary to seek employment and meaningful non-work activities in the community;
- (f) Provide information on beneficiary rights;
- (g) Optimize the beneficiary's initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and choices for personal interaction;
- (h) Facilitate the beneficiary's choices regarding services and supports, and the provision of services;
- (i) Create personalized daily schedules for each beneficiary receiving supports that includes activities that align with the beneficiary's goals, interest, and preferences, and are reflected in his or her PCSP;
- (j) Provide opportunities for the beneficiary to engage in community life;

- (k) Provide opportunities to receive services in the community to the same degree as individuals not receiving Medicaid HCBS;
- (l) Control over the beneficiary's personal funds and bank accounts; and
- (m) Allow visitors at any time except as indicated in the beneficiary's PCSP, based on his or her assessed needs.

4200.7 In addition to the requirements referenced under Subsection 4200.6, all Assisted Living and Community Residence Facility settings shall:

- (a) Be integrated in the community;
- (b) Provide opportunities for the beneficiary to engage in community life;
- (c) Allow full access to the greater community, such as opportunities to seek employment, and access to public libraries with appropriate oversight and assistance to the same extent as access is available to persons who do not receive Medicaid HCBS;
- (d) Be leased in the names of the people who are being supported. If this is not possible, then the Assisted Living or Community Residence Facility provider must ensure that each beneficiary has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under the District's landlord and tenant law. This applies equally to leased and provider owned properties; and
- (e) Develop and adhere to policies which ensure that each beneficiary receiving services has the right to the following:
  - (1) Privacy in the beneficiary's personal space, including entrances that are lockable by the beneficiary (with staff having keys as needed);
  - (2) Freedom to furnish and decorate his or her personal space (except for a beneficiary receiving Respite Daily services);
  - (3) Control over his or her personal funds and bank accounts;
  - (4) Privacy for telephone calls, texts and emails; and
  - (5) Access to food at any time.

4200.8 Any deviations from the requirements in Subsection 4200.7(e) must be supported by a specific assessed need, which is justified in the beneficiary's written PCSP, and reviewed and approved as a restriction by the case manager in the PCSP.

## **4201 ELIGIBILITY**

4201.1 Individuals shall be deemed eligible for the HCB Waiver prior to the receipt of the HCB services described in this chapter.

4201.2 To be eligible for the HCB Waiver services described in this chapter, beneficiaries shall:

- (a) Require the level of care furnished in a nursing facility as determined by DHCF's Long Term Care Services and Supports Contractor via standardized assessment tools in accordance with Subsections 4201.4 and 4201.5;
- (b) Agree to participate in the waiver program by signing Waiver Beneficiary Freedom of Choice forms to elect to receive services in home and community-based settings rather than institutional settings;
- (c) Be aged sixty-five (65) or older, or be aged eighteen (18) and older with one (1) or more physical disabilities;
- (d) Not be inpatients of a hospital, nursing facility or intermediate care facility in accordance with Subsection 4201.3;
- (e) Be financially eligible for long term care services and supports in accordance with the requirements set forth in Chapter 98 (Financial Eligibility for Long Term Care Services and Supports) of Title 29 DCMR; and
- (f) Reside in the District of Columbia in community settings such as natural homes or approved Community Residential Facilities or EPD Waiver assisted living facilities.

4201.3 For purposes of eligibility, an inpatient shall be defined as a beneficiary who is institutionalized for a period greater than one hundred and twenty (120) consecutive days.

4201.4 A Registered Nurse (R.N.) hired by or under contract to DHCF or its designee shall conduct a face-to-face assessment to determine if a beneficiary or applicant meets a nursing facility level of care. The assessment shall utilize a standardized assessment tool which will include an assessment of the individual's support needs across three domains including:

- (a) Functional - impairments including assistance with activities of daily living such as bathing, dressing, eating or feeding;
- (b) Skilled Care - sensory impairments, other health diagnoses and the need for skilled nursing or other skilled care (e.g., wound care, infusions); and
- (c) Behavioral - communications impairments including the ability to understand others, presence of behavioral symptoms such as hallucinations, or delusions.

4201.5 Completion of the assessment shall yield a final total score determined by adding up the individual scores from the three domains. To be eligible for EPD Waiver services a beneficiary or applicant must obtain a score of nine (9) or higher which equates to a nursing home level of care.

4201.6 Eligibility for all EPD Waiver services shall be recertified on an annual basis in accordance with any procedures established by DHCF in this chapter.

## **4202 APPEAL RIGHTS FOR APPLICANTS/BENEFICIARIES**

4202.1 Applicants and beneficiaries shall receive advance notice and shall have the opportunity to request a Fair Hearing if:

- (a) They are found ineligible for participation in the EPD Waiver based on the criteria set forth in Subsection 4201.2;
- (b) They are not given the choice between HCB waiver services or institutional care;
- (c) They are denied the choice of service(s) from a qualified and willing provider in accordance with 42 CFR § 431.51; or
- (d) If DHCF or its designee takes action to deny, discontinue, suspend, reduce, or terminate services, or dis-enroll a beneficiary or applicant from the EPD Waiver Program.

4202.2 An EPD Waiver provider shall issue a written notice in cases of intended actions to discontinue, discharge, suspend, transfer, or terminate services to any applicant or beneficiary in accordance with the requirements sets forth in Section 4205. The notice shall be provided at least thirty (30) days prior to the effective date of the proposed action and shall provide the following information:

- (a) The intended action;
- (b) The reason(s) for the intended action;

- (c) Citations to the law(s) and regulations supporting the intended action;
- (d) A list of EPD waiver standards supporting the decision;
- (e) An explanation of the applicant or beneficiary's right to request a hearing;
- (f) The circumstances under which the applicant or beneficiary's current level of services will be continued if a hearing is requested; and
- (g) A copy of the directory of other EPD waiver providers.

4202.3 DHCF or its designee shall issue a written notice in cases where it intends to take action to deny, discontinue, discharge, suspend, or reduce Waiver services, or disenroll applicants or beneficiaries from the EPD Waiver program. The notice shall be issued at least thirty (30) calendar days prior to the effective date of the proposed action and shall state the following information:

- (a) The intended action;
- (b) The reason(s) for the intended action;
- (c) Citations to the law(s) and regulations supporting the intended action;
- (d) An explanation of the individual's right to request a hearing; and
- (e) The circumstances under which the individual's current level of services will be continued if a hearing is requested.

#### **4203 CASE MANAGEMENT SERVICES REQUIRED**

4203.1 As a condition of participation in the EPD Waiver services program, each beneficiary shall receive case management services which meet the requirements of Sections 4222 – 4224.

#### **4204 WRITTEN PERSON-CENTERED SERVICE PLAN REQUIRED (PCSP)**

4204.1 Services under the EPD Waiver program shall be provided to eligible beneficiaries pursuant to a written Person-Centered Service Plan (PCSP) developed for each individual.

4204.2 The PCSP shall be developed by the Case Manager in full consideration of the beneficiary's needs, preferences, strengths, and goals, which are key hallmarks of person-centered planning as defined in Section 4223. A PCSP shall be subject to the approval of DHCF or its designee.

- 4204.3 Except in the circumstances outlined in Subsection 4204.7, a PCSP shall be required for the initiation and provision of any EPD Waiver service and shall be reviewed by the Case Manager at least quarterly to ensure that services are delivered to meet the established goals.
- 4204.4 A PCSP shall be updated and revised at least annually, pursuant to the outcome of an assessment and a determination of needs or whenever a change in a beneficiary's health needs warrants updates to the plan.
- 4204.5 A PCSP shall, at a minimum, address and document the following:
- (a) The beneficiary's, strengths, positive attributes, and preferences for plan development at the beginning of the written plan including:
    - (1) Consideration of the beneficiary's significant milestones, and important people in the beneficiary's life; and
    - (2) The beneficiary's preferences in order to tailor the plan to reflect any unique cultural or spiritual needs or be developed in a language or literacy level that the beneficiary and representative can understand;
  - (b) The beneficiary's goals, including:
    - (1) Consideration of the beneficiary's current employment, education, and community participation along with aspirations for changing employment, continuing education, and increasing level of community participation; and
    - (2) How the goals tie to the amount, duration, and scope of services that will be provided;
  - (c) List of other contributors selected by the beneficiary and invited to engage in planning and monitoring of the PCSP;
  - (d) End of life plan, as appropriate;
  - (e) Medicaid and non-Medicaid services and supports preferred by the beneficiary, including supports from family, friends, faith-based entities, recreation centers, or other community resources;
  - (f) The specific individuals, health care providers, or other entities currently providing services and supports;
  - (g) Potential risks faced by the beneficiary and a risk-mitigation plan to be addressed by the beneficiary and his or her interdisciplinary team;

- (h) Approaches to be taken to prevent duplicative, unnecessary, or inappropriate services;
- (i) Assurances regarding the health and safety of the beneficiary, and if restrictions on his or her physical environment are necessary, descriptions and inclusion of the following:
  - (1) Explicit safety need(s) with explanation of related condition(s);
  - (2) Positive interventions used in the past to address the same or similar risk(s)/safety need(s) and assurances that the restriction will not cause harm to the beneficiary;
  - (3) Necessary revisions to the PCSP to address risk(s) or safety need(s), including the time needed to evaluate effectiveness of the restriction, results of routine data collection to measure effectiveness, and continuing need for the restriction; and
  - (4) Beneficiary's or representative's understanding and consent to proposed modification(s) to the restrictions; and
- (j) Components of self-direction (if the beneficiary has chosen self-directed delivery under the *Services My Way* program, set forth in Chapter 101 of Title 29 DCMR).

4204.6 Upon completion of development of the PCSP, the Case Manager shall ensure the following:

- (a) The PCSP receives final approval and signature from all those who participated in its planning and development, including the Case Manager and the beneficiary or beneficiary's representative if applicable; and
- (b) All contributors and others who were included in the PCSP development receive a copy of the completed plan or any specific component of the plan, as determined by the beneficiary.

4204.7 A beneficiary temporarily may access waiver services in the absence of a DHCF approved PCSP under the following circumstances:

- (a) DHCF determines a delay in the receipt of services would put the beneficiary's health and safety at risk; or
- (b) DHCF determines services are needed to effectuate a timely discharge from a hospital or nursing facility.

4204.8 If waiver services are provided in accordance with Subsection 4204.7, a PCSP shall be completed within thirty (30) days of the date that services were initiated.

**4205 INITIATING, CHANGING, DISCHARGING/SUSPENDING, TRANSFERS OR TERMINATIONS**

4205.1 Initiating services means a request to add services that has been approved as part of a beneficiary's PCSP.

4205.2 A change in service shall mean a request to modify the type, amount, duration, or scope of services based on the beneficiary's current level of functioning, which is supported by the assessment tool.

4205.3 A discharge shall mean a request to release a beneficiary from a particular service provider.

4205.4 A transfer shall mean a request to move a beneficiary from one service provider to another service provider.

4205.5 A suspension shall mean ending the delivery of services to a beneficiary for a temporary period not to exceed thirty (30) calendar days.

4205.6 A termination shall mean the discontinuation of services under the Waiver or a disenrollment from the EPD Waiver Program.

4205.7 The only grounds for disenrollment from the EPD Waiver Program are the following:

- (a) The beneficiary no longer meets the financial eligibility criteria;
- (b) The beneficiary no longer meets the required level of care as supported by the assessment tool;
- (c) The beneficiary expires;
- (d) The beneficiary has moved out of the District of Columbia;
- (e) The beneficiary remains institutionalized for a period that is expected to exceed one hundred and twenty (120) consecutive days;
- (f) The beneficiary or the beneficiary's authorized representative requests disenrollment, in writing, from the EPD Waiver ; and



- (g) The beneficiary has failed to provide the case management agency with recertification documents or cooperate with the case manager to ensure that level of care evaluations are completed.
- 4205.8 A case manager may coordinate the receipt and subsequent approval by DHCF or its designee for all program modification requests. These include requests to initiate, change, terminate, or suspend services and to transfer or discharge from a service provider.
- 4205.9 The beneficiary, the beneficiary's authorized representative, family member or a service provider may recommend to DHCF or its designee one or more of the following program modifications: the initiation of a new service; a change in approved services; a transfer; or a service termination.
- 4205.10 The beneficiary, the beneficiary's authorized representative, a service provider or the beneficiary's case manager may make requests to DHCF or its designee to authorize a discharge, transfer or suspension.
- 4205.11 Conditions for authorization of a discharge or transfer consist of the following:
- (a) A beneficiary is unsatisfied with the services delivered by a specific provider; or
  - (b) The provider is unable to meet the needs of the beneficiary; and
  - (c) If a service provider is requesting the discharge or transfer, the provider has demonstrated compliance with all requirements set forth in Subsection 4205.12.
- 4205.12 A provider shall demonstrate the following before or at the time of a request to suspend, discharge, transfer or terminate a beneficiary:
- (a) Appropriate steps were taken to attempt remediation of the situation that gave rise to the conditions necessitating the action as set forth in Subsection 4205.11, including a meeting with the beneficiary to resolve conflicts and provider staff training to resolve any staff complaints; and
  - (b) Compliance with provider requirements outlined in Subsection 4205.15 to ensure safe suspension, discharge, transfer or termination of services.
- 4205.13 DHCF, a case manager or provider may suspend the services of a beneficiary when:
- (a) The beneficiary's behavior poses a risk to the staff, and interventions have not successfully addressed the behavior; or

- (b) The beneficiary prohibits access to provider-related visits; or

4205.14 In order to ensure that the beneficiary's health is not threatened during a discharge, transfer, suspension, or termination of services, the provider shall:

- (a) Assess the beneficiary's condition to ensure that discharge, transfer, suspension or termination of services does not endanger the health and safety of the beneficiary;
- (b) Document assessment findings in the beneficiary's record;
- (c) Notify the physician;
- (d) Ensure that the beneficiary's Medicaid eligibility is current;
- (e) Refer the beneficiary to the Department of Behavioral Health or other agencies, as the case manager deems appropriate; and
- (f) Document the actions taken to ensure that the beneficiary's discharge, transfer, suspension, or service termination will have no adverse effect on the beneficiary.

4205.15 In addition to the requirements specified in Subsection 4205.16, the provider shall take the following administrative actions before effectuating a discharge, transfer, suspension, or service termination:

- (a) Issue written notice pursuant to Subsection 4202.2;
- (b) Arrange for alternative services prior to effectuating the discharge, transfer, suspensions or service termination;
- (c) Provide the beneficiary and DHCF (at [DHCFLTCAProvider@dc.gov](mailto:DHCFLTCAProvider@dc.gov)) with a copy of the plan identifying alternative services, identify the alternative services and include timelines describing when the alternative services will be put in place;
- (d) Notify DHCF, the Department of Health (DOH) Health Regulation and Licensing Administration, and Adult Protective Services if the provider believes that the beneficiary's health is at risk as a result of the discharge, transfer, suspension or service termination; and
- (e) In the case of transfers, including transfers to a new case management agency, ensure that an agreement between the transferring agency and receiving agency is executed before the transfer is executed.

4205.16 A case manager or case management agency shall notify DHCF or its designee of the need to send a written notice pursuant to the grounds of disenrollment from the EPD Waiver Program set forth in Subsections 4205.7(e) through (g) within five (5) business days of learning of the event in question.

#### **4206 ASSURING CULTURAL COMPETENCY**

4206.1 In accordance with Title VI of the Civil Rights Act of 1964 and its implementing regulations (42 U.S.C. §§ 2000d *et seq.*, 45 CFR part 80), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132), no individual shall, on the grounds of race, color, national origin, Limited English Proficiency (LEP), or disability, be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under any EPD Waiver Services program.

4206.2 Each provider shall develop an effective plan on language assistance for beneficiaries who are LEP, and ensure access to translation services and free interpretation services in accordance with guidance from Department of Health and Human Services, Office of Civil Rights, available at:

<http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/index.html>.

The plan shall address the LEP needs of the population it serves and ensure compliance with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*).

4206.3 In accordance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and in order to prohibit discrimination on the basis of disability in programs that receive financial assistance from the federal government, each provider of EPD Waiver services shall ensure that all handicapped beneficiaries, shall have access to a provider's facilities or not be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under the Medicaid program (45 CFR § 84.21), and "shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons" (45 CFR § 84.22 (f)).

#### **4207 RECORDS AND CONFIDENTIALITY OF INFORMATION: GENERAL**

4207.1 Each provider of waiver services shall establish and implement a privacy plan to protect the privacy and confidentiality of a beneficiary's records.

4207.2 The disclosure of information by a provider of waiver services shall be subject to all provisions of applicable District and federal laws governing the privacy and security of health and personal information.

- 4207.3 Each provider of waiver services shall maintain comprehensive records of the waiver services provided to each beneficiary, and shall maintain each record for a period of no less than ten (10) years.
- 4207.4 Each beneficiary's electronic case management record shall include, but shall not be limited to, the following information:
- (a) General information including each beneficiary's name, Medicaid identification number, address, telephone number, age, sex, name and telephone number of emergency contact person, physician's name, address, and telephone number;
  - (b) A signed copy of the beneficiary's Bill of Rights and Responsibilities;
  - (c) A complete PCSP which includes all signatures as required in Section 4204 of this chapter;
  - (d) A copy of the initial and all subsequent level of care determinations, case manager attestation/evaluation forms, and the results of the comprehensive assessment tool;
  - (e) A record of the initial signed Waiver Beneficiary Freedom of Choice form;
  - (f) A record of all case management in-home site visits and telephone contacts;
  - (g) A record of all PERS plans of care, if PERS were approved under the PCSP;
  - (h) A record of the initial and annual Pre-Admission Screening and Resident Review (PASRR) for mental illness, cognitive deficiency, and intellectual/developmental disability and Psychiatric Evaluation, as necessary;
  - (i) A record of quarterly reviews and narrative notes;
  - (j) A record of the beneficiary's initial and annual health history;
  - (k) A record of all prior authorizations for services;
  - (l) A record of all requests for program modification requests including initiations, changes, discharges, transfers, suspensions, and terminations;
  - (m) A discharge summary, if applicable; and

- (n) Any other records necessary to demonstrate compliance with all regulations, requirements, guidelines, and standards for the implementation and administration of this waiver.

4207.5 Each direct-services provider of waiver services shall be responsible for maintaining records related to the provision of services delivered in accordance with the specific provider requirements set forth under this chapter.

#### **4208 ACCESS TO RECORDS**

4208.1 Each provider of waiver services shall allow appropriate DHCF personnel, representatives of the U.S. Department of Health and Human Services and other authorized designees or officials of the District of Columbia government and federal government full access to all records upon request and during announced or unannounced audits or reviews.

#### **4209 REIMBURSEMENT: GENERAL**

4209.1 DHCF shall not reimburse any provider of Waiver services who:

- (a) Fails to comply with any applicable regulation in this chapter;
- (b) Fails to comply with all applicable federal and District of Columbia laws, and regulations;
- (c) Fails to comply with all applicable transmittals, rules, manuals and other requirements for payment issued by DHCF;
- (d) Provides services in the absence of an approved prior authorization from DHCF or its designee for payment identifying the authorized service, number of hours or units authorized, duration, and scope of service; and
- (e) Fails to comply with the terms of the Medicaid Provider Agreement.

4209.2 Each provider of Waiver services shall agree to accept as payment in full the amount determined by DHCF as reimbursement for the authorized waiver services provided to beneficiaries.

4209.3 Each provider shall agree to bill any and all known third-party payers prior to billing Medicaid.

4209.4 For purposes of this chapter, the effective dates of EPD Waiver Year Five (5) are January 4, 2016 through April 3, 2017.

4209.5 For purposes of this chapter, the effective dates of EPD Waiver Year One (1) of the Renewal are April 4, 2017 through January 3, 2018.

4209.6 In accordance with CMS' cost neutrality requirements, DHCF may limit or deny Waiver services if the cost of the services in addition to other home care services, exceeds the estimated cost of institutional care.

4209.7 Subsequent changes to any of the reimbursement rate(s) published herein shall be posted on the Medicaid fee schedule at [www.dc-medicaid.com](http://www.dc-medicaid.com). DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s) at least thirty (30) days before a change is made to the reimbursement rate.

#### **4210 REIMBURSEMENT RATES: CASE MANAGEMENT SERVICES**

4210.1 Case management services shall be reimbursable on a per member per month (PMPM) basis.

4210.2 The PMPM reimbursement rate during Waiver Year 5 and Waiver Year 1 of the Renewal shall be two hundred forty-five dollars and ninety-six cents (\$245.96), contingent on performance of the monthly and ongoing care coordination activities outlined in Section 4224.

4210.3 In order for a case management agency to receive reimbursement for case management services, each Case Manager must perform case management duties either on a full-time or on a part-time basis. At any point in time, no more than forty-five (45) beneficiaries shall be assigned to each Case Manager.

4210.4 The case management agency shall ensure case management services are available during regular business hours and shall be on call during weekends and evenings in case of emergency.

4210.5 Reimbursement for transitional case management services provided during a hospital or nursing facility (*i.e.*, institutional) stay shall not exceed one hundred twenty (120) days. Reimbursement shall be contingent on the Case Manager's performance of activities during the institutional stay that facilitate transition to the community, consistent with the reimbursement standards for transitional case management set forth in Subsection 4224.9.

4210.6 Reimbursement for transitional case management services shall be made only after the beneficiary returns to the home or community setting and not during the beneficiary's institutional stay.

#### **4211 REIMBURSEMENT RATES: PERSONAL CARE AIDE (PCA) SERVICES**

4211.1 A home care agency seeking reimbursement for PCA services shall meet the conditions of participation for home health agencies set forth in 42 CFR part 484, and shall comply with the requirements set forth in the Health-Care and

Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*)

- 4211.2 For dates of services beginning November 3 through December 31, 2015, each Provider shall be reimbursed five dollars (\$5.00) per unit of service for allowable services in accordance with the Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat. 119), as amended, and supplemented by the Health Care and Education Reconciliation Act of 2010, approved March 30, 2010 (Pub. L. No. 111-152, 124 Stat. 1029) and the District of Columbia Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code §§ 32-131.01 *et seq.*) The reimbursement rate includes administrative costs following the recent review of the FY 2013 Home Health Agencies cost reports, of which no less than three dollars and forty-five cents (\$3.45) shall be paid to the personal care aide to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 4211.3 For dates of services beginning January 1, 2016, each provider shall be reimbursed five dollars and two cents (\$5.02) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty-six cents (\$3.46) per fifteen (15) minutes for services rendered by a PCA, shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 4211.4 For dates of services beginning January 1, 2017, each provider shall be reimbursed five dollars and five cents (\$5.05) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty-nine cents (\$3.49) per fifteen (15) minutes for services rendered by a PCA, shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 4211.5 A unit of service for PCA services shall be fifteen (15) minutes spent performing allowable tasks.
- 4211.6 Reimbursement for PCA services under the Waiver shall not exceed sixteen (16) hours of service per day per beneficiary.
- 4211.7 A provider of waiver services shall not bill the beneficiary or any member of the beneficiary's family for PCA services.
- 4211.8 DHCF shall not reimburse a provider of PCA services for services provided by the waiver beneficiary's spouse, or other legally responsible relative or court-appointed guardian with the exception of parents of adult children.

**4212 REIMBURSEMENT RATES: PERSONAL EMERGENCY RESPONSE SERVICES (PERS)**

4212.1 The reimbursement rate during EPD Waiver Year 5 and EPD Waiver Year 1 of the Renewal for PERS shall be forty dollars (\$40.00) for one (1) installation and twenty-eight dollars and fifty cents (\$28.50) per month for the rental/maintenance fee consistent with the PERS program services set forth in Section 4229.

**4213 REIMBURSEMENT RATES: RESPITE SERVICES**

4213.1 For individuals needing one (1) to seventeen (17) hours per day, the reimbursement rate for respite services during Waiver Year 5 shall be twenty dollars and sixty cents (\$20.60) per hour. For individuals needing eighteen (18) to twenty-four (24) hours per day, the reimbursement rate during Waiver Years 4 and 5 shall be a flat rate of three hundred dollars (\$ 300.00) per day.

4213.2 For EPD Waiver Year 1 of the Renewal, the reimbursement rate for respite services for individuals needing one (1) to seventeen (17) hours per day shall be twenty dollars and twenty cents (\$20.20) per hour. For individuals needing eighteen (18) to twenty-four (24) hours per day, the reimbursement rate during Waiver Year 1 of the Renewal shall be a flat rate of three hundred eleven dollars and fifty cents (\$311.50) per day.

4213.3 Consistent with Section 4232, respite services shall be limited to a total of four hundred and eighty (480) hours per year per beneficiary unless the need for additional services is prior authorized by DHCF or its designee.

4213.4 DHCF shall not reimburse a provider of respite services for services provided by the waiver beneficiary's spouse, or other legally responsible relative or court-appointed guardian with the exception of parents of adult children. Non-legally responsible relatives including parents of adult children may provide and be reimbursed for respite services provided they meet the requirements of Section 4231.

4213.5 DHCF shall not reimburse for the cost of room and board except when provided as part of respite care furnished in a facility approved by the District of Columbia that is not a private residence.

4213.6 When respite is provided in a facility, including an Assisted Living Facility, group home, or other Community Residential Facility, the facility must meet all HCBS setting requirements consistent with Section 4200.

**4214 REIMBURSEMENT RATES: HOMEMAKER SERVICES**



- 4214.1 The reimbursement rate for homemaker services during Waiver Year 5 shall be eighteen dollars and seventy five cents (\$18.75) per hour with an annual cap of two hundred eight (208) hours per beneficiary per year.
- 4214.2 The reimbursement rate for homemaker services during Waiver Year 1 of the Renewal shall be eighteen dollars and eighty cents (\$18.80) per hour with an annual cap of two hundred eight (208) hours per beneficiary per year.
- 4214.3 DHCF shall not reimburse a provider of homemaker services for services provided by the waiver beneficiary's spouse, or other legally responsible relative or court-appointed guardian with the exception of parents of adult children. Non-legally responsible relatives including parents of adult children may provide homemaker services provided they meet the requirements of Section 4233.

**4215 REIMBURSEMENT RATES: CHORE AIDE SERVICES**

- 4215.1 The reimbursement rate for chore aide services for Waiver Year 5 shall be eighteen dollars and seventy five cents (\$18.75) per hour with a cap of thirty two (32) units per beneficiary throughout the Waiver period, with a unit being one (1) hour of service.
- 4215.2 The reimbursement rate for chore aide services for Waiver Year 1 of the Renewal shall be eighteen dollars and eighty cents (\$18.80) per hour with a cap of thirty two (32) units per beneficiary throughout the Waiver Renewal period, with a unit being one (1) hour of service.
- 4215.3 DHCF shall not reimburse any home care agency, or licensed provider of housekeeping services that provide chore aide services in residences where another party is otherwise responsible for the provision of the services, such as group home providers.
- 4215.4 DHCF shall not reimburse a provider of chore aide services for services provided by the waiver beneficiary's spouse, or other legally responsible relative or court-appointed guardian with the exception of parents of adult children. Non-legally responsible relatives including parents of adult children may provide chore aide services provided they meet the requirements of Section 4235.
- 4215.5 Chore aide services shall not be reimbursed by the DHCF unless the agency or business provides documentation of pre- and post-cleaning activities as referenced in Subsection 4235.10.

**4216 REIMBURSEMENT RATES: ASSISTED LIVING SERVICES**

- 4216.1 The reimbursement rate for assisted living services during Waiver Year 5 shall be sixty dollars (\$60.00) per day.

- 4216.2 The reimbursement rate for assisted living services during Waiver Year 1 of the Renewal shall be one hundred fifty five (\$155) dollars per day.
- 4216.3 The rate shall be an all-inclusive rate for all services provided as set forth in Section 4238.
- 4216.4 Medicaid reimbursement will not be made for twenty-four (24) hour skilled care, costs of facility maintenance, upkeep and improvement, and room and board. Covered services shall be in accordance with Section 4238.
- 4216.5 Beneficiaries may seek subsidies outside of the Home and Community Based Waiver for Persons who are Elderly and Individuals with Physical Disabilities (EPD Waiver) to pay for room and board through the Optional State Supplemental Payment Program.
- 4216.6 DHCF shall not reimburse for assisted living services provided concurrently with the following EPD Waiver services:
- (a) Homemaker services;
  - (b) Chore Aide services;
  - (c) PERS;
  - (d) Respite services; or
  - (e) Environmental accessibility adaptations services.
- 4216.7 PCA services are included for beneficiaries residing in assisted living as part of the all-inclusive rate. Therefore, a Home Care Agency cannot bill for Personal Care Aide Services for a beneficiary who is concurrently receiving assisted living services.

**4217 REIMBURSEMENT RATES: ENVIRONMENTAL ACCESSIBILITY ADAPTATION**

- 4217.1 Environmental accessibility adaptations services shall be reimbursed in accordance with the applicable requirements set forth in Sections 4239 through 4240 of this chapter.
- 4217.2 The maximum reimbursable cost per beneficiary over the duration of each waiver period is ten thousand dollars (\$10,000.00) for EAA services. The ten thousand dollar (\$10,000) rate shall include a five hundred dollar (\$500) reimbursement rate per inspection for the costs associated with the home inspection or evaluation.

**4218 REIMBURSEMENT RATES: ADULT DAY HEALTH**

- 4218.1 The reimbursement rate for adult day health services during Waiver Year 5 and Waiver Year 1 of the Renewal shall be a per-diem rate of one hundred and twenty five dollars and seventy eight cents (\$125.78).
- 4218.2 A provider shall not be reimbursed for adult day health services if the beneficiary enrolled in the waiver is concurrently receiving the following services:
- (a) Intensive day treatment or day treatment mental health rehabilitative services (MHRS) under the District of Columbia State Plan for Medical Assistance (State Plan);
  - (b) Personal Care Aide services; (State Plan or Waiver);
  - (c) Services funded by the Older Americans Act of 1965, approved July 14, 1965 (Pub. L. No. 89-73, 79 Stat. 218); or
  - (d) 1915(i) State Plan Option services under the State Plan.
- 4218.3 If a beneficiary is eligible for adult day health services under the Waiver and intensive day treatment MHRS, a provider shall not be reimbursed for adult day health services if the beneficiary is receiving intensive day treatment mental health rehabilitation services on the same day, or during a twenty-four (24) period that immediately precedes or follows the receipt of adult day health services.
- 4218.4 Adult day health services shall not be provided for more than five (5) days per week and for more than eight (8) hours per day.
- 4218.5 Adult day health services may be used in combination or on the same day as PCA services, as long as these services are not billed “concurrently” or during the same time.
- 4218.6 When a beneficiary enrolled in the EPD Waiver is receiving PCA and adult day services on the same day, the combination of both PCA and adult day services shall not exceed a total of sixteen (16) hours per day.
- 4219 REIMBURSEMENT RATES: PHYSICAL THERAPY**
- 4219.1 The reimbursement rate for physical therapy for Waiver Year 5 and Waiver Year 1 of the Renewal shall be sixteen dollars and twenty five cents (\$16.25) per unit, where one unit of service is equivalent to fifteen (15) minutes of service delivery.
- 4219.2 Reimbursement of physical therapy services shall be limited to four (4) hours per day and one hundred (100) hours per calendar year. Requests for additional hours may be submitted to DHCF or its agent and approved when accompanied by a physician’s order or when the request has passes a clinical review by staff

designated by the State Medicaid Director to provide oversight on the utilization of additional services.

**4220 REIMBURSEMENT RATES: OCCUPATIONAL THERAPY**

4220.1 The reimbursement rate for occupational therapy during Waiver Year 5 and Waiver Year 1 of the Renewal shall be sixteen dollars and twenty five cents (\$16.25) per unit, where one unit of service is equivalent to fifteen (15) minutes of service delivery.

4220.2 Reimbursement of occupational therapy services shall be limited to four (4) hours per day and one hundred (100) hours per calendar year. Requests for additional hours may be submitted to DHCF or its agent and approved when accompanied by a physician's order or when the request passes a clinical review by staff designated by the State Medicaid Director to provide oversight on the utilization of additional services.

**4221 REIMBURSEMENT RATES: COMMUNITY TRANSITION SERVICES**

4221.1 In accordance with Section 4252, reimbursement for the household set up items specified under § 4252.2 shall not exceed five thousand dollars (\$5,000) per Waiver period and shall only be reimbursed beginning one hundred twenty (120) days before a beneficiary's discharge and up to six (6) months after discharge from an institution or long term care facility.

**4222 PROVIDER REQUIREMENTS: GENERAL**

4222.1 Each provider approved to provide one or more Waiver services shall meet the following minimum requirements:

- (a) Demonstrate compliance with all applicable provisions of Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR;
- (b) Have a completed, approved, and current Medicaid Provider Agreement with DHCF before providing any waiver services; and
- (c) Be licensed to do business in the District of Columbia, if required by this chapter.

4222.2 Each provider of waiver services shall demonstrate a comprehensive knowledge and understanding of the EPD Waiver program including:

- (a) Knowledge of Medicaid State Plan services and limitations;

- (b) Knowledge of community resources (legal, housing, energy, food, transportation, and other medical and social assistance) and the methods of accessing these resources; and
  - (c) An understanding of the relationship between Medicaid State Plan and waiver services.
- 4222.3 Each provider of waiver services shall immediately notify DHCF's Long Term Care Administration when a beneficiary is institutionalized, hospitalized or has his or her waiver services suspended for a reason other than those which do not result in an official notice of suspension as set forth in Section 4205.
- 4222.4 Each provider of waiver services shall demonstrate a service history and current capacity to assist beneficiaries in accessing services provided through the District of Columbia Office on Aging or other agencies serving the elderly and individuals with physical disabilities.
- 4222.5 Each provider of waiver services shall require and thoroughly check at least two (2) professional references on all staff entering the home of a waiver beneficiary.
- 4222.6 Each waiver service provider with employees providing direct care in a beneficiary's home or permanent place of residence shall have a proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).
- 4222.7 No employee of a waiver services provider who has been convicted of a felony, a crime involving abuse, neglect, or violence against the person of another, or crime involving theft or larceny under federal or District law shall provide services to a beneficiary.
- 4222.8 Each provider of waiver services shall conduct a performance evaluation of all staff after the first three (3) months of employment and annually thereafter, maintain all performance evaluation files for a period of no less than ten (10) years, and make such files available for review by appropriate DHCF personnel, representatives of the U.S. Department of Health and Human Services and other authorized designees or officials of the District of Columbia government and federal government.
- 4222.9 Each provider of direct care services shall ensure that all staff providing direct care services is trained in universal precautions prior to the provision of any service.

- 4222.10 Universal precautions training shall be included as a component of annual continuing education classes for all staff, including homemakers, who may encounter blood or bodily fluids while providing direct care services. <https://www.osha.gov/SLTC/etools/hospital/hazards/univprec/univ.html>. Documentation of universal precautions training shall be maintained in an employee's file for a period of no less than ten (10) years.
- 4222.11 Each provider of waiver services shall establish and implement a process to ensure that each beneficiary has:
- (a) Been informed of and given his or her freedom of choice in the selection of all qualified service providers; and
  - (b) Been informed of his or her rights and responsibilities under the waiver program.
- 4222.12 When a waiver beneficiary chooses an individual, or family member other than a primary caregiver, the beneficiary's spouse, or other legally responsible relative, or court-appointed guardian to provide direct care services, these individuals shall be subject to the same certification requirements as other service providers described within this chapter.
- 4222.13 Each provider of waiver services shall attend all mandatory provider meetings and trainings hosted by DHCF when scheduled.
- 4222.14 All Case Managers, Adult Day Health, Assisted Living providers, Community Residence Facility providers and Home Care Agencies providing EPD Waiver services shall complete mandatory training in Person-Centered Thinking, Supported Decision-Making, and Supported Community Integration.
- 4222.15 Each provider of waiver services shall immediately report all instances of suspected fraud, theft, or abuse committed by an employee or agent of the provider, or by a beneficiary to whom the provider is rendering waiver services, to the DHCF Division of Program Integrity.

**4223 SPECIFIC PROVIDER REQUIREMENTS: CASE MANAGEMENT SERVICES**

- 4223.1 Each individual providing case management services shall meet the following requirements:
- (a) Be at least eighteen (18) years of age;
  - (b) Be a United States citizen or alien who is lawfully authorized to work in the United States;

- (c) Provide proof by submitting photocopies of the supporting documents for the Immigration and Naturalization Service's Form I-9 requirements;
- (d) Be able to read and write English;
- (e) Be acceptable to the beneficiary using the Waiver service;
- (f) Confirm, on an annual basis, that he or she is free of active tuberculosis by undergoing an annual purified protein derivative (PPD) skin test;
- (g) Confirm, on an annual basis, that he or she is free of communicable diseases by undergoing an annual physical examination by a physician, and obtaining written and signed documentation from the examining physician that confirms he or she is free of communicable diseases; and
- (h) Provide to each case management service provider for whom he or she works:
  - (1) Evidence of acceptance or declination of the Hepatitis vaccine; and
  - (2) A completed DHCF Conflict-Free Case Management Self-Attestation Form described in Subsection 4223.2.

## 4223.2

Effective March 25, 2016, except as provided in Subsection 4223.3, an individual providing case management services, who is employed or under contract to a Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities (EPD Waiver) case management service provider shall self-attest to meeting the CMS conflict-free standards in accordance with 42 CFR § 441.301(c)(1)(vi) using the DHCF Conflict-Free Case Management Self-Attestation Form. Under these standards, individual case managers shall not:

- (a) Be related by blood or marriage to the person receiving services, or to any paid caregiver of the person;
- (b) Be financially responsible for the person, or be empowered to make financial or health decisions on the person's behalf;
- (c) Have a financial relationship, defined in 42 CFR § 411.354, with any entity that is paid to provide care for the person; and
- (d) Be employed by any entity that is a provider of a person's PCA services or any other direct services under the EPD Waiver.

- 4223.3 An individual providing EPD Waiver case management services shall meet the requirements of Subparagraph 4223.1(h)(2) no later than July 1, 2016.
- 4223.4 EPD Waiver case management service providers shall ensure they have a copy of the DHCF Conflict-Free Case Management Self-Attestation Form on file for each case manager prior to submission of any claims for case management services provided by that case manager on or before July 1, 2016. DHCF Conflict-Free Case Management Self-Attestation Forms are subject to inspection and audit and must be produced upon request.
- 4223.5 Individuals conducting case management services shall meet one of the following educational requirements:
- (a) Have a current license in nursing, social work, psychology, counseling, occupational, physical, or speech therapy with a Master's degree in social work, psychology, counseling, rehabilitation, nursing, gerontology, or sociology, and have at least one (1) year of experience working with the elderly or individuals with physical disabilities;
  - (b) Have a current license in nursing, social work, psychology, counseling, occupational, physical, or speech therapy with a Bachelor's degree in social work, psychology, counseling, rehabilitation, nursing, gerontology, or sociology, and have two (2) years of experience working with the elderly or individuals with physical disabilities; or
  - (c) Have a current license as a Registered Nurse (RN), have an Associate degree in nursing, and have at least three (3) years of experience working with the elderly and individuals with physical disabilities.
- 4223.6 Case management service providers shall not provide medical, financial, legal, or other services or advice for which they are not qualified or licensed to provide (except for providing referrals to qualified individuals, agencies, or programs).
- 4223.7 Effective March 25, 2016, except as provided in Subsection 4223.8, in accordance with 42 CFR § 441.301(c)(1)(vi), the following providers shall not be eligible to provide case management services:
- (a) An entity that is a Medicaid provider of PCA services or any other direct services under the EPD Waiver; or
  - (b) An entity that has a financial relationship, as defined in 42 CFR § 411.354, with a Medicaid provider of PCA services or any other direct services under the EPD Waiver.
- 4223.8 Effective March 25, 2016, an entity that is enrolled to provide case management services that is also a Medicaid provider of PCA services or any other direct



services under the EPD Waiver; or has a financial relationship, as defined in 42 CFR § 411.354, with a Medicaid provider of PCA services or any other direct services under the EPD Waiver, shall have until July 1, 2016, to come into compliance with Subsection 4223.7.

- 4223.9 An entity described in Subsection 4223.8 was required to notify DHCF of its election to continue or discontinue providing case management services no later than September 1, 2015. An entity that chose to discontinue case management services was required to submit a transition plan to DHCF no later than October 1 2015, and to cooperate with DHCF to effectuate the orderly and timely transition of its enrollees to other case management providers that meet the conflict-free case management standards. These transition plans were required to include sufficient safeguards to protect individuals who were at risk of experiencing gaps in services during transitions, including demonstrating efforts to ensure compliance with any notice or due process rights governed under local and federal law in case of service suspensions, or terminations.
- 4223.10 Each case management service provider shall conduct an initial evaluation within forty-eight (48) business hours of receiving the waiver referral and prior to the development of the PCSP. All initial PCSPs and all renewal PCSPs were required to conform to the person-centered planning requirements in 42 CFR §§ 441.301(c)(1) – (3) by November 1, 2016, and case managers shall use DHCF’s person-centered-planning template, available at <http://dhcf.dc.gov/release/person-centered-planning>, to develop each beneficiary’s PCSP.
- 4223.11 Each case management service provider shall complete and submit the PCSP to DHCF or its designee for review and approval within ten (10) business days of conducting the initial evaluation.
- 4223.12 Each case management service provider shall include the person whose plan is being developed, other contributors chosen and invited by the person, and representatives of the person’s interdisciplinary team, if possible, in the initial evaluation referenced in Subsection 4223.10 and in the development and implementation of the PCSP. The person or authorized representative shall have access to the PCSP and shall be involved in the periodic review of the PCSP.
- 4223.13 It is the responsibility of the case management service provider to ensure that all other professional disciplines, as identified for resolution of identified needs, are incorporated into the PCSP. Specifically, each case management service provider shall coordinate a beneficiary’s care by sharing information with all other health care and service providers identified in the PCSP, as applicable, to ensure that the beneficiary’s care is organized and to achieve safer and more effective health outcomes.

4223.14 Each case management service provider shall maintain, follow, and continually update a training and supervision program to ensure the individual delivering case management services is fully trained and familiar with the waiver policies and procedures, including CMS's conflict-free case management standards as set forth in this section.

4223.15 Each provider of case management services shall ensure that individuals providing case management services are appropriately supervised and that the case management service provided is consistent with the person's PCSP.

**4224 PROGRAM SERVICES: CASE MANAGEMENT SERVICES**

4224.1 The goal of case management services shall be to ensure EPD Waiver beneficiaries have access to the services and supports needed to live in the most integrated setting including:

- (a) EPD Waiver Services;
- (b) Non-waiver Medicaid funded services under the Medicaid State Plan; and
- (c) Other public and private services including medical, social, and educational services and supports.

4224.2 Case management shall consist of the following:

- (a) Initial evaluation of the beneficiary's current and historical medical, social, and functional status to determine levels of service needs;
- (b) Person-centered process for service planning ("person-centered planning"), including development and maintenance of the Person-Centered Service Plan (PCSP) in accordance with Section 4204;
- (c) Monthly or ongoing care coordination activities, in accordance with Subsection 4224.8 and transitional case management services set forth in Subsection 4224.9; and
- (d) Annual reassessment activities, in accordance with Subsection 4224.14.

4224.3 Consistent with Subsection 4224.2, each Case Manager shall conduct an in-person initial evaluation of the beneficiary within forty-eight (48) hours of receiving notice of his or her enrollment in the EPD Waiver.

4224.4 The Case Manager shall develop, complete, and submit the PCSP to DHCF, or its designee, within ten (10) business days of initiating the initial evaluation.

- 4224.5 The Case Manager shall use a person-centered planning process to develop the PCSP, described in Section 4204, with consideration of the following:
- (a) The beneficiary's personal preferences in developing goals to meet the beneficiary's needs;
  - (b) Convenience of the time and location for the beneficiary and any other individuals included in the planning and potential in-person discussions with all parties and representatives of the beneficiary's interdisciplinary team;
  - (c) Incorporating feedback from the beneficiary's interdisciplinary team and other key individuals who cannot attend in-person discussions where the beneficiary is present;
  - (d) Ensuring information aligns with the beneficiary's acknowledged cultural preferences and communicated in a manner that ensures the beneficiary and any representative(s) understand the information;
  - (e) Ensuring access to effective, understandable, and respectful services in accordance with the U.S. Department of Health and Human Services' National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care, <http://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>, and providing auxiliary aids and services, if necessary;
  - (f) Providing interpreters and translated written documents for those with low literacy or Limited English Proficiency (LEP) to ensure meaningful access for beneficiaries and/or their representatives;
  - (g) Incorporating a strengths-based approach which identifies the beneficiary's positive attributes, and assesses strengths, preferences, and needs;
  - (h) Exploration of housing and employment in integrated settings, where planning is consistent with the goals and preferences of the beneficiary; and
  - (i) Ensuring that a beneficiary under guardianship, other legal assignment, or who is being considered as a candidate for such an arrangement, has the opportunity to address concerns related to the PCSP development process.
- 4224.6 Except for services approved to be delivered sooner, DHCF, or its designee, shall prior authorize the services recommended in the PCSP within seven (7) business days of its receipt of the request.

- 4224.7 Following approval of services by DHCF, or its designee, the Case Manager shall follow-up with the selected service providers within five (5) business days to ensure services are in place at the quantity and quality that is sufficient to meet the beneficiary's needs, unless services are needed earlier and not receiving them would place the beneficiary's health in jeopardy.
- 4224.8 In order for case management services to be reimbursable, a Case Manager shall perform the following ongoing or monthly care coordination activities:
- (a) Direct observation of the beneficiary, including the evaluation described in Subsection 4224.3;
  - (b) Follow-up to ensure DHCF, or its designee, timely uploads the beneficiary's level of care determinations into DHCF's electronic management system;
  - (c) Develop and monitor the PCSP in accordance with Section 4204 and Subsection 4224.5;
  - (d) Assist the beneficiary with the selection of eligible EPD Waiver providers;
  - (e) Coordinate the beneficiary's waiver services to ensure safe, timely, and cost effective delivery;
  - (f) Provide information, assistance, and referrals to the beneficiary, where appropriate, related to public benefits and community resources, including other Medicaid services, Medicare, Supplemental Security Income (SSI), transit, housing, legal assistance, and energy assistance;
  - (g) Provide support for the beneficiary and family as needed through additional visits, telephone calls;
  - (h) Monitor the performance of medical equipment and refer malfunction(s) to appropriate providers;
  - (i) Maintain records related to EPD Waiver services that a beneficiary receives and upload all information into DHCF's electronic case management system;
  - (j) Ensure all information uploaded into DHCF's electronic management system is legible, including monthly assessment and status updates and telephone contacts;
  - (k) Assess appropriateness of beneficiary's continued participation in the waiver;

- (l) Provide information to the beneficiary, authorized representative(s), family members, or legal guardian(s) about the beneficiary's rights, Waiver provider agency procedures for protecting confidentiality, and other matters relevant to the beneficiary's decision to accept services;
- (m) Identify and resolve problems as they occur;
- (n) Acknowledge and respond to beneficiary inquiries within twenty-four (24) hours of receipt, unless a quicker response is needed to address emergencies;
- (o) Develop and implement a utilization review plan to achieve appropriate service delivery, ensure non-duplication of services, and evaluate the appropriateness, efficiency, adequacy, scope, and coordination of services;
- (p) Conduct at least monthly, or more frequently as needed, in-person monitoring visits in the beneficiary's home;
- (q) Supplement in-person monitoring visits described in Paragraph 4224.8(p) with ongoing telephone contact, as required by the individual needs of the beneficiary;
- (r) Respond to requests received during monitoring activity within forty-eight (48) hours, making necessary updates to the PCSP within seven (7) days of monitoring activity or the beneficiary or representative's request to update the PCSP, and ensure the process and all updates comport with Section 4204 including in-person requirements;
- (s) Ensure that the updated PCSP is conducted in-person with the beneficiary, the interdisciplinary team, and others chosen by the person and other requirements of the PCSP planning and development process described in this Section;
- (t) Review the implementation of the PCSP at least quarterly, and as needed, in accordance with Subsection 4224.13;
- (u) Promptly communicate any major updates, issues, or problems to DHCF, or its designee;
- (v) Conduct all other activities related to the coordination of EPD Waiver services, including ensuring that services are utilized and are maintaining the beneficiary in the community;
- (w) Provide transitional case management services for a period not to exceed one hundred twenty (120) days during an institutional stay in order to

facilitate the beneficiary's transition back to the community, in accordance Subsection 4224.9; and

- (x) Perform other service-specific responsibilities and annual reassessment activities described in Subsections 4224.10 and 4224.14.

4224.9 In order for transitional case management services to be reimbursable by Medicaid, a Case Manager shall document and perform the following activities:

- (a) Maintain contact with the beneficiary or representative during the institutional stay;
- (b) Ensure the beneficiary stays connected to community resources (e.g., housing) during the institutional stay and provide assistance to connect to new or reconnect to existing community resources upon discharge;
- (c) Participate in-person in the discharge planning meetings at the institutional care provider's site; and
- (d) Secure prior authorization(s) for service(s) to ensure they are in place on the first day of the beneficiary's discharge.

4224.10 In addition to the duties described in Subsections 4224.8 and 4224.9, a Case Manager shall perform the following service-specific care coordination responsibilities, if applicable:

- (a) Ensure occupational or physical therapy services provided under Early and Periodic Screening, Diagnostic and Treatment (EPSDT) are fully utilized and waiver services neither replace nor duplicate EPSDT services for a beneficiary ages eighteen (18) through twenty-one (21);
- (b) Examine existing responsibilities of the landlord or homeowner pursuant to the lease agreement (or other applicable residential contracts, laws, and regulations) prior to ordering chore aide services through the PCSP if the beneficiary needs chore aide services and resides in a rental property or a residential facility (e.g., assisted living); and
- (c) Assist the beneficiary with home adaptation assessments, evaluations, or bids in accordance with this chapter if the beneficiary requires EAA services.

4224.11 In accordance with Chapter 101 of Title 29 DCMR, for the participant-directed services program, *Services My Way*, Case Managers shall complete a standard training course on that program conducted by DHCF and participate in all required, ongoing training. Case Managers shall also perform activities related to *Services My Way* as follows:

- (a) Provide waiver applicants/beneficiaries with information about *Services My Way* as follows: at the time an EPD Waiver beneficiary is initially evaluated; when a beneficiary is reassessed for continued EPD Waiver eligibility; when the PCSP is updated; and at any other time upon request of the beneficiary or authorized representative;
- (b) Assist applicants/beneficiaries who want to enroll in *Services My Way* by overseeing the beneficiary's completion of enrollment forms and incorporating program goals into the initial PCSP or a revision of an existing PCSP;
- (c) Submit all *Services My Way* forms to the designated DHCF program coordinator;
- (d) Communicate with support brokers to address health and safety concerns identified for *Services My Way* participants; and
- (e) Facilitate transition from *Services My Way* to agency-based personal care aide services when a beneficiary is voluntarily or involuntarily terminated from the program.

4224.12 Case Managers shall also perform any other duties specified under the individual program services sections of this chapter.

4224.13 When conducting PCSP quarterly reviews, the Case Manager shall perform the following activities:

- (a) Review and update risk factors;
- (b) Review stated goals, identified outcomes, services, and supports to ensure the beneficiary is receiving appropriate services for his or her needs;
- (c) Review service utilization;
- (d) Communicate with other providers regarding the beneficiary's goals and progress;
- (e) Identify and resolve problems;
- (f) Provide referrals or linkages to community resources;
- (g) Revise the PCSP, if needed, to reflect changes in needs, goals, and services; and

- (h) Document results of PCSP quarterly reviews in DHCF's electronic case management system, including a summary of the status of the beneficiary's receipt of services and supports.

4224.14 The Case Manager shall ensure a beneficiary timely completes Medicaid reassessment(s) as part of the annual recertification requirements. This includes, but is not limited to, the following activities:

- (a) Collecting and submitting documentation to DHCF, or its designee, such as medical assessments, /clinician authorization forms, and case manager attestation/evaluation forms;
- (b) Effective April 1, 2018, conducting an evaluation of each beneficiary's health status at least once every twelve (12) months or upon a significant change in the beneficiary's health status and completing the case manager attestation/evaluation form following each evaluation;
- (c) Assisting the beneficiary to receive a level of care assessment from DHCF, or its designee when there is a change in health status, as determined by the evaluation described in (b);
- (d) Ensuring information is uploaded to DHCF's electronic case management system at least sixty (60) days prior to the expiration of the beneficiary's current certification period;
- (e) Collecting financial eligibility (*i.e.*, income) information from the beneficiary and/or the authorized representative and transmitting to DHCF, or its designee;
- (f) Reevaluating the beneficiary's goals, level of service and support needs, and updating and/or revising the PCSP to reflect any updates;
- (g) Assessing progress in meeting established goals, as documented in the PCSP and ensuring that the information is forwarded to DHCF;
- (h) Coordinating any change requests, including adding new services; and
- (i) After the approval of services by DHCF, or its designee, following-up with selected service providers within five (5) business days of the approval to ensure services are in place.

**4225 CASE MANAGEMENT AGENCY AND CASE MANAGER RESPONSIBILITIES**



- 4225.1 Case management agencies shall ensure that case managers shall not have a client caseload exceeding forty (45) persons (inclusive of Medicaid and non-Medicaid beneficiaries).
- 4225.2 In accordance with Section 4210, the case management agency shall be responsible for ensuring that case managers are available during regular business hours Monday through Friday, and on call during weekends and evenings in cases of emergency.
- 4225.3 Each case manager shall take all required trainings offered by DHCF and complete mandatory training in Person-Centered Thinking, Supported Decision-Making, and Supported Community Integration, in order to promote the efficient and effective delivery of Medicaid-financed services.
- 4225.4 Each case management agency shall develop an emergency response policy or plan to convey expectations of case managers whereby the case manager coordinates and implements services and ensures the beneficiary's safety, and wellness upon the beneficiary's notification to the case manager about the need for emergency care. This shall also include how the case managers are expected to be available and on call during weekends and evenings in cases of emergency as referenced in Subsection 4225.2.
- 4225.5 Each case management agency shall develop an incident management reporting policy to report, investigate, and follow-up the results of the investigation conducted pursuant to DHCF's Long Term Care Administration's incident management policy, as set forth in Section 4254 (Incidents and Complaints).
- 4225.6 In accordance with Section 4205, a case manager may coordinate the approval by DHCF or its designee for all program modification requests. These include requests to initiate, change, transfer, terminate, discharge, or suspend services.
- 4225.7 When coordinating program modification requests, the case manager shall ensure that provider requirements including notices and steps to ensure safe discharge, suspensions, transfers or service terminations were met.
- 4225.8 In the event that a change in service is requested, the beneficiary's case manager shall ensure that the PCSP is updated to reflect the change. Changes in service shall not be implemented until the PCSP is updated, approved by DHCF or its designee, and shared with the beneficiary and/or the authorized representative, unless a delay in the receipt of services would put the beneficiary's health and safety at risk, or if services are needed to effectuate a timely discharge from an institution.
- 4225.9 If EPD Waiver services are needed to effectuate a timely discharge from an institution during transitional case management, the case manager shall coordinate the modifications to change and/or initiate services by DHCF or its designee by

submitting a new beneficiary freedom of choice form whereby the beneficiary elects to receive HCBS services and the case manager must amend the PCSP to reflect the services within ten (10) business days of the submission of the request to DHCF or its designee to authorize services.

4225.10 The case manager or case management agency shall coordinate dis-enrollments from the EPD Waiver program in accordance with the criteria set forth in Section 4205.

**4226 SPECIFIC PROVIDER REQUIREMENTS: PERSONAL CARE AIDE SERVICES**

4226.1 A personal care aide services provider shall meet the provider requirements as set forth in Chapter 50 (Medicaid Reimbursements for Personal Care Aide Services) of Title 29 DCMR. These shall include, but shall not be limited to:

- (a) Provider and Personal Care Aide (PCA) qualifications;
- (b) Staffing and administration requirements; and
- (c) Notice requirements.

**4227 SPECIFIC ELIGIBILITY REQUIREMENTS: PERSONAL CARE AIDE SERVICES**

4227.1 To receive Medicaid reimbursement for personal care aide (PCA) services, the beneficiary shall first exhaust all available PCA hours provided under the State Plan for Medical Assistance (Medicaid State Plan).

4227.2 To be eligible for Medicaid reimbursement of PCA services under the EPD Waiver program, each beneficiary shall have an assessed need for PCA services as established by the conflict-free assessment that cannot be met by State Plan PCA services alone.

**4228 PROGRAM SERVICES: PERSONAL CARE AIDE SERVICES**

4228.1 A provider shall deliver PCA services consistent with the program service requirements set forth in Chapter 50 of Title 29 DCMR. These include:

- (a) Plan of Care requirements;
- (b) Scope of Services; and
- (c) Non-reimbursable tasks or services.

- 4228.2 A PCA provider shall employ an R.N. to develop a plan of care for delivering PCA services that is consistent with the goals of the PCSP.
- 4228.3 The plan of care shall be developed and reviewed in accordance with all of the requirements set forth in Chapter 50 of Title 29 DCMR, and be consistent with the goals of the PCSP.
- 4228.4 In accordance with Chapter 50 of Title 29 DCMR, PCA services under the State Plan benefit shall not be provided in a hospital, nursing facility, intermediate care facility or any other living arrangement which includes PCA services as a part of its reimbursement rate.
- 4228.5 A beneficiary receiving adult day health services and PCA services on the same day shall be limited to a maximum of a total of sixteen (16) hours of combined services a day.

**4229 SPECIFIC PROVIDER REQUIREMENTS: PERSONAL EMERGENCY RESPONSE SERVICES (PERS)**

- 4229.1 Each Personal Emergency Response Services (PERS) provider shall:
- (a) Provide in-home installation of all equipment necessary to make the service fully operational (including batteries);
  - (b) Provide beneficiary and representative instruction on usage, maintenance, and emergency protocol of the PERS;
  - (c) Provide equipment maintenance (both in-home and response center);
  - (d) Provide twenty-four (24) hours per day, seven (7) days per week response center monitoring and support;
  - (e) Conduct equipment testing, monitoring, and maintenance (both in-home and response center equipment);
  - (f) Conduct monthly service checks;
  - (g) Provide documentation of all services provided, beneficiary contacts, equipment and system checks, and equipment servicing;
  - (h) Make available emergency equipment repairs to the beneficiary on a twenty-four (24) hours per day, seven (7) days per week basis; and
  - (i) Allow the beneficiary to designate responder(s) who will respond to emergency calls. Responders may be relatives, friends, neighbors, or medical personnel.

- 4229.2 PERS shall not be provided to waiver beneficiaries who:
- (a) Are unable to understand and demonstrate proper use of the system; or
  - (b) Live with a person who assumes responsibility for providing care (to the beneficiary) and the waiver beneficiary is subsequently not left alone for significant periods of time.
- 4229.3 Each PERS provider shall ensure that contractors are properly supervised and that the service provided is consistent with the beneficiary's PCSP.
- 4229.4 A PERS provider shall be exempt from the requirement to comply with an annual tuberculosis (TB) test; and
- 4229.5 A PERS provider shall be licensed to do business in the state in which it is incorporated.

**4230 PROGRAM SERVICES: PERS**

- 4230.1 PERS is an electronic system located in a beneficiary's home that summons assistance from a friend, relative, or an emergency services provider (police, fire department, or ambulance) and shall be available twenty-four (24) hours a day, seven (7) days a week.
- 4230.2 Each PERS system shall be comprised of three (3) basic elements:
- (a) A small radio transmitter (portable help button) carried by the user;
  - (b) A console or receiving base connected to a user's telephone; and
  - (c) A response center or responder to monitor the calls.
- 4230.3 The PERS shall be comprised of two (2) processes:
- (a) Installation of the service unit; and
  - (b) On-going monitoring of the system.
- 4230.4 The unit of service shall be as follows:
- (a) One (1) unit per year for installation and testing of the PERS system; and
  - (b) Twelve (12) units per year for monthly rental, maintenance and service fee.
- 4230.5 The PERS shall be:

- (a) Approved by the Case Manager as part of the beneficiary's PCSP; and
- (b) Completed by personnel who are employed by the PERS provider. A copy of the approved PCSP shall be incorporated into the beneficiary's service record. The record shall be maintained for a period of no less than ten (10) years.

#### **4231 SPECIFIC PROVIDER REQUIREMENTS: RESPITE SERVICES**

- 4231.1 In order to receive Medicaid reimbursement, a respite service provider shall be a Medicaid enrolled home care agency approved by DHCF to deliver respite services in the District of Columbia.
- 4231.2 In order to receive Medicaid reimbursement for respite services, a home care agency providing respite services shall require that respite staff be certified as a Home Health Aide in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl.)), and implementing rules, Chapter 93 (Home Health Aides) of Title 17 DCMR.
- 4231.3 DHCF requires respite staff to undergo any training as required pursuant to their DOH certification. Additionally, a respite service provider shall ensure that staff will receive individualized-in-service training about the beneficiary's needs from the supervisory nurse. The continuing education or individualized in-service training for respite services shall be specifically designed to increase the staff's knowledge and understanding of the beneficiary's unique needs.
- 4231.4 Comprehensive records identifying dates of any training including the individualized in-service training and topics covered shall be maintained in each employee's personnel file.
- 4231.5 The respite service provider shall develop and implement an initial intake assessment that:
- (a) Assesses the beneficiary's respite needs; and
  - (b) Identifies the appropriate qualifications of the respite staff required to meet the identified needs.
- 4231.6 A Registered Nurse (R.N.) who possesses the following qualifications shall conduct the initial intake assessment:
- (a) Be licensed to practice registered nursing in the District of Columbia in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official

Code §§ 3-1201.01 *et seq.* (2016 Repl.)), and implementing rules, Chapter 54 (Registered Nursing) of Title 17 DCMR;

- (b) Be employed or contracted by the approved home care agency; and
- (c) Have at least one (1) year of experience working with the elderly and individuals with physical disabilities.

4231.7 After conducting the initial intake assessment, the R.N. shall:

- (a) Establish a written emergency notification plan for each beneficiary receiving respite services;
- (b) Document that the emergency plan has been reviewed with the beneficiary or representative and the individual staff person providing respite care; and
- (c) Develop a plan of care for the delivery of all respite services.

4231.8 The case manager shall coordinate the approval of respite services to ensure that it aligns with the goals of the PCSP. For respite provided for PCA services, the R.N. referenced in Subsections 4231.6 and 4231.7 shall conduct the supervision of the respite staff.

4231.9 To ensure the safety of the beneficiary, respite staff shall not leave the beneficiary unattended during the hours that respite services are authorized.

4231.10 Each respite services provider shall maintain all documentation including records documenting dates of training and the written emergency notification plan for a period no less than ten (10) years. The waiver beneficiary shall also receive a copy of the emergency notification plan and shall keep it at his or her home or place of residence.

4231.11 Respite services shall not be provided to beneficiaries who do not have primary caregivers who are responsible for the provision of the beneficiary's care on an ongoing basis.

4231.12 A waiver beneficiary may choose an individual or family member other than a primary caregiver, the beneficiary's spouse, or other legally responsible relative, or court-appointed guardian to provide respite services. Legally responsible relatives do not include parents of an adult child, so parents of an adult child are not precluded from providing respite services.

**4232 PROGRAM SERVICES: RESPITE SERVICES**

- 4232.1 Respite services are intended to relieve the beneficiary's primary caregiver to provide a range of activities associated with the PCA's role.
- 4232.2 Medicaid reimbursable respite services shall include:
- (a) Basic personal care such as bathing, grooming, and assistance with toileting or bedpan use;
  - (b) Assistance with prescribed, self-administered medication;
  - (c) Meal preparation in accordance with dietary guidelines and other cultural/religious dietary restrictions, and assistance with eating;
  - (d) Household tasks related to keeping the beneficiary's living areas in a condition that promotes the beneficiary's health, comfort, and safety; and
  - (e) Accompanying the beneficiary to medically related appointments.
- 4232.3 Medicaid reimbursable Respite services shall not include services that require the skills of a licensed professional, including, but not limited to, catheter insertion, procedures requiring sterile techniques, and medication administration.
- 4232.4 Medicaid reimbursable Respite services shall not include tasks usually performed by chore workers or homemakers, including cleaning of areas not occupied by the beneficiary; cleaning laundry for family members of the beneficiary; and shopping for items not used by the beneficiary.
- 4232.5 A unit of Medicaid reimbursable service for respite care shall be one (1) to twenty-four (24) hours spent performing allowable tasks.
- 4232.6 Medicaid reimbursable Respite services shall be limited to a maximum of four hundred and eighty (480) hours per year. Requirements for respite services in excess of the established limits shall be prior-authorized by the DHCF.
- 4232.7 Medicaid reimbursable Respite services shall not be billed in combination or at the same time as Personal Care Aide services.
- 4232.8 No waiver beneficiary shall receive Medicaid reimbursement for PCA services other than those provided by the in-home respite staff during the period of time which respite services are provided.
- 4233 SPECIFIC PROVIDER REQUIREMENTS: HOMEMAKER SERVICES**
- 4233.1 In order to be reimbursed by Medicaid, homemaker services must be provided by the following Medicaid-enrolled providers:

- (a) A home care agency which meets the conditions of participation for home care agencies as set forth in 42 CFR part 484, by being enrolled as a Medicare provider, and complying with the requirements set forth in the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*); or
- (b) A business with a general business license issued by the D.C. Department of Consumer and Regulatory Affairs (DCRA) to perform housekeeping services in the District of Columbia.

4233.2 In order to receive Medicaid reimbursement for homemaker services, each individual providing homemaker services shall:

- (a) Be at least eighteen (18) years of age;
- (b) Be able to successfully communicate with the beneficiary receiving EPD Waiver services;
- (c) Pass a criminal background check;
- (d) Obtain, and maintain an updated Cardiopulmonary Resuscitation (CPR) certificate; and
- (e) Meet the qualification and training requirements pursuant to Subsections 4233.3 or 4233.4.

4233.3 In order to receive Medicaid reimbursement for homemaker services, a home care agency shall:

- (a) Require that all individual homemaker service staff be certified as a Home Health Aide in accordance with District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl.)), and implementing rules, Chapter 93 of Title 17 DCMR; and
- (b) Meet any ongoing training requirements required under the DOH's Home Health Aide certification requirements.

4233.4 In order to receive Medicaid reimbursement for homemaker services, a business with a general business license issued by the D.C. DCRA to provide housekeeping services shall:

- (a) Require that all individual homemaker staff shall obtain a minimum of eight (8) hours of training annually in the following areas:



- (1) Beneficiary rights;
- (2) Communicating effectively with beneficiaries enrolled in the waiver;
- (3) Preventing abuse, neglect, and exploitation;
- (4) Controlling the spread of disease and infection;
- (5) Changing linens and bed bug prevention;
- (6) Safe handling of cleaning chemicals (use of gloves, goggles, or masks);
- (7) Handling hazardous waste;
- (8) Blood-borne pathogens and bodily fluids;
- (9) Food preparation, handling, and storage; and
- (10) Instructions on the following:
  - (A) Dusting;
  - (B) Maintenance of floors (mopping or vacuuming);
  - (C) Trash handling;
  - (D) Laundry and safe use of detergents;
  - (E) Cleaning the walls and ceiling; and
  - (F) Kitchen and bathroom cleaning and maintenance.

4233.5 Supervisory staff employed by the homemaker service provider shall develop a written homemaker service delivery plan (Plan of Care) and the beneficiary's case manager shall approve the service delivery plan before it is implemented.

4233.6 The homemaker service provider shall document in-home visits and telephone contacts in the beneficiary's service delivery plan at least within thirty (30) days of its home visit.

4233.7 A copy of the homemaker service delivery plan shall be shared with the case manager and kept on-file at the Home Care Agency or the homemaker service provider licensed to provide housekeeping services.

- 4233.8 Each provider of homemaker services shall maintain comprehensive records including the service delivery plans, and records identifying dates of training and topics covered in each employee's personnel file for a period of no less than ten (10) years.
- 4233.9 An individualized in-service training plan shall be developed and implemented for each staff person when performance evaluations indicate a need for more training.
- 4233.10 A waiver beneficiary may choose an individual or family member other than a beneficiary's spouse, other legally responsible relative, or court-appointed guardian to provide homemaker services. Legally responsible relatives do not include parents of an adult child, so parents of an adult child are not precluded from providing homemaker services.
- 4233.11 Homemaker services shall not duplicate the duties provided through PCA services or respite services.

**4234 PROGRAM SERVICES: HOME MAKER SERVICES**

- 4234.1 Homemaker services shall only be provided in cases where neither the beneficiary nor anyone else in the household (*i.e.*, an unpaid family caregiver) is able to provide or deliver the service.
- 4234.2 Homemaker staff may perform the following tasks when providing homemaker services:
- (a) Food preparation and storage;
  - (b) General household cleaning such as:
    - (1) Cleaning bathrooms;
    - (2) Vacuuming;
    - (3) Dusting;
    - (4) Mopping floors;
    - (5) Sweeping floors;
    - (6) Bed making;
    - (7) Linen changing;
    - (8) Wiping appliances;

(9) Washing dishes;

(10) Doing laundry and ironing clothes; and

(c) Running errands necessary to maintain the beneficiary in the home (for example, shopping for food or essentials needed to clean the home; picking up medicine or mailing payments for utilities).

4234.3 Food preparation and storage shall consist of any tasks to promote maintaining a tidy kitchen including overseeing the proper storage of any groceries by ensuring that all perishable foods are stored in the freezer or fridge.

4234.4 A unit of service for homemaker services shall be one (1) hour spent performing the allowable task(s).

**4235 SPECIFIC PROVIDER REQUIREMENTS: CHORE AIDE SERVICES**

4235.1 In order to receive Medicaid reimbursement, Chore Aide services shall be provided by the following Medicaid-enrolled providers:

(a) A home care agency which meets the conditions of participation for home care agencies as set forth in 42 CFR Part 484, by being enrolled as a Medicare provider, and complying with the requirements set forth in the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective Feb. 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*); or

(b) A business with a general business license issued by the DCRA to perform housekeeping services in the District of Columbia.

4235.2 Each individual providing chore aide services shall:

(a) Be at least eighteen (18) years of age;

(b) Pass a criminal background check; and

(c) Meet the qualification and training requirements pursuant to Subsections 4235.3 or 4235.4.

4235.3 In order to receive Medicaid reimbursement for chore aide services, a home care agency shall:

(a) Require that all individual chore aides be certified as Home Health Aides in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official

Code §§ 3-1201.01 *et seq.* (2016 Repl.)), and implementing rules, Chapter 93 of Title 17 DCMR, and;

- (b) Meet any ongoing training requirements required under the Department of Health's Home Health Aide certification requirements.

4235.4

In order to receive Medicaid reimbursement for chore aide services, a business with a general business license issued by the DCRA to provide housekeeping services shall:

- (a) Require that all individual chore aides shall obtain a minimum of eight (8) hours of training annually in the following areas:
- (1) Beneficiary Rights;
  - (2) Communicating effectively with beneficiaries enrolled in the waiver;
  - (3) Preventing Abuse, Neglect, and Exploitation;
  - (4) Controlling the Spread of Disease and Infection;
  - (5) Changing linens and bed bug prevention;
  - (6) Safe handling of cleaning chemicals (use of gloves, goggles/masks);
  - (7) Handling hazardous waste;
  - (8) Blood-borne pathogens and bodily fluids; and
  - (9) Instruction on the following:
    - (A) Maintenance of floors (mopping/vacuumping);
    - (B) Trash handling;
    - (C) Cleaning the walls and ceiling; and
    - (D) Kitchen and bathroom cleaning and maintenance.

4235.5

Supervisory staff employed by the provider shall develop a written chore aide service delivery plan (Plan of Care), and the beneficiary's case manager shall approve the service delivery plan before it is implemented.

- 4235.6 The chore aide provider shall document in-home visits and telephone contacts in the beneficiary's service delivery plan at least within thirty (30) days of its home visit.
- 4235.7 A copy of the chore aide service delivery plan shall be shared with the case manager and kept on-file at the Home Care Agency or the chore aide service provider licensed to provide housekeeping services.
- 4235.8 Each provider of chore aide services shall maintain comprehensive records including the service delivery plans, and records identifying dates of training and topics covered in each employee's personnel file for a period of no less than ten (10) years.
- 4235.9 An individualized in-service training plan shall be developed and implemented for each chore aide when performance evaluations indicate a need for more training.
- 4235.10 A chore aide service provider shall provide a pre- and post-cleaning inspection of the home or place of residence with documentation indicating that the home environment is in a state that can be maintained by ongoing and routine housekeeping.
- 4235.11 Each home care agency or business with a general business license issued by DCRA to provide housekeeping services shall ensure that the appropriate supervision of chore aide staff is conducted by an individual who has the following qualifications:
- (a) Be trained to evaluate the activities of chore aide staff;
  - (b) Has at least two (2) years of experience supervising the activities of chore aides; and
  - (c) Has been trained in basic supervision by the home care agency, or the chore aide service provider licensed to provide housekeeping services.
- 4235.12 An EPD waiver beneficiary may choose an individual or family member other than a beneficiary's spouse, other legally responsible relative, or court-appointed guardian to provide chore aide services. Legally responsible relatives do not include parents of an adult child, so parents of an adult child shall not be precluded from providing chore aide services.

**4236 PROGRAM SERVICES: CHORE AIDE SERVICES**

- 4236.1 In order to receive Medicaid reimbursement, a unit of service for chore aide services shall be one (1) hour spent performing allowable task(s). The maximum amount of service permitted under the waiver shall be thirty-two (32) units per

beneficiary for the five-year Waiver period. Service shall be limited to thirty two (32) units per beneficiary.

4236.2 Allowable tasks for chore aide services include the following:

- (a) Washing floors;
- (b) Washing windows and walls;
- (c) Tacking down loose rugs and tiles;
- (d) Moving items or furniture in order to provide safe access and egress;
- (e) Trash removal;
- (f) Removal of animal waste; and
- (g) Any other activity designed to bring the environment up to a cleanliness and safety level to enable it to be maintained by ongoing and regular housekeeping.

4236.3 Prohibited tasks for chore aide service include the following:

- (a) Hands-on care normally provided by personal care aides;
- (b) Housekeeping duties normally provided under the Homemaker service description; and
- (c) Respite services.

#### **4237 SPECIFIC PROVIDER REQUIREMENTS: ASSISTED LIVING**

4237.1 In order to receive Medicaid reimbursement, each facility providing assisted living services shall be licensed by the District of Columbia DOH and comply with the requirements set forth in the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq.*) and attendant rules.

4237.2 In accordance with the DOH licensure requirements, each assisted living provider shall develop an individualized service plan (Plan of Care) that identifies the services to be included for the beneficiary, and ensure that the plan is shared with the beneficiary's case manager to facilitate coordination of all services received under the EPD Waiver program's PCSP.

4237.3 In accordance with the Home and Community-Based setting requirements described in Subsections 4200.6 and 4200.7, each assisted living residence shall

support the resident's dignity, privacy, independence, individuality, freedom of choice, decision making, spirituality and involvement of family and friends.

**4238 PROGRAM SERVICES: ASSISTED LIVING SERVICES**

4238.1 In order to receive Medicaid reimbursement, assisted living services shall be personal care and supportive services that are furnished to beneficiaries who reside in a homelike, non-institutional setting that includes twenty-four (24) hour on-site response capability to meet any scheduled or unpredictable needs of the beneficiary and to provide supervision, safety, and security.

4238.2 Assisted living services shall consist of any combination of the following services that meet the beneficiary's needs as outlined in the written PCSP:

- (a) Twenty-four (24) hour supervision and oversight to ensure the well-being and safety of beneficiaries;
- (b) Assistance with activities of daily living and instrumental activities of daily living, such as PCA services to meet the scheduled and unscheduled service needs of the beneficiaries;
- (c) Laundry and housekeeping tasks that a beneficiary is unable to perform and is normally provided under the Chore Aide and Homemaker services benefit;
- (d) Coordinating social and recreational activities;
- (e) Coordinating activities to enable access to health and social services, including social work, nursing, rehabilitative, hospice, medical, dental, dietary, counseling and psychiatric services; and
- (f) Coordinating scheduled transportation to community-based activities.

4238.3 Consistent with Subsection 4238.2(e), the assisted living provider shall coordinate the delivery of all services provided by third parties. A third party may include home care agencies, hospitals, or clinics or Adult Day Health providers.

4238.4 In situations where a beneficiary is prior authorized for PCA services to supplement services provided by the assisted living provider, the assisted living provider shall facilitate coordination by providing a copy of the individualized service plan (Plan of Care) to the case manager and the home care agency providing PCA services.

**4239 SPECIFIC PROVIDER REQUIREMENTS: EAA**

- 4239.1 In order to receive Medicaid reimbursement, the case manager shall ensure that a home adaptation assessment is conducted by a licensed physician, occupational therapist, or physical therapist per a physician's order, prior to ordering EAA service(s) included in the beneficiary's PCSP.
- 4239.2 In order to receive Medicaid reimbursement, the home adaptation assessment shall include, but not be limited to, the following:
- (a) Consulting (phone or in-person) with the beneficiary seeking EAA services, the case manager, and support team;
  - (b) Conducting an on-site assessment to address the beneficiary's accessibility needs and what modifications will be needed to his or her residence; and
  - (c) Drafting an EAA written report which includes a summary of the on-site assessment and recommendations of the home modifications based upon the beneficiary's needs.
- 4239.3 No EAA services shall be approved or reimbursed by Medicaid for a beneficiary seeking EAA services who qualifies for the Handicap Accessibility Improvement Program (HAIP) administered by the District of Columbia Department of Housing and Community Development (DHCD). The only qualified applicant for the HAIP is a certified home owner. An applicant who is a renter does not need to apply for HAIP.
- 4239.4 The case manager shall assist all eligible and certified home owners to apply for the HAIP program. If a home owner is denied participation in the program, he or she must provide a copy of the denial letter to the case manager.
- 4239.5 In the case of rental property or leased property, no EAA services shall be approved or reimbursed by Medicaid unless:
- (a) The current rental, lease agreement, or other residential agreement or contract governing the beneficiary's current residence is thoroughly examined by the Case Manager and DHCF or its designee to determine that the services are not the responsibility of the property owner or manager; and
  - (b) A signed release was obtained from the management of the property authorizing the EAA home modifications to be made.
- 4239.6 Prior to initiating EAA services, the case manager shall assist the beneficiary seeking the receipt of EAA services to obtain an evaluation or home inspection from a Certified Third Party Construction Inspector or a Licensed Contractor.



- 4239.7 The Certified Third Party Construction Inspector shall be certified under the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Third Party Inspector Program.
- 4239.8 The Licensed Contractor shall be licensed to do business in the District of Columbia by the DCRA, or shall be licensed to do business in the jurisdiction in which EAA services are to be provided.
- 4239.9 The evaluation or home inspection shall:
- (a) Determine that the beneficiary's residence is structurally sound;
  - (b) Determine whether the residence can accommodate the recommended EAA services;
  - (c) Identify any construction stipulations; and
  - (d) Recommend how the EAA home modifications should be constructed.
- 4239.10 After receiving the evaluation by the Certified Third Party Construction Inspector, or the Licensed Contractor, the case manager shall assist the beneficiary seeking EAA services to secure three (3) bids from building contractors for cost comparison of EAA services.
- 4239.11 DHCF may review documentation for approval when three (3) bids cannot be obtained for cost comparison.
- 4239.12 Each bid submitted by the building contractor for consideration for the receipt of a contract for the delivery of EAA services shall meet the following:
- (a) Accept the job specifications contained in the home inspection by the Certified Third Party Construction Inspector, or the Licensed Contractor, unless otherwise agreed to and determined by DHCF;
  - (b) Be responsible for the costs associated with bringing to completion the EAA modifications described in the home adaptation assessment, including but not limited to, the costs of all construction materials, labor, and any subsequent inspections should the work be found to be substandard.
- 4239.13 Each building contractor shall be licensed to conduct business in the District of Columbia by the District of Columbia DCRA, or licensed to do business in the jurisdiction where the EEA adaptation services are provided. Each building contractor shall ensure that all construction staff has the training and skill level required to make the allowable in-home modifications.

4239.14 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirements:

- (a) For home-owners, verification of the denial letter issued by the DHCD HAIP program;
- (b) Identification in the PCSP of the EAA service providers (Certified Third Party Contractor/Licensed Contractor and building contractor);
- (c) Receipt of a copy of the home inspection;
- (d) Receipt of a copy of the three (3) bids or bid submitted to the case manager for consideration of the contract to provide EAA services; and
- (e) Verification that the EAA home modifications do not conflict with the service limitations outlined in Section 4240.

4239.15 EAA service providers shall be exempt from the annual tuberculosis (TB) testing requirements.

4239.16 The EAA providers shall maintain a copy of the beneficiary's home inspection, and a copy of the bids submitted, and related documentation, for a period not to exceed ten (10) years.

#### **4240 PROGRAM SERVICES: EAA**

4240.1 In order to receive Medicaid reimbursement, in-home modifications for EAA services include, but are not limited to, the following:

- (a) Installation of ramps and grab-bars or hand-rails;
- (b) Widening of doorways;
- (c) Installation of lift systems;
- (d) Modifications of bathroom facilities; and
- (e) Installation of specialized electric and plumbing systems necessary to accommodate medical equipment and supplies.

4240.2 Modifications or improvements to the home which are of general utility, meaning having no direct medical or remedial benefit to the recipient, shall not be reimbursed by Medicaid as allowable modifications for waiver services. Examples of disallowed EAA modifications include, but are not limited to, the following: carpeting; roof repair; and installation of central air conditioning.

4240.3 In-home modifications adding to the total square footage of the home shall be excluded from Medicaid reimbursement this benefit, except when necessary to complete an adaptation as determined by the Case Manager and DHCF or its designee.

**4241 SPECIFIC PROVIDER REQUIREMENTS: ADULT DAY HEALTH**

4241.1 In order to receive Medicaid reimbursement, an Adult Day Health provider under the Waiver shall meet the requirements set forth in Chapter 97 (Adult Day Health Program Services) of Title 29 DCMR. These include, but shall not be limited to:

- (a) Provider qualifications;
- (b) Program Administration; and
- (c) Staffing requirements.

4241.2 Each Adult Day Health Program (ADHP) waiver provider shall ensure that they meet all the HCBS setting requirements consistent with Subsection 4200.6 and DHCF's Provider Readiness Review process.

4241.3 Each ADHP waiver provider shall ensure that an ADHP plan of care is developed for each beneficiary that outlines services to be received at the ADHP.

4241.4 Each ADHP waiver provider shall ensure that the ADHP plan of care is shared with the case manager and other individual service providers to facilitate the coordination of all services for the beneficiary under the PCSP.

4241.5 The plan of care shall incorporate the goals and principles of the PCSP and be developed in accordance with the ADHP Plan of Care requirements set forth in Chapter 97 of Title 29 DCMR.

**4242 PROGRAM SERVICES: ADULT DAY HEALTH**

4242.1 Adult day health services shall encourage adults enrolled in the EPD Waiver to live in the community by offering non-residential medical supports and supervised, therapeutic activities in an integrated community setting, to foster opportunities for community inclusion, and to deter more costly facility-based care.

4242.2 In order to receive Medicaid reimbursement, Adult Day Health services shall consist of the following:

- (a) Medical and nursing consultation services including health counseling to improve and maintain the health, safety, and psycho-social needs of the beneficiary;

- (b) Individual and group therapeutic activities which may include various social, recreational, and educational activities;
- (c) Social service supports including consultations to determine the beneficiary's need for services and, guidance through counseling and teaching on matters related to the beneficiary's health, safety, and general welfare;
- (d) Direct care supports including personal care assistance, and offering guidance in performing self-care and activities of daily living;
- (e) Instruction on accident prevention and the use of special aides;
- (f) Medication administration services provided by a R.N.;
- (g) Nutrition services; and
- (h) Coordination of transportation services for therapeutic activities that are scheduled off-site.

4242.3 Consistent with Chapter 97 of Title 29 DCMR, ADHP Waiver providers shall not be reimbursed separately for transportation services, including therapeutic activities occurring off-site. However, providers shall coordinate transportation provided under the DHCF non-emergency medical transportation benefit.

4242.4 All services shall be provided in accordance with the requirements set forth in Chapter 97 of Title 29 DCMR.

#### **4243 SPECIFIC PROVIDER REQUIREMENTS: PHYSICAL THERAPY**

4243.1 Physical Therapy services shall only be reimbursed by Medicaid if they are provided by the following Medicaid-enrolled providers:

- (a) A home care agency licensed pursuant to Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code, §§ 44-501 *et seq.*), and implementing rules; or
- (b) An independent licensed physical therapist.

4243.2 Physical therapy services shall be reimbursed by Medicaid if they are provided by a physical therapist or a physical therapy assistant working under the direct supervision of a physical therapist.

- 4243.3 In order to receive Medicaid reimbursement, all practitioners shall meet the following requirements:
- (a) Be licensed to practice physical therapy in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl.)), and implementing rules, Chapter 67 (Physical Therapy) of Title 17 DCMR; or
  - (b) Be a physical therapy assistant who is licensed to practice as a physical therapy assistant in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl.)), and implementing rules, Chapter 82 (Physical Therapy Assistants) of Title 17 DCMR.
- 4243.4 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from DHCF or its designee prior to providing, or allowing any professional to provide physical therapy services. In its request for prior authorization, the Medicaid provider shall document the following:
- (a) The EPD Waiver beneficiary's need for physical therapy services as demonstrated by a physician's order; and
  - (b) The name of the professional or home care agency that will provide the physical therapy services.
- 4243.5 In order to be eligible for Medicaid reimbursement, each individual providing physical therapy services shall participate in PCSP and interdisciplinary team meetings to provide consultative services and recommendations to focus on how the beneficiary is doing in achieving the functional goals that are important to him or her;
- 4243.6 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:
- (a) The physician's order;
  - (b) A copy of the physical therapy assessment and therapy plan developed in accordance with the requirements of this Section; and
  - (c) Any documents required to be maintained by DHCF as specified in Section 4255 (Audits and Monitoring/Oversight Reviews).

**4244****PROGRAM SERVICES: PHYSICAL THERAPY**

- 4244.1 Physical Therapy (PT) services shall maximize independence, prevent further disability, maintain health, and the beneficiary's functionality, and be targeted at the treatment of identified physical dysfunction or the degree to which pain associated with movement can be reduced.
- 4244.2 Physical therapy services shall be provided in accordance with the beneficiary's PCSP and delivered in the beneficiary's home or in a day service setting.
- 4244.3 Each physical therapy professional shall conduct an assessment of physical therapy needs within the first four (4) hours of service delivery, and develop a therapy plan (Plan of Care) to provide services.
- 4244.4 The therapy plan shall include the anticipated and measurable, functional outcomes, based upon what is important to and for the beneficiary as reflected in his or her person-centered goals in his or her PCSP and a schedule of approved physical therapy services to be provided.
- 4244.5 The therapy plan shall be submitted by the Medicaid provider to the beneficiary or authorized representative, and the case manager before services are delivered.
- 4244.6 Medicaid reimbursable physical therapy services shall consist of the following ongoing activities:
- (a) Conducting an initial assessment and annual re-assessment;
  - (b) Consulting with the beneficiary, his or her family, caregivers and interdisciplinary team to develop the therapy plan;
  - (c) Implementing therapies described in the therapy plan;
  - (d) Recording progress notes during each visit which shall contain the following:
    - (1) Progress in meeting each goal in the therapy plan;
    - (2) Any unusual health or behavioral events or change in status;
    - (3) The start and end time of any services received by the beneficiary; and
    - (4) Any matter requiring follow-up on the part of the service provider, case manager, or DHCF.
  - (e) Developing quarterly reports based on the progress notes and indicating progress in meeting each goal in the therapy plan, and any progress made on matters requiring follow-up in the progress notes;

- (f) Submitting quarterly reports to DHCF, which shall be uploaded in the EPD Waiver electronic case management system;
- (g) Routinely assessing (at least annually and more frequently as needed) the appropriateness and quality of adaptive equipment to ensure it addresses the beneficiary's needs;
- (h) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines and Medicare and Medicaid guidelines, including required timelines for submission;
- (i) Conducting periodic examinations (at least annually and more frequently as needed) and modified treatments for the beneficiary, as needed to determine which services are most appropriate to enhance the beneficiary's well-being and meet the therapeutic goals; and
- (j) Updating the therapy plan and communicating with the case manager to make any updates to the PCSP with any modifications to the therapy plan.

**4245 SPECIFIC PROVIDER REQUIREMENTS: OCCUPATIONAL THERAPY**

4245.1 Occupational Therapy services shall only be reimbursed by Medicaid if they are provided by the following Medicaid-enrolled providers:

- (a) A home care agency licensed pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code, §§ 44-501 *et seq.*), and implementing rules; or
- (b) An independent licensed occupational therapist.

4245.2 Medicaid reimbursable occupational therapy services shall be provided by an occupational therapist or an occupational therapy assistant working under the direct supervision of an occupational therapist.

4245.3 In order to receive Medicaid reimbursement all practitioners shall meet the following requirements:

- (a) Be licensed to practice occupational therapy in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl.)), and implementing rules, Chapter 63 (Occupational Therapy) of Title 17 DCMR; or

- (b) Be an occupational therapy assistant who is licensed to practice as an occupational therapy assistant in accordance with the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl.)), and implementing rules, Chapter 73 (Occupational Therapy Assistants) of Title 17 DCMR.

4245.4 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the DHCF or its designee prior to providing, or allowing any professional to provide occupational therapy services. In its request for prior authorization, the Medicaid provider shall document the following:

- (a) The EPD Waiver beneficiary's need for occupational therapy services as demonstrated by a physician's order; and
- (b) The name of the professional or home care agency that will provide the occupational therapy services.

4245.5 In order to be eligible for Medicaid reimbursement, each individual providing occupational therapy services shall participate in the PCSP and interdisciplinary team meetings to provide consultative services and recommendations specific to the expert content with a focus on how the beneficiary is doing in achieving the functional goals that are important to him or her.

4245.6 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

- (a) A physician's order;
- (b) A copy of the occupational therapy assessment and therapy plan developed in accordance with the requirements of this section; and
- (c) Any documents required to be maintained by DHCF per Section 4255 (Audits and Monitoring/Oversight Reviews).

#### **4246 PROGRAM SERVICES: OCCUPATIONAL THERAPY**

4246.1 In order to receive Medicaid reimbursement, Occupational Therapy (OT) services shall be designed to maximize independence, prevent further disability, maintain health, and the beneficiary's functionality.

4246.2 Occupational therapy services shall be provided in accordance with the beneficiary's PCSP and delivered in the beneficiary's home or in a day service setting.



- 4246.3 Each occupational therapy professional shall conduct an assessment of the occupational therapy needs within the first four (4) hours of service delivery, and develop a therapy plan (Plan of Care) to provide services.
- 4246.4 The therapy plan shall include the anticipated and measurable, functional outcomes, based upon what is important to and for the beneficiary as reflected in his or her person-centered goals in his or her PCSP and a schedule of approved occupational therapy services to be provided, and shall be submitted by the Medicaid provider to the case manager before services are delivered.
- 4246.5 Medicaid reimbursable occupational therapy services shall consist of the following ongoing activities:
- (a) Conducting an initial assessment and annual re-assessment;
  - (b) Consulting with the beneficiary, his or her family, caregivers and interdisciplinary team to develop the therapy plan;
  - (c) Implementing therapies described in the therapy plan;
  - (d) Recording progress notes during each visit, which shall contain the following:
    - (1) Progress in meeting each goal in the therapy plan;
    - (2) Any unusual health or behavioral events or change in status;
    - (3) The start and end time of any services received by the beneficiary; and
    - (4) Any matter requiring follow-up on the part of the service provider, case manager, or DHCF.
  - (e) Developing quarterly reports based on the progress notes and indicating progress in meeting each goal in the therapy plan, and any progress made on matters requiring follow-up in the progress notes;
  - (f) Submitting quarterly reports to DHCF, which shall be uploaded in the EPD Waiver electronic case management system;
  - (g) Routinely assessing (at least annually and more frequently as needed) the appropriateness and quality of adaptive equipment to ensure it addresses the beneficiary's needs;

- (h) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines and Medicare and Medicaid guidelines, including required timelines for submission;
- (i) Conducting periodic examinations (at least annually and more frequently as needed) and modified treatments for the beneficiary, as needed to determine which services are most appropriate to enhance the beneficiary's well-being and meet the therapeutic goals; and
- (j) Updating the therapy plan and communicating with the case manager to make any updates to the PCSP with any modifications to the therapy plan.

**4247 SPECIFIC PROVIDER REQUIREMENTS: INDIVIDUAL-DIRECTED GOODS AND SERVICES**

4247.1 In order to receive Medicaid reimbursement, individual-directed goods and services shall only be provided to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.

4247.2 In order to receive Medicaid reimbursement, all individuals and vendors providing individual-directed goods and services shall meet the following minimum qualifications:

- (a) All individuals providing individual-directed goods and services shall be at least eighteen (18) years of age;
- (b) All individuals and vendors providing individual-directed goods and services shall be able to demonstrate to the participant that:
  - (1) The individual or vendor has the capacity to perform the requested work;
  - (2) The individual or vendor has the ability to successfully communicate with the participant; and
  - (3) The individual or vendor has all the necessary professional and/or commercial licenses required by federal and District law.

4247.3 In order to receive Medicaid reimbursement individuals and vendors providing non-medical transportation as an individual-directed service shall meet the following additional qualifications:

- (a) The individual or vendor shall have a valid driver's license; and
- (b) The individual or vendor shall have the minimum amounts of property damage liability, third party personal liability, uninsured motorist bodily

injury, and uninsured motorist property damage insurance coverage required by the District of Columbia for the type of vehicle used to provide the transportation, in accordance with the Compulsory/No-Fault Motor Vehicle Insurance Act, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code §§ 31-2401 *et seq.*).

4247.4 No individual or vendor shall be reimbursed by Medicaid for any individual-directed good or service that is not:

- (a) Documented in the participant's PCSP and participant-directed services (PDS) budget; and
- (b) Approved by the *Services My Way* Program Coordinator.

4247.5 An individual or vendor selected by a participant to provide individual-directed goods or services on a recurrent basis may be required to enter into a Medicaid provider agreement with DHCF prior to providing the goods or services. The Medicaid provider agreement shall be executed by the Vendor Fiscal/Employer Agent (VF/EA) Financial Management Services (FMS)-Support Broker entity supporting the *Services My Way* program on behalf of DHCF.

4247.6 The VF/EA FMS-Support Broker entity shall verify that an individual or vendor selected by the participant to provide individual-directed goods and services meets all applicable requirements set forth in Subsections 4247.2 and 4247.3 at the time of enrollment into the VF/EA FMS-Support Broker entity's provider payment system and thereafter, as necessary.

**4248 PROGRAM SERVICES: INDIVIDUAL-DIRECTED GOODS AND SERVICES**

4248.1 Individual-directed goods and services are only available to EPD Waiver beneficiaries who are enrolled as participants in the *Services My Way* program, and are purchased from the participant's PDS budget.

4248.2 Individual-directed goods and services are services, equipment or supplies not otherwise provided through the EPD Waiver or the Medicaid State Plan that address an identified need in the participant's PCSP, including improving and maintaining the participant's opportunities for full membership in the community. Individual-directed goods and services shall meet the following requirements in order to be reimbursed by Medicaid:

- (a) The requested item or service would decrease the participant's need for other Medicaid services;
- (b) The requested item or service would promote the participant's inclusion in the community; or

- (c) The requested item or service would increase the participant's safety in the home environment.

4248.3 Allowable goods and services shall include, but not be limited to, the following:

- (a) Cleaning services from firms or individuals to clean the participant's personal areas including bedroom, bathroom, kitchen, etc., only if necessary in addition to those services otherwise available through the EPD Waiver;
- (b) Food preparation and delivery services, including grocery delivery and delivery of prepared foods (but not payment for the food itself);
- (c) Transportation services not currently available under Medicaid or the District's accessible transportation programs or through natural supports that are related to activities of daily living, and meet an objective outlined in the participant's PCSP;
- (d) Small electric appliances which allow the participant to safely prepare meals;
- (e) Laundry services;
- (f) The cost of changing locks at the participant's home, as necessary, when a participant-directed worker (PDW) stops working for the participant; and
- (g) Maintenance of items that meet the criteria of allowable individual-directed goods described in § 4248.2.

4248.4 Payment for allowable transportation services shall be made in the form of reimbursement for mileage documented on a Mileage Reporting Form provided by DHCF or its agent or reimbursement for public transit costs documented as specified by DHCF or its agent and submitted to the VF/EA FMS-Support Broker entity.

4248.5 For purposes of Medicaid reimbursement, non-allowable goods and services shall include, but not be limited to, the following:

- (a) Gifts for PDWs, family or friends, including bonus payments to PDWs;
- (b) Loans to PDWs, family or friends;
- (c) Food, beverages and nutritional supplements;

- (d) Entertainment equipment or supplies such as videos, VCRs, televisions, stereos, CDs, DVDs, audio and video tapes;
- (e) Air conditioners, heaters, fans and similar items;
- (f) Electronic devices that do not meet the requirements of § 4248.2 and do not meet an objective outlined in the participant's PCSP;
- (g) Illegal drugs;
- (h) Alcoholic beverages or tobacco products;
- (i) Costs associated with advertising for prospective PDWs;
- (j) Costs associated with travel (airfare, lodging, meals, etc.) for vacations or entertainment;
- (k) Utility, rent or mortgage payments;
- (l) Clothing or shoes;
- (m) Comforters, towels, linens or drapes;
- (n) Paint or related supplies;
- (o) Furniture or other household furnishings;
- (p) Cleaning or laundry for other household members or areas of a home that are not used as part of the participant's personal care;
- (q) Large household or kitchen appliances such as washers, dryers, dishwashers, refrigerators, or freezers;
- (r) Exercise equipment;
- (s) Medications, vitamins or herbal supplements;
- (t) Experimental or prohibited treatments;
- (u) Laundry detergent and household cleaning supplies;
- (v) Vehicle expenses, including routine maintenance, repairs, or insurance costs;

- (w) Transportation services that are otherwise available under Medicaid or the District's accessible transportation programs or through natural supports or that are not related to activities of daily living;
- (x) Landscaping and yard work;
- (y) Pet care and supplies, except when provided for service animals; and
- (z) Massages, manicures or pedicures.

4248.6 Participants in the *Services My Way* program may purchase individual-directed goods and services that are included in their PCSP, meet the requirements of Subsections 4248.2 and 4248.3, and are within their PDS budget to purchase.

4248.7 Individual-directed goods and services shall be documented in the participant's PDS budget and PCSP. The participant's support broker shall assist participants to revise their PDS budgets, as necessary, to account for new, appropriate individual-directed goods and services they would like to purchase. All revisions to a participant's PDS budget to account for new, appropriate individual-directed goods and services shall be accompanied by justification supporting the revision.

4248.8 Upon revising a PDS budget to reflect a new individual-directed good or service, the support broker shall submit the revised PDS budget and justification to the *Services My Way* Program Coordinator for approval.

4248.9 The *Services My Way* Program Coordinator shall review all requested individual-directed goods and services.

4248.10 The VF/EA FMS-Support Broker entity shall only authorize payment of invoices submitted for individual-directed goods and services that are included in the participant's PCSP and PDS budget and that have been approved by the *Services My Way* Program Coordinator.

#### **4249 SPECIFIC PROVIDER REQUIREMENTS: PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES**

4249.1 Participant Directed Community Support Services (PDCS) services shall only be reimbursed to EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.

4249.2 Qualified PDWs shall provide PDCS services as employees of *Services My Way* participants.

4249.3 Medicaid reimbursable PDCS services may be provided by family members and individuals other than a participant's spouse, other legally responsible relative, or court-appointed guardian. A legally responsible relative does not include parents

of adult children, so parents of adult children are not precluded from providing PDCS services. Each family member providing PDCS services shall comply with the requirements set forth in this chapter and Chapter 101 of this title.

- 4249.4 In order to be reimbursed by Medicaid, all PDWs shall meet the following qualifications:
- (a) Be at least eighteen (18) years of age;
  - (b) Complete and pass a criminal background check in accordance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999, as amended by Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.* (2016 Repl.));
  - (c) Receive customized training provided by the participant or the participant's authorized representative that is related to the participant's functional needs and goals as outlined in the PCSP;
  - (d) Be able and willing to perform the service-related responsibilities outlined in the participant's PCSP; and
  - (e) Be certified in cardiopulmonary resuscitation (CPR) and First Aid through an in-person training course approved by the American Red Cross or an alternative course approved by the *Services My Way* Program Coordinator and maintain current certifications.
- 4249.5 *Services My Way* participants shall not serve as PDWs.
- 4249.6 The VF/EA FMS-Support Broker entity shall be responsible for verifying that criminal background checks are conducted on all prospective PDWs in accordance with Subsection 4249.4(b), and providing participants, authorized representatives, prospective PDWs, and the *Services My Way* Program Coordinator with the results of all criminal background checks performed on prospective PDWs.
- 4249.7 The participant, or the participant's authorized representative if designated as the "common law employer" of the PDW, shall verify that a prospective PDW meets all qualifications set forth in Subsection 4249.4 prior to hiring the PDW to provide PDCS services.
- 4249.8 The VF/EA FMS-Support Broker entity shall verify that a PDW meets all qualifications set forth in Subsection 4249.4 prior to enrolling the PDW into its payroll system.

- 4249.9 The VF/EA FMS-Support Broker entity shall execute a Medicaid provider agreement with each PDW on behalf of DHCF at the time a PDW is enrolled into its payroll system.
- 4250 PROGRAM SERVICES: PARTICIPANT-DIRECTED COMMUNITY SUPPORT SERVICES**
- 4250.1 Medicaid will only reimburse PDCS services for EPD Waiver beneficiaries enrolled as participants in the *Services My Way* program.
- 4250.2 In order to receive Medicaid reimbursement, PDCS services shall be detailed in the participant's PCSP and PDS budget and shall be designed to promote independence and ensure the health, welfare, and safety of the participant.
- 4250.3 The participant or his or her authorized representative, as applicable, shall serve a "common law employer" of the PDW providing services. In the role of "common law employer," the participant or authorized representative shall be responsible for recruiting, hiring, supervising and discharging PDWs providing PDCS services.
- 4250.4 Supports shall be available to assist the participant or representative-employer with his or her own employer-related responsibilities as described in Subsection 4250.3 through the VF/EA FMS-Support Broker entity.
- 4250.5 PDCS services shall include cueing and assistance with activities of daily living and instrumental activities of daily living.
- 4250.6 All PDCS services provided by a PDW shall be prior authorized by DHCF or its agent in order to be reimbursed under the *Services My Way* program.
- 4250.7 To be eligible for PDCS services, a participant shall be in receipt of a service authorization for PCA from DHCF or its designated agent that specifies the amount, duration, and scope of services authorized to be provided to the beneficiary, in accordance with 29 DCMR § 5003.
- 4250.8 Payment for PDCS services shall be provided in accordance with the participant's PDS budget, at an hourly wage set by the participant or representative-employer which falls within the wage range established by DHCF as set forth in Subsection 4250.9.
- 4250.9 The hourly wage paid to a PDW shall be no lower than the living wage in the District, set in accordance with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.*), and no higher than the wage paid by DHCF for services provided by a personal care aide in accordance with Chapter 42 of Title 29 DCMR.



- 4250.10 PDCS services shall not include the following:
- (a) Services that require the skills of a licensed professional, as defined in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*); or
  - (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the participant, laundry for family members, shopping for items not used by the participant, or money management.
- 4250.11 An agency-based provider of personal care aide services shall not be designated as an emergency back-up provider of PDCS services.
- 4250.12 In order to ensure PDCS services are provided in a manner that ensures the participant's health and safety, if a participant has been assessed for one hundred twelve (112) or more hours of PCA services per week in accordance with 29 DCMR § 5003, PDCS services must be provided by at least two (2) PDWs each week.

**4251 SPECIFIC PROVIDER REQUIREMENTS: COMMUNITY TRANSITION SERVICES**

- 4251.1 Each case manager providing Community Transition services shall:
- (a) Work with the beneficiary to identify household items needed to facilitate transition to the community;
  - (b) Work with the vendor to ensure that the beneficiary has access to the identified household items to facilitate a successful transition to the community;
  - (c) Complete and forward the beneficiary's demographic information on documents provided by DHCF, or its designee;
  - (d) Submit a purchase order /transition fund request to DHCF or its designee for processing;
  - (e) Act as primary point of contact with DHCF and the vendor for coordination of transition payments;
  - (f) Schedule pick-up of checks from the vendor's site;

- (g) Keep records to ensure that beneficiary's purchase order requests do not exceed the maximum amount of five thousand (\$5,000) allowed per beneficiary; and
- (h) Provide documentation of all services provided, and beneficiary records to be made available to DHCF or its designee for monitoring and oversight and/or audit reviews.

4251.2 Community Transition services shall not be provided to waiver beneficiaries who:

- (a) Are not transitioning to the community from a long term care facility; or
- (b) Have duplicative household set-up items in their possession.

**4252 PROGRAM SERVICES: COMMUNITY TRANSITION SERVICES**

4252.1 Community Transition Services are non-recurring set-up expenses for beneficiaries who are transitioning from an institution or other long term care facility to a more integrated and less restrictive community setting. Allowable expenses are those necessary to enable an individual to establish a basic household that does not constitute room and board.

4252.2 Household set-up expenses provided under community transition services may include the following:

- (a) Rental application fees and security deposits in the amount of the first month's rent or greater that are required to obtain a lease on an apartment or home;
- (b) Essential household furnishings and moving expenses required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bed/bath linens;
- (c) Set-up fees or deposits for utility or service access, including telephone, electricity, heating and water;
- (d) Services necessary for the individual's health and safety such as pest eradication and one-time cleaning prior to occupancy;
- (e) Moving expenses;
- (f) Necessary home accessibility adaptations; and,
- (g) Activities to assess need, arrange for, and procure needed resources.

- 4252.3 Community Transition Services are furnished only to the extent that they are reasonable and necessary as determined through the transition planning process, and clearly identified in the beneficiary's transition plan or PCSP once they are enrolled in the EPD Waiver.
- 4252.4 The household set-up items shall be approved by the Case Manager as part of the beneficiary's PCSP.
- 4252.5 Community Transition Services for the household set up items specified under § 4252.2 shall be provided up to an amount of five thousand dollars (\$5,000) and may be used as determined in the transition plan development, from the time a tentative discharge date from the long term care facility has been established and EPD Waiver eligibility has been established.
- 4252.6 Community Transition funds shall be utilized for a period not to exceed one hundred and twenty days (120) before discharge and up to six (6) months after discharge from an institution or long term care facility.

#### **4253 TERMINATIONS AND ALTERNATIVE SANCTIONS**

- 4253.1 In order to qualify for Medicaid reimbursement, EPD Waiver Providers shall comply with programmatic requirements as part of its Provider Readiness Review and enrollment. The programmatic requirements include adherence to acceptable standards in the following areas:
- (a) Service Delivery as governed by the provider requirements and duties established in this chapter;
  - (b) Program administration as governed under mandated policies and procedures;
  - (c) EPD Waiver-related Performance Measures;
  - (d) Staffing and training; and
  - (e) Home and Community Based Services (HCBS) setting requirements.
- 4253.2 In accordance with the approved Waiver, DHCF may impose alternative sanctions against an EPD Waiver Provider in response to receiving complaints and/or incident reports via the electronic case management system or EPD waiver complaint database, or upon recommendation by the Department's Division of Program Integrity or Long Term Care Administration's EPD Waiver Monitoring Unit.
- 4253.3 DHCF shall determine the appropriateness of alternative sanctions against a Waiver 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 EPD Waiver participants;
- (d) Potential for serious harm to Waiver participants;
- (e) Any history of prior violation(s) and/or sanction(s);
- (f) Actions or recommendations by the Department's Division of Program Integrity or Long Term Care Administration's EPD Waiver Monitoring Unit; and
- (g) Other relevant factors.

4253.4 DHCF may impose one (1) or more alternative sanctions against an EPD Waiver 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 EPD Waiver Program.

4253.5 DHCF shall publicize the imposition of an alternative sanction on its website.

4253.6 A CAP may include actions such as publicizing information during the EPD Waiver mandatory monthly meeting, and posting provider performance cards on DHCF's website.

4253.7 DHCF shall issue a written notice of provider termination where the agency determines that the sanctions listed under Subsection 4253.4 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.

4253.8 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.

- 4253.9 The 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).
- 4253.10 If DHCF initiates an action to impose an alternative sanction, a written notice shall be issued to each EPD Provider notifying the provider of the imposition of an alternative sanction.
- 4253.11 The written notice shall inform the provider that DHCF intends to impose an alternative sanction.
- 4253.12 The notice shall also include the following:
- (a) The basis for the proposed action;
  - (b) The specific alternative sanction that DHCF intends to take;
  - (c) The provider's right to dispute the allegations and to submit evidence to support his or her position; and
  - (d) Specific reference to the particular sections of the statutes, rules, provider's manual, and/or provider agreements involved.
- 4253.13 The EPD Waiver provider may submit documentary evidence to DHCF's Long Term Care Administration, 441 4<sup>th</sup> St. NW, 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 4253.10 through 4253.12.
- 4253.14 DHCF may extend the thirty (30) day period prescribed in Subsection 4253.13 for good cause on a case-by-case basis.
- 4253.15 If DHCF decides to impose an alternative sanction against the EPD provider after the provider has issued a response under Subsection 4253.13, DHCF will send a written notice at least fifteen (15) days before the imposition of the alternative sanction. The notice shall include the following:
- (a) The reason for the decision;
  - (b) The effective date of the sanction; and

- (c) The provider's right to request a hearing by filing a notice of appeal with the District of Columbia Office of Administrative Hearings.

4253.16 If the provider files a notice of appeal within fifteen (15) days of the date of the notice of the alternative sanction under Subsection 4253.15, then the effective date of the proposed action shall be stayed until the D.C. Office of Administrative Hearings has rendered a final decision.

4253.17 The Director of DHCF shall 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 EPD Provider makes significant progress in achieving compliance with the programmatic requirements through good faith efforts.

4253.18 A provider shall be prohibited from submitting an application for participation in the EPD Waiver program for two (2) consecutive years from the date of receipt of the final notice of termination of a Medicaid Provider Agreement.

4253.19 A provider that has been terminated from the District's Medicaid EPD Waiver program shall be precluded from submitting any claims for payment, either personally or through claims submitted by any entity for any services provided under the EPD Waiver program, 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.

#### **4254 INCIDENTS AND COMPLAINTS**

4254.1 Providers are required to report critical incidents that may threaten the beneficiary's health or welfare for review and follow-up by DHCF and/or other designated agencies. The critical incidents consist of the following categories:

- (a) Serious reportable incidents (SRI); and
- (b) Reportable incidents (RI).

4254.2 SRI are those incidents which due to their significance or severity to the beneficiary require immediate response, notification, internal review and investigation by the provider agency and DHCF.

4254.3 RI are significant events or situations that involve harm or risk to the beneficiary.

- 4254.4 SRI include, but are not limited to:
- (a) Unexpected death due to abuse, negligence, or accident;
  - (b) Abuse;
  - (c) Neglect or abandonment;
  - (d) Exploitation;
  - (e) Theft of consumer personal property;
  - (f) Serious physical injury;
  - (g) Inappropriate or unauthorized use of restraints;
  - (h) Suicide threats;
  - (i) Serious medication errors; and
  - (j) Suicide attempts or serious fire incidents that could have resulted in serious bodily harm or death.
- 4254.5 RI include, but are not limited to:
- (a) Medication errors;
  - (b) Hospitalization;
  - (c) Injuries;
  - (d) Emergency Room visits;
  - (e) Fire Occurrences involving property damage;
  - (f) Police Incidents;
  - (g) A temporary relocation due to emergencies; and
  - (h) Other events or situations that involve harm or risk of harm to beneficiaries.
- 4254.6 Each service provider shall develop internal policies and procedures regarding incident reporting and investigation that meets the following minimum criteria:

- (a) Notifying DHCF staff via the electronic management system within twenty four (24) hours or the next business day of an occurrence of an SRI or RI;
- (b) Documenting of the incident on an established incident report form in the electronic management system;
- (c) Completing of an internal investigation within five (5) business days of the SRI or RI's occurrence; and
- (d) Reporting for all SRIs involving death, neglect, abuse, and theft of consumer personal property occurring at a beneficiary's natural home to Adult Protective Services and DHCF.

4254.7 All providers shall establish an internal process for tracking information related to the occurrence of incidents and the outcome of investigations to predict and mitigate recurring incidents.

4254.8 Each provider shall maintain a copy of all incidents and keep them on file for a minimum period of ten (10) years, or until any DHCF, law enforcement, or Adult Protective Services' investigation of an incident has concluded, whichever is longer.

4254.9 A complaint is an expression of dissatisfaction or a formal charge of wrong-doing brought against an EPD Waiver Provider or individual providing services. Complaints include but are not limited to the following:

- (a) Denials or reductions of service;
- (b) Delays in the process resulting in a denial of eligibility;
- (c) Provider tardiness or poor quality of care;
- (d) Restriction of individual rights;
- (e) Lack of choice of service provider;
- (f) Obstructing the beneficiary's choice of preferred service provider when available; and
- (g) Violations of privacy and confidentiality policies as outlined under a providers' privacy plan as required in accordance with the requirements set forth in Section 4207.



- 4254.10 Each service provider shall develop internal policies and procedures regarding complaint documentation and a review process that meets the following minimum criteria:
- (a) An explanation of types of complaints that shall be addressed;
  - (b) The identification of a designated complaint officer who shall manage the complaint process;
  - (c) The timelines for addressing the complaints which shall specify the following:
    - (1) All complaints that pose an immediate risk to the beneficiary shall be addressed by the complaints officer within twenty four (24) hours or next business day of the receipt of the complaint;
    - (2) Complaints pertaining to Medicaid eligibility determination and denial or reduction of service shall be addressed by the complaints officer within five to seven (5 – 7) business days;
    - (3) All other complaints will be addressed by the complaints officer within ten (10) business days;
  - (d) Procedures verifying that all complaints are resolved within thirty (30) business days of the reporting of the complaint to the designated complaint officer; and
  - (e) The procedures that are used to resolve the complaints.
- 4254.11 All provider entities shall establish an internal process for tracking and trending information related to the occurrence of complaints and the outcome of investigations.
- 4254.12 Each provider shall maintain a copy of all complaints on file for a minimum period of ten (10) years.
- 4254.13 DHCF shall issue a transmittal notifying providers to log complaints into the EPD Waiver Complaint Database upon its operation.

## **4255 AUDITS AND MONITORING/OVERSIGHT REVIEWS**

- 4255.1 The DHCF's Division of Program Integrity shall perform ongoing audits to ensure that the provider's services for which Medicaid payments are made are consistent with programmatic duties, documentation, and reimbursement requirements as required under this chapter.

- 4255.2 The audit process shall be routinely conducted by DHCF to determine, by statistically valid scientific sampling, the appropriateness of services rendered to EPD Waiver program beneficiaries and billed to Medicaid.
- 4255.3 Each EPD Waiver provider shall allow access, during an on-site audit or review (announced or unannounced) by DHCF, other District of Columbia government officials, and representatives of the United States Department of Health and Human Services, to relevant records and program documentation.
- 4255.4 The failure of a provider to timely release or to grant access to program documents and records to the DHCF auditors, after reasonable notice by DHCF to the provider to produce the same, shall constitute grounds to terminate the Medicaid Provider Agreement.
- 4255.5 If DHCF denies a claim during an audit, DHCF shall recoup, by the most expeditious means available, those monies erroneously paid to the provider for denied claims, following notice and the period of Administrative Review set forth in Subsection 4255.7 of this chapter.
- 4255.6 The recoupment amounts for denied claims during audits shall be determined by the following formula:
- (a) The number of denied paid claims resulting from the audited sample shall be divided by the total number of paid claims from the audited sample; and
  - (b) The amount derived from (a) as referenced in Subsection 4255.6 shall be multiplied by the total dollars paid by DHCF to the provider during the audit period to determine the amount to be recouped.
- 4255.7 In accordance with the formula referenced in Subsection 4255.6, DHCF would recoup ten percent (10%) of the amount reimbursed by Medicaid during the audit period, or one thousand dollars (\$1000), if a provider received Medicaid reimbursement of ten thousand dollars (\$10,000) during the audit period, and during a review of the claims from the audited sample, it was determined that ten (10) claims out of one hundred (100) claims are denied.
- 4255.8 DHCF shall issue a Notice of Proposed Recovery for Medicaid Overpayment (NPRMO) which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or Provider agreement, the amount to be recouped, and the procedures for requesting an administrative review.
- 4255.9 The timelines for responding to the NPRMO and the provider's appeal rights are governed by Section 4256.

- 4255.10 The DHCF's Long Term Care Administration's EPD Waiver Oversight and Monitoring team shall conduct two (2) types of reviews as follows:
- (a) Annual oversight and monitoring reviews to ensure compliance with established federal and District regulations and applicable laws governing the operations and administration of the EPD Waiver Program; and
  - (b) Quarterly compliance reviews to ensure adherence with the EPD Waiver Program's performance measures.
- 4255.11 Each waiver services provider shall allow the EPD Waiver oversight and monitoring team access, during an on-site oversight/monitoring process (announced or unannounced).
- 4255.12 As part of the oversight and monitoring process, providers shall grant access to any of the following documents, which may include, but shall not be limited to the following:
- (a) Person-Centered Service Plan (PCSP) and Plan of Care/ service delivery plan;
  - (b) Employee records;
  - (c) A signed, and current copy of the Medicaid Provider Agreement;
  - (d) Licensure information;
  - (e) Policies and Procedures;
  - (f) Incident Reports and Investigation Reports; and
  - (g) Complaint related reports.
- 4255.13 DHCF's EPD Waiver Oversight and Monitoring Team shall issue a Statement of Findings and Opportunities for Improvement Plan ("improvement plan") within fifteen (15) calendar days of the annual oversight and monitoring exit meeting. Providers shall subsequently submit a plan of correction within fifteen (15) calendar days of the date of receipt of DHCF's improvement plan.
- 4255.14 DHCF's EPD Waiver Oversight and Monitoring team shall generate a performance measures discovery/remediation report ("remediation report") within five (5) business days of completion of the quarterly performance measures-related review. Providers shall subsequently submit a performance measures-related remediation plan ("remediation plan") within ten (10) business days of receipt of the report.

- 4255.15 The failure to provide an acceptable plan of correction, remediation plan or adherence to the improvement plan or remediation report may result in alternative sanctions such as a prohibition of new admissions and referral to the DHCF's Division of Program Integrity for further investigation.
- 4256 APPEAL RIGHTS FOR PROVIDERS AGAINST WHOM A RECOUPMENT IS MADE**
- 4256.1 The provider shall have thirty (30) calendar days from the date of the NPRMO to respond in writing. The response shall be submitted to the DHCF's Director of the Division of Program Integrity.
- 4256.2 The provider's written response to the NPRMO shall include a specific description of the item(s) to be reviewed, the reason for the request for review, the relief requested, and documentary evidence in support of the relief requested.
- 4256.3 The DHCF's Division of Program Integrity shall mail a written determination no later than one hundred and twenty (120) calendar days from the date of receipt of the provider's response to the NPRMO.
- 4256.4 Payments otherwise authorized to be made to a provider under the District of Columbia Medicaid Program may be suspended or recouped, in whole or in part, by DHCF to recover or aid in the recovery of overpayments that have been made to the provider.
- 4256.5 The DHCF shall notify the provider of its intention to recoup payments, in whole or in part, and the reasons for the recoupment in a Final Notice of Medicaid Overpayment Recovery (FNPRMO). The Final Notice to providers shall include the following:
- (a) The factual basis for the determination of overpayments including the dollar value of the overpayment;
  - (b) How the overpayment was computed;
  - (c) Specific reference to the section of the statute, rule, provider's manual, or provider agreement that is the basis for the recoupment; and
  - (d) Information about the government entity who checks shall be made payable to and the corresponding mailing address.
- 4256.6 Any provider that disagrees with the reason for a recoupment or the amount of the recoupment shall have fifteen (15) calendar days from the date of the FNPRMO to request a hearing by filing an appeal with the District of Columbia Office of Administrative Hearings (OAH).

4256.7 Filing an appeal with the OAH shall not stay any action to recover any overpayment to the provider. The provider shall be liable to the Medicaid Program for any overpayments as set forth in the FNPRMO.

4256.8 The provider shall file a written Notice of Appeal with the Office of Administrative Hearings, 441 4th Street, NW, Suite 450 North, Washington, D.C. 20001. The provider shall also send a copy of that Notice of Appeal to the DHCF Office of General Counsel.

#### **4299 DEFINITIONS: WAIVER SERVICES**

4299.1 When used in this chapter, the following terms shall have the meaning ascribed:

**Abuse** - Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the District Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

**Activities of Daily Living (ADLs)** - 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 Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*).

**Admissions Hold** - A process by which a provider is prohibited from admitting new Waiver beneficiaries.

**Assisted Living Residence** - An entity that shall have the same meaning as set forth in D.C. Official Code § 44-102.01(4).

**Case Management Agency** - An agency under contract with the Department of Health Care Finance (DHCF) to provide case management services to waiver beneficiaries.

**Case Manager** - A staff person from the case management agency who performs case management services.

**Cueing** - Using verbal prompts in the form of instructions or reminders to assist beneficiaries with activities of daily living and instrumental activities of daily living.

**Chore Aide** – A person who performs tasks intended to place the home environment in a clean, sanitary, and safe condition, and to prepare the home environment for ongoing routine home care services.

**Communicable Disease** – Any disease defined in D.C. Official Code § 7-132 and 22-B DCMR § 299.

**Environmental Accessibility Adaptation (EAA)** - Physical adaptations to the home that are necessary to ensure the health, welfare, and safety of the individual, or that enable the individual to function with greater independence in the home, and without which, the individual would require institutionalization.

**Fraud** - An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person, including any act that constitutes fraud under federal or District law.

**Family** - Any person related to the beneficiary by blood, marriage, or adoption.

**Home Care Agency** – An entity licensed pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*)

**Limited English Proficient Individuals** - Individuals who do not speak English as their primary language, and individuals who have a limited ability to read, write, speak, or understand English.

**Medicaid** - A federal-state program established by Title XIX of the Social Security Act, which provides payment of medical expenses for eligible persons who meet income and/or other criteria.

**Natural Home** - A home owned or leased by the beneficiary, the beneficiary's family member or another private individual; the lease/deed must be held by the beneficiary, the beneficiary's family member, or another private individual.

**Participant/Representative-Employer** - The *Services My Way* participant or the participant's authorized representative, as applicable, who performs employer-related duties including recruiting, hiring, supervising and discharging participant-directed workers.

**Person-Centered Service Plan (PCSP)** – Individualized service plan developed by the case manager that identifies the supports and services to be provided to the person enrolled in the Waiver and the evaluation of the

person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met.

**Personal Care Aide** - A person who has successfully completed the relevant jurisdiction's (the person's home state or District of Columbia) established training program and meets the competency evaluation requirements. Tasks include assistance with activities of daily living and instrumental activities of daily living.

**Personal Care Aide services** - Services involving assistance with one or more activities of daily living that is rendered by a qualified personal care aide under the supervision of a registered nurse.

**Physical Disability** - A functionally determinable impairment that substantially limits an individual's ability to perform manual tasks, to engage in an occupation, to live independently, to walk, to see, or hear.

**Physician** - A person who is licensed or authorized to practice medicine pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*).

**Plan of Care** - A plan prepared by the EPD Waiver service provider that outlines the service delivery plans for the services being delivered by that provider. This is also referred to as a service delivery plan.

**Provider** - Any entity that meets the waiver service requirements, has signed an agreement with DHCF to provide waiver services, and is enrolled by DHCF to provide services to waiver beneficiaries.

**Purified Protein Derivative (PPD)** - A tuberculin solution that is used in skin tests for tuberculosis.

**Registered Nurse** - An individual who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, or licensed as a registered nurse in the jurisdiction where services are provided.

**Respite Service** - Services that include the provision of assistance with activities of daily living and instrumental activities of daily living for waiver beneficiaries in their home or temporary place of residence in the temporary absence of the primary caregiver. Respite services may also be provided in a Medicaid certified community setting or a group home.

**Theft** - Wrongfully obtaining or using the property of another with intent to deprive the other of a right to the property or a benefit of the property or to appropriate the property to an individual's own use or to the use of a third person.

**Vendor** - A corporate entity providing individual-directed goods or services.

**Vendor Fiscal/Employer Agent (VF/EA) Financial Management Services (FMS)-Support Broker Entity** - An entity operating in accordance with 26 USC § 3504 and Rev. Proc. 70-6, as modified by REG-137036 and Rev. Proc. 2013-39, which provides financial management services and information and assistance services to *Services My Way* participants and their representatives, as appropriate.

**Waiver**- The home and community-based Waiver for the Elderly and Persons with Disabilities (EPD) as approved by the Council of the District of Columbia (Council) and CMS, as may be further amended and approved by the Council and CMS.

**Waiver Period** - Each five (5) year term for which the Waiver is approved by CMS, beginning with the initial effective date of the Waiver.

**Wrongfully Obtain or Use** - Taking or exercising control over property; making an unauthorized use, disposition, or transfer of an interest in or possession of property; or obtaining property by trick, false pretense, false token, tampering, or deception. The term "wrongfully obtain or use" includes conduct previously known in the District as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses.



**CHILD AND FAMILY SERVICES AGENCY****NOTICE OF PROPOSED RULEMAKING**

The Director of the Child and Family Services Agency (CFSA), pursuant to Section 601 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1306.01 (2012 Repl. and 2017 Supp.)) (Child Abuse Act), Sections 382 and 385 of the Foster Parents Statements of Rights and Responsibilities Amendment Act of 2016, effective February 18, 2017 (D.C. Law 21-217; 63 DCR 16009 (December 30, 2016)) (Foster Parents Act), and Mayor's Order 2017-126, dated May 19, 2017, hereby gives notice of her intent to adopt the following amendments to Chapter 60 (Foster Homes) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These proposed rules are intended to establish and clarify the responsibilities of foster parents in the CFSA system, as well as the responsibilities of CFSA to these foster parents. These amendments do not establish any additional private right of action beyond that which already exists under federal or District law.

The CFSA Director 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*, and following a forty-five (45) day review of the rules by the D.C. Council as required by section 385 of the Foster Parents Act.

**Chapter 60, FOSTER HOMES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 6002, FOSTER PARENT RESPONSIBILITIES, is amended as follows:**

**Subsection 6002.1 is amended to read as follows:**

6002.1 A foster parent shall:

- (a) Provide parental supervision and guidance appropriate to the foster child's age and developmental level;
- (b) Provide daily essentials required for the health, comfort, and good grooming of a foster child, including:
  - (1) A nutritionally balanced diet adequate for the foster child's needs in growth and development;
  - (2) Adequate shelter; and
  - (3) Clothing proper for the season;
- (c) Involve the foster child in household activities;
- (d) Establish clear expectations for and limits on behavior, understand and deal with negative behavior in a positive way, and reward good behavior;

- (e) Abide by the rules on discipline and control as set forth in § 6018;
- (f) Encourage and support the foster child's participation in extracurricular, enrichment, cultural, and social activities;
- (g) Provide, arrange, or coordinate with the agency to provide transportation to and from normal daily activities, including school, appointments, sports, family visitation, social, religious, ethnic, and cultural events, and other appointments as necessary and as set forth in the foster child's case plan;
- (h) Help the foster child cope with the anxiety of being away from his or her family, and promote the child's self-esteem and positive self-image;
- (i) Be sensitive to and respect the foster child's individual needs, tastes, and values, and support the foster child's religious beliefs and cultural customs;
- (j) Participate in and support the foster child's educational process;
- (k) Participate in and support the foster child's mental, physical, and dental health care, and request and maintain a copy of a record from each health care visit;
- (l) Have a plan for the substitute care and supervision of each foster child by a licensed foster parent or day care provider, or the equivalent in the jurisdiction in which that substitute care is provided, when the foster parent is absent from the home on a regular basis, such as for employment;
- (m) Use baby-sitters who are sixteen (16) years of age or older. Babysitters shall be used for a reasonable amount of time, considering the age and level of functioning of the foster child;
- (n) Utilize only substitute caregivers and babysitters in whom the foster parent has confidence that the person can appropriately care for the foster child;
- (o) Maintain the confidentiality of information about the foster child and the foster child's family in accordance with § 6023;
- (p) Transmit information about the foster child or the foster child's family only in accordance with subsection (y)(3) below and § 6023;
- (q) Notify the agency immediately of any change or anticipated change for the foster parent or within the foster home concerning:
  - (1) Employment;
  - (2) Child care arrangements;
  - (3) Composition of the household;
  - (4) Finances;
  - (5) Residence or telephone number;

- (6) Health status;
- (7) Marital status; or
- (8) Any other change which may affect the stability of the foster home or of the foster child's placement in the foster home;
- (r) Notify the agency for any overnight trips of more than one hundred (100) miles from the District of Columbia that the foster parent would like the foster child to take;
- (s) Give at least ten (10) business days' notice to the agency when requesting removal of a foster child except in circumstances that are critical to the health and safety of the foster child or other household member;
- (t) Immediately report to CFSA and the agency any suspected incident of child abuse or neglect;
- (u) Notify CFSA and the agency of any criminal charges, investigations, or findings related to any crime alleged to have been committed by the foster parent or a household member;
- (v) Keep the agency aware of the foster child's development and adjustment;
- (w) Participate in decision-making, case-planning, case reviews, and permanency planning for the child in care;
- (x) Work as a team member in assessing a foster child's strengths and needs and in implementing the foster child's case plan;
- (y) A foster parent, in accordance with a foster child's case plan, shall:
  - (1) Assist the agency in maintaining and improving the foster child's relationship with her or his family, and support this relationship by helping with family visits, which may include visits in the foster home;
  - (2) Maintain an attitude of respect and understanding towards the foster child's parents and family;
  - (3) Tell the foster child's parents about events and happenings in the foster child's daily life; and
  - (4) Serve as a role model for the foster child's parents;
- (z) Assist in preparing the foster child to achieve his or her permanency plan and any move from the foster home;
- (aa) Work with the agency to make every effort to avoid placement disruptions;
- (bb) Work with service providers, when appropriate, to ensure the service needs are being met for the foster child;

(cc) Participate in training required and approved by the agency; and

(dd) Maintain the standards of foster care required by this chapter of the DCMR.

**Subsections 6002.2 and 6002.3 are struck in their entirety.**

**Subsections 6002.4, 6002.5, and 6002.6 are renumbered as 6002.2, 6002.3, and 6002.4, respectively.**

**Section 6003, AGENCY RESPONSIBILITY TO FOSTER PARENT, is amended as follows:**

**Subsection 6003.1 is amended to read as follows:**

6003.1 The following principles and rights are to govern the Agency's relationship with a foster parent.

A foster parent is entitled:

- (a) To be recognized and valued as members of the child welfare team;
- (b) To be treated with dignity, trust, and respect;
- (c) To language translation in accordance with the Language Access Act of 2004;
- (d) To not be subject to discrimination as provided in the D.C. Human Rights Act of 1977, as amended;
- (e) To receive a printed copy of this section;
- (f) To report rights violations and complaints without fear of retaliation;
- (g) To receive a written explanation of the process for reporting and resolving rights violations and complaints;
- (h) To a fair hearing if the agency modifies, suspends, converts, revokes, denies, or takes any other action concerning a license or an application for a foster parent license;
- (i) To accurate information about the foster child, including the reason the foster child is in foster care within three (3) business days after placement;
- (j) To medical records, including immunization records, within three (3) business days of placement;

- (k) To be informed of the foster child's permanency plan, to be updated as to the progress of the achievement of that plan, and to be allowed to provide input into the plan;
- (l) To be informed of decisions that impact the foster parent while ensuring the best interests and confidentiality of the foster child and his or her family;
- (m) To be notified at least ten (10) business days prior to a change in placement except in the case of an emergency;
- (n) To a fair hearing when a foster child has been removed from the home in accordance with chapter 59 of the Title 29 of the DCMR;
- (o) To communicate with professionals who work with a foster child including therapists, physicians, and teachers;
- (p) To support in establishing and developing relationships with birth parents when appropriate and in the best interests of the foster child;
- (q) To be included in the development of any service agreements for a foster child;
- (r) To participate in decision-making, case-planning and permanency planning for a foster child;
- (s) To receive notice and an opportunity to be heard in any proceeding held with respect to a foster child, in accordance with District and federal law;
- (t) To accept or refuse placement and to request removal without fear of reprisal;
- (u) To be considered a priority placement option (when appropriate, based on the circumstances and the best interests of the child) when there is a significant relationship with the child or when the foster parent previously provided care for a child who has re-entered foster care, or when a child becomes available for adoption;
- (v) To appropriate supportive services, when available, that will enable the foster parent to meet the unique needs of the foster child and deal effectively with problems inherent in the foster child's adjustment to care;
- (w) To a response as soon as possible by the agency to crisis situations that may arise from the foster child's placement in the foster home;
- (x) To assistance in preparation for the separation of the foster child from foster care placement;
- (y) To timely board and care payments;

- (z) To have the payment criteria explained, including foster care board and care payments, clothing allowance, and any supplemental expenditures made to meet the foster child's needs;
- (aa) To pre-service and in-service training; and
- (bb) To assistance in the selection, preparation, and completion of in-service foster parent training.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Cory Chandler, General Counsel, Child and Family Services Agency, 200 I Street, SE Washington, D.C. 20003, at [Cory.Chandler@dc.gov](mailto:Cory.Chandler@dc.gov) or online at [dcregs.dc.gov](http://dcregs.dc.gov). Copies of these proposed rules may be obtained without charge at the address above or online at [dcregs.dc.gov](http://dcregs.dc.gov).

## DEPARTMENT OF HEALTH

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2012 Repl.)); the Medical Marijuana Dispensary Temporary Amendment Act of 2016, effective April 1, 2017 (D.C. Law 21-234; D.C. Official Code § 7-1671.06(d)(2); D.C. Official Code § 7-731(d)); and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of the adoption of, on an emergency basis, the following amendments to Subtitle C (Medical Marijuana) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The Council of the District of Columbia has declared the existence of an emergency need to increase the number of medical marijuana dispensaries that may be registered to operate in the District from five (5) to six (6), and to require the Mayor to open an application period for the registration of a dispensary in Ward 7 or Ward 8. The impetus of that emergency legislation is that a quarter of the qualifying patients in the District's Medical Marijuana Program live in Wards 7 and 8, but there are no dispensaries east of the Anacostia River, resulting in a geographical barrier to access to these healthcare services. To further ensure adequate access to medical marijuana for patients located in Wards 7 and 8, the Department exercised its authority under D.C. Official Code §§ 7-1671.06(d)(2)(A) to increase the number of dispensaries registered to operate in the District by emergency and proposed rulemaking from six (6) to seven (7) so that a dispensary could be registered in Ward 7 and in Ward 8.

This emergency action is necessary to immediately preserve and promote the health, safety and welfare of the public and is being taken to enable the Department to effectively and efficiently implement the application process for the addition of a new dispensary in Ward 7 and in Ward 8, and to streamline and clarify the judicial review process for unsuccessful applicants.

This emergency rule was adopted on June 30, 2017, and became effective on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption (October 18, 2017), or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director of the Department of Health also gives notice of her intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

**Chapter 54, REGISTRATION APPLICATIONS, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:**

**Section 5402, SELECTION PROCESS, is amended as follows:****Subsections 5402.5 through 5402.9 are amended to read as follows:**

- 5402.5 The panel shall prepare a report of its final proposed selections and then submit it to the Director. The report shall assign the numerical rank for each applicant based on the application's final score, include a narrative of the basis for each of the panel's final proposed selections, and shall include not more than the ten (10) highest scoring cultivation center applicants and not more than the five (5) highest scoring dispensary applicants.
- 5402.6 In the event that two (2) or more applicants for a cultivation center registration receive the same total score, the panel shall give priority in rank to the applicant that received the highest score in the security plan category. In the event that the same two (2) applicants received the same score in the security plan category, the panel shall give priority in rank to the applicant that received the highest score in the cultivation plan category.
- 5402.7 In the event that two (2) or more applicants for a dispensary registration receive the same total score, the panel shall give priority in rank to the applicant that received the highest score in the security plan category. In the event that the same two (2) applicants received the same score in the security plan category, the panel shall give priority in rank to the applicant that received the highest score in the product safety and labeling plan category.
- 5402.8 In the event that a selected cultivation center or dispensary application is subsequently denied by the Director, the applicant who received the next highest ranking from the panel who was not initially accepted shall be selected.
- 5402.9 An applicant submitting a cultivation center or dispensary registration application shall be required to submit the five thousand dollar (\$5,000) nonrefundable application fee at the time the cultivation center or dispensary application is filed with the Director.

**Section 5404, APPLICATION FORMAT AND CONTENTS, is amended as follows:****Subsection 5404.9 is amended to read as follows:**

- 5404.9 The Director shall not permit any applicant for a cultivation center or dispensary to make any additions, changes, alterations, amendments, modifications, corrections, or deletions to the application package once it has been submitted to the Department; however, an applicant may be permitted to modify the location of the premises identified on the application pursuant to subsection 6001.10 of this chapter.



**Chapter 60, DIRECTOR APPROVAL PROCEDURES, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:**

**Section 6001, DIRECTOR FINAL DECISIONS AND JUDICIAL REVIEW, is amended to read as follows:**

**6001 DIRECTOR FINAL DECISIONS AND JUDICIAL REVIEW**

6001.1 Denial by the Director of an application or renewal application for any registration under this subtitle shall be deemed a final Department action.

6001.2 An initial applicant for registration of a dispensary or cultivation center may seek review of the Director’s final decision in the Superior Court of the District of Columbia within thirty (30) days after receipt of the notice if the applicant:

- (a) Submitted a Letter of Intent that was not accepted by the Department;
- (b) Submitted an application that was determined to be non-responsive;
- (c) Received a score of less than one hundred fifty (150) by the panel prior to the ANC review; or
- (d) Received a score of one hundred fifty (150) or more by the panel prior to the ANC review and was denied registration.

6001.3 The petition for review shall include a clear and concise statement of the legal and factual grounds for which the applicant is seeking review, including copies of relevant documents, citations to statutes, or regulations claimed to be violated.

6001.4 Judicial review shall be an on the record review of the decision, and not a de novo review. Judicial review shall be conducted with deference to the agency’s factual findings, and such findings shall be final and conclusive unless the decision is fraudulent, arbitrary, capricious, not supported by substantial evidence, or so grossly erroneous as to necessarily imply bad faith.

6001.5 The Department record on judicial review shall include, where relevant:

- (a) Applicant’s letter of intent to file an application for a cultivation center or dispensary registration with the Medical Marijuana Program;
- (b) The application submitted by the applicant;
- (c) Scoring sheets, provisional score report, scoring tabulations for ANC comments, and the final score and ranking report prepared by the panel for the applicant’s application;
- (d) The review of applicant’s proposed security systems, as prepared by the

Metropolitan Police Department;

- (e) Notices and correspondence between the Department and the applicant pertaining to the application for registration; and
- (f) Any other document or exhibits that are relevant to the scoring of applicant's application and are not proprietary or protected by confidentiality or privilege.

6001.6 A document or exhibit containing the confidential, proprietary, or privileged information of another applicant or a registered cultivation center or dispensary may be ordered under review by the Court, but shall be sealed and reviewable by the Court via *in camera* review, only. For purposes of this chapter, confidential, proprietary, or privileged information or documents shall include but not be limited to:

- (a) Security plans;
- (b) Business plans;
- (c) Cultivation plans;
- (d) Operation plans;
- (e) Marijuana transportation plans;
- (f) Marijuana disposal plans; and
- (g) Facility floor plans.

6001.7 The scoring of an application's criteria or individual criterion without comments from all panel members is not by itself arbitrary or capricious, provided that the panel as a whole provides comments that address each major criteria category.

6001.8 If the reviewing court rules in favor of the applicant, the case shall be remanded to the Department to rescore and rank the applicant's application according to the scoring process in § 5402 of this chapter.

6001.9 In the event that after a rescoring and ranking of the applicant's application the applicant has become eligible for registration, but issuing the applicant a registration would result in surpassing the number of dispensaries or cultivation centers permitted to operate in a single election ward under D.C. Official Code § 7-1671.06 (2012 Repl.), the applicant shall be permitted to modify the location of the premises identified on the application within 180 days of notice from the Department without negatively affecting the current status of the application or registration.

- 6001.10 In the event that after the rescoring and ranking the applicant has become eligible for a registration, but issuing the registration would result in surpassing the number of dispensaries or cultivation centers permitted in the District under § 5200 of this chapter, the Department may, for the convenience of the District, revoke the registration of the dispensary or cultivation center that was awarded a registration in lieu of the applicant, pursuant to § 6002 of this chapter.
- 6001.11 In the event that after the rescoring and ranking of its application an applicant is not eligible for a registration, the Director shall notify the applicant of the outcome of the rescoring process and that the applicant's application remains denied. Notification by the Director that an applicant is not eligible for a registration after the completion of a rescoring process shall be deemed a final Department action and the applicant may seek review of the Department action in the Superior Court of the District of Columbia.
- 6001.12 A registrant that has been denied the renewal of a registration for a dispensary or cultivation center may file a request for a hearing with OAH within thirty (30) days after service of the notice of denial by delivering, within thirty (30) days of service of the notice, a certified letter addressed to OAH containing a request for a hearing or hand delivery of same to OAH (receipt required for proof of delivery);
- 6001.13 The decision rendered by the Office of Administrative Hearings in a matter filed pursuant to § 6001.12 shall be the Final Order in the matter, and that either party may seek review of OAH's decision by the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501- 2-511 (2012 Repl.).
- 6001.14 Any party may appeal a decision by the Superior Court of the District of Columbia to the District of Columbia Court of Appeals.
- 6001.15 The timely filing of a petition for review in the Superior Court of the District of Columbia or a petition for review to the District of Columbia Court of Appeals shall not stay the decision of the Director or prohibit the Director from issuing registrations to the selected applicants.

**Section 6002, REVOCATION OF REGISTRATION FOR CONVENIENCE OF THE DISTRICT, is amended as follows:**

**Subsections 6002.1 and 6002.2 are amended to read as follows:**

- 6002.1 If the Department determines a revocation is in the District's interest, the Department may revoke a registrant's registration. Revocation pursuant to this section may occur only if there are no further cultivation center or dispensary

registrations permitted by law to be awarded to an applicant that has become eligible for a registration pursuant to § 6001.10.

- 6002.2 The registrant whose registration is in jeopardy of revocation pursuant to § 6002.1 shall receive notice of the action in the Superior Court of the District of Columbia which places the registrant's registration in jeopardy, and be provided an opportunity to intervene in the matter pursuant to § 6002.3. If after receiving notice of the action, the registrant fails to intervene in the matter within the allotted time period, the registrant shall have no further right of appeal of the Department's final action which results in the revocation or non-issuance of his or her registration.

**Subsections 6002.3 through 6002.5 are renumbered 6002.4 through 6002.6, respectively.**

**A new subsection 6002.3 is added to read as follows:**

- 6002.3 The registrant whose registration is in jeopardy of revocation pursuant to § 6002.1 may, at the registrant's option, seek to be joined as a party pursuant to the rules of the Superior Court of the District of Columbia.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at [Angli.Black@dc.gov](mailto:Angli.Black@dc.gov), (202) 442-5977.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2017-158  
July 12, 2017

**SUBJECT:** Limitations Regarding Out-of-Boundary Transfers

**ORIGINATOR:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2), (3), and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2), (3), and (11) (2012 Repl.), and section 103 of the Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172) (2012 Repl.), it is hereby **ORDERED** that:

1. On May 12, 2017, I issued Mayor's Order 2017-125, which halted any grants or denials of out-of-boundary transfer requests by the Chancellor of the District of Columbia Public Schools ("Chancellor") and required the Chancellor to issue a policy to clarify the criteria under which his discretionary authority would be exercised pursuant to 5E DCMR § 2106.6. I directed the Chancellor to craft a policy that would be consistent with the ethics laws of the District of Columbia and expressly ensure that requests from former or current public officials were not given special consideration.
2. During the creation of the new District of Columbia Public Schools ("DCPS") policy, we determined that no former or current public official shall be able to request an out-of-boundary transfer request.
3. Accordingly, the Chancellor issued Chancellor's Directive #103, dated June 21, 2017, which requires each applicant to certify that he or she is not, and never has been, a public official in the District of Columbia and creates an Advisory Committee in DCPS to consider such discretionary transfer requests and make recommendations to the Chancellor.
4. The Chancellor's Directive #103, dated June 21, 2017, is hereby adopted in full in this Mayor's Order. Any modifications or amendments to Chancellor's Directive #103 shall be considered and executed in consultation with the Executive Office of the Mayor.
5. For the purposes of this Order, a public official is any individual listed in the definition of the term "public official" set forth in section 101(47) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01(47)).

6. **EFFECTIVE DATE:** This Order shall become effective *nunc pro tunc* to June 21, 2017.



MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**DISTRICT OF COLUMBIA  
OFFICE OF THE MAYOR  
OFFICE ON AGING**

**NOTICE OF FUNDING AVAILABILITY**

**Fiscal Year 2018 Senior Villages Competitive Grant**

The government of the District of Columbia, Office on Aging is soliciting applications for its Fiscal Year 2018 Senior Villages Competitive Grant process. Up to \$300,000 in district appropriated funds is available for projects in three service areas. The Request for Applications (RFA) solicits submissions that will enable DCOA to select the most qualified candidate to:

- (1) Establish a Senior Village in Wards 7 or 8 for seniors who have been traditionally underserved in the District of Columbia;
- (2) Provide support and training for Senior Village staff and volunteers; and/or
- (3) Design and implement innovative programming for seniors.

Nonprofit organizations with places of business within the physical boundaries of the District of Columbia are eligible to apply. For-profit organizations with places of business within the physical boundaries of the District of Columbia are also eligible to apply, but must not include profit in their grant application. Because Senior Service Network (SSN) organizations are potential recipients of funds allocated, SSN members responding to this RFA must submit a statement justifying why their selection would not present a conflict of interest.

Entities may choose to apply for one or more of the three service areas. Separate applications must be completed and submitted for each area of interest. Applicants must demonstrate a strong sustainability plan for services outlined in each application for a target population of low-income and underserved seniors 60 years old and older residing in delineated District neighborhoods.

The RFA will be released on July 21, 2017. Deadline for submission is September 15, 2017, at 2:00 p.m. A Pre-Application Conference will be held on July 27, 2017, 2:00 p.m. at 500 K St. NE, Washington, DC 20002.

Applications are available for pickup from the D.C. Office on Aging, 500 K Street, NE, Washington, DC 20002 between 9:00 a.m. and 5:00 p.m. Monday through Friday. Electronic posting will be on the DCOA website, [www.dcoa.dc.gov](http://www.dcoa.dc.gov), and the Office of Partnerships and Grants Development website, [www.opgd.dc.gov](http://www.opgd.dc.gov) no later than July 27, 2017. Inquiries should be forwarded to Phillip Hashey at [Phillip.Hashey@dc.gov](mailto:Phillip.Hashey@dc.gov) or Aurora Delespin-Jones at [aurora.delespin-jones@dc.gov](mailto:aurora.delespin-jones@dc.gov) or by calling (202)-535-1437.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, JULY 26, 2017  
2000 14<sup>TH</sup> 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.

<b>Protest Hearing (Status)</b> <b>Case # 17-PRO-00028;</b> Silver Cathedral Commons, LLC, t/a Silver, 3404 Wisconsin Ave NW, License #105729, Retailer CR, ANC 3C <b>Application for a New License</b>	<b>9:30 AM</b>
<b>Show Cause Hearing (Status)</b> <b>Case # 17-CMP-00143;</b> Lepri, LLC, t/a Steel Plate, 3523 12th Street NE License #94011, Retailer CT, ANC 5B <b>No ABC Manager on Duty</b>	<b>9:30 AM</b>
<b>Show Cause Hearing (Status)</b> <b>Case # 17-CMP-00124;</b> Sharcon Hospitality of D.C. Three, LLC, t/a Holiday Inn Express Hotel & Suites, 1917 Bladensburg Road NE, License #82836 Retailer CH, ANC 5C <b>Failed to File Quarterly Statements</b>	<b>9:30 AM</b>
<b>Show Cause Hearing (Status)</b> <b>Case # 17-CMP-00152;</b> Sharcon Hospitality of D.C. Three, LLC, t/a Holiday Inn Express Hotel & Suites, 1917 Bladensburg Road NE, License #82836 Retailer CH, ANC 5C <b>No ABC Manager on Duty, Failed to Post Pregnancy Sign, Failed to Post Minimum Age Required for the Purchase of an Alcohol Beverage</b>	<b>9:30 AM</b>
<b>Show Cause Hearing (Status)</b> <b>Case # 17-AUD-00020;</b> Thirteenth Step, LLC, t/a Kitty O'Shea's DC, 4624 Wisconsin Ave NW, License #90464, Retailer CR, ANC 3E <b>Failed to File Quarterly Statements</b>	<b>9:30 AM</b>



Board's Calendar

July 26, 2017

**Show Cause Hearing (Status) 9:30 AM**

**Case # 16-CMP-00703;** Sei Restaurant & Lounge, LLC, t/a Sei Restaurant & Lounge, 444 7th Street NW, License #78742, Retailer CR, ANC 2C  
**No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 17-CMP-00115,** TMI International, Inc., t/a Sip, 1812 Hamlin Street NE License #95164, Retailer CT, ANC 5C

**Substantial Change in Operation Without Board Approval, Violation of Settlement Agreement**

**Show Cause Hearing\* 10:00 AM**

**Case # 17-CMP-00026;** The Noodles Shop, Co-Colorado, Inc., t/a Noodles & Company, 1667 K Street NW, License #91046, Retailer CR, ANC 2B  
**No ABC Manager on Duty**

**Show Cause Hearing\* 11:00 AM**

**Case # 17-CMP-00008;** TMI International, Inc., t/a Sip, 1812 Hamlin Street NE License #95164, Retailer CT, ANC 5C  
**Noise Violation**

**BOARD RECESS AT 12:00 PM**

**ADMINISTRATIVE AGENDA**

**1:00 PM**

**Protest Hearing\* 1:30 PM**

**Case # 17-PRO-00027;** 2012 9th Street Café, LLC, t/a Garden State, 2012 9th Street NW, License #105646, Retailer CT, ANC 1B

**Application for a New License**

*This hearing is cancelled due to the submission of a Settlement Agreement for the Board's review and approval.*

**Protest Hearing\* 1:30 PM**

**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 for a Change of Hours to the Sidewalk Café)**

**Fact Finding Hearing\* 1:30 PM**

Pub Crawl

Applicant: Alex Lopez

Date of Event: October 28, 2017

Event: Project DC Events, (DC Halloween Crawl)

Neighborhood: Multiple Licensed Premises

Size of Event 2400-3400

Board's Calendar  
July 26, 2017

Pub Crawl

Applicant: Samantha Gorman

Date of Event: October 28, 2017

Event: Lindy Promotions, (19<sup>th</sup> Annual Nightmare on M Street Bar Crawl)

Neighborhood: Multiple Licensed Premises

Size of Event 2500-3000

**Show Cause Hearing\***

**3:30 PM**

**Case # 17-CMP-00050;** Imm on H, LLC, t/a Imm on H, 1360 H Street NE  
License #99569, Retailer CR, ANC 6A

**No ABC Manager on Duty**

*This hearing has been continued to August 2, 2017 at 10:00 am.*

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

**BREAKTHROUGH MONTESSORI PUBLIC CHARTER SCHOOL****NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Renovation Services**

Breakthrough Montessori intends to enter into a Sole Source contract with MCN Build for Summer 2017 renovations to their current facility. The work includes the reconfiguration of the space to meet our growing enrollment at a cost not to exceed \$271,000. MCN Build was chosen based due to their previous experience renovating the space and their ability to deliver in a short timeframe for school to open in August.

**CARLOS ROSARIO PUBLIC CHARTER SCHOOL****REQUEST FOR QUOTES****Cleaning Services for Kitchen Equipment**

The Carlos Rosario School is seeking bids for deep cleaning services for its Kitchen Equipment at its V St. NE Campus location. For further information please contact Gwen Ellis at [gellis@carlosrosario.org](mailto:gellis@carlosrosario.org). All bids are due by 4pm on Friday, July 28, 2017.

**CESAR CHAVEZ PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS****Substitute Staffing**

Cesar Chavez Public Charter Schools for Public Policy (Chavez Schools) is in need of substitute staffing services for the schools daily operations. For full RFP contact

[Cheryl.cunningham@chavezschools.org](mailto:Cheryl.cunningham@chavezschools.org)

**Submission**

**Please submit an electronic version of the proposal by Friday August 4<sup>th</sup> 2017 at 5:00pm EST to [Cheryl.cunningham@chavezschools.org](mailto:Cheryl.cunningham@chavezschools.org).**

**CREATIVE MINDS INTERNATIONAL PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****2017-2018****Professional Employer Organization (P.E.O.) Contract**

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 440 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 a professional employer organization contract for SY2017-18.

**Requested Services**

The successful bidder will provide the service under which CMIPCS can outsource employee management tasks, including but not limited to the following:

- Employee healthcare benefits
- HR consulting
- Payroll and workers' compensation
- Recruitment services
- Retirement (401k)
- Risk/safety management
- Short and long term disability program
- Time and attendance
- Training and development

**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**

CMIPCS 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 proposals please email [james.lafferty-furphy@creativemindspcs.org](mailto:james.lafferty-furphy@creativemindspcs.org). Proposals are due no later than 1:00 pm August 1<sup>st</sup>, 2017.

**DC INTERNATIONAL PUBLIC CHARTER SCHOOL****INVITATION FOR BID**

**RFP for Internal and External Signs:** DCI will be purchasing custom signage to outfit our new facility at 1400 Main Drive NW. Signage needs include 150 interior signs, 2 5x3 brushed metal 2-sided outdoor signs, 10 wayfinding or parking signs, 50 pinned metal letters. Bids must include evidence of experience in field, qualifications and estimated fees. Please send proposals to [RFP@dcinternationalschool.org](mailto:RFP@dcinternationalschool.org). Proposals must be received no later than the close of business Tuesday, August 1, 2017.

**EAGLE ACADEMY PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****SOLAR ELECTRIC PV SYSTEM**

Eagle Academy Public Charter School, in accordance with Section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby requests proposals to provide services for Solar Electric PV System related to a school construction project and one existing school building.

**Submittal is Due: Monday, July 31, 2017, by 5:00 p.m.**

**Submittal Terms**

1. Submittal Requirements – Please limit your submittal to less than 20 pages, and submit your submittal by the time specified above. No late submittals will be accepted. **Requests for information should be directed to the attention of [jmallory@eagleacademypcs.org](mailto:jmallory@eagleacademypcs.org)**
2. Award of Contract – If the results of this RFP warrant the awarding of a contract, Eagle Academy will negotiate terms and fees with the top selected firm(s). Eagle Academy PCS reserves the right to reject any and all bids at its sole discretion.



**BOARD OF ELECTIONS****CERTIFICATION OF ANC/SMD VACANCY**

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

**VACANT: 2B07**

Petition Circulation Period: **Monday, July 24, 2017 thru Monday, August 14, 2017**

Petition Challenge Period: **Thursday, August 17, 2017 thru Wednesday, August 23, 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 - 4<sup>th</sup> Street, NW, Room 250N  
Washington, DC 20001**

For more information, the public may call **727-2525**.

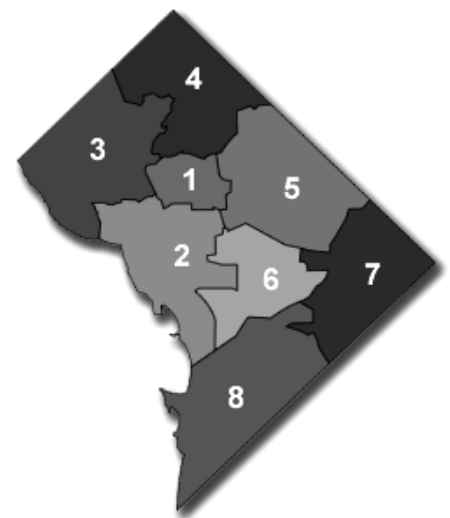
**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
CITYWIDE REGISTRATION SUMMARY  
As Of JUNE 30, 2017**

<b>WARD</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>1</b>	45,200	2,955	632	147	160	11,314	<b>60,408</b>
<b>2</b>	30,871	5,809	207	160	153	10,889	<b>48,089</b>
<b>3</b>	38,334	6,630	348	141	151	11,095	<b>56,699</b>
<b>4</b>	49,062	2,272	520	84	166	8,775	<b>60,879</b>
<b>5</b>	52,046	2,349	581	104	215	9,183	<b>64,478</b>
<b>6</b>	54,747	7,131	482	234	228	13,515	<b>76,337</b>
<b>7</b>	47,511	1,256	419	48	158	6,321	<b>55,713</b>
<b>8</b>	45,783	1,351	427	41	175	7,030	<b>54,807</b>
<b>Totals</b>	363,554	29,753	3,616	959	1,406	78,122	<b>477,410</b>
<b>Percentage By Party</b>	<b>76.15%</b>	<b>6.23%</b>	<b>.76%</b>	<b>.20%</b>	<b>.29%</b>	<b>16.36%</b>	<b>100.00%</b>

DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF  
**VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS**  
AS OF THE END OF JUNE 30, 2017

COVERING CITY WIDE TOTALS BY:  
**WARD, PRECINCT AND PARTY**

ONE JUDICIARY SQUARE  
441 4<sup>TH</sup> STREET, NW SUITE 250N  
WASHINGTON, DC 20001  
(202) 727-2525  
<http://www.dcboe.org>



**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
WARD 1 REGISTRATION SUMMARY  
As Of JUNE 30, 2017**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>20</b>	1,458	28	9	2	4	251	<b>1,752</b>
<b>22</b>	3,749	393	29	15	11	978	<b>5,175</b>
<b>23</b>	2,903	212	44	15	10	782	<b>3,966</b>
<b>24</b>	2,665	253	25	15	13	804	<b>3,775</b>
<b>25</b>	3,791	450	47	12	13	1,088	<b>5,401</b>
<b>35</b>	3,568	230	55	16	7	835	<b>4,711</b>
<b>36</b>	4,226	253	56	7	14	1,022	<b>5,578</b>
<b>37</b>	3,473	164	50	14	10	832	<b>4,543</b>
<b>38</b>	2,883	138	47	16	10	726	<b>3,820</b>
<b>39</b>	4,153	206	68	7	14	911	<b>5,359</b>
<b>40</b>	3,957	188	85	11	17	1,020	<b>5,278</b>
<b>41</b>	3,598	203	61	7	17	1,009	<b>4,895</b>
<b>42</b>	1,846	82	30	2	11	451	<b>2,422</b>
<b>43</b>	1,804	70	19	3	7	361	<b>2,264</b>
<b>137</b>	1,126	85	7	5	2	244	<b>1,469</b>
<b>TOTALS</b>	<b>45,200</b>	<b>2,955</b>	<b>632</b>	<b>147</b>	<b>160</b>	<b>11,314</b>	<b>60,408</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 2 REGISTRATION SUMMARY**  
**As Of JUNE 30, 2017**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>2</b>	938	181	6	9	12	560	<b>1,706</b>
<b>3</b>	1,666	392	18	8	11	668	<b>2,763</b>
<b>4</b>	1,944	487	5	10	7	763	<b>3,216</b>
<b>5</b>	2,089	592	13	15	10	781	<b>3,500</b>
<b>6</b>	2,337	861	17	13	15	1,242	<b>4,485</b>
<b>13</b>	1,290	239	4	2	5	422	<b>1,962</b>
<b>14</b>	2,952	483	23	15	10	960	<b>4,443</b>
<b>15</b>	3,049	417	27	18	15	884	<b>4,410</b>
<b>16</b>	3,481	442	24	18	15	973	<b>4,953</b>
<b>17</b>	4,815	629	33	21	17	1,488	<b>7,003</b>
<b>129</b>	2,371	398	12	12	15	893	<b>3,701</b>
<b>141</b>	2,392	319	12	10	13	659	<b>3,405</b>
<b>143</b>	1,547	369	13	9	8	596	<b>2,542</b>
<b>TOTALS</b>	<b>30,871</b>	<b>5,809</b>	<b>207</b>	<b>160</b>	<b>153</b>	<b>10,889</b>	<b>48,089</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 3 REGISTRATION SUMMARY**  
**As Of JUNE 30, 2017**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>7</b>	1,281	405	15	3	7	562	<b>2,273</b>
<b>8</b>	2,437	635	30	6	8	767	<b>3,883</b>
<b>9</b>	1,277	518	7	9	8	509	<b>2,328</b>
<b>10</b>	1,888	428	19	7	13	699	<b>3,054</b>
<b>11</b>	3,434	925	39	28	22	1,265	<b>5,713</b>
<b>12</b>	481	192	0	4	4	205	<b>886</b>
<b>26</b>	2,894	345	20	8	6	851	<b>4,124</b>
<b>27</b>	2,446	246	23	11	3	592	<b>3,321</b>
<b>28</b>	2,499	502	38	7	9	761	<b>3,816</b>
<b>29</b>	1,350	244	12	8	8	411	<b>2,033</b>
<b>30</b>	1,293	210	12	4	6	299	<b>1,824</b>
<b>31</b>	2,435	307	17	6	11	568	<b>3,344</b>
<b>32</b>	2,724	302	23	5	12	565	<b>3,631</b>
<b>33</b>	2,918	300	23	4	4	677	<b>3,926</b>
<b>34</b>	3,748	432	37	14	8	1,114	<b>5,353</b>
<b>50</b>	2,184	273	16	6	7	480	<b>2,966</b>
<b>136</b>	849	101	6	1	3	266	<b>1,226</b>
<b>138</b>	2,196	265	11	10	12	504	<b>2,998</b>
<b>TOTALS</b>	<b>38,334</b>	<b>6,630</b>	<b>348</b>	<b>141</b>	<b>151</b>	<b>11,095</b>	<b>56,699</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 4 REGISTRATION SUMMARY**  
**As Of JUNE 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,257	71	32	5	11	381	2,757
46	2,842	91	33	8	13	499	3,486
47	3,396	147	42	10	16	748	4,359
48	2,815	131	26	5	6	544	3,527
49	919	47	15	1	6	203	1,191
51	3,344	527	21	7	9	624	4,532
52	1,243	155	9	0	4	235	1,646
53	1,252	70	20	1	5	237	1,585
54	2,370	97	28	2	5	446	2,948
55	2,430	76	18	1	9	429	2,963
56	3,138	95	32	8	12	617	3,902
57	2,431	71	33	6	11	457	3,009
58	2,264	65	19	4	7	338	2,697
59	2,638	88	30	6	6	420	3,188
60	2,165	74	24	4	8	592	2,867
61	1,591	53	13	0	6	273	1,936
62	3,172	127	22	2	3	383	3,709
63	3,731	131	56	2	18	635	4,573
64	2,358	70	21	7	5	352	2,813
65	2,706	86	26	5	6	362	3,191
<b>Totals</b>	<b>49,062</b>	<b>2,272</b>	<b>520</b>	<b>84</b>	<b>166</b>	<b>8,775</b>	<b>60,879</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 5 REGISTRATION SUMMARY**  
**As Of JUNE 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,367	195	61	7	15	983	5,628
44	2,795	241	25	8	18	643	3,730
66	4,513	94	44	4	15	571	5,241
67	2,891	102	22	4	10	407	3,436
68	1,913	167	22	8	5	398	2,513
69	2,068	70	20	1	10	277	2,446
70	1,446	78	24	0	4	209	1,761
71	2,370	71	25	4	10	313	2,793
72	4,330	140	39	8	24	707	5,248
73	1,959	94	22	6	10	362	2,453
74	4,600	260	60	9	21	958	5,908
75	3,879	218	47	16	18	827	5,005
76	1,602	87	23	5	7	340	2,064
77	2,860	123	29	4	12	477	3,505
78	2,941	95	44	8	11	460	3,559
79	2,040	74	19	2	10	353	2,498
135	3,079	186	40	8	9	606	3,928
139	2,393	54	15	2	6	292	2,762
<b>TOTALS</b>	<b>52,046</b>	<b>2,349</b>	<b>581</b>	<b>104</b>	<b>215</b>	<b>9,183</b>	<b>64,478</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 6 REGISTRATION SUMMARY**  
**As Of JUNE 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	4,518	561	43	24	15	1,231	6,392
18	4,875	372	45	14	20	1,094	6,410
21	1,182	55	8	7	0	254	1,506
81	4,658	381	45	11	20	933	6,048
82	2,595	263	35	9	8	585	3,495
83	5,261	717	36	29	23	1,372	7,438
84	1,986	415	20	6	10	545	2,982
85	2,694	522	16	11	11	742	3,996
86	2,197	261	24	10	8	459	2,959
87	2,727	275	19	3	15	579	3,618
88	2,164	290	18	6	4	519	3,001
89	2,592	654	19	9	9	774	4,057
90	1,603	249	10	6	10	478	2,356
91	4,089	392	38	18	21	959	5,517
127	4,159	324	40	22	14	858	5,417
128	2,455	218	27	10	11	616	3,337
130	791	319	6	3	3	283	1,405
131	2,635	690	18	24	19	812	4,198
142	1,566	183	15	12	7	422	2,205
<b>TOTALS</b>	<b>54,747</b>	<b>7,131</b>	<b>482</b>	<b>234</b>	<b>228</b>	<b>13,515</b>	<b>76,337</b>



**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 7 REGISTRATION SUMMARY**  
**As Of JUNE 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,460	83	19	4	2	255	<b>1,823</b>
92	1,589	34	12	2	6	223	<b>1,866</b>
93	1,578	39	18	2	5	222	<b>1,864</b>
94	1,906	52	19	0	6	250	<b>2,233</b>
95	1,652	45	12	1	3	260	<b>1,973</b>
96	2,337	65	17	1	13	335	<b>2,768</b>
97	1,425	43	14	1	7	197	<b>1,687</b>
98	1,910	42	23	2	6	250	<b>2,233</b>
99	1,481	51	18	4	9	230	<b>1,793</b>
100	2,350	45	16	2	7	272	<b>2,692</b>
101	1,585	29	13	2	5	169	<b>1,803</b>
102	2,329	50	18	1	9	278	<b>2,685</b>
103	3,449	74	37	2	9	471	<b>4,042</b>
104	3,048	86	31	0	18	422	<b>3,605</b>
105	2,442	66	20	4	8	360	<b>2,900</b>
106	2,781	55	17	2	11	362	<b>3,228</b>
107	1,752	65	13	1	8	218	<b>2,057</b>
108	1,093	29	6	0	2	123	<b>1,253</b>
109	960	38	4	0	1	91	<b>1,094</b>
110	3,724	97	21	7	9	412	<b>4,270</b>
111	2,471	63	33	3	4	365	<b>2,939</b>
113	2,168	52	21	3	7	269	<b>2,520</b>
132	2,021	53	17	4	3	287	<b>2,385</b>
<b>TOTALS</b>	<b>47,511</b>	<b>1,256</b>	<b>419</b>	<b>48</b>	<b>158</b>	<b>6,321</b>	<b>55,713</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 8 REGISTRATION SUMMARY**  
**As Of JUNE 30, 2017**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	2,215	61	17	1	10	306	2,610
114	3,488	128	33	4	22	557	4,232
115	2,847	68	21	5	9	596	3,546
116	4,114	101	38	5	15	621	4,894
117	2,071	49	18	2	12	341	2,493
118	2,748	73	34	2	11	408	3,276
119	2,730	111	29	1	13	469	3,353
120	1,863	30	16	1	2	223	2,135
121	3,350	80	27	3	5	459	3,924
122	1,789	45	19	0	9	236	2,098
123	2,320	160	24	8	18	367	2,897
124	2,609	64	20	1	8	349	3,051
125	4,502	102	39	2	13	678	5,336
126	3,794	131	45	4	16	695	4,685
133	1,297	44	11	0	0	174	1,526
134	2,210	47	27	1	6	282	2,573
140	1,836	57	9	1	6	269	2,178
<b>TOTALS</b>	<b>45,783</b>	<b>1,351</b>	<b>427</b>	<b>41</b>	<b>175</b>	<b>7,030</b>	<b>54,807</b>

**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
CITYWIDE REGISTRATION ACTIVITY**

*For voter registration activity between 5/31/2017 and 6/30/2017*

<b>NEW REGISTRATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
<b>Beginning Totals</b>	<b>366,194</b>	<b>29,961</b>	<b>3,647</b>	<b>966</b>	<b>1,407</b>	<b>78,938</b>	<b>481,113</b>
Board of Elections Over the Counter	13	2	0	0	0	6	21
Board of Elections by Mail	39	5	0	0	0	13	57
Board of Elections Online Registration	166	18	1	3	3	46	237
Department of Motor Vehicle	491	58	10	4	5	175	743
Department of Disability Services	2	0	0	0	0	2	4
Office of Aging	0	0	0	0	0	0	0
Federal Postcard Application	0	0	0	0	0	0	0
Department of Parks and Recreation	0	0	0	0	0	0	0
Nursing Home Program	0	0	0	0	0	0	0
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	0
Department of Corrections	5	0	0	0	0	0	5
Department of Human Services	0	0	0	0	0	1	1
Special / Provisional	0	0	0	0	0	0	0
All Other Sources	47	4	0	0	0	18	69
<b>+Total New Registrations</b>	<b>763</b>	<b>87</b>	<b>11</b>	<b>7</b>	<b>8</b>	<b>261</b>	<b>1,137</b>

<b>ACTIVATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
Reinstated from Inactive Status	599	39	8	1	5	144	796
Administrative Corrections	659	107	5	0	10	319	1,100
<b>+TOTAL ACTIVATIONS</b>	<b>1,258</b>	<b>146</b>	<b>13</b>	<b>1</b>	<b>15</b>	<b>463</b>	<b>1,896</b>

<b>DEACTIVATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
Changed to Inactive Status	3,540	317	48	12	27	943	4,887
Moved Out of District (Deleted)	0	0	0	0	0	0	0
Felon (Deleted)	0	0	0	0	0	0	0
Deceased (Deleted)	7	1	0	0	0	0	8
Administrative Corrections	1,284	108	11	7	16	446	1,872
<b>-TOTAL DEACTIVATIONS</b>	<b>4,831</b>	<b>426</b>	<b>59</b>	<b>19</b>	<b>43</b>	<b>1,389</b>	<b>6,767</b>

<b>AFFILIATION CHANGES</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	
+ Changed To Party	471	101	26	23	42	287	
- Changed From Party	-301	-116	-22	-19	-23	-438	
<b>ENDING TOTALS</b>	<b>363,554</b>	<b>29,753</b>	<b>3,616</b>	<b>959</b>	<b>1,406</b>	<b>78,122</b>	<b>477,410</b>

**DEPARTMENT OF ENERGY AND ENVIRONMENT****PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5<sup>th</sup> Floor, Washington, DC, intends to issue an air quality permit (#6545-R1) to Gelberg Signs to operate one existing custom built paint booth for painting of signs at the property located at 6511 Chillum Place, NW, Washington DC 20012. The contact person for the facility is Neil A. Brami, President, at (202) 882-7733.

The proposed emission limits are as follows:

- a. No person shall discharge into the atmosphere more than fifteen (15) pounds of volatile organic compound (VOC) emissions in any one (1) day, nor more than three pounds (3 lb.) in any one (1) hour, from any combination of articles, machines, units, equipment, or other contrivances at a facility, unless the uncontrolled VOC emissions are reduced by at least ninety percent (90%) overall capture and control efficiency. [20 DCMR 700.2]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]
- c. Visible emissions shall not be emitted into the outdoor atmosphere from the paint spray booth. [20 DCMR 107 and 606]

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, 5<sup>th</sup> Floor

Washington, DC 20002  
[Stephen.Ours@dc.gov](mailto:Stephen.Ours@dc.gov)

**No comments or hearing requests submitted after August 21, 2017 will be accepted.**

For more information, please contact Stephen S. Ours at (202) 535-1747.

**DEPARTMENT OF ENERGY AND ENVIRONMENT****PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5<sup>th</sup> Floor, Washington, DC, intends to issue an air quality permit (#6554-R2) to the Washington Metropolitan Area Transit Authority (WMATA) to operate one existing automotive paint spray booth at the Shepherd Parkway Bus Facility located at 2 DC Village Lane SW, Washington DC. The contact person for the facility is Gary Wood, Environmental Compliance Officer, at (202) 962-5600.

**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
Underbody coating	3.6	430

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
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 permits 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, 5<sup>th</sup> Floor  
Washington, DC 20002  
[Stephen.Ours@dc.gov](mailto:Stephen.Ours@dc.gov)

**No written comments or hearing requests postmarked after August 21, 2017 will be accepted.**

For more information, please contact Stephen S. Ours at (202) 535-1747.



## DEPARTMENT OF ENERGY AND ENVIRONMENT

## NOTICE OF FUNDING AVAILABILITY

## Analysis of 2013 Sustainable DC Plan

The Department of Energy and Environment (the Department) seeks eligible entities to advise the Department on how close the 143 actions in the 2013 Sustainable DC Plan will get to meeting the plan's 31 targets and the individual contribution each action will make towards its corresponding target. This is a multi-year project. The amount available for the project is approximately \$150,000.00, with up to \$50,000 available before September 30, 2017. This amount is subject to continuing availability of funding and approval by the appropriate agencies.

Beginning 7/21/2017, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

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

**Email** a request to [Greenbuildingrfa.grants@dc.gov](mailto:Greenbuildingrfa.grants@dc.gov) with "Request copy of RFA 2017-1725-USA" in the subject line.

**Pick up a copy in person** from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Daniel Guilbeault at (202) 281-3957 and mention this RFA by name.

**Write** DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Daniel Guilbeault RE:2017-1725-USA" on the outside of the envelope.

**The deadline for application submissions is 8/7/2017, at 11:00 AM.** Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to [Greenbuildingrfa.grants@dc.gov](mailto:Greenbuildingrfa.grants@dc.gov).

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

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

For additional information regarding this RFA, write to: [Greenbuildingrfa.grants@dc.gov](mailto:Greenbuildingrfa.grants@dc.gov).

**EW STOKES COMMUNITY FREEDOM PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Food Distributor**

EW Stokes PCS is advertising the opportunity to bid on the delivery of produce products to children enrolled at the school for the 2017-2018 school year with a possible extension of (2) one year renewals. All items 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 **7/21/2017** from **EWS Procurement Team at 202-265-7237 or [procurement@ewstokes.org](mailto:procurement@ewstokes.org)**:

Proposals will be accepted at 3700 Oakview Terrace NE Washington DC 20017 on **August 8, 2017**, not later than **1:00pm**.

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

**FRIENDSHIP PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

Friendship Public Charter School is soliciting proposals from qualified vendors for:

- PreK-12 professional development and curriculum consultancy for the Student Support Services and Health & PE Service Teams
- K-12 Academic Technology and Intervention supplemental assessment and instruction solution designed and developed to address the Common Core State Standards (CCSS) and/or the state standards in reading and mathematics
- Curriculum and professional development for Middle and High School PE and Health Teachers for a pregnancy prevention program that incorporates infant simulators and all required hardware and software

The competitive Request for Proposal can be found on FPCS website at <http://www.friendshipschools.org/procurement>. Proposals are due no later than 4:00 P.M., EST, Tuesday, August 15, 2017. No proposal will be accepted after the deadline. Questions can be addressed to: [ProcurementInquiry@friendshipschools.org](mailto:ProcurementInquiry@friendshipschools.org). -- **Bids not addressing all areas as outlined in the RFP will not be considered.**

**HARMONY DC PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS****Student Transportation Services**

Harmony DC Public Charter Schools requests proposals for student daily transportation services for School Year 2017-2018.

More information about the scope of the services will be provided upon request to [info@harmonydc.org](mailto:info@harmonydc.org).

Email questions to [info@harmonydc.org](mailto:info@harmonydc.org) with an appropriate subject line for the above services.

Deadline for proposal submission is Friday July 28, 2017 - 12:00pm.

**DEPARTMENT OF HEALTH  
HEALTH PROFESSIONAL LICENSING ADMINISTRATION**

**NOTICE OF MEETING**

Board of Medicine  
July 26, 2017

On JULY 26, 2017 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

The meeting will be open to the public from 8:30 am to 10:30 am to discuss various agenda items and any comments and/or concerns from the public.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will then move to Closed Session from 10:30 am until 4:45 pm to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting location is 899 North Capitol Street NE, 2<sup>nd</sup> Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website [www.doh.dc.gov/bomed](http://www.doh.dc.gov/bomed) and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Frank B. Meyers, J.D.

## DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Pharmacy hereby gives notice of its regularly scheduled monthly meetings for the remainder of the 2017 calendar year pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.).

The District of Columbia Board of Pharmacy's meeting scheduled is as follows:

**Thursday, August 3, 2017**, the District of Columbia Board of Pharmacy will hold an open session (public) meeting, which will begin at 9:30 a.m. and end at 11:00 a.m., or when there is no further open session business for the Board to consider. Following the open (public) session, the Board will meet in executive (closed/non-public) session to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14).

**Thursday, September 7, 2017**, the District of Columbia Board of Pharmacy will have a limited open session (public) meeting in which the only item on the agenda will be to vote to move into the executive (closed) session meeting to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14). The open (public) session will begin at 11:30 a.m. and will end following the vote to move into the executive (closed) session. Following the open (public) session, the Board will meet in executive (closed/non-public) session to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14).

**Thursday, October 5, 2017**, the District of Columbia Board of Pharmacy will hold an open session (public) meeting, which will begin at 9:30 a.m. and end at 11:00 a.m., or when there is no further open session business for the Board to consider. Following the open (public) session, the Board will meet in executive (closed/non-public) session to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14).

**Thursday, November 2, 2017**, the District of Columbia Board of Pharmacy will have a limited open session (public) meeting in which the only item on the agenda will be to vote to move into the executive (closed) session meeting to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14). The open (public) session will begin at 11:30 a.m. and will end following the vote to move into the executive (closed) session. Following the open (public) session, the Board will meet

in executive (closed/non-public) session to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14).

**Thursday, December 7, 2017**, the District of Columbia Board of Pharmacy will hold an open session (public) meeting, which will begin at 9:30 a.m. and end at 11:00 a.m., or when there is no further open session business for the Board to consider. Following the open (public) session, the Board will meet in executive (closed/non-public) session to seek the advice of counsel to the board, pursuant to D.C. Official Code § 2-575(b)(4); to discuss disciplinary matters pursuant to D.C. Official Code § 2-575(b)(9); and to discuss ongoing or planned investigations pursuant to D.C. Official Code § 2-575(b)(14).

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

**DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING****DISTRICT OF COLUMBIA FINANCIAL LITERACY COUNCIL****NOTICE OF PUBLIC MEETING**

The Members of the District of Columbia Financial Literacy Council (DCFLC) will hold a meeting 3:00 PM, Thursday, August 17, 2017. The meeting will be held at the DC Department of Insurance, Securities and Banking, 810 First St, NE, 7th Floor Conference Room, Washington, D.C. 20002. Below is the draft agenda for this meeting. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at <http://disb.dc.gov>. Please RSVP to Idriys J. Abdullah, [idriys.abdullah@dc.gov](mailto:idriys.abdullah@dc.gov), for additional information call (202) 442-7832 or e-mail [idriys.abdullah@dc.gov](mailto:idriys.abdullah@dc.gov)

**DRAFT AGENDA**

- I.** Call to Order
- II.** Welcoming Remarks
- III.** Minutes of the Previous Meeting
- IV.** Unfinished Business
- V.** New Business
- VI.** Executive Session
- VII.** Adjournment



**DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND  
TENURE****Judicial Tenure Commission Begins Reviews Of  
Judges Zoe Bush, Thomas J. Motley, And Susan R. Winfield**

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of **Judges Zoe Bush and Thomas J. Motley** of the Superior Court of the District of Columbia, who are retiring and have requested recommendations for initial appointments as Senior Judges. In addition, the Commission is reviewing the qualifications of **Judge Susan R. Winfield** of the Superior Court of the District of Columbia, who has requested a recommendation for reappointment as a Senior Judge.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on the qualifications of Judges Bush, Motley, and Winfield which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, faxed, or e-mailed by **September 29, 2017**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure  
Building A, Room 246  
515 Fifth Street, N.W.  
Washington, D.C. 20001  
Telephone: (202) 727-1363  
FAX: (202) 727-9718  
E-Mail: dc.cjdt@dc.gov

In addition, comments may be submitted by an online survey available on the Commission's website, <https://www.cjdt.dc.gov>, and using the link "Evaluate Candidates", or using the link <https://www.surveymonkey.com/r/SeniorJudgeSuperiorCourt1216>.

The members of the Commission are:

Jeannine C. Sanford, Esq., Chairperson  
Anthony T. Pierce, Esq., Vice Chairperson  
Hon. Joan L. Goldfrank  
Hon. Colleen Kollar-Kotelly  
William P. Lightfoot, Esq.  
David P. Milzman, M.D.  
Nikki Sertsu

BY: /s/ Jeannine C. Sanford, Esq.  
Chairperson

**KIPP DC PUBLIC CHARTER SCHOOLS****INVITATION FOR BID****Food Service Management Services**

KIPP DC is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the High 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 7/21/17 from Lazette Wells at 202-903-3608 or [lazette.wells@kipfdc.org](mailto:lazette.wells@kipfdc.org):

Proposals will be accepted at 2600 Virginia Ave. NW, Ste. 900 Washington, DC 20037\_on 8/14/17, not later than 3pm.

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

**LATIN AMERICAN MONTESSORI BILINGUAL PUBLIC CHARTER SCHOOL  
("LAMB")**

**REQUEST FOR PROPOSALS**

**Architect Services**

LAMB, in partnership with Building Hope, is seeking proposals from qualified firms to provide architectural services related to the development of a new facility. Please send an email to [rfp@bhope.org](mailto:rfp@bhope.org) to receive the full RFP. Proposals are due no later than 5pm on Friday, August 4, 2017.

MAYA ANGELOU PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Heating, Ventilation & Air Conditioning (HVAC) and Plumbing

Overview of Facility: Maya Angelou Public Charter School (MAPCS) is located at 5600 East Capitol Street NE, Washington DC 20019. Our mission is to create learning communities in lower income urban areas where all students, particularly those who have not succeeded in traditional schools, can succeed academically and socially.

Intent and Definitions:

- a. Heating, Ventilation & Air Conditioning is hereafter referred to as HVAC. Preventative Maintenance is hereafter referred to as PM.
b. The intent of this solicitation is to secure proposals for Preventative Maintenance, fixed-pricing for time and materials service calls related to HVAC and plumbing at MAPCS, as well as an optional facilities upgrade of the gym HVAC system.

Goals of this RFP: To provide a comfortable environment for our students and staff while protecting our assets, the aims of this proposal are to:

- i. Ensure optimal operations of newer equipment through a robust PM program of all HVAC equipment
ii. Develop a PM schedule to address known potential plumbing issues
iii. Establish a plan to address HVAC and plumbing issues as the need arises
iv. Obtain a quote to install new HVAC system utilizing the existing ductwork for the gym

General Practices: A licensed, union service technician will provide all services. All work will be scheduled with MAPCS' Operations Manager. Contractor must be familiar with the control system (Siemens/Desigo CC) and have the software tools to service the system.

Evaluation Criteria: The following criteria will be used to evaluate each proposal:

- Cost Quality, and
Function References
Experience

Contractor Expectations:

- a. All bidders are expected to inspect the site at 5600 East Capitol Street NE, Washington DC 20019 prior to bid submittal. Failure to make such an investigation shall not relieve the successful contractor from the obligation to comply, in every detail, with all provisions and requirements of this RFP nor shall it be the basis for any claim whatsoever for alteration of the terms or payment required by the Agreement.

b. Appointments can be scheduled by contacting Heather Hesslink at (202) 792-5655 ext. 1106 or at [hhesslink@seeforever.org](mailto:hhesslink@seeforever.org). All inquiries regarding technical specifications can be emailed to Heather Hesslink at [hhesslink@seeforever.org](mailto:hhesslink@seeforever.org).

Bid Proposal Acceptance and Information:

a. **All bid proposals will be accepted until 12:00 PM on July 28, 2017.**

b. Interested vendors will respond to the advertised Notice of RFP via upload to SmartSheet link at

<https://app.smartsheet.com/b/form?EQBCT=6d532f773029472a98e13c69f58a8d87>

Complete RFP details can be found at [www.seeforever.org/requestforproposals](http://www.seeforever.org/requestforproposals).

c. Any proposal received after 12:01 PM on July 28, 2017 is deemed non-responsive and will not be considered. Proposals will not be accepted by oral communications, telephone, electronic mail, telegraphic transmission, or fax.

d. All proposals will remain valid for a minimal period of 45 days subsequent to the RFP closing date.

Award:

a. The successful contractor shall enter into a contract for the performance of the work proposed and the contract shall incorporate all applicable provisions of this RFP.

b. The installation of the gym HVAC is optional work and will be performed at the sole discretion of MAPCS.

c. MAPCS reserves the right, in its sole discretion, to award the contract to another contractor if contract negotiations do not appear successful.

**EXECUTIVE OFFICE OF THE MAYOR****NOTICE OF FUNDING AVAILABILITY (NOFA)****FY 2018 Immigrant Justice Legal Services Grant (IJLS)****Background information:**

The Executive Office of the Mayor is soliciting grant applications from qualified Community-Based Organizations (CBOs), private organizations and partnerships serving the District of Columbia's population for its *FY 2018 Immigrant Justice Legal Services Grant Program* (IJLS). The grant program will make a total of \$500,000 available to fund programs that provide targeted services and resources to the DC immigrant population and their family members. The *FY 2018 Immigrant Justice Legal Services Grant Program* will award grants of up to \$150,000 to organizations with a current and valid 501(c)(3) status, as well as private organizations, associations and law firms that plan to mobilize pro bono legal services in order to provide immigration legal services.

**Funding priority areas identified for IJLS FY18 are aligned with Mayor Muriel Bowser's administration priorities:**

- Public Safety, and
- Civic Engagement

**More information regarding eligibility criteria, acceptable grant purposes, pre-bidder's conferences and the deadline for submission will be included in the Request for Applications (RFA).**

**Release Date of RFA:** August 4, 2017

**Availability of RFA:** The RFA will be posted on the Mayor's Office on Asian and Pacific Islander Affairs website (<http://apia.dc.gov/>); the Mayor's Office on Latino Affairs website ([www.ola.dc.gov](http://www.ola.dc.gov/)); the Mayor's Office on African Affairs website (<http://oaa.dc.gov/>); the Mayor's Office on Community Affairs ([www.moca.dc.gov](http://www.moca.dc.gov/)); and the [District's Grant Clearinghouse](#) website.

**Executive Office of the Mayor Contact:**

Thea Sebastian  
(202) 727-2292  
Email: [Thea.Sebastian@dc.gov](mailto:Thea.Sebastian@dc.gov)

**MUNDO VERDE PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****General Contracting for Kitchen Installation**

Mundo Verde PCS seeks bids for general contracting services to install a full service kitchen. The RFP with bidding requirements and supporting documentation can be obtained by contacting [kweisgerber@mundoverdepcs.org](mailto:kweisgerber@mundoverdepcs.org). **Any bids not addressing all areas as outlined in the RFP may not be considered.**

**The deadline for application submission is 9:00am July 31, 2017.**

A pre-con site walk will be conducted on Tuesday July 25 from 12:30-1:30. RSVP required by 2pm on July 24. To RSVP or for further information regarding this notice, contact **Kelsey Weisgerber** at [kweisgerber@mundoverdepcs.org](mailto:kweisgerber@mundoverdepcs.org).



**OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT**

**THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**INCLUSIONARY ZONING 2017 MAXIMUM INCOME, RENT AND PURCHASE PRICE SCHEDULE**

This Maximum Income, Rent and Purchase Price Schedule is published pursuant to the Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 et seq.) (as amended, the "Act") and the Inclusionary Zoning Regulations codified in Chapter 10 of Title 11-C and Chapter 22 of Title 14 of the DCMR.

Maximum Household Income Limits, rents and purchase prices are based on the Washington Metropolitan Statistical Area 2017 Median Family Income (MFI), previously referred to as Area Median Income (AMI) of \$110,300 for a household of four, as published by the U.S. Department of Housing and Urban Development on April 14, 2017. The limits are adjusted for household size. For further information contact Gene Bulmash Inclusionary Zoning Program Manager, Department of Housing and Community Development, 1800 Martin Luther King Jr. Avenue, SE, Washington, DC 20020 or gene.bulmash@dc.gov.

Household Size	Maximum Household Income (\$s)		
	50% of MFI	60% of MFI	80% of MFI
<b>1</b>	38,600	46,350	61,750
<b>2</b>	44,100	52,950	70,600
<b>3</b>	49,650	59,550	79,400
<b>4</b>	55,150	66,200	88,250
<b>5</b>	60,650	72,800	97,050

Unit Size	Minimum Household Income (\$s)		
	50% of MFI	60% of MFI	80% of MFI
<b>Studio</b>	30,650	36,650	48,650
<b>1 bedroom</b>	32,550	39,150	52,400
<b>2 bedroom</b>	39,150	47,050	62,850
<b>3 bedroom</b>	45,800	54,950	73,250
<b>4 bedroom</b>	52,400	62,850	83,700

Note: Minimum Incomes are only applicable for rental Inclusionary Units and are not applicable if a household has rental assistance, such as a rent voucher or subsidy.

Multi-Family Inclusionary Developments

Bed-rooms	Est. Utilities (\$s)	Est. Condo Fees (\$s)	50% of MFI Units		60% of MFI Units		80% of MFI Units	
			Max. Rent (\$s)	Max. Purchase Price (\$s)	Max. Rent (\$s)	Max. Purchase Price (\$s)	Max. Rent (\$s)	Max. Purchase Price (\$s)
Studio	111 - 160	331	970	109,800	1,160	140,700	1,540	202,500
1	169 - 241	394	1,030	110,700	1,240	143,800	1,660	210,100
2	226 - 322	583	1,240	113,600	1,490	153,300	1,990	232,800
3	285 - 404	662	1,450	134,100	1,740	180,400	2,320	273,100
4	342 - 484	693	1,660	162,200	1,990	215,100	2,650	321,100

Single-Family Inclusionary Developments

Bed-rooms	Est. Utilities (\$s)	Est. Condo Fees (\$s)	50% of MFI Units		60% of MFI Units		80% of MFI Units	
			Max. Rent (\$s)	Max. Purchase Price (\$s)	Max. Rent (\$s)	Max. Purchase Price (\$s)	Max. Rent (\$s)	Max. Purchase Price (\$s)
2	269 - 426	143	1,240	164,800	1,490	204,500	1,990	284,000
3	336 - 529	169	1,450	192,100	1,740	238,500	2,320	331,200
4	401 - 629	195	1,660	211,500	1,990	264,400	2,650	370,400

The Maximum Allowable Purchase Price or Rent takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above and the range is based on the difference between gas or electric heat. Actual costs to be deducted for each utility are itemized in Schedule 1 below.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Agency at [www.fhfa.gov](http://www.fhfa.gov) (4.24% as of May 5, 2017) plus a one and a half percent (1.5%) cushion to protect for future interest rate increases and a five percent (5%) down payment.
2. Real estate property taxes are assessed based on the control price at the current real estate tax rate of \$0.85 per \$100 of valuation and a homestead deduction of \$72,450.
3. Condominium fees are estimated at sixty-three cents (\$0.63) per square foot per month applied to the assumed unit square footages. Single-Family homeowner association fees are estimated at eleven (\$0.11) cents per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

	<b>Multi-Family Inclusionary Development</b>				<b>Single-Family Inclusionary Development</b>		
<b>Bed-rooms</b>	Studio	1	2	3	2	3	4
<b>Unit Size</b>	525	625	925	1,050	1,100	1,300	1,500
<b>Hazard Insurance</b>	Included in Condominium Fee				120	130	190

NOTE 1. If the actual homeowner association/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fees assumed in this Schedule, then DHCD may use the actual fees to determine the Maximum Purchase Price for the Inclusionary Unit.

NOTE 2. If the condominium fees for any given Inclusionary Unit do not include hazard insurance, then DHCD may add the actual or estimated insurance costs to determine the Maximum Purchase Price for the Inclusionary Unit.

NOTE 3. For unit types or target MFI not listed above contact DHCD Housing Regulation Administration.

NOTE 4. Maximum and Minimum Incomes are rounded to the nearest 50, Maximum Rents are rounded to the nearest 10 and Maximum Purchase Prices are rounded to the nearest 100. Incomes within one percent (1%) of the Maximum and Minimum Household Incomes will be considered by DHCD.

NOTE 5. More information on Inclusionary Zoning is available at [www.dhcd.dc.gov](http://www.dhcd.dc.gov)

**Schedule 1: Estimated Utilities per Unit Type**

The following utility estimates are produced by the District of Columbia Housing Authority. The estimates shall be deducted from the maximum allowable rent if the tenant pays all or a portion of the required utilities. Only deduct from the rent the utility for which the tenant is responsible. For example, an 80% of MFI one-bedroom apartment for which the tenant pays electricity and not water and sewer will have a maximum rent of \$1,480 (\$1,660 maximum allowable rent minus \$180 estimated electricity cost).

## Multi-family Inclusionary Developments

<b>Unit type</b>	<b>Electricity</b>	<b>Gas</b>	<b>Water</b>	<b>Sewer</b>	<b>Total</b>
<b>Electric heat, hot water, and cooking</b>					
<b>Studio</b>	130	N/A	13	17	160
<b>1-bedroom</b>	180	N/A	26	35	241
<b>2-bedroom</b>	231	N/A	39	52	322
<b>3-bedroom</b>	282	N/A	52	70	404
<b>4-bedroom</b>	332	N/A	65	87	484
<b>Gas heat, hot water, and cooking</b>					
<b>Studio</b>	36	45	13	17	111
<b>1-bedroom</b>	48	60	26	35	169
<b>2-bedroom</b>	60	76	39	52	226
<b>3-bedroom</b>	72	91	52	70	285
<b>4-bedroom</b>	84	106	65	87	342

## Single-family Inclusionary Developments

<b>Unit type</b>	<b>Electricity</b>	<b>Gas</b>	<b>Water</b>	<b>Sewer</b>	<b>Total</b>
<b>Electric heat, hot water, and cooking</b>					
<b>2-bedroom</b>	335	N/A	39	52	426
<b>3-bedroom</b>	407	N/A	52	70	529
<b>4-bedroom</b>	477	N/A	65	87	629
<b>Gas heat, hot water, and cooking</b>					
<b>2-bedroom</b>	72	106	39	52	269
<b>3-bedroom</b>	86	128	52	70	336
<b>4-bedroom</b>	101	149	65	87	401

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

## NOTICE OF FINAL TARIFF

**GAS TARIFF 00-2, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S RIGHTS-OF-WAY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 3**

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Code and in accordance with Section 2-505 of the District of Columbia Code,<sup>1</sup> of its final action taken in the above-captioned proceeding.<sup>2</sup>

2. On March 23, 2017, pursuant to D.C. Code § 10-1141.06,<sup>3</sup> Washington Gas Light Company ("WGL") filed a Surcharge Update to revise the Rights-of-Way (ROW) Current Factor.<sup>4</sup> The ROW Surcharge contains two components, the ROW Current Factor and the ROW Reconciliation Factor. In the Surcharge Update, WGL sets forth the process to be used to recover from its customers the D.C. ROW fees paid by WGL to the District of Columbia government in accordance with the following tariff page:

**GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 3****Section 22****3<sup>rd</sup> Revised Page 56**

3. According to its tariff, WGL's Surcharge Update shows that the ROW Current Factor is 0.0325 with the ROW Reconciliation Factor of 0.0054 due to under collection for the prior period of June 2016 through May 2017, which yields a Net Factor of 0.0379.<sup>5</sup> In addition, WGL's intent is to collect the surcharge beginning with the April 2017 billing cycle.<sup>6</sup>

---

<sup>1</sup> D.C. Code § 2-505 (2001 Ed.) and D.C. Code § 34-802 (2001 Ed.).

<sup>2</sup> *GT00-2, In the Matter of Washington Gas Light Company's Rights-of-Way Surcharge General Regulations Tariff, P.S.C.-D.C. No. 3, (GT00-2) Rights-of-Way Current Factor Surcharge Filing of Washington Gas Light Company (Surcharge Update), filed March 23, 2017.*

<sup>3</sup> D.C. Code, § 10-1141.06 (2001 Ed.) states that, "Each public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement."

<sup>4</sup> *GT00-2, Surcharge Update at 1.*

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 1.

4. A Notice of Proposed Tariff (NOPT) regarding this Surcharge Update was published in the *D.C. Register* on May 19, 2017.<sup>7</sup> In the NOPT, the Commission stated that WGL has a statutory right to implement its filed surcharges, but if the Commission were to discover any inaccuracies in the calculation of the proposed surcharge, WGL could be subject to reconciliation of the surcharges. No comments were filed in response to the NOPT. Based on the Commission's review of the tariff filing, the Commission finds that WGL's calculations for the ROW Current Factor, the ROW Reconciliation Factor and Surcharge Update comply with the General Services Tariff, P.S.C. No. 3, Section 22, 3<sup>rd</sup> Revised Page No. 56 and with D.C. Code § 10-1141.06.

5. The Commission at its regularly scheduled Open Meeting held on July 6, 2017, took final action approving WGL's Surcharge Update tariff filing. WGL's Surcharge Update tariff filing shall become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

---

<sup>7</sup> 64 *D.C. Reg.* 004845-004846 (2017).

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

## NOTICE OF FINAL TARIFF

**GAS TARIFF 95-3, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S APPLICATION FOR AUTHORITY TO WITHDRAW WATERGATE TARIFF**

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to section 34-802 of the District of Columbia Official Code ("D.C. Code") and in accordance with section 2-505 of the D.C. Code,<sup>1</sup> of its final tariff action to approve the Application of Washington Gas Light Company ("WGL" or "Company")<sup>2</sup> to Withdraw P.S.C. of D.C. No.3, pages 28-31, Steam and Chilled Water Rates for Service to the Watergate Project ("Watergate Tariff"). The Commission issued a Notice of Proposed Tariff ("NOPT"), which was published in the D.C. Register on March 10, 2017,<sup>3</sup> giving notice of the Commission's intent to act on WGL's proposed tariff withdrawal. Comments were filed by Watergate West, Inc.;<sup>4</sup> Watergate East, Inc.; Watergate South, Inc.; Watergate Holdings I and II, LLC; Watergate Office Fee Owner, LLC; and Watergate Hotel LLC ("collectively, "Proponents").<sup>5</sup> The Commission received reply comments from WGL.<sup>6</sup>

2. WGL proposes to amend the following tariff pages:

**NATURAL GAS TARIFF, P.S.C. of D.C. No. 3  
Seventeenth Revised Page No. 1  
Superseding Sixteenth Revised Page No. 1**

3. According to WGL, it "entered into an Agreement with Watergate Improvements, Inc.<sup>7</sup> to provide steam and chilled water for all [six] of the buildings in the Watergate [building] Complex through a central plant to be located on the premises ("Central Plant") to generate heat, hot water and air conditioning to the buildings and an underground structure built in the District

---

<sup>1</sup> D.C. Code § 34-802 (2001); D.C. Code § 2-505 (2001).

<sup>2</sup> Gas Tariff 95-3, *In the Matter of Washington Gas Light Company's Application for Authority to Withdraw Watergate Tariff* ("Gas Tariff 95-3"), Letter from Cathy Thurston-Seignious, Supervisor, Administrative and Associate General Counsel, Washington Gas Light Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed January 30, 2017 ("WGL's Application").

<sup>3</sup> 64 *D.C. Reg.* 002584-002586 (2017).

<sup>4</sup> *Gas Tariff 95-3*, Comments of Watergate West, Inc., Request for Hearing, filed April 7, 2017 ("Watergate West's Comments").

<sup>5</sup> *Gas Tariff 95-3*, Comments of (1) Watergate East, Inc., (2) Watergate South, Inc., (3) Watergate Holdings I and II, LLC; (4) Watergate Office Fee Owner, LLC; and (5) Watergate Hotel LLC, filed on April 10, 2017, (Collectively, "Proponents").

<sup>6</sup> *Gas Tariff 95-3*, Reply Comments of Washington Gas Light Company, filed April 24, 2017 ("WGL's Reply Comments").

<sup>7</sup> The Watergate Complex Council, represented by each of the affected buildings in the Watergate complex, was subsequently formed to address all matters related to the Central Plant.



of Columbia (“Agreement”).<sup>8</sup> WGL states that the “Central Plant was constructed, owned or leased, and operated by Washington Gas, and the rates and charges for the services provided by Washington Gas were initially set by agreement of the parties and later established by the Commission, under the Company’s tariff.”<sup>9</sup>

4. The Company asserts that the “Agreement is set to expire on February 1, 2020, with [the] automatic renewal for additional 25-year terms unless terminated by either party at the end of the initial term or any subsequent 25-year term, provided the party seeking termination of the contract gives three (3) years’ prior written notice.”<sup>10</sup> According to WGL, “[u]nder the agreement, termination by [Washington Gas] shall be only with the approval of any regulatory authority having jurisdiction in the premises.”<sup>11</sup>

5. The Company explains that “Watergate South, Inc., one of the representatives in the Watergate Complex Council; filed an Expedited Complaint for Declaratory Judgment and Injunctive Relief in D.C. Superior Court against Washington Gas and the other representative of the Watergate Complex Council, seeking to end the Agreement.”<sup>12</sup> WGL states that “[g]iven this entity’s interest in terminating the Agreement and pursuing other arrangements for heating and cooling needs, as well as the Company’s desire to end its oversight of the Central Plant, continuation of the provision of this service is not in the public interest.”<sup>13</sup>

6. The Company states that “[o]n January 24, 2017, Washington Gas provided the affected Watergate entities written notification of its intent to terminate the Agreement (Attachment A) and hereby seeks Commission approval to terminate the Agreement and applicable portions of its tariff.”<sup>14</sup> According to WGL, it seeks to terminate its services under the Agreement for the following reasons: “(1) the provision of steam and chilled water is not a core function of Washington Gas, the utility provider of retail natural gas service in the District of Columbia, and the Company is not obligated by law to provide this service”; and (2) “Washington Gas has outsourced most of the functions associated with the operation of the Central Plant, demonstrating that there are other companies that can operate and maintain the Central Plant, other than Washington Gas.”<sup>15</sup> WGL asserts that it “has a very minor role in the operation and maintenance of the Central Plant, other than oversight of the performance of the work and preparation of bills, and no ownership interest in the facilities.”<sup>16</sup>

<sup>8</sup> *Gas Tariff 95-3*, WGL’s Application at 1.

<sup>9</sup> *Gas Tariff 95-3*, WGL’s Application at 1-2.

<sup>10</sup> *Gas Tariff 95-3*, WGL’s Application at 2.

<sup>11</sup> *Gas Tariff 95-3*, WGL’s Application at 2.

<sup>12</sup> *Gas Tariff 95-3*, WGL’s Application at 4.

<sup>13</sup> *Gas Tariff 95-3*, WGL’s Application at 4.

<sup>14</sup> *Gas Tariff 95-3*, WGL’s Application at 2.

<sup>15</sup> *Gas Tariff 95-3*, WGL’s Application at 3.

<sup>16</sup> *Gas Tariff 95-3*, WGL’s Application at 3.

7. The Company states that “District of Columbia firm ratepayers would not be negatively impacted by withdrawal of the Watergate Tariff.”<sup>17</sup> WGL submits that “the Commission has authorized pass-through of the operating and capital costs of the maintenance and operation of the Central Plant to the Watergate Complex Council and allowed the Watergate Complex Council to directly purchase any capital improvements associated with the Capital Plant.”<sup>18</sup> The Company states that the “Watergate Complex Council pays Washington Gas monthly demand and commodity charges pursuant to the Company’s tariff; however, these revenues are not included in Washington Gas’s cost of service for purposes of calculating base rates.”<sup>19</sup>

8. The Commission at its regularly scheduled open meeting held on July 6, 2017, took final action approving WGL’s proposed withdrawal of P.S.C. of D.C. No. 3, pages 28-31, Steam and Chilled Water Rates for Service to the Watergate Project (Watergate Project). The amendments will become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

---

<sup>17</sup> *Gas Tariff 95-3*, WGL’s Application at 3.

<sup>18</sup> *Gas Tariff 95-3*, WGL’s Application at 3-4.

<sup>19</sup> *Gas Tariff 95-3*, WGL’s Application at 3-4.

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

Issued: July 21, 2017

The Washington Latin Public Charter School solicits expressions of interest in the form of proposals with references from qualified vendors for each of the 4 services listed below.

School services

1. Cleaning services with the implementation of green cleaning program – daily cleaning services after school for school’s facility and gymnasium (80,000 sf)
2. Bus service – daily round trip bus service from up to five DC locations to the school in morning and afternoon; and additional services as needed
3. Tutoring services – provide services to SPED students in school and at home
4. Occupational therapy services to SPED students

Questions and proposals may be e-mailed to [gizurieta@latinpcs.org](mailto:gizurieta@latinpcs.org) with the type of service in the subject line. Deadline for submissions is **July 28, 2017**. Appointments for presentations will be scheduled at the discretion of the school office after receipt of proposals only. No phone calls please.

E-mail is the preferred method for responding but you can also mail (must arrive by deadline) proposals and supporting documents to the following address:

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

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

**Appeal No. 19360 of Southwest Business Improvement District**, pursuant to 11 DCMR §§ 3100 and 3101<sup>1</sup>, from a June 24, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, that a proposed use meets the definition of a community-based residential facility in the C-3-C District at premises 475 School Street, S.W. (Square 494, Lot 860).

**HEARING DATES:** November 2, 2016 and December 14, 2016<sup>2</sup>  
**DECISION DATE:** December 14, 2016

**DISMISSAL ORDER**

Appeal No. 19360 was submitted to the Board of Zoning Adjustment (“Board”) on August 22, 2016 by the Southwest Business Improvement District (“Appellant” or “SWBID”). (Exhibits 1 and 3.) The appeal challenged a decision of the Zoning Administrator (“ZA”) at the Department of Consumer and Regulatory Affairs (“DCRA”), per the ZA’s Determination Letter dated June 24, 2016 (“Determination Letter”), that a proposed use of a Residential Reentry Facility (“RRF”) for the property at 475 School Street, S.W. (“Subject Property”), which is in the C-3-C Zone District, met the definition of a community-based residential facility (“CBRF”) and that a CBRF is a matter of right use in the C-3-C Zone District. (Exhibit 2.) In its appeal, the SWBID objected to the allowance of an RRF at the Subject Property as a matter of right. The appeal was accompanied by a statement describing the reasons for the Appellant’s objections to the ZA’s conclusion that a RRF would be a matter of right occupancy at the Subject Property. (Exhibits 1 and 3.) The Appellant also submitted a Notification of Parties statement. (Exhibit 4.)

Another appeal, No. 19361, was filed by Advisory Neighborhood Commission (“ANC”) 6D objecting to the same ZA Determination Letter regarding the same property.

On November 22, 2016, counsel to the Department of Consumer and Regulatory Affairs (“DCRA”) notified the Board that the ZA officially withdrew the Determination Letter that was the subject of this and the other appeal based on the Determination Letter, No. 19361, and requested that the Board dismiss the appeals as moot. (Exhibit 28.) On December 2, 2016, the

---

<sup>1</sup> This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Appeal was filed or heard and decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order.

<sup>2</sup> The case was postponed and continued from the November 2, 2016 hearing and rescheduled at the Appellant’s request. (Exhibit 23.)

Appellant submitted a letter consenting to the Motion to Dismiss the appeals. (Exhibits 29 and 30.)

Based on the withdrawal of the Determination Letter and with the consent of the Appellant, the Board voted to grant DCRA's motion to dismiss the appeal as moot at its public hearing on December 14, 2016. At that same meeting, the Board granted DCRA's motion with respect to Appeal No. 19361. *See BZA Order No. 19361.*

Accordingly, it is therefore **ORDERED** that the appeal is **DISMISSED**.

**VOTE:**    **3-0-2** (Frederick L Hill, Carlton E. Hart, and Michael G. Turnbull to DISMISS; Anita Butani D'Souza, not present, not voting; one Board seat vacant.)

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

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

**FINAL DATE OF ORDER:** July 7, 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.

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

**Appeal No. 19361 of ANC 6D**, pursuant to 11 DCMR §§ 3100 and 3101<sup>1</sup>, from a June 24, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, that a proposed use meets the definition of a community-based residential facility in the C-3-C District at premises 475 School Street, S.W. (Square 494, Lot 860).

**HEARING DATES:** November 2, 2016 and December 14, 2016<sup>2</sup>  
**DECISION DATE:** December 14, 2016

**DISMISSAL ORDER**

Appeal No. 19361 was submitted to the Board of Zoning Adjustment (“Board”) on August 23, 2016 by Advisory Neighborhood Commission (“ANC”) 6D (“Appellant”). (Exhibits 1 and 2.) The appeal challenged a decision of the Zoning Administrator (“ZA”) at the Department of Consumer and Regulatory Affairs (“DCRA”), per the ZA’s Determination Letter dated June 24, 2016 (“Determination Letter”), that a proposed use of a Residential Reentry Facility (“RRF”) for the property at 475 School Street, S.W. (“Subject Property”), which is in the C-3-C Zone District, met the definition of a community-based residential facility (“CBRF”) and that a CBRF is a matter of right use in the C-3-C Zone District. (Exhibit 4.) In its appeal, the ANC objected to the allowance of an RRF at the Subject Property as a matter of right. The appeal was accompanied by a resolution describing the reasons for the Appellant’s objections to this proposed use at the Subject Property. (Exhibit 2.)

Another appeal, No. 19360, was filed by Southwest Business Improvement District (“SWBID”) objecting to the same ZA Determination Letter regarding the same property.

On November 22, 2016, counsel to the Department of Consumer and Regulatory Affairs (“DCRA”) notified the Board that the ZA officially withdrew the Determination Letter that was the subject of this and the other appeal (No. 19360) based on the Determination Letter and requested that the Board dismiss the appeals as moot. (Exhibit 28.) At the hearing on December 14, 2017, the counsel for DCRA testified that the ANC’s Chair had consented to the dismissal by email. (Transcript of December 14, 2016, pg. 11.)

---

<sup>1</sup> This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Appeal was filed or heard and decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order.

<sup>2</sup> The case was postponed and continued from the November 2, 2016 hearing and rescheduled at the request of the appellant in Case No. 19360.

Based on the withdrawal of the Determination Letter and with the consent of the Appellant, the Board voted to grant DCRA's motion to dismiss the appeal as moot at its public hearing on December 14, 2016. At the same meeting, the Board granted DCRA's motion with respect to Appeal No. 19360. *See BZA Order No. 19360.*

Accordingly, it is therefore **ORDERED** that the appeal is **DISMISSED**.

**VOTE: 3-0-2** (Frederick L Hill, Carlton E. Hart, and Michael G. Turnbull to DISMISS; Anita Butani D'Souza, not present, not voting; one Board seat vacant.)

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

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

**FINAL DATE OF ORDER:** July 7, 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.

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

**Application No. 19514 of Hector Burgos**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1504.1 from the general penthouse requirements of Subtitle C § 1500.4 and the penthouse setback requirements of Subtitle C § 1502, and pursuant to Subtitle X, Chapter 10, for variances from the nonconforming structure requirements of Subtitle C § 202.2, and the lot occupancy requirements of Subtitle E § 304.1, to permit the addition of a third-story and roof deck to an existing two-story one-family dwelling in the RF-1 Zone at premises 1805 Wiltberger Street N.W. (Square 441, Lot 84).

**HEARING DATE:** June 28, 2017  
**DECISION DATE:** June 28, 2017

**SUMMARY ORDER**

**SELF-CERTIFICATION<sup>2</sup>**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibits 8 (original) and 31 (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") 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 June 6, 2017, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 45.)

---

<sup>1</sup> The Applicant amended the application by adding to the original request variances from the nonconforming structure requirements of Subtitle C § 202.2, and the lot occupancy requirements of Subtitle E § 304.1. (See Exhibit 31.) Also, on June 21, 2017, at the Applicant's request (Exhibit 36), the Board waived the 40-day notice requirement to allow the Applicant to amend the application to add variance relief. The caption has been amended accordingly.

<sup>2</sup> Although this application was ultimately self-certified (Exhibits 8 and 31), it also was accompanied by Zoning Administrator ("ZA") memos certifying the relief. (Exhibits 9, 29, and 30.)



Three letters from nearby residents, including one adjacent neighbor, in support of the application were submitted to the record. (Exhibits 39-41.)

The Office of Planning (“OP”) submitted a timely report, dated June 16, 2017, in support of the application. (Exhibit 44.) The District Department of Transportation (“DDOT”) submitted a timely report, dated June 8, 2017, expressing no objection to the approval of the application. (Exhibit 42.)

#### Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the nonconforming structure requirements of Subtitle C § 202.2, and the lot occupancy requirements of Subtitle E § 304.1, to permit the addition of a third-story and roof deck to an existing two-story 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 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 variances from 11 DCMR Subtitle C § 202.2 and Subtitle E § 304.1, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates 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 C § 1504.1 from the general penthouse requirements of Subtitle C § 1500.4 and the penthouse setback requirements of Subtitle C § 1502. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C §§ 1504.1, 1500.4, and 1502, 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 UPDATED APPROVED PLANS AT EXHIBIT 43 - ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE:**           **4-0-1** (Carlton E. Hart, Leslylé M. White, Frederick L. Hill, and Anthony J. Hood to APPROVE; one Board seat vacant.)

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

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

**FINAL DATE OF ORDER:** July 6, 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

**BZA APPLICATION NO. 19514**

**PAGE NO. 3**

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. 19516 of Daniel Hines**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, the roof top architectural element requirements of Subtitle E § 206.1(a), and the addition to a nonconforming structure provisions of Subtitle C § 202.2, to construct an addition to an existing porch on a one-family dwelling in the RF-1 Zone at premises 765 Gresham Place, N.W. (Square 2887, Lot 322).

**HEARING DATE:** June 28, 2017

**DECISION DATE:** June 28, 2017

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by a memorandum, dated April 20, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 9.)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 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 did not submit a report recommending approval of the application. However, the Applicant testified that the ANC unanimously approved the application at a May 2017 ANC meeting which the Applicant attended. Given that the ANC did not submit an official report in this case, there are no issues or concerns to which great weight can be afforded.

The Office of Planning (“OP”) submitted a timely report dated June 16, 2017, recommending approval of the special exceptions requested. OP also recommended that relief under Subtitle C § 202.2 for an addition to a nonconforming structure where the lot occupancy does not meet the zoning regulations was needed. As noted (footnote 1), the Applicant amended the application to

---

<sup>1</sup> Based on the recommendation of the Office of Planning (Exhibit 36), the Applicant amended the application at the hearing by adding to the original request a special exception under Subtitle C § 202.2 to allow an addition to a nonconforming structure. Also, special exception relief from the roof top architectural element requirements of Subtitle E § 206.1 had been added to the original application in the Applicant’s second Burden of Proof statement. (Exhibit 14.) The Board accepted the amendment and the amended relief is reflected in the caption above.

include the relief from Subtitle C § 202.2. OP recommended approval of the amended application. (Exhibit 35.)

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application.<sup>2</sup> (Exhibit 34.)

Two letters of support for the application from nearby neighbors were submitted to the record. (Exhibits 12 and 29.)

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 Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, the roof top architectural element requirements of Subtitle E § 206.1(a), and the addition to a nonconforming structure provisions of Subtitle C § 202.2. 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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle E §§ 5201, 304.1, and 206.1(a), 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 7 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Anthony J. Hood to APPROVE; one Board seat vacant.)

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

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

---

<sup>2</sup> DDOT’s report noted that the porch would project more than allowed into public space and would require a public space permit. (Exhibit 34.)

**FINAL DATE OF ORDER:** July 11, 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. 19516

PAGE NO. 3

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION CASE NO. 15-27**

**Z.C. ORDER NO. 15-27**

**KF Morse, LLC**

**(Consolidated PUD, First-Stage PUD, and Related Map Amendment  
@ Square 3587, Lots 805, 814, and 817)**

**March 27, 2017**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on January 12, 2017, to consider applications for a consolidated planned unit development ("PUD"), a first-stage PUD, and a related zoning map amendment, filed by KF Morse, LLC ("Applicant"). The Commission considered the merits of the applications pursuant to Chapter 24<sup>1</sup> of the 1958 Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations ("DCMR")). The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 400 of the 2016 Zoning Regulations (Title 11 DCMR). For the reasons stated below, the Commission hereby **APPROVES** the applications.

**FINDINGS OF FACT**

**The Application, Parties, and Hearings**

1. On October 30, 2015, the Applicant filed applications with the Commission for a consolidated PUD, a first-stage PUD, and a related zoning map amendment from the C-M-1 District to the C-3-C District<sup>2</sup> for property located at 300, 325, and 350 Morse Street, N.E. (Square 3587, Lots 805, 814, and 817) ("PUD Site").<sup>3</sup>
2. The PUD Site has a land area of approximately 213,044 square feet and is bounded by New York Avenue, N.E. to the north, 4<sup>th</sup> Street, N.E. to the northeast, Morse Street, N.E. to the southeast, Florida Avenue to the southwest, and the Amtrak and Metrorail lines to the west. The PUD Site is presently improved with one-story industrial buildings used for wholesale distribution, which the Applicant will raze as part of this PUD. The PUD Site is located within the boundaries of Advisory Neighborhood Commission ("ANC") 5D.
3. The PUD Site is within the Florida Avenue Market district, which has historically been the District's center for wholesale and specialized retail food distribution. The newly renovated market at the Union Market building, which is located to the east of the PUD Site, is a year-round indoor market of local artisans and vendors, including local farmers, bakers, and butchers. The Florida Avenue Market district is located at the strategic

---

<sup>1</sup> Chapter 24 and all other provisions of Title 11 DCMR were repealed on September 6, 2016, and replaced with Chapter 3 of Subtitle 11-X. However, because this application was set down for hearing prior to that date, the Commission's approval was based upon the standards set forth in Chapter 24. Since the hearing was scheduled and held on October 27, 2016, the pre-hearing and hearing procedures of Title 11-Z, Chapter 4 applied.

<sup>2</sup> Under the 2016 Zoning Regulations, the C-M-1 Zone District was re-designated as the PDR-1 zone and the C-3-C Zone District was re-designated as the MU-9 zone.

<sup>3</sup> Lots 805, 814, and 817 are Assessment and Taxation ("A&T") lots and are located within Record Lot 6. The remaining portion of Record Lot 6 is known as A&T Lot 819 and is owned by the District. Lot 819 is not included within the PUD and is not part of the PUD Site. However, the Applicant will undertake significant improvements to Lot 819 as part of development of the PUD, as described in this Order.

intersection of New York and Florida Avenues, N.E., is served by the NoMA-Gallaudet Metrorail station, and is situated between Gallaudet University, NoMa, and H Street, N.E.

4. The Applicant proposes to redevelop the PUD Site with four buildings (“Building A,” “Building B,” “Building C,” and “Building D”), which will include residential, retail, office, and potential hotel uses (“Project”). The Project will be constructed in two phases. Phase I (the consolidated PUD) includes development of the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (“Building C1”). Phase II (the first-stage PUD) includes the northern portion of Building A (“Building A2”), the northern portion of Building C (“Building C2”), and Building D. The Applicant will create new theoretical lots for each building.
5. Upon completion of all buildings, the Project will have an aggregate density of approximately 7.1 floor area ratio (“FAR”). Approximately 1,091,201 square feet of total gross floor area will be devoted to residential use, approximately 52,968 square feet of total gross floor area will be devoted to retail use, and approximately 217,558 square feet of total gross floor area will be devoted to office use. If Building D is occupied with the optional hotel use, approximately 121,484 square feet of gross floor area will be devoted to hotel use. Approximately 105,469 square feet of gross floor area will be devoted to parking and loading support spaces for the Project. Building heights will range from 78 feet to 130 feet. The Project will include a total of 682 off-street parking spaces.
6. Pursuant to 11 DCMR § 2603.2, each building in the Project is required to individually dedicate eight percent of the residential gross floor area to inclusionary zoning (“IZ”) units (approximately 87,296 square feet of gross floor area), set aside for households earning up to 80% of the area median income (“AMI”). The Applicant proposes to exceed that requirement by dedicating 11% of the residential gross floor area (approximately 120,036 square feet of gross floor area) as inclusionary units, with 50% set aside for households earning up to 50% of the AMI (60,018 square feet of gross floor area) and 50% set aside for households earning up to 80% of the AMI (60,018 square feet of gross floor area).
7. On January 15, 2016, the Applicant filed updated architectural plans and elevations and an updated list of proposed public benefits and amenities. (Exhibit [“Ex.”] 14.) By report dated April 18, 2016, the Office of Planning (“OP”) recommended that the applications be set down for a public hearing. At its public meeting on April 25, 2016, the Commission voted to schedule a public hearing on the applications. (Ex. 15.)
8. On April 12, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 5-0-1 to support the Project as initially presented. (Ex. 29.) The Applicant returned to ANC 5D’s duly noticed, regularly scheduled meeting on September 13, 2016, which also had a quorum of commissioners and the public present. At the second meeting, ANC 5D voted 6-0-0 to continue to support the Project. (Ex. 36.)
9. The Applicant filed a prehearing statement on May 11, 2016 and a public hearing was timely scheduled for the matter. (Ex. 17-18I.) On June 10, 2016, the notice of the public



hearing was mailed to all owners of property located within 200 feet of the PUD Site; ANC 5D; ANC 5C; and to Councilmember McDuffie of Ward 5. A description of the proposed Project and the notice of the public hearing on this matter were published in the *DC Register* on June 17, 2016.

10. On July 21, 2016, the Applicant submitted a request to postpone the hearing, which was approved. (Ex. 26.) On July 28, 2016, notice of the postponed hearing was sent to the recipients of the original notice, and notice of the revised hearing date was published in the *DC Register* on August 5, 2016.
11. On September 30, 2016, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission and OP at the setdown meeting. (Ex. 37-37C.) The supplemental submission included revised architectural plans and elevations, a Comprehensive Transportation Review (“CTR”) report prepared by Gorove/Slade Associates and submitted to the District Department of Transportation (“DDOT”) on September 7, 2016, and a copy of ANC 5D’s September 20, 2016 resolution in support.
12. On October 6, 2016, a party status request in support of the Project was submitted by 1250 4TH ST EDENS, LLC and UNION MARKET APARTMENTS, LLC (together, “Party in Support”). (Ex. 38.) The Party in Support is the owner of property located in the 1200 block of 4<sup>th</sup> Street, N.E. (Parcels 129/77, 129/95, and 129/96), which is adjacent to the PUD Site and was approved as a PUD in Z.C. Case No. 14-07 (“Fourth Street PUD”). The PUD Site and the Fourth Street PUD are separated by a 48-foot-wide private alley, which was the subject of discussion in Z.C. Case No. 14-07 (“Alley”). The Commission’s approval in Z.C. Case No. 14-07 was conditioned on the buildout of the Alley consistent with the designs submitted by the Party in Support. The Applicant in the subject case submitted a design for the Alley that diverges from the previously approved Alley design. (See Sheet L1.32 of the Architectural Plans and Elevations dated December 23, 2016 (Ex. 61A12).) Thus, the Party in Support submitted documents indicating its intent to ensure that the Commission’s approval of the Project does not conflict with its prior approval in Z.C. Case No. 14-07. The Party in Support also stated that it “...welcomes the addition of an exciting, dynamic, and sustainable building and use to the Union Market neighborhood.” (Ex. 38, p. 4.)
13. On October 11, 2016, OP submitted a report on the application. (Ex. 39.) The OP report noted that the Project “...represents a great opportunity for creativity between the NoMA neighborhood and the developing Florida Avenue Market area and an influx of new residential where residential does not yet exist.” (Ex. 39, p. 1.) The OP report also found that the proposed uses and density “...are not inconsistent with the Future Land Use and Generalized Policy Maps, as well as with the Florida Avenue Market Small Area Plan upon a determination that the PUD results in ‘the provision of significant amenities,’ and would further objectives of the Land Use, Transportation, Housing, Economic Development, Urban Design, and Upper Northeast Area elements and their related policies.” (Ex. 39, p. 11.)

14. OP's report also asserted that it could not yet make a recommendation on the applications, but recommended that the Commission hold a public hearing and that the Applicant submit the additional information listed in Finding of Fact ("FF") No. 138 of this Order.
15. On October 11, 2016, DDOT submitted a report on the application. (Ex. 40.) The DDOT report stated that it had no objection to the applications, subject to a variety of conditions listed in FF No. 143 of this Order.
16. On October 19, 2016, the Applicant submitted responses to the OP and DDOT reports. (Ex. 45-46C.) The responses included updated architectural plans and elevations that responded to specific concerns raised by both agencies; an analysis demonstrating that the Project complies with many of the employment and economic development objectives of the Comprehensive Plan, the Ward 5 Works Study, and the Florida Avenue Market Study ("FAMS"); and an updated list of proposed public benefits and project amenities.
17. On October 20, 2016, the Applicant submitted a motion to accept the late filing of the CTR, which was submitted to the record less than 30 days prior to the public hearing and thus inconsistent with the requirements of Subtitle Z §§ 401.7 and 401.8 of the 2016 Zoning Regulations. (Ex. 50.)
18. The Commission convened a public hearing on October 20, 2016. At that hearing, the Commission voted to approve the Applicant's late filing of the CTR. The Commission also accepted Sacha Rosen of R2L Architects, as an expert in architecture; Jeff Barber of Gensler, as an expert in architecture; and Erwin Andres of Gorove/Slade Associates, as an expert in transportation planning and engineering. However, the Commission voted to postpone the hearing in order to give the Applicant additional time to continue working with OP and DDOT on their outstanding issues and concerns. The Commission rescheduled the public hearing for November 22, 2016.
19. On November 3, 2016, the Applicant submitted a request to further postpone the hearing until January 12, 2016 in order to continue working with OP and DDOT, which was approved. (Ex. 53.) On November 14, 2016, notice of the postponed hearing was sent to the recipients of the original hearing notice, and notice of the revised hearing date was published in the *DC Register* on November 25, 2016.
20. On December 21, 2016, the Applicant filed a further revised supplemental prehearing submission, which included: (a) further updated architectural plans and elevations that responded to recommendations from OP's October 11, 2016 hearing report at Exhibit 39 and additional comments from OP conveyed at subsequent meetings with the Applicant; and (b) an email confirmation from the Zoning Administrator indicating that FAR relief was not required for theoretical Lot C, even though the proposed FAR for Lot C was greater than the maximum permitted for a PUD in the C-3-C Zone District, because the aggregate FAR across the PUD Site was less than the maximum permitted FAR for a PUD in the C-3-C Zone District. (Ex. 61B.)
21. On January 3, 2017, OP submitted a supplemental hearing report, which indicated that "...OP has continued to work with the applicant on updates to their plans and can now

- recommend approval of the application.” (Ex. 64, p. 1.) The OP report also attached a memorandum from DC Water, which indicated that the design of the proposed DC Water easement is “...conceptually adequate, and that final review will be conducted at the time of permitting.” (Ex. 64, pp. 2-3.) OP’s only request in its hearing report was for the Applicant to clarify the window selection for the proposed sound-dampening windows on the side of the buildings facing the rail tracks. The Applicant provided clarification on this issue at the public hearing.
22. On January 3, 2017, DDOT submitted a supplemental hearing report, which indicated that the Applicant and DDOT had coordinated closely to address comments and mitigations requested in DDOT’s original hearing report. (Ex. 40, 62.) The DDOT report noted that the Applicant had agreed to implement a variety of transportation infrastructure design improvements, physical improvements, and transportation demand management (“TDM”) measures, with which DDOT agreed. DDOT also made the following notes and clarifications:
- a. Cycle track design in the alley: The Applicant will need to coordinate with DDOT through the Environmental Impact Screening Form (“EISF”) process on final design of signage and pavement markings for the cycle track design. This includes best practice designs to accommodate loading and vehicle access points for Buildings C1, C-2, and D;
  - b. Off-site cycle track: The cycle track should be installed as part of Phase 1; and
  - c. Capital Bikeshare station: No funding cap should be in place. The Applicant is expected to fund the installation and first year’s operation expenses of a new 19-dock Capital Bikeshare station to be located within the boundaries of the PUD and in a mutually acceptable location to the Applicant and DDOT. The current cost for this proffer is approximately \$85,000-\$90,000 but costs are subject to change over time in response to fluctuating labor and equipment charges. The fee for the installation and first year’s operating costs shall be determined at the time of issuance of a Certificate of Occupancy for the Project.
23. The January 3, 2017 DDOT report stated that DDOT had “...no objections to the action on the condition that all the agreed upon elements enumerated and clarified [] are included as part of the PUD.” (Ex. 62, p. 2.) The Applicant agreed to all of DDOT’s conditions at the public hearing.
24. On January 3, 2017, DOEE submitted a hearing report, which provided comments on the application. The DOEE report outlined some concerns related to the level of commitment to sustainability, the design and configuration of the proposed plaza, streetscape and public space, and the schematic design for GAR and stormwater management. (Ex. 63.) The Applicant addressed these issues at the public hearing and in its post-hearing submission through a letter to DOEE responding to its concerns. (Ex. 72, 72C.)
25. The Commission convened the public hearing on January 12, 2016, which was concluded the same evening. At the hearing, the Applicant presented five witnesses in support of the

- applications: Graham Tyrrell, on behalf of the Applicant; Sacha Rosen of R2L Architects, architect for the Project; Jeff Barber of Gensler, architect for Building C1; Erwin Andres of Gorove/Slade Associates, transportation consultant for the Project; and Don Hoover of Oculus, landscape architect for the Project. Based upon their professional experience and qualifications, the Commission reasserted the qualifications of Mr. Rosen and Mr. Barber as experts in architecture and Mr. Andres as an expert in transportation planning and engineering.
26. At the public hearing, the Applicant submitted a copy of its PowerPoint presentation, and photographs of the proposed building materials. (Ex. 67A1-67A5, 68.) The Commission also reasserted approval of the Applicant's request to accept the CTR less than 30 days prior to the public hearing.
  27. Matthew Jesick testified on behalf of OP at the public hearing. Jonathan Rodgers testified on behalf of DDOT at the public hearing.
  28. The parties to the case were the Applicant, ANC 5D, and the Party in Support.
  29. The record was closed at the conclusion of the hearing except to receive additional submissions from the Applicant and responses thereto by OP, DDOT, and the parties.
  30. At the close of the public hearing, the Commission took proposed action to approve the Application. The proposed action was referred to the National Capital Planning Commission ("NCPC") on January 17, 2017, pursuant to § 492 of the Home Rule Act. The Executive Director of NCPC, by delegated action dated January 26, 2017, found that the proposed project "would not be inconsistent the Comprehensive Plan for the National Capital."
  31. On January 26, 2017, the Applicant filed a post-hearing submission, which provided the information requested by the Commission at the public hearing. The post-hearing submission included the following materials: (a) updated architectural plan and elevation sheets that clarified certain aspects of the Project; (b) a chart indicating the value of the proposed public benefits and project amenities; (c) a letter to DOEE responding to the DOEE report on the application; (d) worksheets showing the proposed affordable housing contribution for the Project; and (e) additional analysis regarding the Project's compliance with the Comprehensive Plan. (Ex. 72-72F.)
  32. At the public meeting of February 27, 2017, the Commission reviewed the additional materials submitted by the Applicant. The Commission reviewed the Project and draft order submitted by the Applicant and made the following comments. The Commission noted that it considered some of the requested flexibility related to material selection and ground-floor design to be overly broad. The Commission recommended that the delivery of the park and plaza amenities should be tied to the issuance of a Certificate of Occupancy for one of the buildings in the Project. The Commission questioned whether the space labeled as a "mezzanine" on the plans was in fact a mezzanine, and whether the penthouse drawings in the plans accurately reflected the actual setbacks and heights, and suggested that the Applicant consider whether the level was properly characterized as a

mezzanine, and submit revised drawings that accurately show the actual penthouse setbacks and heights. The Commission also stated that it observed that the inclusionary units were “stacked” in a manner that suggested the potential that the units were concentrated in undesirable locations. Finally, the Commission suggested that the Applicant’s proposed signage plan was not sufficiently restrictive.

33. On March 13, 2017, the Applicant submitted filed an additional post-hearing submission which responded to the Commission’s comments at the public meeting. The post-hearing submission included the following materials: (a) updated roof plans showing penthouse setbacks and heights and information about the “mezzanine” level; (b) a revised plans showing reallocated locations for inclusionary units; (c) revised signage plans and guidelines; and (d) revised findings of fact and conclusions of law with proposed conditions. (Ex. 75-75B.)
34. At the public meeting of March 27, 2017, the Commission reviewed the additional materials submitted by the Applicant and took final action to approve the applications. Before doing so, the Commission noted that it did not agree with the Applicant that the area marked as a “mezzanine” on the plans was in fact a mezzanine. The Commission stated that it would not release this Order until the Applicant submitted revised plans that removed the references to the “mezzanine” level.

#### **The PUD Site and Surrounding Area**

35. The PUD Site is located at 300, 325, and 350 Morse Street, N.E. (Square 3587, Lots 805, 814, and 817) and has a land area of approximately 213,044 square feet. The PUD Site is bounded by New York Avenue, N.E. to the north, 4<sup>th</sup> Street, N.E. to the northeast, Morse Street, N.E. to the southeast, Florida Avenue to the southwest, and the Amtrak and Metrorail lines to the west. The PUD Site is presently improved with one-story industrial buildings used for wholesale distribution.
36. The PUD Site is within the Florida Avenue Market district, which has historically been the District’s center for wholesale and specialized retail food distribution. The newly renovated market at the Union Market building, which is located to the east of the PUD Site, is a year-round indoor market of local artisans and vendors, including local farmers, bakers, and butchers. The Florida Avenue Market district is located at the strategic intersection of New York and Florida Avenues, N.E. and is served by the NoMA-Gallaudet Metrorail station, and is situated between Gallaudet University, NoMa, and H Street, NE.
37. The PUD Site is also located at the intersection of several District neighborhoods, with Ivy City to the east, NoMa to the southwest, Old City to the south, and Eckington to the northwest. The area immediately surrounding the PUD Site has been the location of a variety of recently approved mixed-use developments, many of which are being developed as PUDs in the C-3-C Zone District. The area south of the PUD Site and the Florida Avenue Market is the NoMa Business Improvement District (“BID”).

**Existing and Proposed Zoning**

38. The PUD Site is currently zoned C-M-1. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) As a matter of right, property in the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted building height in the C-M-1 Zone District is 40 feet and three stories. (11 DCMR § 840.1.)
39. The Applicant proposes to rezone the PUD Site to C-3-C in connection with this application. The C-3-C Zone District permits medium-high-density development, including office, retail, housing, and mixed-use development. (11 DCMR § 740.8.) The C-3-C Zone District permits, as a matter of right, a maximum building height of 90 feet with no limit on the number of stories (11 DCMR § 770.1), and a maximum permitted density of 6.5 FAR for any permitted use, but a density of 7.8 FAR for projects subject to IZ (11 DCMR §§ 771.2 and 2604.1). The maximum percentage of lot occupancy in the C-3-C Zone District for all uses is 100%. (11 DCMR § 772.1.) Rear yards in the C-3-C Zone District must have a minimum depth of 2.5 inches per foot 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 12 feet. (11 DCMR § 774.1.) A side yard is not required in the C-3-C Zone District; however, when a side yard is provided, it must have a minimum width of two inches per foot of height of building, but not less than six feet. (11 DCMR § 775.5.)
40. The parking and loading requirements for buildings are based upon the proposed use of the property. For example, an apartment house or multiple dwelling in the C-3-C Zone District requires one parking space for each four dwelling units. (11 DCMR § 2101.1.) Retail or service establishments in excess of 3,000 square feet are required to provide one parking space for each additional 750 square feet of gross floor area. (*Id.*) An apartment house or multiple dwelling with 50 or more units in all zone districts is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. (11 DCMR § 2201.1.)
41. Consistent with the C-3-C development parameters, the Applicant will develop the PUD Site with a mix of residential, retail, office, and potentially hotel uses. A tabulation of the PUD's development data is included on Sheets 11-19 of the Architectural Plans and Elevations dated December 23, 2016, and included in the record at Exhibit 61A1-61A15, as supplemented by the revised sheets included in the record at Exhibit 72A1-72A3 ("Plans").

**Description of the PUD Project**

42. The overall Project will be developed with four new mixed-use buildings. The Project will be constructed in two phases, with Buildings A1, B, and C1 constructed in Phase I (consolidated PUD), and Buildings A2, C2, and D constructed in Phase II (first-stage PUD). The Applicant will create a new theoretical lot for each building.
43. Upon completion of all buildings, the Project will have an aggregate FAR of approximately 7.1. Approximately 1,091,201 square feet of total gross floor area will be devoted to residential use, approximately 52,968 square feet of total gross floor area will be devoted to retail use, and approximately 217,558 square feet of total gross floor area will be devoted to office use. If Building D is occupied with the optional hotel use, approximately 121,484 square feet of gross floor area will be devoted to hotel use. Approximately 105,469 square feet of gross floor area will be devoted to parking and loading support spaces for the Project. Building heights will range from 78 feet to 130 feet. The Project will include a total of 682 off-street parking spaces.
44. Pursuant to 11 DCMR § 2403.2, the Project is required to dedicate eight percent of the residential gross floor area IZ units (approximately 87,296 square feet of gross floor area), set aside for households earning up to 80% of the AMI. The Applicant proposes to exceed that requirement by dedicating 11% of the residential gross floor area (approximately 120,036 square feet of gross floor area) as IZ units, with 50% set aside for households earning up to 50% of the AMI and 50% set aside for households earning up to 80% of the AMI.
45. Buildings A1 and B will achieve LEED-Gold certification under the United States Green Business Council (“USGBC”) LEED for New Construction v2009 rating standards, Building C1 will achieve LEED-Gold certification under the USGBC LEED for Core and Shell v.2009 rating standards, and each building within the first-stage PUD will, in its second-stage PUD application, achieve the total number of LEED points consistent with the USGBC LEED-Gold for New Construction v2009 rating standards. The Project will also incorporate a number of sustainable and environmentally-friendly elements, such as energy and water efficient systems, construction waste management techniques, landscaping and street tree planting, and significant bicycle parking, bicycle lanes, and amenities. The Project will also replace several acres of concrete pavement with tree-lined streets, bio-filtration areas, pervious surfaces, and green spaces, which will significantly improve the area’s stormwater treatment and management. Moreover, the Project will be located in an infill, transit-rich setting in close walking distance to public transportation facilities and multiple types of services, amenities, and entertainment options.

**Consolidated PUD**

46. The Applicant proposes to develop Buildings A1, B, and C1 as a consolidated PUD. This consolidated portion of the Project includes approximately 508,610 square feet of

residential uses, approximately 36,058 square feet of retail uses, and approximately 217,558 square feet of office uses.

47. Building A1: Building A1 will contain approximately 515,038 square feet of gross floor area and will rise to a maximum height of 130 feet. Building A1 is the centerpiece of the Project and will include approximately 453 residential units, extensive ground-floor retail, three levels of parking, and significant residential amenity spaces. Building A1 consists of an 11-story high-rise component and a six-story mid-rise component. Located at the south end, the taller portion of the building fronts visually on a proposed new public plaza (“Plaza”), which is integrated into the public park to be constructed as part of the approved PUD located at 320 Florida Avenue, N.E., which is immediately to the south of the PUD Site. (See Z.C. Order No. 15-01) (“Florida Avenue Park”). The configuration of Building A1 and the Plaza maximizes the solar exposure of the outdoor space and allows the iconic building to serve as a visual entry marker for the neighborhood. The unique curvilinear shape of the 11-story tower will be highly visible for pedestrians walking from the Metro along either Florida Avenue or 3<sup>rd</sup> Street to the south; for motorists on Florida and New York Avenues; and for riders of both Metro and Amtrak trains. The design and massing of Building A1 will be unique in the city, accentuating the special and dynamic character of this redeveloping neighborhood.
48. Connected to, but architecturally distinct from, the high-rise tower, will be the six-story mid-rise structure that extends north along 3<sup>rd</sup> Street. The design of this portion of Building A1 will recall the more industrial/commercial character of the warehouse structures and market halls that characterized the neighborhood in the past. Various design elements and creative use of materials will be implemented to reflect the neighborhood’s history, such as a long, continuous retail canopy along 3<sup>rd</sup> Street and a double-height retail floor level, which are inspired by the deep canopies covering the existing truck loading docks on the PUD Site and on nearby properties. This canopy will also serve as a balcony for the residential units above, providing a unique feature while protecting the units from the hubbub of the street.
49. Contrasting with the high-rise component, the façade of the mid-rise component will have a strong horizontal design, which is also consistent with the former character of the block and the present character of this portion of the market neighborhood located two blocks to the east. The use of brick for the lower floors and composite metal panels for the upper floors accentuates this horizontality. The design of the ground-floor façade visually and physically connects the tower and midrise portions of Building A1, and also creates a consistent framework that will accommodate a varied mix of retail store frontages. All of these features, in concert with the street trees and roadway improvements of 3<sup>rd</sup> Street, will create a strong pedestrian-friendly streetscape and public gathering space. Building A1’s residential entrances, parking and loading, and utility infrastructure have been located so as not to interrupt the continuity, flexibility, and viability of the retail space.
50. Most resident amenity spaces for Building A1 will be located in the high-rise portion of the building. The main residential lobby, mailroom, bicycle lobby, bicycle valet facility,



leasing office, and lounge will be located primarily on the ground level and the level directly above the ground level. The second floor will provide a fitness center and workout areas, with an outdoor terrace overlooking the Plaza and a visual connection to an interior courtyard wrapped by the mid-rise structure. A set of terraced steps below the south tower and fronting the Plaza will create a sunny public amphitheater with views towards the Capitol and Washington Monument. The roof of Building A1's high-rise component will provide additional amenity spaces including a pool.

51. Building B: Building B will contain approximately 97,530 square feet of gross floor area and will rise to a maximum height of 78 feet. Building B is a six-story structure with approximately 105 residential units above ground-floor retail. It is located at the southern end of the PUD Site, with frontage on Morse Street, at the intersection of Morse and 3<sup>rd</sup> Streets, and extends west of the intersection to engage and define the Plaza. Building B's predominantly orthogonal form, fenestration, and varied materials palette have been carefully coordinated with the curvilinear and taller façade of Building A1 to create a unique, three-dimensional public space, and its form includes a bridge element that anchors the south end of 3<sup>rd</sup> Street to the rest of the PUD Site. The main residential entry is located on Morse Street, and loading is located at the far east end, allowing a continuous retail space to wrap around the west elevation to activate the Plaza.
52. Building B will include minimal amenity spaces, as the Applicant intends for the amenities within Building A to be shared with residents of Building B. The proposed shared program will foster a close residential community and constant movement across the Plaza. The open stair at the Plaza is intended to be an inviting gesture for residents of Building B to easily access the second-floor fitness center in Building A, as well as to provide access for visitors to the leasing center.
53. Building C1: Building C1 will contain approximately 228,121 square feet of gross floor area and will rise to a maximum height of 130 feet. Building C1 is located on the southeast portion of the PUD Site and will be developed as a high-rise office building with significant ground-floor retail and below-grade parking. Building C1 will be bounded by 3<sup>rd</sup> Street to the west, Morse Street to the south, the Neal Place extension to the north, and the Alley to the east.
54. Building C1 is designed as a modern structure with a primary and secondary grid as a frame for the floor-to-ceiling window elements. The building design and materials consciously differ from Buildings A1 and B in order to create an eclectic character for the neighborhood. Building C1's massing is consistent with traditional Washington urban planning, clearly defining the public realm of Morse and 3<sup>rd</sup> Streets. The main entrance lobby is located in the center of the west facade, flanked on both sides by retail space, which together activate the street and engage the Plaza diagonally across the intersection. The ground floor is predominantly glass both at the office lobby as well as on the remainder of the Morse and 3<sup>rd</sup> Street façades, which are designed as high-quality retail shell spaces with high ceilings.

55. Building C1 will include extensive exterior terrace areas, amenities, and flexible/shared workspace, which will differentiate Building C1 from conventional office buildings. Building C1 provides unique spatial configurations, fantastic views, and convenient access to outdoor spaces to gather, relax, and work. Building C1 will also include a green roof to add to the environmental performance of the structure.

### Zoning Flexibility

56. The Applicant requested the following areas of flexibility from the Zoning Regulations as discussed in the paragraphs below.
57. Flexibility from the Loading Requirements. The Project requires flexibility from the loading requirements. Pursuant to 11 DCMR § 2201.1, for an apartment house with 50 or more dwelling units, one loading berth at 55 feet deep is required. However, the Applicant proposes to provide 30-foot loading berths for each of the apartment houses within the Project, with the exception of Building B, which will not have any residential loading facilities. All buildings in the Project will provide the required retail loading facilities, except for Building B, which will not provide any retail loading, and Building C1, which will not provide the one required retail service/delivery space. For office use, Building C1 requires three loading berths, three loading platforms, and one service/delivery space. However, the Applicant is providing one berth, one platform, and no service/delivery space for Building C1's office component. In the event that Building D is developed with a hotel use, it will not provide the one required service/delivery space. If Building D is developed with office use, it will not provide one of the required loading berths, one of the required loading platforms, or the one required service/delivery spaces.
58. The Commission finds that the proposed loading facilities are appropriate for the proposed mix of uses within the Project. Given the nature and size of the residential units, 55-foot berths are not necessary for the apartment houses, since the loading berths will primarily be used for move-ins and move-outs, which can be accommodated with 30-foot trucks. The Commission also finds that separate loading facilities are not needed in Building B, since it can reasonably share the residential and retail loading facilities within Building A. Shared loading is directly in accordance with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, minimize curb cuts, and provide shared loading spaces in mixed-use projects. Moreover, additional on-street loading on Morse Street near the Plaza will be provided, such that internal loading is not necessary for Building B. For Building C1, the Commission finds that the retail and office loading facilities as proposed will adequately accommodate these uses, and Building C1 will also be able to share loading space with Building C2, which will provide a variety of loading facilities for its proposed retail and residential uses. For Building D, the potential for hotel or office use with fewer loading facilities than required will similarly not result in any adverse impacts due to the ability to share loading access across the Project. Therefore, the Commission grants the requested loading flexibility and finds that the loading as proposed is appropriate for the mix of uses within the Project.

59. Flexibility from the Parking Requirements. The Applicant requests flexibility to not provide any on-site parking spaces for Building B, and to instead locate Building B's required parking spaces within Building A. Pursuant to 11 DCMR § 2101.1, Building B requires 34 parking spaces, and Building A requires 183 parking spaces. However, Building A's parking garage will provide a total of 371 parking spaces, which is significantly more than the total required parking spaces for Buildings A and B combined. Given the close proximity of Buildings A and B, users of Building B will not be inconvenienced by the off-site parking location. Moreover, eliminating parking in Building B will reduce curb cuts and any potential pedestrian/vehicle conflicts. Therefore, the Commission finds that providing all of Building B's parking spaces within Building A is appropriate in this case and grants the requested flexibility. The Commission noted that given the "...surplus and the "adjacency of [B]uilding A to [B]uilding B," OP also supported this area of flexibility. (Ex. 39, p. 15.)
60. Flexibility from the Compact Parking Space Requirements. Pursuant to 11 DCMR § 2115.2, a maximum of 54 compact parking spaces is permitted in the proposed parking garage for Building C1. The Applicant proposes to provide 84 compact parking spaces in Building C1 in order to maximize efficiency for the garage. Given that the Project provides more parking spaces than are required by the Zoning Regulations, the Commission finds that providing a greater number of compact parking spaces than is permitted as a matter-of-right for Building C1 will not have any adverse impacts. The Commission also notes OP's support for this requested flexibility. (Ex. 39, p. 15.)
61. Flexibility from the Rear Yard Depth Requirements. The Applicant requests flexibility from the rear yard depth requirements for Building A. Pursuant to 11 DCMR § 774, Building A is required to have a rear yard depth of 27 feet, 1 inch. However, Building A has an irregularly shaped rear yard with an average depth of 18 feet, six inches. The overall footprint of Building A is based on a typical width for a double-loaded residential building with an interior courtyard that is sized appropriately for the building height. The Applicant cannot increase the rear yard depth without disrupting these proportions. However, based on the location of Building A's rear yard adjacent to the rail tracks, the Commission finds that the building will have adequate light and air and thus the reduced rear yard depth will not have any adverse impacts.
62. The Applicant requests flexibility to provide a 24-foot rear yard for Building C, whereas a 27-foot, one-inch rear yard is required. The proposed rear yard depth is intended to allow for an adequate width for 3<sup>rd</sup> Street, including new sidewalks and landscaping. If the width of 3<sup>rd</sup> Street was reduced in order to provide a code-compliant rear yard for Building C, it would reduce the amount of public space reserved for pedestrians, and interfere with the public realm design in this location. Moreover, the rear yard of Building C abuts the adjacent Alley, which provides additional space and thus ensures adequate light and air for Building C's occupants. Therefore, the Commission finds that rear yard relief is appropriate for Building C.
63. The Applicant requests flexibility to not provide any rear yard for Building D, whereas a rear yard of 27 feet, one inch is required. If Building D had a rear yard, it would be

adjacent to a portion of the District-owned land on the PUD Site adjacent to the rail tracks, which will not be developed. Providing a rear yard in this location would create an unnecessary gap between the rear of Building D and the District-owned land. Moreover, the District land will provide adequate open space, light, and air for building occupants. Thus, the Commission finds that the lack of a rear yard in this location will not result in any adverse impacts to the public good or the zone plan.

64. Moreover, the Commission notes that OP supported the flexibility from the rear yard depth requirements for Buildings A, C, and D, noting that “[g]iven that there are features that provide separation from the affected buildings and adjacent structures, be it an alley or railroad tracks, the intent of the rear yard has been met.” (Ex. 39, p. 14.)
65. Flexibility from the Open Court Width Requirements. The Applicant requests flexibility to provide an open court width of 24 feet for Building B; whereas, a width of 26 feet is required. The open court for Building B was created to add architectural variation to the building façade and create a more dynamic building program. At only two feet short of the minimum requirement, the Commission finds that flexibility from the open court width requirements for Building B will not result in any adverse impacts.
66. The Applicant proposes to provide an open court width of 34 feet, eight inches for Building C, whereas an open court width of 36 feet, four inches is required. This open court is located between Buildings C1 and C2 and divides both portions of the Building into different uses. At less than two feet short of the minimum requirement, the Commission finds that the proposed open court will provide adequate light, air, and ventilation, and an adequate separation of window lines, for both portions of Building C, and therefore grants the requested flexibility. Moreover, the Commission credits OP’s support for this requested flexibility given that the “...flexibility is minimal.” (Ex. 39, p. 14.)
67. Flexibility from the Building Lot Control Requirements. Pursuant to 11 DCMR § 2517.3, open space is required in front of building entrances that is equivalent to the required rear yard depth. In this case, the Applicant proposes to provide no open space in the front of building entrances on the theoretical lots for each of Buildings A, B, C, and D. However, given the extensive amount of open space proposed for the PUD Site, including the Plaza, the Florida Avenue Park, the Neal Place Park, street and alley right-of-ways, sidewalks, and landscaping, the Commission finds that additional open space at the front of each theoretical lot is not required, and that flexibility is appropriate. More specifically, the Commission credits OP’s finding that significant areas of open space are appropriately provided elsewhere in the Project “...in areas where the space can be used more effectively.” (Ex. 39, p. 15.) “For example, the plaza provides a significant route to Florida Avenue and is a gateway to the Market area as identified in the Small Area Plan, and open space has been provided at the termination of Neal Place, which will provide interesting temporary uses. As a result, OP has no objection to the requested flexibility.” (*Id.*) The Commission therefore grants flexibility from the building lot control requirements of 11 DCMR § 2517.3, since the Project otherwise provides a significant amount of open space in more effective locations.

**Development Flexibility**

68. The Applicant also requests flexibility in the following additional areas:
- a. To be able to provide a range in the number of residential units of plus or minus 10%;
  - b. To vary the number, location, and arrangement of parking spaces, provided that the total number is not reduced below the minimum number of parking spaces required by the Zoning Regulations;
  - c. To develop Building A2 with hotel use above the proposed ground-floor retail and to develop Building D with hotel or office use above the proposed ground-floor retail, should the market demand be more appropriately satisfied with hotel and/or office use;
  - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - e. To vary the sustainable design features of the Project, provided (i) the total number of LEED points achievable for Buildings A1 and B are not below LEED-Gold under the USGBC's LEED for New Construction v2009 rating standards, (ii) the total number of LEED points achievable for Building C1 is not below LEED-Gold under the USGBC's LEED for Core and Shell v2009 rating standards, and (iii) the total number of LEED points achievable for each building within the First-stage PUD is not below the total number of LEED points consistent with the USGBC LEED-Gold for New Construction v2009 rating standards;
  - f. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; such that the refinements do not substantially change the external configuration or appearance of the building;
  - g. To use either tonal masonry or warm-tone terracotta cementitious panels for Building C1's exterior building material, as shown on Sheet 80 of Exhibit. 72A1;
  - h. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or

service use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and

- i. To vary the features, means and methods of achieving the code-required Green Area Ratio (“GAR”) of 0.20.

### **Project Benefits and Amenities**

69. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a) – The Project includes six new buildings and open space improvements that incorporate high-quality design that will have a positive impact on the visual and aesthetic character of the neighborhood, will respond to the PUD Site’s location and historical context, and will integrate a variety of uses that will directly benefit the community. The Project includes significant new streetscape features, including new streets, sidewalks, landscaping and trees, bicycle racks, benches, lighting, and other amenities that will encourage pedestrian activity and greatly improve the existing streetscape which presently caters exclusively to vehicles and provides unsafe sidewalk conditions. The streets throughout the PUD Site will be lined continuously on both sides with neighborhood-serving retail, and the buildings will be interspersed with a variety of parks, plazas, seating, and open gathering spaces. The Project’s overall streetscape plan will contribute to the appearance of the proposed buildings and their appeal to residents and visitors by creating an animated sense of place that connects retail activity with pedestrians on the street and the residents above. In addition, the streetscape has been designed to utilize many of the concepts that are proposed in the Union Market Streetscape Guidelines, which are being developed by DDOT and OP.
70. The buildings themselves will have varying heights, materials, and a mix of uses. Residential units will be offered at a wide range of price points available through diverse offerings. A variety of commercial spaces will be provided to support diverse businesses and create a well-amenitized community. The PUD is not being developed to the maximum permitted density in order to create human-scaled public open spaces and ensure good light and air between the buildings and in the public open spaces.
71. With respect to site planning and efficient and economical land utilization, the Applicant's proposal to replace the existing one-story wholesale buildings and surface parking with new mixed-use, mixed-income, high-density buildings constitutes a significant urban design benefit. This is particularly significant given the PUD Site’s location. The Project will complete the transformation of the western side of the Florida Avenue Market district, together with numerous new and exciting development projects in close proximity, thereby fulfilling the goals of the Florida Avenue Market Study.
72. As shown on Sheets 20-21, L1.27 and L1.32 of the Plans, Buildings C and D on the PUD Site are separated from the PUD approved in Z.C. Order No. 14-07, as amended (“Fourth Street PUD”) by the Alley. (Ex. 61A.) Both the Applicant and the applicants in the Fourth Street PUD have proposed improvements to portions of the Alley and have developed mutually agreeable conditions related to the timing for development of the

Alley improvements. The Alley, as measured from the Fourth Street PUD, labeled from east to west, is comprised of a five-foot planting area; 24-foot drive lane; one-foot rolled curb; 10-foot bike lane, one-foot paving band; and seven-foot circulation zone.

73. Housing and Affordable Housing (11 DCMR § 2403.9(f)) – The Project will create new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. The overall project will provide a total of approximately 1,091,201 square feet of new residential gross floor area (approximately 1,103 units). Under the Zoning Regulations, each building within the Project is required to dedicate eight percent of the residential gross floor area to inclusionary units (approximately 87,296 square feet), all of which may be set aside for households earning up to 80% of the AMI. The Project will provide significantly more affordable housing and at a steeper subsidy by dedicating 11% of the residential gross floor area (approximately 120,036 square feet) to affordable units at 50% and 80% of the AMI as follows:
- a. Approximately 5.5% of the residential gross floor area in Buildings A1, A2, B, C2, and D will be set aside for households earning up to 50% of the AMI, as shown on the Affordable Housing Chart; and
  - b. Approximately 5.5% of the residential gross floor area in Buildings A1, A2, B, C2, and D will be set aside for households earning up to 80% of the AMI, as shown on the Affordable Housing Chart below.
74. If Building A2 is developed as for-sale housing, then the Applicant will reduce the total affordable housing proposed for Building A2 from 11% to eight percent of Building A2's residential gross floor area, all of which will be dedicated to households earning up to 80% of the AMI, and will transfer an additional 13,713 square feet of affordable housing dedicated to households earning up to 50% of the AMI in Buildings A1 and B to result in the following allocations:
- a. Building A1:
    - i. 30,100 square feet of Building A1's residential gross floor area will be dedicated to households earning up to 50% of the AMI; and
    - ii. 17,011 square feet of Building A1's residential gross floor area will be dedicated to households earning up to 80% of the AMI.
  - b. Building B:
    - i. 11,587 square feet of Building B's residential gross floor area will be dedicated to households earning up to 50% of the AMI; and
    - ii. 4,731 square feet of Building B's residential gross floor area will be dedicated to households earning up to 80% of the AMI.

The affordable units will include a range of unit types, from studios to three-bedrooms.

75. Affordable Housing Chart

	<b>Building A1</b>	<b>Building A2<sup>4</sup></b>	<b>Building B</b>	<b>Building C2</b>	<b>Building D (resid. option)</b>	<b>Affordable Control Period</b>	<b>Affordable Unit Type</b>	<b>Total</b>
<b>Total</b>	422,605 sf GFA  (453 units) (100%)	249,323 sf GFA  (198 units) (100%)	86,005 sf GFA  (105 units) (100%)	211,784 sf GFA  (232 units) (100%)	121,484 sf GFA  (115 units) (100%)	NA	NA	1,091,201 sf GFA  (1,103 units) (100%)
<b>Market Rate</b>	376,117 sf GFA  (89%)	221,897 sf GFA  (89%)	76,543 sf GFA  (89%)	188,488 sf GFA  (89%)	108,120 sf GFA  (89%)	NA	NA	971,165 sf GFA  (977 units)
<b>50% AMI</b>	23,244 sf GFA  (26 units) (5.5%)	13,713 sf GFA  (12 units) (5.5%)	4,731 sf GFA  (5 units) (5.5%)	11,648 sf GFA  (13 units) (5.5%)	6,682 sf GFA  (6 units) (5.5%)	Life of the Project	Rental (optional for-sale in Building A2)	60,018 sf GFA  (62 units)
<b>80% AMI</b>	23,244 sf GFA  (26 units) (5.5%)	13,713 sf GFA  (12 units) (5.5%)	4,731 sf GFA  (5 units) (5.5%)	11,648 sf GFA  (13 units) (5.5%)	6,682 sf GFA  (6 units) (5.5%)	Life of the Project	Rental (optional for-sale in Building A2)	60,018 sf GFA  (62 units)

76. Environmental Benefits (11 DCMR § 2403.9(h)) – The Applicant will ensure environmental sustainability through the implementation of a variety of design features, materials, and systems, which will further enhance the already sustainable nature of the PUD Site’s mixed-use, transit-rich location and minimize impacts on the environment. The Project provides a host of environmental benefits consistent with the recommendations of 11 DCMR § 2403.9(h), which include street tree planting, landscaping, energy and water efficient systems, construction waste management techniques, methods to reduce stormwater runoff, and ample bicycle parking. Moreover, Buildings A1 and B will achieve LEED-Gold certification under the USGBC LEED for

<sup>4</sup> If Building A2 is developed as for-sale housing, then the proffered affordable housing will be redistributed as follows: (i) 19,946 square feet of Building A2’s residential gross floor area will be dedicated to households earning up to 80% of the AMI; (ii) a total of 30,100 square feet of Building A1’s residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 17,011 square feet of Building A1’s residential gross floor area will be dedicated to households earning up to 80% of the AMI; and (iii) a total of 11,587 square feet of Building B’s residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 4,731 square feet of Building B’s residential gross floor area will be dedicated to households earning up to 80% of the AMI. If Building A2 is to be developed as for-sale housing and Buildings A1 and B are constructed prior to Building A2, then the condition enforcing this commitment will be based on the timing of issuance of the certificate of occupancy for Building A1 and Building B, respectively (*see* Condition No. B2).



New Construction v2009 rating standards, Building C1 will achieve LEED-Gold certification under the USGBC LEED for Core and Shell v2009 rating standards, and each building within the first-stage PUD will, in its second-stage PUD application, achieve the total number of LEED points consistent with the USGBC LEED-Gold for New Construction v2009 rating standards.

77. Employment Benefits (11 DCMR § 403.9(j)) – The Applicant will submit to the Department of Consumer and Regulatory Affairs (“DCRA”) a First Source Employment Agreement for each building, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004.
78. Transportation Benefits (11 DCMR §2403.9(c)) – The Project includes a number of elements designed to promote effective and safe vehicular and pedestrian movement, transportation demand management (“TDM”), and connections to public transportation services. The Project incorporates significant improvements to the streetscape surrounding and within the PUD Site that will improve the transportation network in the Florida Avenue Market district and establish a street grid within the PUD Site in lieu of the chaotic paved areas that currently exist. Many of these elements were mitigations proposed to address potential adverse impacts of the project identified by DDOT. These elements are listed below in connection with DDOT’s report.
79. The Applicant will reconnect the street grid by extending Morse Street, adding a new section of 3<sup>rd</sup> Street, and connecting Neal Place into 3<sup>rd</sup> Street, thus creating a two-way vehicular circulation route that connects Morse Street to 3<sup>rd</sup> Street to Neal Place. The Applicant will also open and improve the existing Alley running between Building C and the Fourth Street PUD, creating a secondary circulation route around the PUD Site and completing the grid. The Applicant will improve Morse Street, 3<sup>rd</sup> Street, Neal Place, and the Alley with new paving, curbs, gutters, sidewalks, landscaping, lighting, and other pedestrian amenities, all in accordance with DDOT standards, and will provide street-activating and community-serving retail. All three streets will be private but will utilize 10’ x 16’ scored concrete as recommended in the proposed Union Market Streetscape Guidelines, so as to be consistent with the other streets in the market area. The Alley will be finished with permeable pavers to match the balance of the Alley being installed as part of Fourth Street PUD.
80. To promote pedestrian travel, the Applicant will undertake significant improvements to the streetscape surrounding and within the PUD Site. All sidewalks and elements in public space will be built to DDOT standards, and many improvements will include elements of the Union Market Streetscape Guidelines. Sidewalks will be over-sized to allow for café seating, outdoor vending and pedestrian circulation, and to further support new businesses. Building canopies along Morse and 3<sup>rd</sup> Streets will provide extra shade and a visual connection to the historic market warehouse buildings to the east of the PUD Site. In total, the Project will provide over two-thirds of an acre of pedestrian streetscape improvements along the three street sections.

81. To promote bicycle travel, the Applicant will provide secure, indoor bicycle parking within each building, as well as numerous exterior bicycle racks in appropriate locations on the PUD Site adjacent to the buildings. The Applicant will create a dedicated bicycle lane in the Alley that will ultimately provide a bicycle connection to the proposed New York Avenue Rails to Trails bicycle path. The Applicant will further install a bicycle lane from the Alley to 4<sup>th</sup> Street, N.E., along the north side of Morse Street, N.E.
82. In order to further improve vehicular circulation around the PUD Site and surrounding area, the Applicant will install a new traffic signal at the intersection of 4<sup>th</sup> and Morse Streets, N.E., at an approximate cost of \$250,000, and will install traffic management cameras at the intersections of New York Avenue and 4<sup>th</sup> Street and Florida Avenue and 5<sup>th</sup> Street for integration into the DDOT traffic management program, at an approximate cost of \$12,000.
83. The Applicant will pay DDOT for the installation and first year's operation expenses of a new Capital Bikeshare station to be located on Morse Street, south of Building C1.
84. The Applicant will further dedicate two curbside parking spaces for carsharing services within the PUD Site. If no carshare providers are willing to operate in those spaces, the dedicated spaces may be returned to the general on-street parking supply.
85. Each building owner will designate a Transportation Management Coordinator responsible for organizing and marketing the TDM plan and will act as a point of contact with DDOT for the relevant building;
86. In addition, each building owner will implement the following TDM strategies:
  - a. Provide TDM materials to new residents as part of the Residential Welcome Package;
  - b. Price all on-site vehicle parking at market rate at minimum, defined as the average cost for parking within a 0.25-mile radius of the PUD Site;
  - c. Unbundle the cost of residential parking from the cost of lease or purchase of residential units for Buildings A, B, C2, and D;
  - d. Exceed the zoning requirements to provide bicycle parking/storage facilities at each of the buildings, as shown on Sheets 37-39, 44, 69, and 82 of the Plans, which include long-term (secure, interior) and short-term (exterior) spaces;
  - e. Provide a total of four bicycle repair stations, located within the bicycle storage rooms in Buildings A1, B, and C1, and adjacent to the public plaza, as shown on Sheets 37-39, 44, 69, and 82 of the Plans; (Ex. 61A, 72A, 75A,)
  - f. Install a transit information screen in each of the residential and office lobbies, containing information related to local transportation alternatives;

- g. Dedicate \$200 per residential unit within each phase of development in alternative transportation incentives that can be used for an annual Capital Bikeshare membership, an annual carshare membership, a carshare driving credit, or for bicycle repair/maintenance;
  - h. Provide two cargo bicycles within each residential building; and
  - i. Provide three rolling shopping carts within each residential building.
87. Uses of Special Value to the Neighborhood and the District of Columbia as a Whole (11 DCMR § 2403.9(I)) – The Applicant will develop three public park/plaza spaces within the PUD Site as follows:
- a. Florida Avenue Park:
    - i. As shown on Sheets 20 and L1.01-L1.05 of the Plans, the Applicant will extend the park space approved as part of Z.C. Case No. 15-01 for The Highline at Union Market into the PUD Site. (Ex. 61A, 75A.) The additional park area has been designed and fully coordinated with the developer of the Highline (“Highline Developer”) to create a seamless park experience and community gathering area. The portion of the Florida Avenue Park on the PUD Site will feature a continuation of terraced greenspace, public seating areas, and two pathways that provide handicapped, bike, and stroller accessibility. It will also feature a biofiltration garden and extensive landscaping that will buffer the rail tracks to the west, and wayfinding elements to help orient pedestrians entering the Florida Avenue Market area. The combined park area will encompass approximately one-third of an acre of land that will serve as a meaningful greenspace and gateway into the Florida Avenue Market area from Florida Avenue and the NoMa Metrorail Station. Pursuant to Condition No. B7 of this Order, the Applicant must complete approximately 75% of the construction of the portion of the Florida Avenue Park located on the PUD Site prior to the issuance of a certificate of occupancy for the first building completed within the consolidated PUD, with the remainder to be completed within the next 120 days. No Certificate of Occupancy may be issued for Building A1 or B (whichever is second) until the portion of the Florida Avenue Park located on the PUD Site is 100% complete;
    - ii. The Applicant will also place \$150,000 into an escrow fund for the benefit of the Highline Developer, to be used in connection with improvements to the Florida Avenue Park to enable the provision of handicapped accessible pathways; and

- iii. The Applicant will establish a Property Management Company that will maintain the Florida Avenue Park in partnership with the Highline Developer.
- b. The Plaza:
- i. As shown on Sheets 20, L1.01-L1.19 of the Plans, the Plaza will occupy approximately one-third of an acre of land and extend from Florida Avenue Park to the corner of Morse and 3<sup>rd</sup> Streets, N.E. (Ex. 61A, 72A, 75A.) The Plaza will complete the critical pedestrian connection from NoMa and Old City into the Florida Avenue Market area, and will be a preeminent gathering space or commons for neighborhood residents, office workers, students, shoppers and visitors alike. Together with the Florida Avenue Park (a total 0.6-acre area), the Plaza will afford pedestrians a series of experiences that are enticing, activated, and informative to first-time visitors. Pursuant to Condition No. B11 of this Order, the Applicant must complete approximately 75% of the construction of the Plaza prior to the issuance of a certificate of occupancy for the first building completed within the consolidated PUD, with the remainder to be completed within the next 120 days. No Certificate of Occupancy may be issued for Building A1 or B (whichever is second) until the Plaza is 100% complete;
  - ii. The central feature of the Plaza is the Gantry (“Gantry”), a metal-framed structure that represents a de-constructed form of the nearby rail gantries. The Gantry will provide a third side to the Plaza along the rail tracks, creating a window for passengers on passing trains. The Gantry will also serve as a neighborhood identifier and a backdrop for outdoor events, such as musical performances, movies, and festivals. Most significantly, the Gantry will be interactive with a series of jets that will emit fog-like water vapor at regular intervals – recalling the era of steam railcars at the PUD Site. Specialty stone paving will extend through the Gantry allowing people, especially children, to engage with this unique water feature. A series of wooden benches will frame the stone paving, providing parents and others a place to congregate that is outside of the primary pedestrian traffic area. The seating in this area will be positioned using deaf-space design principles that accommodate people speaking sign language;
  - iii. Located across the Plaza from the Gantry is a set of terraced steps (the “Steps”), which will provide additional seating to serve as another communal gathering space for everyday users, as well as a viewing area for special events. The Steps utilize a similar design to the wood bench seats at the Gantry, and again utilize deaf-space principles through their orientation. The Steps further frame the southern face of the Building A1 with landscaping connecting a café terrace and covered outdoor terrace that is an extension of the Building A1 residential courtyard;

- iv. At the bottom of the Steps is the entrance to a retail space and resident bike parking on the B01/Plaza Level of Building A1. The A1 Building owner will make this area available to accommodate additional short-term, public bicycle parking through either (A) designated publicly accessible bicycle parking spaces; or (B) a bicycle valet operated by the Property Management Company, retail tenant, or BID on weekends and during special events. In combination, these elements will create a highly activated gathering space that has views of the Gantry, Florida Avenue Park, and beyond toward NoMa and downtown DC;
  - v. The easternmost section of the Plaza has been designed as a pedestrian thoroughfare which is intimate enough to be pedestrian-friendly but with room to accommodate temporary vendor stations as contemplated for 3<sup>rd</sup> Street in the Florida Avenue Market Study. Lined on both sides by retail storefronts and café terraces, with landscape separation on the south side, the paved area will comfortably allow for vendor stations and a circulation zone that responds to deaf space design principles;
  - vi. Additional deaf space design principles are also incorporated within the Plaza, including pulling back Building B's ground floor and adding a curved stair element in lieu of a wall to improve sight lines into the Plaza and avoiding blind corners. In addition, material variation is incorporated at the transition from the Plaza to the street and sidewalk to help inform the change into a vehicular space. Loose furniture is also provided, which gives greater flexibility for seating arrangements for the hearing impaired; and
  - vii. As the plaza opens to 3<sup>rd</sup> and Morse Streets, a wayfinding totem or similar element will provide orientation to key destinations within the Florida Avenue Market area, as well as adjacent landmarks such as Gallaudet University, Two Rivers Charter School, NoMa Metro Station, among others.
- c. Neal Place Park:
- i. As shown on Sheets 20, L1.01-L1.02, and L1.20-L1.21 of the Plans, Neal Place Park will be an urban park located at the western terminus of Neal Place, N.E., and wrapping the northwest corner of Neal Place and 3<sup>rd</sup> Street to provide almost 12,000 square feet of additional public open space. (Ex. 61A.) Neal Place Park will include additional seating, outdoor dining, and an artistic water feature that will serve as a focal point for pedestrians walking from Union Market and other retail in the Florida Avenue Market area. The final design of Neal Place Park will be part of the Second-Stage PUD application. Pursuant to Condition No. B14 of this Order, the Applicant must complete approximately 75% of the

construction of Neal Place Park prior to the issuance of a certificate of occupancy for the first building completed within the consolidated PUD, with the remainder to be completed within the next 120 days. No Certificate of Occupancy shall be issued for Building C2 or D (whichever is first) until Neal Place Park is 100% complete;

- ii. The site of the future Neal Place Park will feature pop-up business incubators that will accommodate small, local, start-up businesses devoted to the creation of goods and services (“Makers”). Maker uses are defined as:

The production, sale, and/or distribution of food and beverages (provided that the on-site consumption of food and beverages shall be permitted only as an accessory use of such production, sale, and/or distribution user); small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; specialty sports and recreation uses (not including traditional gyms or fitness clubs); engineering and design; and technology design and production;

- iii. The Applicant will install approximately 3,000 square feet of retrofitted containers or similar structures to house Makers on the site of the future Neal Place Park. The Applicant will target marketing of the containers to Makers through the following actions:

- A. Retain a retail broker with experience marketing to and securing a variety of tenant types, including Makers;
- B. Sponsor a workshop that encourages the maker movement;
- C. Market the proposed retail space to retail tenants within Union Market; and
- D. Market the proposed retail space to retail tenants operating in Union Kitchen or similar facility;

d. Interim Park:

- i. As shown on Sheets 20-21 and L2.05-L2.07 of the Plans, approximately 41,000 square feet of land area will be devoted to an interim park located where Buildings C2 and D will be constructed (“Interim Park”). (Ex. 61A.) The Interim Park will have a large multi-use lawn area that can accommodate events such as outdoor fitness classes, musical performances, and festivals. A gravel parking area along the Alley and adjacent to the Interim Park will provide a convenient pull-up zone for food trucks, vendors, and exhibitors. The Interim Park will also have space

dedicated to outdoor lawn games and an “Imagination Playground” that will feature interactive foam building blocks;

- ii. The Applicant will install furnishings and equipment for the Interim Park, all of which will be used in other areas of the PUD and/or donated to local schools once the Interim Park is built out; and
  - iii. Adjacent to the Interim Park at the rear of Parcel D is an existing dis-used rail-loading platform that the Applicant will restore to provide a historic reference. The loading platform will be retained following construction of Building D, but may be relocated as part of the construction;
- e. Maker Spaces. The Applicant will dedicate approximately 2,250 square feet of total retail space in Building A1 or Building B, and approximately 2,250 square feet of total retail space in Building C2 or Building D for Makers. The Maker spaces will be marketed at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased. The Applicant will target marketing to Makers by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers;
- f. Metropolitan Branch Trail. The Applicant will contribute \$10,000 to the Metropolitan Branch Trail beautification program (PowWowMural) via the NoMa BID; and
- g. Utilities. The Applicant will extend all new utilities throughout the entire PUD Site, at a cost of approximately \$2.4 million. The utilities for the Consolidated PUD will be oversized for future development to provide capacity for additional buildings outside of the PUD and in order to minimize utility work in the streets during later phases of development of the PUD.

### **Compliance with the Comprehensive Plan**

88. The Comprehensive Plan includes Citywide Elements that each address a topic that is citywide in scope, and Area Elements that focus on issues that are unique to particular parts of the District. (See 10A DCMR §§ 104.4-104.5.) The Comprehensive Plan includes a Generalized Policy Map and a Future Land Use Map, which are incorporated as part of the plan and provide the foundation for land use decision-making and zoning. (10A DCMR § 108.3.) For the reasons stated below, the Commission finds that the Project advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan, as described herein.
89. Purposes of the Comprehensive Plan. The purposes of the Comprehensive Plan are six-fold: (a) to define the requirements and aspirations of District residents and, accordingly,

influence social, economic, and physical development; (b) to guide executive and legislative decisions on matters affecting the District and its citizens; (c) to promote economic growth and jobs for District residents; (d) to guide private and public development in order to achieve District and community goals; (e) to maintain and enhance the natural and architectural assets of the District; and (f) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Code §1-245(b).)

90. The Commission finds that the Project significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality mixed-use development without generating any adverse impacts. The Project includes residential, retail, office, and potentially hotel uses that will attract residents, visitors, employees, and the general public to the area. The Project also incorporates well-designed public spaces that emphasize the importance of pedestrians and bicyclists, provide significant new landscaping and open spaces, and create a sense of place that will draw people into the Florida Avenue Market neighborhood. The overall Project will promote economic growth, enhance the District's natural and architectural assets, and will significantly improve the PUD Site and surrounding neighborhood.
91. Compliance with the Future Land Use Map. The PUD Site is designated in the mixed-use High-Density Commercial, High-Density Residential, and Production, Distribution and Repair ("PDR") land use categories on the District of Columbia Comprehensive Plan Future Land Use Map.
92. The High-Density Commercial designation is used to define the central employment district of the city and other major office employment centers on the downtown perimeter. It is characterized by office, mixed residential/retail, and mixed office/retail buildings greater than eight stories in height, although many lower-scale buildings, including historic buildings, are interspersed. The corresponding zone districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply. (10A DCMR § 225.11.)
93. The High-Density Residential designation is used to define neighborhoods and corridors where high-rise (eight stories or more) apartment buildings are the predominant use. The corresponding zone districts are generally R-5-D and R-5-E, although other districts may apply. (10A DCMR § 225.6.)
94. The PDR category is used to define areas characterized by manufacturing, warehousing, wholesale and distribution centers, transportation services, food services, printers and publishers, tourism support services, and commercial, municipal, and utility activities which may require substantial buffering from noise, air pollution, and light-sensitive uses such as housing. The PDR designation is not associated with any industrial zone and therefore permits a building height of up to 90 feet with 6.0 FAR.
95. The Framework Element of the Comprehensive Plan states that the Land Use Map is not a zoning map. (See 10A DCMR § 226.1(a); see also Z.C. Order No. 11-13; Z.C. Order



- No. 10-28.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (*Id.*) By definition, the Map is to be interpreted broadly. (*Id.*)
96. The land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. The granting of density bonuses (for example, through planned unit developments) may result in heights that exceed the typical ranges cited here. (*Id.* at § 226.1(c).) The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (*Id.* at § 226.1(d).) Thus, in evaluating the proposed zoning map amendment, the PUD Site should be viewed in context and not as an isolated parcel.
97. The Commission finds that the Applicant's proposal to rezone the PUD Site to the C-3-C Zone District to construct four new mixed-use buildings (six total building components) is consistent with the designations for the PUD Site on the Future Land Use Map. The proposed C-3-C zoning classification is specifically identified to accommodate major business and employment areas and to provide substantial amounts of employment, housing, and mixed uses. (11 DCMR §§ 740.1-2.) The C-3-C Zone Districts permit medium- and high-density development, including retail, housing, and mixed-use development. (11 DCMR §§ 740.8.) The Project incorporates all of these elements into a medium- and high-density development that creates residential, retail, and employment opportunities in a dynamic mixed-use setting.
98. When taken in context with the surrounding neighborhood, the Applicant's proposal to rezone the PUD Site from the C-M-1 District to the C-3-C District is not only consistent with the Comprehensive Plan, but also with other recently-approved projects in the surrounding area. For example, pursuant to Z.C. Order No. 15-01, dated July 13, 2015, the Commission approved a PUD and related zoning map amendment from the C-M-1 Zone District to the C-3-C Zone District for 320 Florida Avenue, N.E., to be constructed with a maximum density of 8.0 FAR and a maximum building height of 120 feet. Similarly, pursuant to Z.C. Order No. 06-40C, dated January 27, 2014, the Commission approved a PUD and Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District for 340 Florida Avenue, N.E., to be constructed with a maximum density of 5.0 FAR and a maximum building height of 80 feet. The 320 Florida Avenue project and the 340 Florida Avenue project are located directly to the south of the PUD Site and are also located in the High-Density Commercial, High-Density Residential, and PDR land use categories on the Future Land Use Map.
99. The Commission also recently approved a PUD and related Zoning Map amendment at 300 M Street, N.E., located two blocks south of the PUD Site. The 300 M Street project includes a Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District on property located in the Medium-Density Residential category on the Future Land Use Map. OP testified in support of that project at its public hearing, noting that the

PUD and Zoning Map amendment were "...consistent with the Comprehensive Plan and the land use changes that have been envisioned for the area," that the project "...fits within the guidelines of the Comprehensive Plan for what would constitute medium density," and that it is "...at the upper end of [the medium-density designation] but it's certainly not outside of what has in the past been considered acceptable." (*See* Z.C. Case No. 14-19 Public Hearing Transcript dated July 9, 2015, pp. 64-65, 72.)

100. Based on this context, the Commission finds that the proposed C-3-C zoning classification and PUD will enable the PUD Site to be developed with four new mixed-use buildings constructed to a maximum building height of 130 feet and an overall PUD Site density of approximately 7.1 FAR. The Commission finds that the proposed heights and density are consistent with the limitations expressly permitted in high-density zones and are appropriate given the location of the PUD Site and its context adjacent to other recent development projects in the surrounding area.
101. In addition, the Commission finds that the Project is specifically consistent with the PDR designation on the Future Land Use Map. The Comprehensive Plan notes that residents of the Upper Northeast Area Element "are concerned that they are the location of choice for 'unwanted' municipal land uses," and that while there is "an appreciation for the importance of these uses to the city, there are concerns about their continued concentration in Upper Northeast simply because the area has a large supply of industrially zoned land." (10A DCMR § 2407.2(c).) Moreover, the Comprehensive Plan acknowledges that "Upper Northeast neighborhoods have lived with the heavy truck traffic, noise, and visual blight that comes with industrial land uses for decades" and that there is a desire to clean up these sites in the community and return them to productive use. Indeed, "[t]hese sites provide an opportunity to apply 'green' development principles, turning environmental liabilities into environmental assets." (10A DCMR § 2407.2(d).)
102. The Commission finds that the Project is consistent with these goals and appropriately balances the dual priorities of maintaining PDR uses while establishing a productive new mix of uses. The Project will reduce the concentration of industrial land uses in the Upper Northeast area by establishing a mix of residential, retail, office, and potentially hotel uses at the PUD Site, which will take advantage of other existing industrial uses in the surrounding area. The Project also involves the major clean-up and revival of the PUD Site into productive use with significant "green" sustainability measures that will be an asset to the surrounding neighborhood and the District as a whole.
103. Moreover, the Commission finds that the Project is consistent with several Policies within the Comprehensive Plan that encourage an appropriate balance between saving existing PDR uses and creating new compatible uses within the area. Reviewing the Comprehensive Plan's Citywide Elements is appropriate in this context, given the guidance of 10A DCMR § 226.1(d), which provides that "the zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well

as approved Small Area Plans.” (10A DCMR § 226.1(d); *see also, e.g.* Z.C. Order Nos. 14-19 and 15-14.)

104. For example, the Commission finds that the Project is consistent with Policy UNE-1.1.9, because it creates new uses, including retail and office space, that create jobs for Upper Northeast area residents and that minimize off-site impacts on the surrounding residential areas. Consistent with this policy the Project also involves high-quality design, landscaping, and improved screening and buffering. The Commission finds that the Project is also consistent with Policy UNE 2.3.2, which encourages “the conversion of industrial land to other uses” on key sites, so long as they do not diminish the area’s ability to function as an industrial district and meet the needs of government and District businesses and agencies. In this case, the PUD Site will be converted from its original industrial use, but doing so will not eliminate the significant amount of industrial and PDR uses currently existing in the surrounding area. Rather, the new uses on the PUD Site will help to spur the growth of those surrounding businesses while enhancing the PUD Site itself.
105. Generalized Policy Map. The PUD Site is located in a Multi-Neighborhood Center category on the District of Columbia Comprehensive Plan Generalized Policy Map. Multi-Neighborhood Centers contain many of the same activities as Neighborhood Commercial Centers<sup>5</sup> but in greater depth and variety. Multi-Neighborhood Centers’ service areas are typically one to three miles. These centers are generally found at major intersections and along key transit routes, and they might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers may also include office space for small businesses, although their primary function remains retail trade. Mixed-use infill development should be encouraged to provide new retail and service uses, and additional housing and job opportunities. (10A DCMR § 223.18.)
106. The Commission finds that the Project is consistent with the policies indicated for the Multi-Neighborhood Centers. The existing C-M-1 Zone District is inconsistent with the Policy Map’s designation for the PUD Site because C-M Zone Districts are “intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts.” (11 DCMR § 800.1.) In contrast, the proposed mix of new residential, retail, office, and potential hotel uses are consistent with the C-3-C zone designation, and will help to improve the overall neighborhood fabric and bring new residents and retail uses to the area, in compliance with the goals and objectives of Multi-Neighborhood Centers.
107. Compliance with Guiding Principles of the Comprehensive Plan. The Commission finds that the Project is consistent with the guiding principles in the Comprehensive Plan for

---

<sup>5</sup> Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (10A DCMR § 223.15.)

managing growth and change, creating successful neighborhoods, and building green and healthy communities, as set forth below.

108. Managing Growth and Change. In order to manage growth and change in the District, the Comprehensive Plan encourages, among other goals, the growth of both residential and non-residential uses. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. The Commission finds that the Project is fully consistent with each of these goals. Redeveloping the PUD Site as a vibrant new mixed-use development with residential, retail, office, and potential hotel uses will further the revitalization of the surrounding neighborhood. These proposed uses will create new jobs for District residents, increase the city's tax base, and help to reinvigorate the existing neighborhood fabric. Moreover, the PUD Site is exceptionally well located as an infill development along two major corridors, which will allow for convenient access to the PUD Site and draw people into the neighborhood to live, work, and play.
109. Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development; from development of the Comprehensive Plan to implementation of the plan's elements. The Commission finds that the Project furthers this goal since, as part of the PUD process, the Applicant worked closely with ANC 5D and other neighborhood stakeholders to ensure that the Project will have a positive impact on the immediate neighborhood. As set forth in ANC 5D's resolution in support of the application, "the applicant has done an excellent job of presenting its proposed PUD to the community and responding to the ANC's questions and concerns. The development will contribute to the redevelopment of the Florida Avenue Market area and includes important new connections that will help bring surrounding communities closer together. The project incorporates a mix of uses, including residential, retail, office, and hotel uses, as well as significant new public open spaces, which will together create a vibrant new mixed-use and transit-oriented community." (Ex. 36, p. 1.)
110. Building Green and Healthy Communities. A major objective for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. In this case, the Commission finds that the Project furthers these goals because it will include a substantial number of sustainable design features and will ensure that all buildings within the consolidated PUD are certified as LEED-Gold under v2009, and all buildings within the first-stage PUD are certified as consistent with LEED-Gold under v2009.
111. Major Elements of the Comprehensive Plan. As set forth in detail in the Applicant's Statement in Support, the Applicant's response to the OP and DDOT Reports, the OP reports, and the Applicant's post-hearing submission, the Commission agrees that the Project advances many of the objectives and policies in the Comprehensive Plan's Major Elements, including the Land Use, Transportation, Housing, Environmental Protection, Urban Design, Economic Development, Community Services and Facilities, and

Infrastructure Citywide Elements, and the Upper Northeast Area Element. (Ex. 6, 15, 39, 46B, 72F.) These elements together “...encourage a mix of uses in the Florida Avenue Market...[a]rea, high-density development and well-designed open space and public realm,” which is exactly the type of development proposed in this case. (Ex. 39, p. 24.)

112. Land Use Element. The Commission finds that the Project supports the following policies of the Land Use Element:

- a. *Policy LU-1.2.2: Mix of Uses on Large Sites*. The Commission finds that the Project, which includes residential, retail, office, and potentially hotel uses on a large underutilized site, is consistent and compatible with adjacent uses and will provide a number of benefits to the immediate neighborhood and to the city as a whole. The Project will provide significant new housing and affordable housing units, create dynamic new street-activating retail spaces, and provide employment opportunities for District residents. Moreover, these proposed uses are consistent with the Future Land Use Map's mixed-use designation of the PUD Site;
- b. *Policy LU-1.3 Transit-Oriented and Corridor Development*. The Commission finds that the Project exemplifies the principles of transit-oriented development. The PUD Site is located within convenient walking distance of the NoMa/Gallaudet University Metrorail station and is served by several Metrobus routes, including routes 90, 92, 93, P6, and X3, which are all located within 0.3 miles of the PUD Site. The PUD Site is also located within 0.3 miles of two existing Capital Bikeshare stations and within a few blocks from the entrance to the Metropolitan Branch Trail, an eight-mile multi-use trail that runs from Union Station in the District of Columbia to Silver Spring in Maryland. Furthermore, the PUD Site is located within convenient walking distance to the residential and office district in the NoMA neighborhood, dining and entertainment options in the Union Market and H Street neighborhoods, and just one Metro station away from intercity and commuter trains and buses connecting at Union Station. The Project is also consistent with the following stated transit-oriented principles: (i) a preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground-floor retail uses; and (ii) a preference for diverse housing types, including affordable units;
- c. *Policy LU-1.3.4: Design to Encourage Transit Use*. The Commission finds that the Project has been designed to encourage transit use and enhance the safety, comfort and convenience of passengers walking to the Metrorail station and local bus stops. The Project incorporates ground-floor retail uses that will activate and animate the surrounding streets, and provides new sidewalks and crosswalks that will create safe spaces to walk to and from public transportation. The Project also reconnects the street grid by extending Morse Street, adding a new section of 3<sup>rd</sup> Street, and connecting Neal Place into 3<sup>rd</sup> Street, thus creating a two-way vehicular circulation route that connects Morse Street to 3<sup>rd</sup> Street to Neal Place, as recommended in the FAMS. Applicant will also open and improve the existing Alley running parallel to and between 3<sup>rd</sup> and 4<sup>th</sup> Streets, creating a secondary circulation route around the PUD Site and completing the grid;

- d. *Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods.* In designing the Project, and consistent with Policy LU-2.1.3, the Applicant sought to conserve and enhance the surrounding neighborhood. The Project creates neighborhood-defining public open spaces and parks, establishes pedestrian-oriented streetscapes and amenities, provides significant new retail opportunities for surrounding residents and neighborhood visitors, and augments the mixed income housing supply in the area. Thus, the Commission finds that the Project is consistent with Policy LU-2.1.3 due to its ability to protect the neighborhood's existing character while expanding neighborhood commerce;
- e. *Policy LU-2.2.4: Neighborhood Beautification.* Policy LU-2.2.4 encourages projects to improve the visual quality of the District's neighborhoods. In this case, the Commission finds that the buildings within the Project have been designed to improve the visual aesthetic of the neighborhood and create clear sightlines from multiple points in the neighborhood. The Applicant utilized design techniques in the new construction that enhance the sense of place within and around the PUD Site and greatly improve the pedestrian character of the surrounding area. Moreover, redevelopment of the PUD Site will be a significant improvement to the current site condition, thus helping to revitalize the area. The Project also includes a significant amount of landscaped and open spaces, which the Commission finds also greatly enhance and beautify the surrounding streetscape; and
- f. *Policy LU-3.1.4: Rezoning of Industrial Areas.* *Policy LU-3.1.4: Rezoning of Industrial Areas.* "Allow the rezoning of industrial land for non-industrial purposes only when the land can no longer viably support industrial or PDR activities or is located such that industry cannot co-exist adequately with adjacent existing uses. Examples include land in the immediate vicinity of Metrorail stations, sites within historic districts, and small sites in the midst of stable residential neighborhoods. In the event such rezoning results in the displacement of active uses, assist these uses in relocating to designated PDR uses." Although this policy provides guidance to avoid rezoning viable industrial land, the Florida Avenue Market Small Area Plan approved by the District Council by Resolution R18-0257 on October 6, 2009 and incorporated into the Comprehensive Plan in 2011 identifies the Florida Avenue Market, inclusive of this site for "a mixed-use neighborhood that serves a variety of purposes." (Florida Avenue Market Study, p. 52.) In this case, the PUD Site is surrounded by a variety of uses, including industrial warehouses to the north, residential, commercial, to the east and south, and industrial warehouse and major mixed use residential and commercial developments to the west. The PUD Site is located on the east side of the growing NoMa neighborhood, which is extending north and east through numerous recently approved development projects. As these mixed-use residential and commercial developments continue to expand, particularly around the NoMa/Gallaudet University Metrorail station, the PUD Site's suitability for heavy industrial and warehouse activities will diminish but the development of the site for mixed use will remain viable for small-scale maker-spaces and

cottage-industry uses. Thus, the Commission concludes that, on balance, the proposed Project and requested zoning map amendment support the policy of supporting low-impact cottage industries identified in Policy LU-3.1.7 Cottage Industries, and rezoning industrial land to permit residential and commercial uses on land included in targeted redevelopment areas.

113. Transportation Element. The Commission finds that the Applicant's proposal to develop the mixed-use Project on the PUD Site will help to advance several policies and actions of the Transportation Element of the Comprehensive Plan, including the following:

- a. *Policy T-1.1.4: Transit-Oriented Development*. As set forth above, the Commission finds that the Project is an excellent example of transit-oriented development due to its location along a major transportation corridor and close proximity to a Metrorail station, multiple Metrobus routes, bicycle lanes, and Capital Bikeshare stations. The Project will include secure bicycle storage areas, a bicycle valet, and public space improvements, including new sidewalks, lighting, landscaping, street trees, and bicycle lanes, which will create safe spaces to walk to and from public transportation. The Applicant has also developed an extensive TDM plan that is grounded in the PUD Site's transit-rich location; and
- b. *Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning and Action T-2.3-A: Bicycle Facilities*. The Commission finds that the Project carefully integrates bicycle and pedestrian safety considerations. To promote bicycle travel, the Project includes secure, indoor bicycle parking within each building, as well as numerous exterior bicycle racks in appropriate locations on the PUD Site adjacent to the buildings. The Applicant will establish a dedicated bicycle lane in the Alley that will ultimately provide a bicycle connection to the proposed New York Avenue Rails to Trails bicycle path. The Applicant will also install a bicycle lane from the Alley to 4<sup>th</sup> Street, N.E., along the north side of Morse Street, N.E.

To promote pedestrian travel, the Project includes significant improvements to the streetscape surrounding and within the PUD Site. All sidewalks will be built to DDOT standards, and in many cases will be over-sized to allow for café seating, outdoor vending and pedestrian circulation, and to support new businesses. Building canopies along Morse and 3<sup>rd</sup> Streets will provide extra shade and a visual connection to the historic market warehouse buildings to the east of the PUD Site. In total, the Project will provide over two-thirds of an acre of pedestrian streetscape improvements along the three street sections.

The Applicant will also repave the streetscape surrounding the PUD Site according to DDOT's standards, and will otherwise improve the public realm by planting trees and making other landscape and lighting improvements. Together, the Commission finds that these physical enhancements to the streetscape will encourage bicycle and pedestrian activity and will bring additional revitalization to the area.

114. Housing Element. The overarching goal of the Housing Element is to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future

residents of the District of Columbia." (10 DCMR § 501.1.) The Commission finds that the Project will help achieve this goal by advancing the policies below:

- a. *Policy H-1.1.1: Private Sector Support.* The Commission finds that the Project helps meet the needs of present and future District residents at locations consistent with District land use policies and objectives. The Project will contain a significant amount of new housing that will contribute to the District's housing supply. The Project also provides significantly more affordable housing than is required by the Zoning Regulations, and at a steeper subsidy, particularly given that under the current C-M-1 zoning no new housing could be provided at the PUD Site. Moreover, the provision of new housing at this particular location is fully consistent with the District's land use policies, as set forth above. Therefore, the Commission finds that the Project is fully consistent with Policy H-1.1.1, which encourages private sector support for new housing development;
- b. *Policy H-2.1.1: Protecting Affordable Rental Housing, Policy H-1.2.1: Affordable Housing Production as a Civic Priority, and Policy H-1.2.7: Density Bonuses for Affordable Housing.* The Commission finds that the Project exemplifies the goals of Policies H-2.1.1, H-1.2.1, and H-1.2.7 because a minimum of 11% of the Project's residential gross floor area will be devoted to affordable housing. The overall project will include approximately 1,091,201 square feet of residential gross floor area (1,103 units). Of that, a minimum of 120,036 square feet of gross floor area (124 units) will be dedicated to affordable housing, with 60,018 square feet (62 units) dedicated to households earning up to 50% of the area medium income ("AMI") and 60,018 square feet (62 units) dedicated to households earning up to 80% of the AMI. Each residential building within the Project will dedicate 11% of its residential gross floor area to affordable housing in this same manner.

As contemplated by Policy H-1.2.7, the Applicant requested density bonuses associated with development of the PUD in order to build the affordable housing proposed for the Project. The Commission finds that the proposed density is consistent with the limitations permitted in high-density zones and is appropriate given the location of the PUD Site and its context adjacent to other recently approved development projects in the surrounding area. Moreover, the housing affordability levels proffered for the Project will establish a supply of new residential units that are affordable for teachers, police officers, and other working professionals in the District. Thus, the Commission concludes that the Project furthers the goals of Policy H-1.2.7 by simultaneously providing a substantial new supply of affordable housing while preserving the well-being of the diversity of the District's neighborhoods;

- c. *Policy H-1.1.4: Mixed Use Development.* The Commission finds that the Project is consistent with the goals of promoting mixed use development, including housing, on commercially or industrially zoned land, because the Project incorporates residential, retail, office, and potentially hotel uses into a single, mixed-use, walkable new development;



- d. *Policy H-1.1.3: Balanced Growth.* The Commission finds that the Project advances Policy H-1.1.3 by developing new housing on surplus, vacant and underutilized land. The PUD Site is presently underutilized, as it is improved with one-story industrial buildings and/or is vacant land. The Project will replace these uses with significant new housing and affordable housing, in addition to retail, office, and potentially hotel uses. Doing so will help the District meet its long-term housing needs by developing moderate- and high-density housing that will be affordable for a range of income levels. Thus, the Commission finds that the Project is fully consistent *with* Policy H-1.1.3; and
- e. *Policy H-1.2.3: Mixed Income Housing.* The residential component of the Project is mixed-income and includes both market-rate and affordable housing units. Thus, the Commission finds that the Project will further the District's policy of dispersing affordable housing throughout the city in mixed-income communities, rather than concentrating such units in economically depressed neighborhoods. Of the total gross floor area devoted to housing, 11% will be dedicated to affordable housing units, with half dedicated to households earning up to 50% of the AMI and half dedicated to households earning up to 80% of the AMI. In contrast, under the current zoning, there would be no new housing or affordable housing on the PUD Site.
115. Environmental Protection Element. The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. The Commission finds that the Project is consistent with the following policies within the Environmental Protection Element for the reasons set forth below: *Policy E-1.1.1: Street Tree Planting and Maintenance; Policy E-1.1.3: Landscaping; Policy E-2.2.1: Energy Efficiency; Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff; and Policy E-3.1.1: Maximizing Permeable Surfaces.*
116. The Commission finds that the Project is consistent with these policies because the Applicant will (a) plant and maintain numerous new street trees throughout the PUD Site; (b) incorporate significant new landscaping to beautify the city, enhance the streets within and surrounding the PUD Site, reduce stormwater runoff, and create a stronger sense of character and identity; (c) promote the efficient use of energy in building design and operation; and (d) incorporate permeable surfaces and green roofs into the project design to reduce runoff. Moreover, each building within the consolidated PUD will achieve LEED-Gold under v2009, and each building within the first-stage PUD will, in its second-stage PUD application, achieve the total number of LEED points consistent with LEED-Gold v2009.
117. More specifically, the Commission finds that the Project is consistent with policies regarding air quality and noise and land use compatibility, as set forth below:
- a. *Policy E-4.1.3: Evaluating Development Impacts On Air Quality.* The Commission finds that the Project is consistent with Policy E-4.1.3 because it includes a number of sustainable, environmentally-friendly features that will mitigate adverse impacts on air quality. These environmental measures include

the use of low emitting materials, air delivery monitoring techniques, energy and water efficient systems, permeable paving and materials, construction waste management techniques, landscaping and tree planting, accommodations for alternative transportation modes, and green power practices, all of which will together work to reduce emissions and absorb carbon monoxide and other pollutants. In addition, each building will achieve LEED-Gold as described above, and the Project will incorporate significant TDM measures that will reduce travel demand and associated carbon emissions.

Moreover, the Commission notes that DOEE reviewed the Project and submitted a report on the application. (Ex. 63.) DOEE's report indicated that it "met with the applicant several times during the last year...some concerns were included with [OP's] report and were addressed directly in meetings with the applicant." (Ex. 63, p. 2.) DOEE's report also stated that it is "generally supportive of the Project" and that it is "glad that the applicant increased their commitment to LEED, and are now projecting certification at the LEED v2009 Gold level." (*Id.* at pp. 2, 3.) By letter dated January 11, 2017, the Applicant responded to the comments and recommendations in DOEE's report, explaining how the Project incorporates a number of sustainability features, including stormwater management and retention techniques, significant greenspaces and trees, bioretention facilities, and energy efficient systems, among others. (Ex. 72C.)

Moreover, following issuance of the Applicant's letter to DOEE, and in response to comments at the public hearing, the Applicant increased the amount of permeable paving in the Plaza by 2,400 square feet. (*See* Sheets L1.05-L1.06 of Ex. 72A.) Thus, the Commission finds that the Project incorporates a number of features that will help to ensure sustainability and further the goals of Policy E-4.1.3.

The Commission also notes that the Applicant will be required to comply with all applicable laws and regulations regarding construction noise and air pollution, and will address the mitigation of any construction-related impacts during the building permit process; and

- b. *Policy E-4.3.5: Noise and Land Use Compatibility.* The Commission finds that the Project is consistent with Policy E-4.3.5 because it will not establish new land uses that generate excessive noise. The PUD Site will be developed with a mix of uses, including residential, retail, office, and potentially hotel uses. These uses are found throughout the immediately surrounding area in other recently approved PUDs. (*See, e.g.* Z.C. Case No. 15-01 for a PUD at 320 Florida Avenue, N.E. (directly to the south of the PUD Site), approved for residential and retail uses; Z.C. Case No. 06-40 at 340 Florida Avenue, N.E. (directly to the southeast of the PUD Site), approved for residential, retail, and office uses; Z.C. Case No. 14-07 for a PUD at 1270 4<sup>th</sup> Street N.E. (directly to the east of the PUD Site), approved for residential and retail uses; and Z.C. Case No. 16-10 for a PUD located at 400 Florida Avenue, N.E. (one block southeast of the PUD Site), preliminarily approved for residential and hotel uses.) Moreover, the Applicant will be required

to comply with all federal and District noise regulations during construction and operation of the buildings on the PUD Site. Therefore, the Commission concludes that the Project will not create adverse impacts by generating excessive noise in the surrounding neighborhood

118. Urban Design Element. The goal of the Comprehensive Plan's Urban Design Element is to “[e]nhance the beauty and livability of the city by protecting its historic design legacy, reinforcing the identity of its neighborhoods, harmoniously integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and security of streets and public spaces.” (10A DCMR § 901.1.) Consistent with these objectives, the Commission finds that the Applicant has gone to great lengths to align the Project with the character of the surrounding neighborhood, and is consistent with the following specific policies for the reasons stated below: *Policy UD-2.2.1: Neighborhood Character and Identity and Policy UD-2.2.7: Infill Development; Policy UD-2.2.5 Creating Attractive Facades, and Policy UD-3.2.5: Reducing Crime Through Design.*
119. The Commission finds that the Project will strengthen the architectural quality of the immediate neighborhood by relating the Project's scale to the existing neighborhood context, including both existing and approved development projects. The Project is a true infill development, and includes elegant, aesthetically appealing and well-designed building façades to create stunning visual interest and to contribute to the architectural quality of the neighborhood and streetscape. The building architecture takes its cues from the industrial surroundings and from the adjacent rail tracks, and the overall site plan is integrally connected to the approved PUDs to the south and east of the PUD Site through the coordinated development of the Florida Avenue Park and the alley. Moreover, the Commission finds that the Project will reduce crime through design by bringing additional "eyes and ears" to the area, as well as improved lighting, clear lines of sight, and visual access, all of which will help to minimize the potential for criminal activity in the immediate area.
120. Economic Development Element. The purpose of the Economic Development Element is to address the future of the District's economy and the creation of economic opportunity for current and future District residents. (See 10A DCMR § 700.1.) The Commission finds that the Project is consistent with a variety of policies in the Economic Development Element as follows:
- a. *Policy ED-3.2.1: Small Business Retention and Growth*. Consistent with Policy ED-3.2.1, the Commission finds that the Project will encourage the retention, development, and growth of small and minority businesses for the following reasons:
    - i. The Applicant will enter into a First Source Employment Agreement with DOES consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004, to ensure that District residents are given priority for new jobs created by municipal financing and development programs;

- ii. The Applicant will provide approximately 3,000 square feet for temporary pop-up business incubators that will accommodate small, local, start-up businesses devoted to the creation of goods and services. The Applicant will target marketing to Makers by: (A) retaining a retail broker with experiencing marketing to and securing a variety of tenant types, including Makers; (B) sponsoring a workshop that encourages the Maker movement; (C) marketing the proposed retail space to retail tenants within Union Market; and (D) marketing the proposed retail space to retail tenants operating in Union Kitchen; and
- iii. The Applicant will dedicate approximately 4,500 square feet within the Project for permanent Maker spaces. These spaces will be marketed at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased. The Applicant will target marketing to Makers by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers.

Therefore, the Commission finds that the Project is fully consistent with the goals of Policy ED-3.2.1;

- b. *Policy ED-3.2.6: Commercial Displacement.* Consistent with Policy ED-3.2.6, the Commission finds that the Project will not result in the displacement of small and local businesses. The PUD Site is presently improved with one-story industrial buildings used for wholesale distribution. However, the owners of those parcels have chosen to sell their interests in the PUD Site to the Applicant and move their businesses elsewhere. Indeed, development of the Project will help support small and local businesses by introducing significant new housing and affordable housing into the neighborhood on a site where none previously existed. The new housing will be occupied by mixed-income residents who will need neighborhood goods and services on a daily basis. This type of mixed-income development will generate diverse new customers for small and local businesses in the surrounding area, and due to the mixed-income nature of the Project, will not result in rising real estate costs that could potentially displace existing businesses;
- c. *Policy ED-3.2.7: Assistance to Displaced Businesses.* As stated above, the Commission finds that the Project will not result in the displacement of small businesses. To the contrary, the Project will help to spur the growth and development of businesses in the area by creating new housing for residents in need of local goods and services. Moreover, the Applicant's commitments regarding First Source Employment and providing temporary and permanent space for Makers will help to create new employment opportunities for District residents;
- d. *Action ED-3.2.A: Anti-Displacement Strategies.* Consistent with Action ED-3.2.A, the Commission finds that the Project will not result in commercial

gentrification or the displacement of small and local businesses. The Project will be a benefit to the entire community and will help maintain economic stability and support the growth of small and local businesses. Due to the Project's mix of uses, including subsidized retail space for Makers, and its mixed-income housing options with 11% affordable housing, half of which will be dedicated to households earning up to 50% of the AMI, the Commission finds that the Project will not result in destabilization of land values, acceleration of gentrification, or any displacement of neighboring residents. Rather, the Applicant will provide dedicated, rent-reduced space within the Project to small and local businesses, which will encourage their growth and development within the neighborhood; and.

- e. *Policy ED-4.2.4: Neighborhood-Level Service Delivery, Policy ED-4.2.7: Living Wage Jobs, and Policy ED-4.2.12: Local Hiring Incentives.* The Project will advance the goals of Policies ED-4.2.4, 4.2.7, and 4.2.12 by entering into a First Source Employment Agreement with DOES in order to promote living wage jobs, comply with resident job training and placement requirements, and ensure that District residents are given priority for new jobs created by the PUD.

121. Community Services and Facilities Element. The Comprehensive Plan provides that a “well-balanced and adequate public facility system is a key part of the city’s drive to sustain and enhance the quality of life for its residents.” (10A DCMR § 1100.1.) The Commission finds that the Project is consistent with several policies within the Community Services and Facilities Element of the Comprehensive Plan, including the following:

- a. *Policy CSF-1.1.1: Adequate Facilities.* The Commission finds that the Applicant will construct all facilities necessary for the efficient delivery of public services to current and future District residents. Compliance with this requirement will be confirmed during the building permit process. Moreover, the Commission notes that DC Water reviewed the Applicant’s proposal to establish an easement for an existing 8-foot sewer main running along the western property line of the PUD Site. After reviewing the proposed easement width, accessibility, clearance, truck turning movements, and foundation design for the proposed buildings, DC Water found that the easement would meet DC Water’s requirements. (See DC Water Report at Ex. 64.) Therefore, the Commission finds that the Project will fully comply with Policy CSF-1.1.1; and
- b. *Policy CSF-1.2.6: Impact Fees.* Consistent with Policy CSF-1.2.6, the Commission finds that the Applicant will pay all applicable application, permit, and other required fees associated with the Project, and that there are no specific impact fees associated with development of the PUD Site.

122. Infrastructure Element. The Infrastructure Element provides policies and actions on the District’s water, sanitary sewer, stormwater, solid waste management, energy, and telecommunication systems. (See 10A DCMR § 1300.1.) The Commission finds that the Project is consistent with policies within the Infrastructure Element as follows:

- a. *IN-1.2 Modernizing Water Infrastructure and Policy IN-2.1.1: Improving Wastewater Collection.* Consistent with Section IN-1.2 and Policy IN-2.1.1, the Applicant will be required to construct and maintain all public facilities and infrastructure, including water infrastructure, to accommodate future demand and maintain efficient delivery of public services for the Project. The civil sheets submitted to the record include plans for utilities, erosion and sediment control, and stormwater management. Moreover, the Applicant will be required to coordinate with all applicable public utilities and District agencies during the permitting process, including DC Water, to ensure that adequate services will continue to be available for the existing and new uses. Therefore, the Commission finds that the Project will fully comply with Policies IN-1.2 and 2.1.1; and
  - b. *Policy IN-6.1.3: Developer Contributions.* The Commission finds that the Project is consistent with Policy IN-6.1.3 because the Applicant will coordinate with all applicable public utilities and District agencies during the permitting process to ensure that adequate services will continue to be available for new uses on the PUD Site and for the existing uses in the surrounding neighborhood. The Applicant will extend all new utilities throughout the entire PUD Site, at a cost of approximately \$2.4 million. The utilities for the Consolidated PUD will be oversized for future development to provide capacity for additional buildings outside of the PUD and in order to minimize utility work in the streets during later phases of development of the PUD. Moreover, the Applicant will pay any required costs/fees associated with securing required utility permits for the PUD Site. Therefore, the Commission finds that the Project will further the goals of Policy IN-6.1.3.
123. Upper Northeast Area Element. The PUD Site is located within the boundaries of the Upper Northeast Area Element. Section 2407 of the Upper Northeast Area Element sets forth the planning and development priorities for this Area Element. The Commission finds that the Project is consistent with several of these priorities. For example, the Project will expand retail choices in the Upper Northeast, which are specifically encouraged along Florida Avenue and around Metrorail stations. The new retail opportunities, streetscape improvements, and public open spaces at the PUD Site will create a lively new pedestrian-oriented shopping district, consistent with 10A DCMR § 2407.2(i). The Upper Northeast Area Element also encourages compatible infill development (Policy UNE-1.1.2), Metro station development (Policy UNE-1.1.3), streetscape improvements (Policy UNE-1.2.1), and environmental quality (Policy UNE-1.2.8), all of which are policies and goals that the Project directly supports, as detailed above. Moreover, the Project will provide much-needed new infill housing, retail, and employment opportunities while protecting the nearby lower-density residences and increasing pedestrian accessibility and safety in the area. Thus, the Commission finds that the Project is fully consistent with the Upper Northeast Area Element.

### **Compliance with the Florida Avenue Market Study**

124. The Comprehensive Plan provides that the zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive

- Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (*See* 10A DCMR § 226.1(d).) The Comprehensive Plan requires zoning to be “interpreted in conjunction with...approved Small Area Plans.” (10A DCMR § 226.1(d).)
125. The Zoning Regulations further require consistency with “other adopted public policies and active programs related to the subject site.” (*See* 11 DCMR § 2403.4.) Small area policies appear in “separately bound Small Area Plans for particular neighborhoods and business districts. As specified in the city’s municipal code, Small Area Plans provide supplemental guidance to the Comprehensive Plan and are not part of the legislatively adopted document.” (10A DCMR § 104.2.)
126. In this case, the Commission finds that the PUD and related Zoning Map amendment will help to implement the FAMS, which provides a framework for the strategic redevelopment of the Florida Avenue Market study area. The FAMS was prepared by OP and released in June, 2009, and was approved by the District Council as Resolution Number R18-0257 on October 6, 2009. The District’s purpose in undertaking the FAMS was to evaluate the existing infrastructure, the economic vitality and potential, and the historic significance of the study area in order to prepare a small area plan that guides and evaluates future development proposals. (*See* FAMS, p. 5.) The FAMS envisions the study area as a vibrant, mixed-use neighborhood that protects the look and feel of the historic retail markets, while also providing a basis for new development and rehabilitation. (*Id.* at p. 9.)
127. In addition, the FAMS encourages new residential, office, and retail uses that create a vibrant, mixed-use destination that retains a revitalized wholesale/retail market and incorporates a mix of densities, ranging from moderate- to medium- to high-density, designed to be integrated into surrounding development and community fabric. (*Id.* at p. 53.) The FAMS includes a number of components, and the Development Framework section makes detailed recommendations for improving the area’s land use, development priorities, transportation facilities, and public realm features. The Commission credits OP’s findings that the Project is consistent with the following key elements of the Development Framework:
- a. Zoning and Intensity Plan: Designated as “High Density,” which corresponds to development of 90’ in height and an FAR of 6.5 as a matter of right; or 130’ in height and an 8.0 FAR in a PUD/TDR scenario. (*See* FAMS at p. 57 and OP Report at Ex. 39, p. 27);
  - b. Public Realm: “To fulfill the public realm and sense of place vision for the Study Area, it is essential that street-activating or pedestrian-enlivening activities are featured in the ground floors of development or within public space of key streets such as...Morse Street...and Neal Place...” (*Id.* at p. 54.) Create a pedestrian-friendly environment with clear pathways throughout the market...Improve sidewalk conditions...encourage active ground-floor uses (such as restaurants and retail) along expected pedestrian routes...” (*See* FAMS at p. 59 and OP Report at Ex. 39, p. 27.);

- c. Sense of Place: Utilize design techniques in new construction to enhance the sense of place and pedestrian character of the FAMS.” (See FAMS at p. 58 and OP Report at Ex. 39, p. 27.);
  - d. Open Space: “Include amenities in open space for users, such as benches, water fountains, etc....Create defensible open space that is well-lit, with clear sightlines from multiple points in and near the market...Ensure accessibility for a wide range of users—both physically accessibility and obvious visual cues will ensure people know the space is public.... Utilize and enhanced streetscape as part of the open space system.” (See FAMS at p. 58 and OP Report at Ex. 39, p. 27.); and
  - e. Transportation: “Increase pedestrian connectivity to/from the New York Avenue Metro Station...Reestablish a more complete street grid in the study area...” (See FAMS at p. 59 and OP Report at Ex. 39, p. 27.)
128. The Commission finds that the Project is consistent with these and many more recommendations set forth in the FAMS, and will help to implement the FAMS’ vision and goals for the area. For example, the Project includes a mix of retail uses and street enlivening activities in the form of retail spaces with vibrant facades, highly transparent storefronts, and public realm activities such as plazas, and outdoor cafes. (See FAMS at p. 54.) The Project provides public space amenities, such as varied seating options, parks and open spaces, public art, way-finding elements, and lighting techniques. The Project incorporates a new street grid and clear pathways for separation of pedestrians, bicycles, and vehicles. Moreover, the buildings and public spaces utilize sustainable design elements and low impact development techniques in deference to the natural environment, all of which are consistent with the recommendations in the FAMS. (See FAMS at pp. 82, 86.)
129. The Project is also consistent with the FAMS’ recommended zoning and intensity plan, which establishes high density for the PUD Site and for all other properties in the Florida Avenue Market district located to the west of 4<sup>th</sup> Street, N.E. (See FAMS at p. 57.) As defined in the FAMS, the “high density sub-area encourages the development of larger scale projects adjacent to the rail line and along New York Avenue, which is considered one of the “gateways” to the city. The width and traffic volumes of New York Avenue support this level of building height and density... High density development at these locations is in accordance with the goals of the Northeast Gateway Revitalization Strategy and the New York Avenue Corridor studies.” (*Id.* at p. 56.)
130. The FAMS specifically recognizes that the “zoning for the study area could be changed through the zoning map amendment process, which requires public review and approval by the District’s Zoning Commission.” (*Id.* at p. 55.) The zoning recommendations in the FAMS include providing opportunities for additional density and associated building height, especially in areas designated as “High Density” or “Medium-High Density.” (*Id.*) The FAMS recognizes that the PUD Site is located in the high-density development area (see Figure 6.01, p. 57), and states that the maximum height and density for high-density development (130 feet and 8.0 FAR) is achievable only through a PUD that includes the



provision of significant amenities. (*Id.* at p. 55.) In this case, the Commission finds that the Project is consistent with the FAMS' recommendation to change the PUD Site's zoning through the zoning map amendment process. The Commission also finds that, as set forth in FF Nos. 69-87 of this Order, the Project includes significant public benefits and amenities that warrant the high-density development envisioned in the FAMS and as proposed by the Applicant for the PUD Site.

131. Overall, the Commission concludes that the Project is consistent with the FAMS because it will provide new residential, retail, office, and potentially hotel uses in a vibrant new mixed-use designation. The Project's architecture, open spaces, and site plan will retain and improve the character of the Florida Avenue Market area, and will provide a mix of densities that are appropriate for the PUD Site and integrate well into the surrounding community. Importantly, the Project includes significant new job opportunities, which will be located in a transit-rich and highly walkable and bikeable location, thus increasing access and enhancing sustainability. New streets and sidewalks created within and around the PUD Site will promote improved vehicular circulation by completing the street grid, avoid pedestrian conflicts by locating loading and parking in appropriate locations, and enhancing pedestrian circulation by providing wide sidewalks, ground-floor retail, and pedestrian-oriented lighting and furnishings. Overall, the Commission finds that the improvements proposed for the PUD Site will significantly improve economic development in the Florida Avenue Market area and increase access to a variety of jobs and new employment opportunities.

#### **Compliance with the Ward 5 Works Industrial Land Transformation Study**

132. The Commission finds that the Project is consistent with the Ward 5 Works Industrial Land Transformation Study ("Ward 5 Works Study"). The Ward 5 Works Study recognizes the demand for small and medium-sized PDR spaces and encourages the District to partner with local stakeholders to capitalize on current economic trends to transform the industrial areas of Ward 5 into a hub of cutting-edge and sustainable PDR businesses. Key opportunities include the development of maker uses (described as small-scale production activities that include both engineering-oriented pursuits and traditional crafts/trades); arts and creative uses; and green, sustainable businesses. (*See* Ward 5 Works Study, p. 3.) The Ward 5 Works Study's strategic recommendations span a wide range of policies, actions, and place-based investments, and include the goal of partnering with the private sector to support development of affordable space for PDR and new and emerging businesses with, a particular focus on arts uses and makers, media and communications, food industries and green, sustainable businesses. (*Id.* at p. 4.)
133. The Commission finds that the Project is consistent with several specific policy actions within the Ward 5 Works Study. For example, Action 1.2 focuses on emerging industries, such as "media, communications, food and arts/maker and businesses" and encourages the linking of these emerging industries to "resources and each other, possibly within the context of shared facilities." (*Id.* at p. 90.) In addition, Action 2.2 encourages the location of PDR uses on the ground floor of residential developments (referred to as "Make/Live Districts"). The Plan indicates that "with a higher overall density, the land could be used

more productively while still providing as much dedicated space for production uses. Cross-subsidy from the residential uses could reduce the required rents for the first-floor PDR uses.” (*Id.* at p. 92.)

134. The Commission finds that the Project is consistent with these Actions because it includes subsidized business incubator spaces that be dedicated exclusively to Makers. These “Makers” are exactly the type of emerging industries referenced in the Ward 5 Works Study, and the Project creates an environment in which different types of Makers can be linked and share resources. For example, the Project includes space that will be exclusively reserved for small, local, start-up businesses devoted to the creation of goods and services. The Applicant will retain a retail broker with experience marketing to and securing a variety of tenant types, including Makers, and will market the Maker spaces at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased. Consistent with the Ward 5 Works Study, the Maker spaces will be located within mixed-use residential buildings, allowing for increased density and highly productive land. Moreover, the Applicant’s commitment to provide the Maker spaces at a subsidized rent is consistent with the Ward 5 Works Study’s recommendation to partner with the private sector to support development of affordable Maker space to help create a hub of cutting-edge and sustainable local businesses.
135. Therefore, based on the foregoing, as well as OP’s finding that the Project’s proposed ground floor retail uses provide an opportunity for certain creative, start-up Maker uses that complement the food-focused retail of Union Market, the Commission concludes that the Project is consistent with many goals and recommendations of the Ward 5 Works Study. (Ex. 39, p. 28.)

### **District Review of Project Impacts**

#### **Office of Planning**

136. By report dated April 18, 2016, OP recommended that the applications be set down for a public hearing. The OP setdown report stated that the “...proposed zoning and PUD would not be inconsistent with the maps and written elements of the Comprehensive Plan and the small area plan known as the Florida Avenue Market Study. However, OP also notes that both the FAMS and the Comprehensive Plan Future Land Use Map identify this site for the highest density and OP would support more density than proposed.” (Ex. 15, p. 2.)
137. On October 11, 2016, OP submitted a hearing report. (Ex. 39). The OP hearing report noted that the Project “...represents a great opportunity for connectivity between the NoMA neighborhood and the developing Florida Avenue Market area and an influx of new residential where residential does not yet exist.” (Ex. 39, p. 1.) This report also found that the proposed uses and density “...are not inconsistent with the Future Land Use and Generalized Policy Maps, as well as with the Florida Avenue Market Small Area Plan upon a determination that the PUD results in ‘the provision of significant amenities,’

and would further objectives of the Land Use, Transportation, Housing, Economic Development, Urban Design, and Upper Northeast Area elements and their related policies.” (Ex. 39, p. 11.)

138. The October 11, 2016 OP hearing report stated that OP could not yet make a recommendation on the applications, but recommended that the Commission hold a public hearing and that the Applicant submit the following additional information: (a) details on the proposed building materials; (b) additional renderings; (c) confirmation on whether Neal Place would be open during construction of the adjacent buildings; (d) status of continued coordination with DC Water regarding the necessary DC Water easement; (e) correspondence from Virginia Railway Express (“VRE”) regarding the use of Track 2 for the New York Avenue storage facility and on mitigation measures to impact the use of the track to adjacent properties; (f) provision of the square foot area of green roof for the consolidated PUD; (g) details on the connection between the Florida Avenue Park and the Plaza; (h) correspondence from DMPED regarding the use of city-owned land within the PUD; (i) a determination letter from the Zoning Administrator regarding FAR calculations for the theoretical lots; and (j) additional information regarding flexibility to allow Buildings C1 and C2 to be a single building.
139. On October 17, 2016, VRE submitted a letter in support of the Project, stating that VRE’s planned track improvements and rail alignment will not conflict with Project. (Ex. 42.)
140. On October 17, 2016, DMPED submitted a letter in support of the Project, indicating that as fee owner of Lot 819 in Square 3587, it consented to the inclusion of Lot 819 in the PUD application and designated the Applicant as the agent of the District for the purposes of filing and processing the PUD applications. (Ex. 44.)
141. On October 19, 2016, the Applicant submitted responses to the OP hearing report. (Ex. 45-46C.) The responses included updated architectural plans and elevations; an analysis demonstrating that the Project complies with many of the employment and economic development objectives of the Comprehensive Plan, the Ward 5 Works Study, and the FAMS; and an updated list of proposed public benefits and amenities. On December 21, 2016, the Applicant filed a Supplemental Prehearing submission, which included an email confirmation from the Zoning Administrator indicating that FAR relief was not required for theoretical Lot C because the aggregate FAR across the PUD Site was less than the maximum permitted FAR for a PUD in the C-3-C Zone District.
142. On January 3, 2017, following postponement of the public hearing, OP submitted a supplemental hearing report, which indicated that “...OP has continued to work with the applicant on updates to their plans and can now recommend approval of the application.” (Ex. 64, p. 1.) The Applicant and OP both testified at the public hearing that the Applicant had adequately responded to all of the questions and concerns that were previously raised by OP. OP’s only request in its hearing report was for the Applicant to clarify the window selection for the proposed sound-dampening windows on the side of the buildings facing the rail tracks. The Applicant provided this information at the public hearing.

**District Department of Transportation**

143. On October 11, 2016, DDOT submitted a report on the application. (Ex. 40.) The DDOT report stated that it had no objection to the applications, subject to the following conditions:
- a. Revise the site's transportation infrastructure to meet the following design requirements:
    - i. Street centerlines: Align the centerline of the Neal Place and Morse Street with the Neal Place extension under Z.C. 14-07 and public segment of Morse Street, respectively;
    - ii. Pedestrian crossing designs: Commit to design all pedestrian crossings internal to the site to current DDOT and ADA standards;
    - iii. Clear circulation zones: Maintain circulation zones as clear and continuous pedestrian paths along all streets devoid of obstacles such as sidewalk cafes, street furniture, utility vaults, etc. The clear sidewalks should be in the same location for each block face, and the sidewalk clear zone should not jog within a block face;
    - iv. Construction-related interim Neal Place cross section: Construct a cross section featuring two 11-foot travel lanes for bidirectional vehicular operations and minimum six-foot clear pedestrian circulation zones on both sides of the street; and
    - v. Cycle track design: Construct a 10-foot cycle track in the alley featuring a two-foot raised buffer to separate bicycle traffic from vehicular traffic and a one-foot buffer to separate bicycle traffic from pedestrian traffic. Breaks in the barriers should be provided to accommodate loading and vehicle access points for Buildings C-1, C-2, and D;
  - b. Construct off-site cycle track connections between the proposed cycle track in the private alley and the planned cycle track on 4<sup>th</sup> Street between Florida Avenue and Morse Street; and
  - c. Strengthen the proposed TDM plan by implementing the following measures:
    - i. Place and fund the operations and maintenance for one year of a new Capital Bikeshare station within the site;
    - ii. Increase the duration of the annual carsharing or Capital Bikeshare membership to each residential unit for a period of five years;
    - iii. Provide at least 63 and 28 short-term bicycle parking spaces for Phases 1 and 2, respectively;

- iv. Dedicate two curbside parking spaces for car sharing services to use with right of first refusal;
  - v. Purchase a total of 20 electric bikes and install ten electric bike charging stations to be distributed proportionally across the residential buildings;
  - vi. Purchase a total of 20 cargo bicycles for residents to use to be distributed proportionally across the residential buildings;
  - vii. Install six publicly accessible electric bike charging stations; and
  - viii. Provide 40 rolling shopping carts to be distributed proportionally across the residential buildings.
144. On October 19, 2016, the Applicant submitted responses to the issues and requests raised in the DDOT. (Ex. 45-46.). At the public hearing, the Applicant testified that it agreed to implement all of DDOT's requested conditions, except for providing 20 electric bikes and installing 10 electric bike charging stations. At the public hearing, DDOT testified that it was satisfied with the Applicant's proposed infrastructure improvements and TDM measures. Therefore, the Commission finds that the Applicant has fully satisfied all of DDOT's initial concerns and requests, and that the Project is consistent with current DOT policy.

#### **DC Water**

145. DC Water reviewed the Project and submitted a letter in support. (Ex. 64, pp. 5-10.) The substance of the letter described the need for an easement for an existing eight-foot sewer main running along the western property line of the PUD Site. The letter indicated that the Applicant met with DC Water to discuss the easement and to review the associated width, accessibility, clearance, and other easement requirements. The Applicant submitted a variety of documents for DC Water's review, to which DC Water determined that "the proposed easement layout was found to conceptually meet DC Water's easement requirements." (Ex. 64, pp. 5-10.)

#### **Department of Energy and Environment**

146. DOEE reviewed the Project and submitted a report on the application. (Ex. 63.) DOEE's report stated that it is "generally supportive of the Project" and that it is "glad that the applicant increased their commitment to LEED, and are now projecting certification at the LEED v2009 Gold level." (Ex. 63, pp. 2, 3.) The DOEE report also indicated that it "met with the applicant several times during the last year...some concerns were included with the Office of Planning's report and were addressed directly in meetings with the applicant." (Ex. 63, pp. 1-2.) The DOEE report also set forth a variety of recommendations to increase the Project's overall sustainability and reduce its impact on the environment.

147. By letter dated January 11, 2017, the Applicant responded to the comments and recommendations in DOEE's report, explaining how the Project incorporates a number of sustainability features, including stormwater management and retention techniques, the planting of new street trees and the creation of new greenspaces, the establishment of bioretention facilities, and the incorporation of energy efficient systems, among others. (Ex. 72C.) Moreover, following issuance of the Applicant's letter to DOEE, and in response to comments at the public hearing, the Applicant increased the amount of permeable paving in the Plaza by 2,400 square feet. (See Sheet L1.05-L1.06 of the Plans dated January 26, 2017 (Ex. 72A3).)

### **Advisory Neighborhood Commission**

148. ANC 5D, the ANC in which the PUD Site is located, submitted two resolutions in support of the Project. The first report noted that on April 12, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 5-0-1 to support the Project as initially presented. (Ex. 29.) The second report noted that on September 13, 2016, at a duly noticed, regularly scheduled monthly meeting of ANC 5D, with a quorum of commissioners and the public present, ANC 5D voted 6-0-0 to continue to support the Project. (Ex. 36.) The ANC's second report stated that "[t]he applicant has done an excellent job of presenting its proposed PUD to the community and responding to the ANC's questions and concerns. The development will contribute to the redevelopment of the Florida Avenue Market area and includes important new connections that will help bring surrounding communities closer together." The ANC report also indicated that the Project would "...include a number of significant public benefits and project amenities developed in coordination with the ANC, including: (i) [a]dditional IZ ... with greater affordability - 50% of IZ units at 50% AMI and 50% at 80% AMI; (ii) [s]upport for local businesses with maker space, incubators and a first-source employment agreement; (iii) LEED Gold buildings; (iv) [a]ctivation and programming of open spaces to appeal to all members of the community." (Ex. 36, p. 1.)

### **Review by Other Agencies**

149. Pursuant to 11 DCMR § 2403.3 the impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project. The Commission's evaluation is informed by District agencies who review and advise on the impact on the subject application.
150. In this case, and as set forth in the OP setdown report, OP referred the application to other District agencies for review, including DDOT, DOEE, DC Water, the Department of Housing and Community Development ("DHCD"), the Department of Parks and Recreation ("DPR"), the Department of Public Works ("DPW"), DC Public Schools ("DPS"), Fire and Emergency Medical Services Department ("FEMS"), Metropolitan Police Department ("MPD"), and Washington Metropolitan Area Transit Authority ("WMATA"). (Ex. 15.) OP's hearing report also stated that it "...coordinated with other agencies in the completion of this report, including DHCD and DC Water." (Ex. 39,

p. 20.) However, of the above-referenced agencies, only OP, DDOT, DOEE, and DC Water submitted reports on the application.

151. Although many of the relevant District agencies did not submit reports on the application, based on the evidence in the case record, the Commission finds that the Project's impact on the operation of city services and facilities and on the surrounding area are capable of being mitigated. In support of this conclusion, the Commission makes the following findings:

- a. The Project will not have any negative impacts on fire hazards or public safety because the proposed buildings and site plan have been designed to meet all Fire and Construction Code requirements, and because the proposed open spaces, activated storefronts, and pedestrian amenities will put additional "eyes and ears" on the street, thus increasing safety and security in the area;
- b. The District has previously determined that it has capacity to provide adequate police services throughout the city;
- c. The Applicant will construct and maintain all necessary public facilities and infrastructure to accommodate future demand and maintain the efficient delivery of public services;
- d. The Applicant will ensure adequate provision of utilities for the Project and for existing development in the surrounding area;
- e. The Project will not result in residential or commercial displacement, and will instead spur the growth and development of businesses in the area through its mixed-income and mixed-use amenities. These qualities are evident through the significant amount of affordable housing throughout all of the residential buildings and the subsidies provided for dedicated "Maker" space;
- f. The Project includes a significant amount of parks and green spaces that will be open to the public, include a variety of interactive design techniques, and incorporate landscaping and permeable materials to benefit the environment;
- g. The District has previously determined that the DC public school system has available capacity to accommodate new students, such that the Project will not impose an unreasonable burden on the DCPS system;
- h. The Project is located in close proximity to a wide variety of public transportation options, including Metrorail, Metrobus, carshare, and bikeshare, and is also located in a mixed-use, walkable location, such that the Project will not have any negative impacts on transit capacity; and
- i. As discussed above, DDOT submitted a report on the application. (Ex. 40.) The DDOT report stated that it had no objection to the applications, subject to the conditions listed in its report. The Applicant agreed to implement all of DDOT's

requested conditions, except for providing 20 electric bikes and installing 10 electric bike charging stations. At the public hearing, DDOT testified that it was satisfied with the Applicant's proposed infrastructure improvements and TDM measures. Therefore, the Commission finds that the Project's impact on traffic, transportation, and parking will be adequately mitigated.

Therefore, based on all of the evidence in the record and the Findings of Fact set forth above, the Commission finds that the Project is consistent with 11 DCMR § 2403.3 in that its impacts on the city services and the surrounding area are capable of being mitigated.

Moreover, as part of the building permit process, the Applicant will be required to comply with all applicable laws and regulations, which are established to preclude negative impacts and ensure the continued and safe operation of city services and facilities. As set forth in 12A DCMR § 101.2.4, these laws and regulations will "safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, accessibility, sustainability, and safety to life and property from fire and other hazards attributed to the built environment, and to provide safety to fire fighters and emergency responders during emergency operations."

### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a consolidated PUD or a two-stage PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.
3. The PUD Site meets the minimum area requirements of 11 DCMR § 2401.1 of the Zoning Regulations.
4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations and as approved by the Commission.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the PUD Site, with a



mix of uses, capitalizes on the Property's transit-oriented location and is compatible with citywide and area plans of the District of Columbia.

6. The Applicant seeks a PUD-related zoning map amendment to the C-3-C Zone District, as well as flexibility relating to the loading, parking, compact parking, rear yard, open court, and building lot control requirements of the Zoning Regulations. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential, retail, office, and potential hotel uses for this PUD are appropriate for the PUD Site's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the PUD Site would provide. The Commission finds that the urban design, site planning, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the PUD Site's mixed-use High-Density Commercial, High-Density Residential, and Production, Distribution and Repair designation on the Future Land Use Map, and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.
11. The Commission concludes that the proposed PUD-related Zoning Map amendment for the Property from the C-M-1 to the C-3-C Zone District is not inconsistent with the Comprehensive Plan, including the Property's land use designation on the Future Land Use map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. The PUD-related rezoning of the PUD Site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.

12. The PUD will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
13. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.
14. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. In this instance, ANC 5D expressed no issues or concern, but rather indicated its support of the application. The District of Columbia Court of Appeals has noted that the ANC Act does not require an agency "to give 'great weight' to the ANC's recommendation but requires the [the agency] to give great weight to any issues and concerns raised by the ANC in reaching its decision." (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1086 (D.C. 2016).) The court thus held that in the context of a BZA application, although "it may be helpful to an applicant seeking a variance or a special exception to have the support of the local ANC, that body's recommendation in favor of a project does not provide any substantial support to justify the BZA's decision." (*Id.* at 1087.) Thus, the Commission did not consider the ANC's recommendation of approval as providing substantial support to justify its decision to grant this application, except to the extent it reflected community sentiment.
15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for review and approval of a consolidated PUD, a first-stage PUD, and a related Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District for property located at 300, 325, and 350 Morse Street, N.E. (Square 3587, Lots 805, 814, and 817). The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

#### **A. Project Development**

1. The Project shall be developed in accordance with the Architectural Plans and Elevations dated December 23, 2016 (Ex. 61A1-61A15), as supplemented by the revised sheets dated January 26, 2017 (Ex. 72A1-72A3), and as revised and supplemented by the sheets dated March 13, 2017 (Ex. 75A1-75A2), and as revised by the sheets dated April 7, 2017 (Ex. 76A) ("Plans") and as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the Plans, the PUD shall be a mixed-use project comprised of four buildings (“Building A,” “Building B,” “Building C,” and “Building D”) constructed in two phases. Phase I (consolidated PUD) shall include the southern portion of Building A (“Building A1”), Building B, and the southern portion of Building C (“Building C1”). Phase II (first-stage PUD) shall include the northern portion of Building A (“Building A2”), the northern portion of Building C (“Building C2”), and Building D. Upon completion of all buildings, the Project shall have an aggregate density of approximately 7.1 FAR. Approximately 1,091,201 square feet of total gross floor area will be devoted to residential use, approximately 52,968 square feet of total gross floor area will be devoted to retail use, and approximately 217,558 square feet of total gross floor area will be devoted to office use. Building heights shall range from approximately 78 feet to approximately 130 feet. The Project will include a total of approximately 682 off-street parking spaces.
3. Exterior signage shall be limited to the types and locations depicted on Sheets 106-114 and Sheet 118 of Exhibit 75A2, and Sheets 119 and 120 of Exhibit 72A2, and the signage shall comply with the guidelines shown on Sheet 105A of Exhibit 75A2.
4. As shown on Sheets 20-21, L1.27 and L1.32 of the Plans, Buildings C and D on the PUD Site are separated from the Fourth Street PUD by the 48-foot-wide Alley. (Ex. 61A.) Both the Applicant and the applicants in the Fourth Street PUD have proposed improvements to portions of the Alley and have developed mutually agreeable conditions related to the timing for development of the Alley improvements, as set forth below. The Alley, as measured from the Fourth Street PUD, labeled from east to west, is comprised of a five-foot planting area; 24-foot drive lane; one-foot rolled curb; 10-foot bike lane, one-foot paving band; and seven-foot circulation zone.
5. The Applicant shall not undertake construction of any improvements to the 35-foot-wide portion of the Alley between Buildings C1 and C2 of the PUD Site and the Fourth Street PUD, until such time as the Alley improvements approved as part of the Fourth Street PUD have been constructed and the certificate of occupancy has been issued for the South Parcel building on the Fourth Street PUD. If such Alley improvements have not been completed by December 31, 2019, the Applicant may proceed to construct its proposed Alley improvements at that time but shall cooperate with the developers of the Fourth Street PUD to ensure that the Applicant’s work in the Alley does not compromise the completion and opening of the South Parcel of the Fourth Street PUD. This condition does not preclude either party from utilizing the Alley and making any necessary repairs to allow for access to their respective properties.
6. The Applicant shall not undertake construction of any improvements in the 35-foot-wide portion of the Alley between Building D of the PUD Site and the North

Parcel building of the Fourth Street PUD until such time as the Alley improvements approved as part of the Fourth Street PUD have been constructed and the Certificate of Occupancy has been issued for the North Parcel building. If such Alley improvements have not been completed by December 31, 2022, the Applicant may proceed to construct its proposed Alley improvements at that time but shall cooperate with the developers of the Fourth Street PUD to ensure that the Applicant's work in the Alley does not compromise the completion and opening of the North Parcel of the Fourth Street PUD. This condition does not preclude either party from utilizing the Alley and making any necessary repairs to allow for access to their respective properties.

7. The Applicant is granted flexibility from the loading, parking, compact parking, rear yard, open court, and building lot control requirements of the Zoning Regulations, consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.
8. The Applicant shall also have flexibility with the design of the PUD in the following areas:
  - a. To be able to provide a range in the number of residential units of plus or minus 10%;
  - b. To vary the number, location, and arrangement of parking spaces, provided that the total number is not reduced below the minimum number of parking spaces required by the Zoning Regulations;
  - c. To develop Building A2 with hotel use above the proposed ground-floor retail and to develop Building D with hotel or office use above the proposed ground-floor retail, should the market demand be more appropriately satisfied with hotel and/or office use;
  - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - e. To vary the sustainable design features of the Project, provided (i) the total number of LEED points achievable for Buildings A1 and B are not below LEED-Gold under the USGBC's LEED for New Construction v2009 rating standards, (ii) the total number of LEED points achievable for Building C1 is not below LEED-Gold under the USGBC's LEED for Core and Shell v2009 rating standards, and (iii) the total number of LEED points achievable for each building within the first-stage PUD is not below the total number of LEED points consistent with the USGBC LEED-Gold for New Construction v2009 rating standards;

- f. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, such that the refinements do not substantially change the external configuration or appearance of the building;
- g. To use either tonal masonry or warm-tone terracotta cementitious panels for Building C1's exterior building material, as shown on Sheet 80 of the Plans dated January 26, 2017; (Ex. 72A1.)
- h. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the Project in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and
- i. To vary the features, means and methods of achieving the code-required Green Area Ratio ("GAR") of 0.20.

**B. Public Benefits**

- 1. **Prior to the issuance of a Certificate of Occupancy for each residential building and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator the following:
  - a. **For the life of the Project**, the Applicant shall:
    - i. Provide a total of 1,091,201 square feet of residential Gross Floor Area ("GFA") of housing;
    - ii. Set aside no less than 11% of the residential GFA, equaling not less than 120,036 square feet, as inclusionary units pursuant to version of 11 DCMR Chapter 26 in effect as of September 5, 2016;
    - iii. Set aside no less than 62 units (50% of the inclusionary units) comprising at least 60,018 square feet of GFA as inclusionary units for households earning equal to or less than 50% of the Area Median Income ("AMI") (50% AMI Units"); and
    - iv. Set aside no less than 62 units (50% of the inclusionary units) comprising at least 60,018 square feet of GFA as inclusionary units

for households earning equal to or less than 80% of the AMI (“80% AMI Units”).

- b. The distribution of the affordable housing units shall be in accordance with Sheets 122-130 of the Plans dated March 13, 2017 (Ex. 75A2), and in accordance with the following chart:

	<b>Building A1</b>	<b>Building A2<sup>6</sup></b>	<b>Building B</b>	<b>Building C2</b>	<b>Building D (resid. option)</b>	<b>Affordable Control Period</b>	<b>Affordable Unit Type</b>	<b>Total</b>
<b>Total</b>	422,605 sf GFA  (453 units) (100%)	249,323 sf GFA  (198 units) (100%)	86,005 sf GFA  (105 units) (100%)	211,784 sf GFA  (232 units) (100%)	121,484 sf GFA  (115 units) (100%)	NA	NA	1,091,201 sf GFA  (1,103 units) (100%)
<b>Market Rate</b>	376,117 sf GFA  (89%)	221,897 sf GFA  (89%)	76,543 sf GFA  (89%)	188,488 sf GFA  (89%)	108,120 sf GFA  (89%)	NA	NA	971,165 sf GFA  (977 units)
<b>50% AMI</b>	23,244 sf GFA  (26 units) (5.5%)	13,713 sf GFA  (12 units) (5.5%)	4,731 sf GFA  (5 units) (5.5%)	11,648 sf GFA  (13 units) (5.5%)	6,682 sf GFA  (6 units) (5.5%)	Life of the Project	Rental (optional for-sale in Building A2)	60,018 sf GFA  (62 units)
<b>80% AMI</b>	23,244 sf GFA  (26 units) (5.5%)	13,713 sf GFA  (12 units) (5.5%)	4,731 sf GFA  (5 units) (5.5%)	11,648 sf GFA  (13 units) (5.5%)	6,682 sf GFA  (6 units) (5.5%)	Life of the Project	Rental (optional for-sale in Building A2)	60,018 sf GFA  (62 units)

- c. The Inclusionary Zoning Covenant required by D.C. Official Code §§ 6-1041.05(A)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with all the terms of this condition.

- 2. If Building A2 is developed as for-sale housing, then the Applicant shall reduce the total affordable housing proposed for Building A2 from 11% to eight percent of Building A2’s residential gross floor area, all of which shall be dedicated to households earning up to 80% of the AMI, and shall transfer an additional 13,713

<sup>6</sup> If Building A2 is developed as for-sale housing, then the proffered affordable housing will be redistributed as follows: (i) 19,946 square feet of Building A2’s residential gross floor area will be dedicated to households earning up to 80% of the AMI; (ii) a total of 30,100 square feet of Building A1’s residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 17,011 square feet of Building A1’s residential gross floor area will be dedicated to households earning up to 80% of the AMI; and (iii) a total of 11,587 square feet of Building B’s residential gross floor area will be dedicated to households earning up to 50% of the AMI, and a total of 4,731 square feet of Building B’s residential gross floor area will be dedicated to households earning up to 80% of the AMI. If Building A2 is to be developed as for-sale housing and Buildings A1 and B are constructed prior to Building A2, then the condition enforcing this commitment will be based on the timing of issuance of the certificate of occupancy for Building A1 and Building B, respectively (*see* Condition No. B2).

square feet of affordable housing dedicated to households earning up to 50% of the AMI in Buildings A1 and B, to then result in the following allocations:

- a. **Prior to the issuance of a Certificate of Occupancy for Building A1 and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated the following affordable housing in Building A1:
    - i. 30,100 square feet of Building A1's residential gross floor area to households earning up to 50% of the AMI; and
    - ii. 17,011 square feet of Building A1's residential gross floor area to households earning up to 80% of the AMI;
  - b. **Prior to the issuance of a Certificate of Occupancy for Building B and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated the following affordable housing in Building B:
    - i. 11,587 square feet Building B's residential gross floor area to households earning up to 50% of the AMI; and
    - ii. 4,731 square feet of Building B's residential gross floor area to households earning up to 80% of the AMI;
  - c. The requirement to dedicate the additional affordable housing totaling 13,713 square feet in Buildings A1 and B as set forth above is only triggered if Building A2 is developed as for-sale housing and dedicates eight percent of its residential gross floor area to households earning up to 80% of the AMI;
  - d. In no event shall any building include less than eight percent of its residential gross floor area devoted to inclusionary units; and
  - e. All IZ units shall maintain affordability in accordance with all applicable requirements of the Zoning Regulations in effect as of September 5, 2016.
3. **Prior to the issuance of a building permit for Buildings A1 and B**, each building owner shall have the individual obligation to register the subject building with the USGBC to commence the LEED certification process under the USGBC's LEED for New Construction v2009 rating standards. **Prior to the issuance of a building permit for Building C1**, the Building C1 owner shall have the individual obligation to register Building C1 with the USGBC to commence the LEED certification process under the USGBC's LEED Core and Shell v2009 rating standards. **Prior to the issuance of a building permit for each building in the second-stage PUD**, each building owner shall have the

individual obligation to register the subject building with the USGBC to commence the LEED certification process under the version of LEED that is in place at the time of applying for that building's building permit.

4. **Prior to the issuance of a Certificate of Occupancy for each building in the consolidated PUD**, each building owner shall have the individual obligation to furnish a copy of the associated LEED certification application submitted to the USGBC for that building. The application for Buildings A1 and B shall indicate that the subject building has been designed to include at least the minimum number of points necessary to achieve LEED-Gold certification under the USGBC's LEED for New Construction v2009 rating standards. The application for Building C1 shall indicate that Building C1 has been designed to include at least the minimum number of points necessary to achieve LEED-Gold certification under the USGBC's LEED for Core and Shell v2009 rating standards. **Prior to the issuance of a Certificate of Occupancy for each building in the second-stage PUD**, each building owner shall have the individual obligation to furnish a copy of the associated LEED certification application submitted to the USGBC for that building. The application shall indicate that the subject building has been designed to include at least the minimum number of points necessary to be consistent with the USGBC LEED-Gold for New Construction v2009 rating standards.
5. **Prior to the issuance of a Certificate of Occupancy for each building within the consolidated PUD and the first-stage PUD**, each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has executed and submitted a First Source Employment Agreement to DOES for the subject building, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004.
6. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has completed construction of:
  - a. The street grid, landscaping, sidewalks, streetscape improvements, street trees, energy and water efficient systems, construction waste management elements, stormwater runoff materials, and bicycle parking facilities, consistent with the Landscape Plans included in the Plans dated December 23, 2016 (Exhibit 61A1-61A15), and the Plans dated January 26, 2016 (Exhibit 72A1-72A2), showing such improvements for each relevant building delivery. Morse Street, 3<sup>rd</sup> Street, and Neal Place shall utilize 10' x 16' scored concrete; the Alley shall be finished with permeable pavers. All sidewalks and elements in public space shall be built to DDOT standards and shall utilize the Union Market Streetscape Guidelines; and
  - b. The Neal Place Extension, consistent with Sheets 20-21, L1.01-L1.02, L1.20-L1.21, L1.26-L1.28, L1.31, L2.05-L2.06, and C200-C201 of the



Plans. (Ex. 61A.) However, if at the time of issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD, a second-stage PUD application has been approved for Building C2 or Building D, then the final construction and opening of Neal Place may be deferred until the earlier of (i) completion of construction of Building C2 or Building D, or (ii) three years from the date of issuance of the Certificate of Occupancy for the first building completed within the consolidated PUD. If the Neal Place Extension is deferred as set forth above, then **prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has built a temporary street in either of the locations shown on Sheet C202 of the Plans, in order to provide an interim east-west connection between 3<sup>rd</sup> Street and the Alley.

### **Florida Avenue Park**

7. **Prior to the issuance of a Certificate of Occupancy for Building A1 or B (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has completed 75% of construction of the portion of the Florida Avenue Park located on the PUD Site, in accordance with Sheets 20 and L1.01-L1.04 of the Plans, as certified by the landscape architect. (Ex. 61A.) The portion of the Florida Avenue Park located on the PUD Site shall be improved with terraced greenspace, public seating areas, and two pathways that provide handicapped, bike, and stroller accessibility. The portion of the Florida Avenue Park located on the PUD Site shall also include biofiltration gardens, landscaping to buffer the rail tracks to the west, and wayfinding. The remainder of the construction of the portion of the Florida Avenue Park located on the PUD Site shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect.
8. **Prior to the issuance of a Certificate of Occupancy for Building A1 or B (whichever is second)**, the Applicant shall demonstrate to the Zoning Administrator that the portion of the Florida Avenue Park located on the PUD Site is 100% complete.
9. **Prior to the issuance of a building permit for the first building to be constructed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has placed \$150,000 into an escrow fund for the benefit of the Highline Developer, to be used in connection with improvements on the portion of the Florida Avenue Park required by Z.C. Order No. 15-01 to enable the provision of handicapped accessible pathways.
10. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has contracted with a Property Management

Company to maintain and operate the portion of the Florida Avenue Park located on the PUD Site for the life of the Project, or is contributing to a maintenance agreement in partnership with the Highline Developer or market-wide BID.

### The Plaza

11. **Prior to the issuance of a Certificate of Occupancy for Building A1 or B (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that it has completed 75% of construction of the Plaza, as certified by the landscape architect, in accordance with Sheets 20, L1.01-L1.04, and L1.07-L1.19 of the Plans. (Ex. 61A.) The Plaza shall complete the pedestrian connection from NoMa and Old City into the Florida Avenue Market area, and shall be developed as an active public gathering space with a variety of seating options positioned using deaf-space design principles that accommodate people speaking sign language. The easternmost section of the Plaza shall be designed to accommodate temporary vendor stations, and shall be lined on both sides by retail storefronts and café terraces. The remainder of the construction of the Plaza shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect. **Prior to the issuance of a Certificate of Occupancy for Building A1 or B (whichever is second)**, the Applicant shall demonstrate to the Zoning Administrator that the portion of the Florida Avenue Park located on the PUD Site is 100% complete.
12. **Prior to the issuance of a Certificate of Occupancy for Building A1**, the A1 building owner shall demonstrate to the Zoning Administrator that it has either: (a) reserved a portion of the B01/Plaza Level for publicly accessible bicycle parking; or (b) established a bicycle valet operated by the Property Management Company, retail tenant, or BID to operate on weekends and during special events.
13. **Prior to the issuance of a Certificate of Occupancy for Building A1 or B (whichever is completed first)**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a wayfinding totem or similar element at the Plaza where it opens to 3<sup>rd</sup> and Morse Streets, to provide orientation to key destinations within the Florida Avenue Market area.

### Neal Place Park

14. **Prior to the issuance of a Certificate of Occupancy for Building A2**, the Applicant shall demonstrate to the Zoning Administrator that it has completed 75% of construction of the Neal Place Park in accordance with Sheets 20, L1.01-L1.02, and L1.20-L1.21 of the Plans, and as certified by the landscape architect. Neal Place Park shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect. (Ex. 61A.) The Applicant shall submit detailed landscape design sheets as part of the Second-Stage PUD application that shall be consistent with the above-referenced sheets.

15. **Prior to the issuance of a Certificate of Occupancy for Building C2 or D (whichever is first)**, the Applicant shall demonstrate to the Zoning Administrator that Neal Place Park is 100% complete.
16. **Prior to the issuance of a Certificate of Occupancy for Building A1**, the Applicant shall demonstrate to the Zoning Administrator that it has: (i) installed a minimum of 3,000 square feet of retrofitted containers or similar structures on the site of the future Neal Place Park, as shown on Sheet 20 of the Plans, numbered as “1” and labeled/identified as “Pop-Up Retail/Makers Space Incubators” to house Makers; and (ii) marketed, or is in the process of marketing, the retrofitted containers to Makers through the following actions: (*Id.*)
  - a. Retain a retail broker with experience marketing to and securing a variety of tenant types, including Makers;
  - b. Sponsor a workshop that encourages the maker movement;
  - c. Market the container spaces to retail tenants within the Florida Avenue Market area; and
  - d. Market the container spaces to retail tenants operating in Union Kitchen.
17. The Applicant shall install, maintain, and operate this area as Pop-Up Retail/Makers Space Incubators and green space until the filing of a building permit application for the construction of Building A2. If the Applicant files a building permit application for the construction of Building A2 at or before issuance of a Certificate of Occupancy for Building A1, then the Applicant is under no obligation to undertake the conditions set forth in Condition B.16.
18. The Applicant shall have the flexibility to relocate the containers as necessary to accommodate building construction.

### **Interim Park**

19. **Prior to the issuance of a Certificate of Occupancy for Building A1**, the Applicant shall demonstrate to the Zoning Administrator that it has installed the temporary improvements shown on Sheet 20 of the Plans, numbered as “3” and labeled/identified as a “Temporary Park.” The Applicant shall install, maintain, and operate this area as a landscaped temporary park until the filing of a building permit for the construction of Building D. (Ex. 61A.)
20. **Prior to the issuance of a Certificate of Occupancy for Building C1**, the Applicant shall demonstrate to the Zoning Administrator that it has installed the temporary improvements labeled as “1” on Sheet 21 of the Plans. The Applicant

shall install, maintain, and operate this area as a landscaped temporary park until the filing of a building permit for the construction of Building C2. (*Id.*)

21. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has:
  - a. Completed the installation of furnishings and equipment for the Interim Park. **Prior to the issuance of a Certificate of Occupancy for the last building completed within the second-stage PUD application**, the Applicant shall demonstrate to the Zoning Administrator that it has reused the Interim Park furnishings in other areas of the PUD and/or has donated the furnishings to local schools; and
  - b. Restored the dis-used loading platform at the rear of Parcel D.

### **Maker Spaces**

22. For the purposes of Conditions B.23 through B.25 the term “Makers Uses” means uses within the following use list: production, sale, and/or distribution of food and beverages (provided that the on-site consumption of food and beverages shall be permitted only as an accessory use of such production, sale, and/or distribution user); small-scale production and repair of goods and related sales; media/communications production and distribution; arts and entertainment; traditional crafts and trades; specialty sports and recreation uses (not including traditional gyms or fitness clubs); engineering and design; and technology design and production);
23. **Prior to the issuance of a Certificate of Occupancy for Building A1 and Building B**, the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that:
  - a. It has dedicated a minimum of 2,250 total square feet for Makers Uses in Building A1 or Building B (spread between Buildings A1 and B, or located in either Building A1 or B;
  - b. It is marketing the Maker Spaces at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased; and
  - c. It has and/or is in the process of marketing the 2,250 total square feet of Maker space to Makers Uses by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers.

24. **Prior to the issuance of a Certificate of Occupancy for Building C2 and Building D**, the building owner shall have the individual obligation to demonstrate to the Zoning Administrator that:
- a. It has dedicated a minimum of 2,250 total square feet for Makers Uses in Building C2 or Building D (spread between Buildings C2 and D, or located in either Building C2 or D);
  - b. It is marketing the Maker Spaces at 10% less rent than the average base rent charged for leased retail space across the PUD Site at the time that each Maker space is leased; and
  - c. It has and/or is in the process of marketing the 2,250 total square feet of Maker space to Makers Uses by retaining a retail broker with experience marketing to and securing a variety of tenant types, including Makers.
25. **For the life of the Project**, a minimum of 4,500 square feet of gross floor area shall be reserved in Buildings A1, B, C2 and/or D for Maker Spaces, consistent with the immediately preceding condition.

### **Metropolitan Branch Trail**

26. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$10,000 to the Metropolitan Branch Trail beautification program (PowWowMural) via the NoMa BID, and that the trail beautification items and/or services are being provided.

### **Utilities**

27. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has extended all new utilities throughout the PUD Site. The utilities for the consolidated PUD shall be oversized to minimize utility work in the streets during future phases of development.

### **C. Transportation Mitigations**

1. **Prior to the issuance of a Certificate of Occupancy for Building C1**, the Applicant shall demonstrate to the Zoning Administrator that it has installed the improvements in the western 13 feet of the Alley, labeled from west to east as a 7-foot circulation zone, a one-foot paving band, and half of the 10-foot bicycle lane, and as shown on Sheet L1.32 of the Plans. (Ex. 61A.)
2. **Prior to the issuance of a Certificate of Occupancy for Building C1**, the owner of Building C1 shall demonstrate to the Zoning Administrator that it has installed

a bicycle lane in the Alley, as shown on Sheet L1.32 of the Plans. (*Id.*) In the event that the owner of Building C1 is unable to complete the installation of the bicycle lane in the Alley prior to the issuance of a Certificate of Occupancy for Building C1, due to the resultant timing of completion of the Alley improvements that are part of the Fourth Street PUD, then the owner of Building C1 shall have the flexibility to complete the installation of the bicycle lane no less than six months following the issuance of the Certificate of Occupancy for the South Parcel building of the Fourth Street PUD.

3. **Prior to the issuance of a Certificate of Occupancy for each building**, each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has constructed the interior bicycle parking within the relevant building, as shown on Sheets 37-39, 44, 69, and 82 of the Plans. (Ex. 61A, 75A.)
4. **Prior to the issuance of a Certificate of Occupancy for each building completed within the consolidated PUD**, each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed the exterior bicycle parking adjacent to the relevant building and open spaces.
5. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has installed a bicycle lane on Morse Street, between the Alley and 4<sup>th</sup> Street.
6. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has: (a) installed a new traffic signal, subject to DDOT approval, at the intersection of 4<sup>th</sup> and Morse Streets, N.E., and (b) installed traffic management cameras at the intersections of New York Avenue and 4<sup>th</sup> Street and Florida Avenue and 5<sup>th</sup> Street for integration into the DDOT traffic management program. If DDOT is not ready to incorporate these improvements at the time that the Applicant is submitting for Certificate of Occupancy for the first building, then prior to the issuance of a Certificate of Occupancy for the first building completed within the Consolidated PUD, the Applicant shall put into an escrow account: (a) \$250,000 necessary to install a new traffic signal at 4<sup>th</sup> and Morse Streets, N.E., and (b) \$12,000 necessary to install a traffic management camera at the intersections of New York Avenue and 4<sup>th</sup> Street and Florida Avenue and 5<sup>th</sup> Street.
7. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the second-stage PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has paid DDOT for the installation and first year's operation expenses of a new Capital Bikeshare station to be located on Morse Street, south of Building C1.

8. **Prior to the issuance of a Certificate of Occupancy for the first building completed within the consolidated PUD**, the Applicant shall demonstrate to the Zoning Administrator that it has designated two curbside parking spaces for carsharing services within the PUD Site. If no carshare providers are willing to operate in those spaces, the dedicated spaces may be returned to the general on-street parking supply.
9. **Prior to the issuance of a Certificate of Occupancy for each building completed within the consolidated PUD, and for the life of the Project**, each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has designated a Transportation Management Coordinator responsible for organizing and marketing the TDM plan and acting as a point of contact with DDOT for the relevant building.
10. **For the life of the Project**, each building owner shall have the individual obligation to:
  - a. Provide TDM materials to new residents as part of the Residential Welcome Package for Buildings A, B, C2, and D;
  - b. Price all on-site vehicle parking at market rate at minimum, defined as the average cost for parking within a 0.25-mile radius of the PUD Site; and
  - c. Unbundle the cost of residential parking from the cost of lease or purchase of residential units for Buildings A, B, C2, and D.
11. **Prior to the issuance of a Certificate of Occupancy for Buildings A1, B, or C1**, each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed one bicycle repair station in the relevant building listed above, consistent with Sheets 37-39, 44, 69, and 82 of the Plans. (*Id.*)
12. **Prior to the issuance of a Certificate of Occupancy for each building**, the Applicant shall demonstrate to the Zoning Administrator that it has exceeded the zoning requirements for bicycle parking for the applicable building.
13. **Prior to the issuance of a Certificate of Occupancy for Building A1**, the Applicant shall demonstrate to the Zoning Administrator that it has installed one bicycle repair station at the public Plaza.
14. **Prior to the issuance of a Certificate of Occupancy for each building**, each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has installed a transit information screen in each of the residential and office lobbies.

15. **Prior to the issuance of a Certificate of Occupancy for each residential building completed within the consolidated PUD and second-stage PUD,** respectively, each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has dedicated \$200 per residential unit in alternative transportation incentives that can be used as an annual Capital Bikeshare membership, an annual carshare membership, a carshare driving credit, or for bicycle repair/maintenance. These funds shall be pooled during each phase of the Project into a fund that would make incentives available to residents until the fund is exhausted. This benefit shall be included in rental or condominium documents for all of the residential units planned within the project, both in Phase 1 and Phase 2. If the fund is not exhausted within five years of issuance of a certificate of occupancy for the first building within each phase of the project, it shall be disbursed to a TDM-related entity or organization at DDOT direction.
16. **Prior to the issuance of a Certificate of Occupancy for each residential building,** each building owner shall have the individual obligation to demonstrate to the Zoning Administrator that it has:
  - a. Purchased and placed two cargo bicycles within each residential building;  
and
  - b. Purchased and placed three rolling shopping carts within each residential building.

**D. Miscellaneous**

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The consolidated PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-27. Within such time, an application must be filed for a building permit for construction of Buildings A1, B, and C1, with construction of any of these buildings to commence within three years of the effective date of this Order.
3. The first-stage PUD shall be valid for five years after the effective date of this Order; provided that a second-stage application for one or more of the second phase buildings must be filed no later than two years after the effective date of this Order.



4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
5. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On January 12, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

On March 27, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on July 21, 2017.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 16-18**  
**Z.C. Case No. 16-18**  
**Georgetown University (2017-2036 Campus Plan)**  
**December 1, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on December 1, 2016 to consider an application by Georgetown University (“University”) for approval of the 2017–2036 Campus Plan (“2017 Campus Plan”) pursuant to Subtitle X 101.8 of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations. The 2017 Campus Plan includes the University’s Main Campus and Medical Center as well as the MedStar Georgetown University Hospital (“Hospital”), and it is bounded by Glover Archbold Parkway on the west; National Park Service property along the Chesapeake and Ohio Canal, Canal Road, N.W., and Prospect Street, N.W. to the south; 35<sup>th</sup> Street, N.W., N Street, N.W. to 36<sup>th</sup> Street, N.W., and 36<sup>th</sup> Street to P Street, N.W. to the east; and Reservoir Road, N.W. to the north. In connection with the 2017 Campus Plan, the University requested flexibility from the special exception approval requirements of Subtitle X § 101.1 for certain minor projects and changes in use.

The Commission considered the application for the 2017 Campus Plan pursuant to Subtitles X and Z of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4. As discussed below, no party, person, or entity appeared in opposition to the application at the public hearing. Accordingly, a decision by the Commission to grant this application would not be adverse to any party, and pursuant to Subtitle Z § 604.7, the Commission waives the requirements for findings of facts and conclusions of law. As set forth below, the Commission hereby approves the application.

**Application, Parties, and Hearing**

1. The property that is the subject of the 2017 Campus Plan consists of property located in Squares 1222, 1223, 1226, 1248, and 1321 (Square 1222, Lots 62, 801, and 802; Square 1223, parts of Lots 65, 66, and 67, and Lots 86, 807, 808, 809, 810, 812, 815, 826, 827, 831, 834, 843, 846, 847, 852, 853, 855, 857, and 858; Square 1226, Lots 94, 95, 96, 97, 98, 99, 100, 101, 105, 106, 107, 108, 803, 804, 806, 811, 812, 813, and 814; Square 1248, Lots 150, 151, 152, 153, 154, 155, 156, 157, 160, 161, 162, 800, 801, 802, 804, 806, 829, 830, 831, 834, and 835; and Square 1321, Lots 811, 815, 816, 821, 823, 824, 825, 826, 828, 829, 830, 831, 832, 833, 7000, 7001, 7002, 7003, 7004, 7005, 7006, 7007, and 7008) (“Property”).
2. The Property is currently subject to the 2010-2017 Campus Plan (“2010 Campus Plan”), which was approved by the Commission in Z.C. Order No. 10-32, as amended. The 2010 Campus Plan was approved based on a compromise reached among the University, Advisory Neighborhood Commissions (“ANC”) 2E and 3D, the Citizens Association of Georgetown (“CAG”), the Burleith Citizens Association (“BCA”), and the Foxhall Community Citizens Association (“FCCA”).

3. On September 1, 2016, the University filed an application for approval of the 2017 Campus Plan. (Exhibits [“Ex.”] 1-9Z.)
4. The 2017 Campus Plan was developed through the Georgetown Community Partnership (“GCP”). The GCP was established in 2012 to facilitate consensus-based decision-making among University administrators, students, and members of the surrounding residential communities through a collaborative process. The GCP was integral in the implementation of the 2010 Campus Plan, as well as the establishment of the framework, goals, and principles of the long-range planning efforts undertaken by the University that underpin the 2017 Campus Plan. (Ex. 8.)
5. Prior to filing the 2017 Plan, on July 15, 2016, the University mailed a notice of intent to file the campus plan to all property owners within 200 feet of the campus as well as to ANC 2E, ANC 3D, CAG, BCA, and FCCA. The University also presented the 2017 Plan to each ANC after mailing the notice and prior to filing of the plan. Accordingly, the University satisfied the notice requirements of Subtitle Z §§ 302.6 and 302.8. (Ex. 5.)
6. In addition to the formal pre-filing notice requirements, the University also published a draft of the 2017 Campus Plan on its website on June 6, 2016 and established a portal for public comments to be submitted, reviewed, and addressed. The comment period ran from June 6<sup>th</sup> to July 15<sup>th</sup>; during the comment period, representatives from the University and the Hospital, as well as community representatives of the GCP conducted multiple briefings on the Plan for students, faculty, staff, and neighbors. Copies of feedback received and the University’s responses were published on the website, and the feedback resulted in multiple changes to the Plan. (Ex. 5, 32C.)
7. The 2017 Campus Plan satisfied the filing requirements of Subtitle X, Chapter 1 and Subtitle Z, Chapter 3. (Ex. 7.)
8. At the September 26, 2016 public meeting, pursuant to Subtitle Z § 101.9, the Commission voted to waive the posting requirements of Subtitle Z § 402.4 because they imposed an undue burden. The Commission required the University to post all frontages of the campus that face property not owned by the University, which is consistent with the posting requirements for campus plans in the previous 1958 Zoning Regulations. Notice of the public hearing was otherwise provided in accordance with the requirements of Subtitle Z, Chapter 4. (Ex. 15-17, 29, 44.)
9. On October 31, 2016, as a part of its pre-hearing submission, the University filed a Comprehensive Transportation Review (“CTR”) for the 2017 Campus Plan in the record of the case. The CTR was previously submitted to the District Department of Transportation (“DDOT”) for review in August 2016. (Ex. 32-32C, 33-33B.)
10. On November 10, 2016, the University filed a supplemental prehearing submission that detailed justification for the areas of flexibility sought as a part of the 2017 Campus Plan. (Ex. 40.)

11. The Property is located primarily within ANC 2E, with a small sliver of the western edge of the campus located within ANC 3D. Accordingly, ANCs 2E and 3D were both automatically parties to the case, and each ANC submitted a report in support of the 2017 Campus Plan. (Ex. 11, 24.) CAG, BCA, FCCA, and the Georgetown University Student Association (“GUSA”) all submitted requests for party status in support and sought advance party status consideration pursuant to Subtitle Z § 404. (Ex. 12, 14, 25, 27, 30, 31-31A, 34-39.) The Commission granted party status to all four parties at its November 14, 2016 public meeting.
12. On November 16, 2016, the Commission received a request for party status in opposition. The request was later withdrawn based on agreement between the potential party and the University. (Ex. 41, 45, 46.)
13. On December 1, 2016, the Commission held a public hearing in accordance with Subtitle Z § 408. Representatives of the University, ANC 2E, ANC 3D, CAG, BCA, FCCA, and GUSA all provided testimony and evidence in support of the 2017 Campus Plan. (Ex. 47-54.) No person, party, or entity appeared in opposition to the application. One individual appeared as “undeclared.”
14. The Office of Planning (“OP”) and DDOT each submitted reports and testified in support of the 2017 Campus Plan, based on the proposed conditions of approval included in the Campus Plan. (Ex. 42, 43.) DDOT’s report also recommended potential additional mitigation measures. The University agreed to a number of these additional measures and submitted revised conditions of approval reflecting these additional measures. (Ex. 55.) The Commission agreed with the University that the additional measures proposed by DDOT, but not agreed to by the University, were unnecessary.
15. Pursuant to Subtitle Z § 506.5, at the close of the hearing, the Commission voted to approve the application, provided that the areas of flexibility requested by the University would be reviewed by the Commission as a modification of consequence pursuant to 11-Z DCMR § 703.

As directed by Subtitle Z § 408.8, the Commission has required the University to satisfy the burden of proving the elements that are necessary to establish the case for approval of a campus plan pursuant to Subtitle X § 101. The University has proposed a series of conditions of approval, endorsed by the GCP, the ANCs and other parties in support, OP, and DDOT, that will address the potential impacts of the University. (Ex. 9FF.) As discussed above, these proposed conditions were updated during the course of the proceedings. (Ex. 46, 55.)

As required by law, the Commission must give “great weight” to the recommendations of OP as well as ANCs 2E and 3D as the affected ANCs, which is satisfied by the Commission acknowledging the written reports of OP, ANC 2E, and ANC 3D, and their unanimous support for the 2017 Campus Plan. The Commission finds this evidence to be persuasive.

Based upon the record before the Commission, the Commission concludes that the University has met the burden of proof, pursuant to Subtitle X § 101.14, and that the 2017 Campus Plan

may be approved. The 2017 Campus Plan is in harmony with the general purpose and intent of the Zoning Regulations and Map, and it will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. Pursuant to Subtitle X § 101.11, the Commission concludes that the 2017 Campus Plan will further multiple policies of the District Elements of the Comprehensive Plan, as detailed in the Plan and in the OP Report.

### DECISION

It is, therefore, **ORDERED** that the application for approval of the 2017–2036 Georgetown University Campus Plan be **GRANTED** subject to the following conditions:

#### Term

1. The Campus Plan is approved for the period January 1, 2017 through December 31, 2036.

#### Georgetown Community Partnership

2. During the term of the Campus Plan, the University shall work collegially with the parties through the Georgetown Community Partnership to successfully implement this Campus Plan. Any development on the Main Campus shall be consistent with the University's goal of developing an integrated living and learning campus and the community's goal of as rapid a transition as possible toward a more residential undergraduate on-campus environment.
3. The Georgetown Community Partnership ("GCP") shall continue to serve as a mechanism for collegial and productive discussion of the Plan's implementation, and for engaging in long-term planning work. The GCP shall be co-chaired by a member of the University's senior leadership and a designee of ANC 2E and have a steering committee composed of University senior leadership and persons selected by ANC 2E (including at least one student who serves on ANC 2E), ANC 3D, CAG, BCA, FCCA, and GUSA. For such time or times when the GCP anticipates it is about to engage in a longer-term discussion about a specific issue (e.g., a further processing application or an amendment to the Campus Plan), the GCP shall strongly consider adding a second student who is an ANC Commissioner to the Steering Committee. Persons selected by ANC 2E and ANC 3D serve in their individual capacity and not as ANC Commissioners. In addition, MedStar Georgetown University Hospital ("MGUH") has an *ex officio* seat. The GCP shall also provide an opportunity for broad community and University participation on an issue-by-issue basis. The GCP shall engage a facilitator (funded fully by the University but selected jointly by the University, ANC 2E, ANC 3D, CAG, BCA, and FCCA leadership). The facilitator shall be responsible for balancing collaboratively the interests of the University, MGUH, ANC 2E, ANC 3D, CAG, BCA, FCCA, and GUSA leadership to achieve the purposes and ongoing operation of the GCP and its working group structure. The GCP framework shall continue to include a working group structure that shall address the key issues (e.g. public safety, trash, transportation, parking, off campus

conduct, housing, enrollment, beautification) to facilitate in-depth discussions on core issues.

4. The University shall continue to work with the community parties, through the GCP, together with such outside advisors as are jointly agreed upon to develop and implement tools for measuring and mitigating the impacts of residential and non-residential graduate students on the Georgetown, Burleith, and Foxhall communities.<sup>1</sup>
  - a. Through reasonable techniques such as, for example, incentives or the provision of University-sponsored graduate student housing elsewhere, the University shall manage the impact of its graduate student enrollment so the impact is not objectionable during the term of the Campus Plan.
  - b. The University shall continue to explore the feasibility of developing competitive and marketable University-sponsored graduate student housing outside of the Georgetown, Burleith, and Foxhall communities.

#### Undergraduate Housing

5. During the term of the Campus Plan, the University shall continue to provide competitive and marketable on-campus undergraduate housing. The University shall provide special emphasis on renovating current on-campus housing, with a focus on senior and junior living communities such as Henle Village, Village A, and Alumni Square considered as priorities. The University shall also adopt appropriate sustainable measures, in consultation with the GCP, so that as of fall 2030 and maintained for each semester thereafter during the term of the Campus Plan, an additional 244 Traditional Undergraduate Program students (who would otherwise be expected to live in the surrounding community and whose alternate living arrangements demonstrably reduce the number of undergraduate student group houses<sup>2</sup> in the surrounding community) shall be housed on campus or outside of Zip Code 20007 ("Housing Commitment"). (Ex. 9O.) Such measures may include raising the occupancy rate of the number of on-campus beds required by the 2010 Campus Plan as of Fall 2015 (i.e., 5,438 beds) above 95%. Such measures might also include, for example, some credit for an increase (above an agreed upon number based on historic experience) of students studying abroad or elsewhere, to the extent the GCP upon analysis concludes there is a demonstrable and sustainable causal link to the reduction as described above. Alternatively, the University may meet the Housing Commitment by providing additional on-campus beds through the

---

<sup>1</sup> For purposes of these conditions, the Georgetown, Burleith, and Foxhall communities are defined as the neighborhoods bounded on the east by Rock Creek and Potomac Parkway, on the south by the Potomac River, on the west by Canal Road and the Georgetown Reservoir, and on the north by Whitehaven Parkway to Foxhall Road to Hoban Road to Reservoir Road to 39<sup>th</sup> Street to Whitehaven Parkway (including the 1900 blocks of 39<sup>th</sup> and 38<sup>th</sup> Streets) to Whitehaven Street to Dumbarton Oaks Park on the north.

<sup>2</sup> For purposes of this condition, an undergraduate student group house is a single-family house where traditional undergraduate program students reside, other than a house where the majority of residents are not traditional undergraduate program students. The GCP will examine the application of this definition from time to time and, if need be, the GCP can adopt by consensus adjustments to the definition.

renovation of existing on-campus buildings or the construction of new housing facilities as follows:

- a. During the term of the Campus Plan, the University shall maintain on-campus housing for at least 5,438 students, subject to the provision in Section 5, above, regarding the possibility of providing additional on-campus beds;
  - b. No new residence hall (if any) constructed during the term of the Campus Plan shall be located on the Main Campus east of 37<sup>th</sup> Street or elsewhere within Zip Code 20007, unless the University receives permission from the relevant civic organization (e.g., CAG, BCA, or FCCA), the relevant ANC (ANC 2E or ANC 3D), and the Commission;
  - c. To implement the Housing Commitment above, the University shall be permitted to continue to use existing portions of the Leavey Center for residential use without additional further processing review;
  - d. To implement the Housing Commitment above, the University shall be permitted to repair, renovate, remodel, or structurally alter such facilities, as well as construct modest increases in gross floor area that are required to meet code requirements, improve accessibility, and create a more competitive and marketable living experience, without further processing approval, provided that such plans are approved by the Commission as a modification of consequence pursuant to 11-Z DCMR § 703. Such increases in gross floor area shall not exceed 15% of the existing gross floor area of the residence hall. Any exterior alteration resulting in an increase in gross floor area pursuant to this section shall be permitted only if reviewed with and concurred to by the GCP as well as, as required, reviewed by the Old Georgetown Board and the U.S. Commission of Fine Arts; and
  - e. In the event that St. Mary's Hall is converted to residential use, appropriate screening and mitigation measures shall be addressed in conjunction with any further processing application for the same.
6. The University shall limit the use of townhouses located on the west side of the 1400 block of 36<sup>th</sup> Street, N.W. to faculty and staff housing. Notwithstanding the foregoing, the properties located at 1412, 1420, and 1426 36<sup>th</sup> Street, N.W. may continue to be used for daytime administrative uses previously approved by the GCP, provided that there shall be no on-street parking connected with such use. In the event that the existing daytime administrative uses are discontinued, the properties shall be used for faculty and staff housing.
  7. During the term of the Campus Plan, the University shall be permitted to change the use of properties located east of 37<sup>th</sup> Street and within the boundaries of the Campus Plan for either academic/administrative or residential/campus life without further processing approval, provided that the change in use is approved by the Commission as a modification of consequence pursuant to 11-Z DCMR § 703. Any change in use to an

academic/administrative use shall also be subject to review and approval by the GCP. To the extent that the University may, in the future, change current uses of townhouses located on 36<sup>th</sup> Street between N and O Streets, the University shall, in connection with townhouses repurposed for student housing, make best efforts to use such townhouses for special interest housing (e.g. La Casa Latina, Black House, etc.) in an effort to provide a balanced mix of community, social, and student life activities.

8. The University shall require all Traditional Undergraduate Program students (as defined in Condition 10) to live in University housing during their first year (freshman as well as transfer sophomore and transfer junior students under 21), sophomore year, and either junior year or senior year, except for study abroad students, commuters, veterans, married students, and students with medical conditions or disabilities, religious beliefs, or other restrictions that are inconsistent with residence hall life.

#### Maximum Total Enrollment

9. During the term of the Campus Plan, the Main Campus student headcount shall not exceed 14,106 students. For purposes of this condition, the Main Campus student headcount shall be defined as the Georgetown University total student body<sup>3</sup>, minus the number of students (by headcount) who are not registered for any courses located at the Main Campus (e.g. students who are registered for courses located only at off-campus locations (such as the Law Center, SFS-Qatar, and other locations not at the Main Campus ("off-campus")), students studying abroad, and continuous registration students) and senior citizens auditing courses located at the Main Campus:
  - a. Growth towards the above maximum shall be gradual and measured; it shall not be linear, but reflected in tranches as new programs come online, culminating in a number that approaches but does not exceed the Main Campus student headcount;
  - b. In the event that the University locates programs currently located on the Main Campus to satellite locations outside of Zip Code 20007, such actions shall result in a corresponding reduction in the Main Campus student headcount. The University shall be permitted to replace such students on the Main Campus, and shall work to do so in a way that minimizes impacts; and
  - c. The University shall maintain the senior citizen auditor program.
10. During the term of the Campus Plan, the Traditional Undergraduate Program student headcount shall not exceed 6,675 students. For purposes of this condition, the Traditional

---

<sup>3</sup> The Georgetown University total student body shall be defined as the total number of students reported under the Integrated Postsecondary Education Database System (IPEDS), which was established by the National Center for Education Statistics, a division of the U.S. Department of Education, and is a standardized definition for student enrollment at institutions of higher education in the United States. The official count of the Georgetown University total student body shall be taken in the Fall semester on the census date identified by the University for purposes of its IPEDS reporting. The University shall also conduct a second count in the Spring semester using the same methodology. For the Spring semester, enrollment headcounts shall be calculated on a date reasonably determined by the University to reflect the maximum undergraduate enrollment for that semester.



Undergraduate Program student headcount shall be defined as the Main Campus student headcount as defined in Condition 9 plus students studying abroad minus the number of graduate students, professional students, students enrolled in the School of Continuing Studies, non-degree students and students returning for their second degree in nursing, all by headcount (for purposes of Conditions 8 and 28 of this Order, each such student counted under the Traditional Undergraduate Program student headcount being a "Traditional Undergraduate Program student").

11. During the term of Campus Plan, the Medical Student Program headcount shall not exceed 830 students. For purposes of this condition, the Medical Student Program headcount shall be defined as all students enrolled in the Doctor of Medicine (MD) degree program who are registered in at least one course on the Main Campus.
12. The University shall provide the GCP, prior to the end of each Spring and Fall semester, a complete report on the student enrollment maximums set forth in Conditions 9 through 11 above. The report shall also contain information on other categories of undergraduate students (as defined under this Campus Plan), and graduate student enrollment. The report shall also contain the number and location of all University-provided student housing as well as progress toward the Housing Commitment set forth in Condition 5 above. The Report shall contain a certificate as to its accuracy signed by the Provost of the University.

The University shall work with the GCP to develop metrics for analysis and establish benchmarks for evaluating changes in the number of Traditional Undergraduate Program and graduate program students living in the Georgetown, Burleith, and Foxhall neighborhoods as well as the number of Traditional Undergraduate Program, graduate program, and mixed program student group houses in those neighborhoods. The University shall work with the GCP to begin to develop such metrics and to establish such benchmarks prior to the Fall 2017 semester, in order to work toward a baseline for measuring:

- (a) Progress toward the Housing Commitment set forth in Condition 5; and
- (b) Changes associated with enrollment pursuant to the limitations set forth in Condition 9.

Beginning in Fall 2017, and for each semester thereafter, the University shall include such information as the GCP may request on the number and type of group houses in the surrounding neighborhoods and the number and type (e.g., Traditional Undergraduate Program) of undergraduate students and the number and type of graduate students living in the surrounding neighborhoods pursuant to these agreed upon metrics and benchmarks in each semester's Enrollment and Housing Report. The Report shall contain a certificate confirming that such information was collected in accordance with the request and pursuant to any agreed-upon metrics and is accurate to the extent of the University's knowledge.

13. Each January during the term of the Campus Plan, the University shall provide the GCP a letter from an independent firm jointly selected by the University and the community parties and responsible equally to all members of the GCP (but wholly funded by the University) certifying that the enrollment numbers and University-provided housing numbers for the preceding Fall and Spring semesters are accurate and have been calculated in conformity with this Order. Unless agreed to by all members of the GCP, the independent firm shall not be required to certify the accuracy of information reported pursuant to Condition 12.

#### Quality of Life Initiatives

14. The University shall commit sufficient resources (financial, personnel, intellectual capital, etc.) to the University's Quality of Life Initiative to support a safe community, educate students to be good neighbors, and successfully mitigate the impacts of trash, noise and student behavior as follows:
  - a. Initiatives shall include programs such as the Student Neighborhood Assistance Program ("SNAP"), the late-night Metropolitan Police Department ("MPD") reimbursable detail, regular trash and litter pick up patrols as needed, education of students about the responsibilities of living in a residential community, the Helpline, and late-night transportation services during nighttime weekend hours:
    - i. The University shall continue to ensure that SNAP, the MPD reimbursable detail, and the Georgetown University Police Department ("GUPD") are proactive in addressing issues as well as responsive to calls;
    - ii. The University shall continue to run the late night shuttle (or equivalent services as reviewed and approved by the GCP), to supplement nighttime neighborhood transportation options;
    - iii. The University shall continue to require all undergraduate students who live off campus during the academic year and during the summer to attend an orientation program that shall address "good neighbor" issues, reminding and educating students about appropriate conduct in the off-campus community. This program shall especially emphasize objectionable noise both inside and outside of buildings, underage drinking, applicable rules and standards regarding proper disposal of trash and recyclables, restricted parking in the West Georgetown, Burleith, and Foxhall neighborhoods, and University expectations that all students conduct themselves in a respectful and responsible manner as members of the local residential community; and
    - iv. The University shall continue to maintain and publicize a helpline available 24 hours per day, seven days per week to receive calls about noise and other quality of life issues; and

- b. The University shall be permitted to modify these programs only as necessary or appropriate to increase efficacy (that is, to focus on results). Through the GCP, the University shall continue to evaluate and collegially develop meaningful ways to enhance the efficacy of these programs based on suggestions and feedback received through the GCP from neighbors, students, and other stakeholders.
15. During the term of the Campus Plan, the University shall continue to maintain policies that: equalize party polices for on and off campus parties; and reduce the impacts of off campus student parties. Specifically, the University shall:
- a. Maintain a policy that states that living off-campus is a privilege, not a right, taking into account conduct and seniority; students who have engaged in serious or repeated misconduct shall not be permitted to live off-campus;
  - b. Maintain a noise policy that specifically provides that "excessive noise inside or outside a building" is unacceptable. This will mean that if noise can be heard beyond the property line, it is probably too noisy, taking into account the time and the nature of the activity generating the sound. Violations of the noise policy shall be part of the Code of Conduct;
  - c. Maintain student conduct policies to assure that the environment for students to host social gatherings (including parties where alcohol is served) is at least as welcoming on campus as off campus in order to encourage students to initiate socializing on campus and/or to return to campus for late night socializing. Specific policy and practices shall continue to include:
    - i. Permit students of legal age living in apartments, townhouses, and other living spaces on campus to host parties in impromptu ways, eliminating the need to register parties well in advance;
    - ii. Train Residence Life staff and GUPD staff to manage student parties on campus in ways that allow those parties to continue whenever it is reasonable to do so (acknowledging that safety is still a primary concern), making it significantly more likely that on campus parties shall be allowed to continue;
    - iii. Educate students in ways that encourage them to socialize on campus in safe and appropriate ways; and
    - iv. Maintain transparency in operations and results to the maximum extent possible via the GCP; and
  - d. In addition to the foregoing, the University shall investigate reports of improper off-campus student conduct and respond to behavior found to violate the Student Code of Conduct promptly with appropriate sanctions. Egregious or repeat violations of the Code of Conduct shall be subject to serious sanctions up to and including separation from the University.

16. Through the GCP and with the community, the University shall engage city agencies (DCRA, DPW, MPD) to give vigorous attention to housing code, basic business license, trash, and public safety issues.
17. The University shall maintain a program to provide its students who are eligible to live off-campus with information about housing opportunities outside the West Georgetown and Burleith neighborhoods.
18. During the term of the Campus Plan, the University shall publish and maintain a list of rental properties in the West Georgetown and Burleith neighborhoods that maintain a basic business license according to DCRA's website, including:
  - a. The University shall maintain the University's posted list of "properties of concern" (properties that are the recipient of three or more credible complaints received by Georgetown over a two-year period);
  - b. The University shall coordinate with DCRA to address problem properties in West Georgetown, Burleith, and Foxhall;
  - c. The University shall continue and enhance a landlord marketing campaign to encourage and promote "good neighbor" behavior from local landlords; and
  - d. The University shall maintain a policy that requires students maintain properties that they rent in the same manner that they would be expected to if they owned the properties (e.g., snow removal and yard maintenance as required by District of Columbia law). Violations of the off-campus property maintenance policy shall be part of the Code of Conduct.

#### On-Campus Social Life Improvements

19. During the term of the Campus Plan, the University shall continue the productive work toward improvements to on-campus facilities to promote student life on campus (i.e., green space for outdoor campus socializing, academic spaces such as libraries and study rooms, recreational and athletic facilities, student activity spaces, and other social gathering spaces).

#### Comprehensive Transportation Plan

20. The University shall continue to monitor and evaluate the campus roadway network and the Georgetown University Transportation Shuttle ("GUTS") system with regular consultation and input through the GCP and with DDOT, with the goals of enhancing the GUTS system and maximizing the use of the Canal Road entrance for all GUTS routes except the Wisconsin Avenue route as follows:

- a. By June 1, 2017, the University shall install (and thereafter maintain) enhanced GPS (or another form of effective Automatic Vehicle Locator technology) as well as Automated Passenger Counters in all GUTS vehicles;
- b. The University shall maintain traffic control gates (or similar devices) at the Canal Road entrance that shall restrict use of the Canal Road entrance for left turns during the AM peak period (6:00 a.m.-10:15 a.m.) to GUTS vehicles, which shall be the only vehicles equipped to activate such gates or devices during such period and to use the left turn lane to exit the campus during such period. The University shall evaluate the effectiveness of such measures and, from time to time as appropriate, may modify the control mechanism or other operational measures limiting left turns to GUTS vehicles during the AM peak period;
- c. The University shall monitor the Canal Road and Reservoir Road corridors to assess University-related impacts on traffic conditions. The design, construction, and modification of any curb cuts or traffic signals along either corridor shall be reviewed with the GCP, and final design shall be subject to review and approval by District of Columbia public space officials; and
- d. Until the commencement of construction of the planned medical/surgical pavilion at MGUH, the Wisconsin Avenue GUTS route shall be permitted to use Entrance 1 on Reservoir Road. During construction, the Wisconsin Avenue GUTS route shall utilize a temporary location acceptable to the GCP, MGUH, DDOT, and the University. After completion of construction, the Wisconsin Avenue GUTS shuttle route shall not use Entrance 4, unless the University secures GCP and MGUH review and approval for such use, based on a demonstration that measures shall be implemented to mitigate successfully any adverse impacts (e.g., noise, light, and air quality).

21. Pedestrian and Bicycle Network:

- a. During the term of the Campus Plan, the University shall implement the pedestrian and bicycle infrastructure improvements shown on Figure 22 of the Georgetown University 2017 Campus Plan CTR, dated October 2016 and, prepared by Wells + Associates. (Ex. 33A.) The design and construction of any improvements within public space shall be subject to review and approval by District of Columbia public space officials. The University shall consult with the GCP and DDOT on the design of such improvements located on private property;
- b. The University shall continue to explore and evaluate improvements to Healy Circle and the main campus entrance at the intersection of 37<sup>th</sup> Street and O Street in support of its ongoing commitment to create a more pedestrian and bicycle-friendly campus and in the context of its broader campus sustainability objectives. Future improvements to Healy Circle shall still allow vehicular access for special events and emergency access needs, but design shall be for non-auto users;

- c. The University shall integrate bicycle routing and wayfinding information into campus wayfinding systems; and
  - d. At such time as a potential Palisades Trolley Trail extending to the University's main campus comes to fruition, the University shall work with DDOT to explore the feasibility of providing a connection on the University's property to the Trail.
22. Transportation Demand Management:
- a. The University shall continue to adhere to its Transportation Demand Management ("TDM") Plan, as discussed on pages 68-69 of the CTR), to promote greater use of the GUTS bus system, transit, bicycling, carpooling, satellite parking, and other transportation alternatives. (Ex. 33.) The University shall implement TDM measures sufficient to ensure that peak hour vehicle trips shall not exceed 632 trips during the AM peak hour and 591 trips during the PM peak hour (Performance Target Commitment). In addition, as an aspirational goal, the University shall strive to achieve a peak hour trip threshold that is below 593 AM peak hour trips and 532 PM peak hour trips. The University shall be permitted to update the TDM Plan, in consultation with the GCP and with DDOT, to enhance its efficacy during the term of the Campus Plan consistent with the performance standards set forth above. MGUH performance targets and aspirational goals are set forth in Condition 32;
  - b. To assess the University's efforts towards achieving the Performance Target Commitment and aspirational goal described above, the University shall conduct an Annual Performance Monitoring Study. The Study shall include: (1) measurement of University vehicle trip generation; (2) a University-wide transportation survey (including determination of mode split); (3) GUTS ridership counts utilizing AVL and APC data; (4) a summary report on TDM activities and expenditures; and (5) parking occupancy counts. The Annual Transportation Performance Monitoring Study shall be conducted in accordance with the methodology outlined on pages 69-72 of the CTR, as modified with the five items listed on page 17 of the DDOT Report. (Ex. 33, 43.) The Annual Transportation Performance Monitoring Study shall be submitted to the GCP and DDOT by December 31<sup>st</sup> each year during the term of the Campus Plan; and
  - c. If the results of the Annual Transportation Performance Monitoring Study reveal that the Performance Target Commitment outlined in Condition 22(a) is not met, the University shall work with the GCP and DDOT to review the then-current TDM strategies and associated expenditures and to develop an increasingly robust plan to augment existing and/or implement more stringent TDM strategies to enhance performance. Furthermore, the University shall conduct and submit a Supplemental Performance Monitoring Study by June 30<sup>th</sup> of the same academic year to track progress toward the Performance Target Commitment. If the Performance Target Commitment is not met in the following fall, the additional TDM strategies and associated expenditures shall become increasingly more

stringent, and the University shall work with the GCP and DDOT to develop additional TDM strategies not currently included in the TDM Plan, until such time as the Performance Target Commitment is met.

23. Events:
  - a. All weekday evening performances at the Davis Performing Arts Center expected to draw more than 100 visitors shall begin no earlier than 7:00 p.m., unless agreed to by the GCP; and
  - b. Weekday athletic events at Cooper Field expected to draw over 100 visitors shall begin before 4:00 p.m. or after 7:00 p.m., unless agreed to by the GCP.
24. Deliveries: The University shall require its vendors to use the Canal Road entrance to make regular deliveries between the hours of 8:00 p.m. and 6:00 a.m. Special deliveries in unusual circumstances may be allowed from time-to-time other than through the Canal Road entrance after 8:00 p.m., provided such deliveries are quiet and not disruptive to the neighborhood. The University shall inform its vendors that deliver other than through the Canal Road entrance between 6:00 a.m. and 8:00 a.m. are discouraged and shall take appropriate corrective action in response to meritorious complaints that such a delivery is not quiet or is disruptive to the neighborhood.

#### Parking

25. The University shall continue to maintain a parking inventory of no more than 4,080 parking spaces within the Campus Plan boundary as defined in Condition 36. In addition:
  - a. Spaces set aside for car sharing vehicles such as Zipcar or as charging stations for electric vehicles shall not count towards this limit; and
  - b. By December 31, 2022, the University shall install four 240-volt electric car charging stations in Leavey Garage and/or Southwest Garage.
26. The University shall create incentives to encourage students living off campus not to bring cars to campus. In particular, the University shall provide space for Zipcar or other carsharing service vehicles on campus and shall work with DDOT to continue to expand the availability and use of the Capital Bikeshare program on and near the Main Campus.
27. The University shall develop and implement a parking management system that promotes use of satellite parking by students arriving for daytime classes by car and on-campus parking by students arriving for evening classes by car. Students shall be firmly directed to use such University or satellite parking facilities or use public transportation alternatives. The University shall continue to work with the community, DDOT, and DPW to: (a) develop and implement changes to the management of the on-street parking supply on the streets within and proximate to the campus; and (b) ensure regular

enforcement of District of Columbia laws and regulations regarding on-street parking, and shall engage the GCP on this issue as helpful and appropriate.

28. Subject to reasonable, very limited exceptions, all Traditional Undergraduate Program students (as defined in Condition 10) shall be prohibited from bringing cars to campus or parking their cars on the street in Georgetown, Burleith, and Foxhall. Violations of the parking policy shall be part of the Code of Conduct. Notices of this parking policy shall be provided to students and to the parents of Traditional Undergraduate Program students.

#### Limitations on University's Property Acquisitions

29. During the term of the Campus Plan and except for apartment properties along MacArthur Boulevard between Foxhall Road and Reservoir Road (which shall not be used for undergraduate student housing), the University shall not purchase or enter into a lease or other arrangement for additional property in Georgetown, Burleith, Foxhall, and the Palisades<sup>4</sup> outside of the Campus Plan boundaries for use as student housing, unless the University receives permission from the relevant civic organization (e.g., CAG, BCA, or FCCA) and the relevant ANC (e.g., ANC 2E or ANC 3D). For apartment properties along MacArthur Boulevard for graduate student housing, the University shall discuss the proposed use with leaders of FCCA, the Palisades Citizens Association ("PCA"), and ANC 3D, to the extent such discussions do not adversely impact the confidentiality of negotiations.

#### Penthouses

30. During the term of the Campus Plan, the University shall be permitted to adaptively reuse and expand penthouses on existing buildings for habitable uses without further processing approval, provided that the Commission approves the plans as a modification of consequence pursuant to 11-Z DCMR § 703, and provided further that any changes proposed pursuant to this section are reviewed with and concurred to by the GCP.

#### MedStar Georgetown University Hospital

31. Deliveries: MGUH shall maintain its current delivery schedules and the current western delivery route during the term of the Campus Plan, including during and after construction of the medical/surgical pavilion. Regular critical deliveries shall continue to occur outside the regular delivery hours of 8:30 a.m.-4:30 p.m., and consist of a delivery for medical and surgical supplies, a delivery for pharmaceuticals, a delivery for linens, occasional deliveries for patient care equipment and oxygen, and deliveries for food

---

<sup>4</sup> For the purposes of this condition, the Palisades is defined as the neighborhoods bounded by the Potomac River; the Maryland-District of Columbia Line; a line through the Dalecarlia Reservoir grounds at right angles to the District Line; to the intersection of Loughboro Road and Dalecarlia Parkway; the middle of Loughboro Road to Foxhall Road, east boundary of Battery Kemble Park to the middle of 49<sup>th</sup> Street; the middle of 49<sup>th</sup> Street to the southern boundary of Wesley Heights Park; the southern boundary of Wesley Heights Park to the middle of Foxhall Road; and the middle of Foxhall Road extended to the Potomac River.



(which number no more than four to six per day). In addition, urgent or unplanned critical deliveries may also occur, as patient needs demand, between 6:30 a.m. and 8:30 a.m. Emergency deliveries for the immediate saving need of patients may occur as needed. During emergency operations (such as snowstorms or citywide disasters) deliveries temporarily may occur as needed. Proposed future recurring deliveries outside of the regular delivery hours may be added only if reviewed by and concurred to by the GCP.

32. Transportation Demand Management:

- a. MGUH shall implement TDM measures sufficient to ensure that peak hour vehicle trips shall not exceed 1,379 trips during the AM peak hour and 1,062 trips during the PM peak hour (Performance Target Commitment). In addition, as an aspirational goal, MGUH shall strive to achieve a peak hour trip threshold that is below 1,328 AM peak hour trips and 1,007 PM peak hour trips. MGUH shall be permitted to update the TDM Plan, in consultation with the GCP and with DDOT, to enhance its efficacy during the term of the Campus Plan consistent with the performance standards set forth above. After the first 10 years that the Campus Plan is in effect, MGUH shall do a joint “look back” with the GCP and DDOT on the results at the midpoint of the Plan and make adjustments to the TDM Plan as necessary. If agreement is not reached between MGUH and the GCP at the 10-year “look back” as to the scope and nature of those adjustments, community organizations represented on the GCP (collectively the “community parties”) or MGUH may suggest a proposed MGUH TDM commitment for the remaining years of the Campus Plan and the University shall, upon the request of the community parties or MGUH, submit the matter to the Commission for review and determination;
- b. To assess MGUH’s efforts towards achieving the Performance Target Commitment and aspirational goal described above, MGUH shall conduct an Annual Transportation Performance Monitoring Study. The Study shall include: (i) measurement of MGUH vehicle trip generation; (ii) a MGUH-wide transportation survey (including determination of mode split); (iii) GUTS ridership counts utilizing AVL and APC data; (iv) a summary report on TDM activities and expenditures; and (v) parking occupancy counts. The Annual Transportation Performance Monitoring Study shall be conducted in accordance with the methodology outlined on pages 9-12 of the CTR Addendum, as modified with the five items listed on page 17 of the DDOT Report. (Ex. 33B, 43.) The Annual Transportation Performance Monitoring Study shall be submitted to the GCP and DDOT by December 31<sup>st</sup> of each year; and
- c. If the results of the Annual Transportation Performance Monitoring Study reveal that the Performance Target Commitment outlined in Condition 32(a) is not met, MGUH shall work with the GCP and DDOT to review the then-current TDM strategies and associated expenditures and to develop an increasingly robust plan to augment existing and/or implement more stringent TDM strategies to enhance

performance. Furthermore, MGUH shall conduct and submit a Supplemental Performance Monitoring Study by June 30<sup>th</sup> of the same academic year to track progress toward the Performance Target Commitment. If the Performance Target Commitment is not met in the following fall, the additional TDM strategies and associated expenditures shall become increasingly more stringent, and MGUH shall work with the GCP and DDOT to develop additional TDM strategies not currently included in the TDM Plan, until such time as the Performance Target Commitment is met.

33. Lombardi Bus Turnaround: MGUH shall work with the University to develop a mutually acceptable plan for the construction of a new bus turnaround at Lombardi Circle. MGUH shall endeavor to relocate its oncology patient care services away from the bus turnaround within 18 months following the date on which the medical/surgical pavilion first opens for the delivery of care to patients. MGUH intends to open the Lombardi Circle turnaround within six months after the oncology patient care services are relocated and, barring any unforeseen construction delays of the medical/surgical pavilion, no later than August 15, 2022. In the event that the medical/surgical pavilion is not constructed, MGUH and the University shall work with the GCP to ensure that a turnaround on the northern portion of the campus is operational no later than August 15, 2022.

#### Reporting and Compliance Review

34. By November 30<sup>th</sup> of each year of the Campus Plan term, MGUH shall file an annual compliance report with the GCP that addresses MGUH's compliance with conditions 31-33 above.
35. By November 30<sup>th</sup> of each year of the Campus Plan term, the University shall file an annual compliance report with the GCP that addresses the University's compliance with the above conditions, except for Conditions 5–11, which shall be reported pursuant to Condition 12, and except for Conditions 31–33, which shall be reported by MGUH pursuant to Condition 34.

#### Campus Plan Boundary

36. The Campus Plan boundary shall be that boundary depicted on Exhibit 9B of the record (which is the same as the Campus Plan boundary established by the D.C. Board of Zoning Adjustment in 2000 Plan).

#### Further Processing Applications

37. The University shall include ANC 2E, ANC 3D, CAG, BCA, and FCCA on all lists of property owners within 200 feet related to any campus plan amendment or further processing application under the Campus Plan.

Human Rights Act

38. The University is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code section 2-1401.01, et seq. ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above-protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On December 1, 2016, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at the the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is on July 21, 2017.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

**District of Columbia REGISTER – July 21, 2017 – Vol. 64 - No. 29 006711 – 007031**