

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council schedules a public oversight roundtable on the “Department of Consumer and Regulatory Affairs: Inspection and Enforcement of Tenant Housing”
- Department of Employment Services announces funding availability for the FY 2018 Mayor’s Opportunity Scholarship Program and the In-School Youth Innovation Grants
- Department of Energy and Environment solicits grant applications for the RiverSmart Rooftops Green Roof Rebate Program
- Department of Health announces funding availability for the Effi Barry HIV/AIDS Capacity Building Program
- Department of Health proposes regulations for body art establishments
- Public Service Commission proposes Gas Procurement Report requirements

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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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 to request the *District of Columbia Register* publication schedule.

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DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

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ADMINISTRATOR

CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

RESOLUTIONS

Res 22-34 Council Independent Authority Clarification
Congressional Review Emergency Declaration
Resolution of 2017.....008398 - 008399

COUNCIL HEARINGS

Notice of Public Hearing -

B22-0170 At-Risk Tenant Protection Clarifying Amendment
Act of 2017008400 - 008401
B22-0329 Trafficking Survivors Relief Amendment Act of 2017008400 - 008401

Notice of Public Oversight Roundtable -

The Department of Consumer and Regulatory Affairs:
Inspection and Enforcement of Tenant Housing 008402

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -

Anchor - ANC 6D - New008403
La Vie - ANC 6D - New008404
Library Tavern - ANC 4D - Sidewalk Cafe008405
Nomad Hookah Bar - ANC 6A - Change of Hours008406
TBD (1313 Ventures, LLC) - ANC 2F - New008407
Union Square Cafe - ANC 2C - New - CORRECTION008408
Union Square Cafe - ANC 2C - New - RESCIND.....008409
Union Trust - ANC 2B - New008410
XS Lounge - ANC 5C - Summer Garden008411

Zoning Adjustment, Board of - October 11, 2017 - Public Hearings

19571 Carl and Hallie Smith - ANC 3D (Appeal)008412 - 008415
19572 SIM Development, LLC - ANC 8A008412 - 008415
19583 Jemal’s East 451 LLC - ANC 6E008412 - 008415
19584 Christopher and Katelyn Kimber - ANC 6D008412 - 008415
19585 Leonard and Sheryl Bennett - ANC 8A008412 - 008415
19586 GH Group, LLC - ANC 6D.....008412 - 008415
19594 1469 Florida LLC - ANC 1B008412 - 008415

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

FINAL RULEMAKING

Zoning Commission, DC -

Z.C. Case No. 14-11E to amend 11 DCMR (Zoning Regulations of 2016)

Subtitle D (Residential House (R) Zones)

- Ch. 3 (Residential House Zones – R-1-A, R-1-B, R-2, and R-3),
Sec. 306.....008416 - 008420
Ch. 7 (Naval Observatory Residential House Zones – R-12 and R-13),
Sec. 706.....008416 - 008420
Ch. 10 (Foggy Bottom Residential House Zone – R-17),
Sec. 1006.....008416 - 008420
Ch. 12 (Georgetown Residential House Zones – R-19 and R-20),
Sec. 1206.....008416 - 008420

Subtitle E (Residential Flat (RF) Zones)

- Ch. 2 (General Development Standards (RF)),
Sec. 205.....008416 - 008420

Subtitle U (Use Permissions)

- Ch. 3 (Use Permissions Residential Flats (RF) Zones),
Sections 301 and 320.....008416 - 008420
to clarify the Commission’s intent that the matter-of-right rear
yard additions permitted under Z.C. Case No. 14-11B should
be measured from “any” of the adjoining or adjacent lots

PROPOSED RULEMAKING

Health, Department of - Amend 22 DCMR (Health),

- Subtitle B (Public Health and Medicine),
Ch. 12 (Controlled Substances Act Rules),
Sec. 1201 (Schedule I Enumerated) and
Sec. 1205 (Schedule V Enumerated),
to add synthetic opioid agonists to the list of
Schedule I drugs and remove propylhexedrine
from the list of Schedule V drugs 008421

Health, Department of - Amend 25 DCMR

- (Food Operations and Community Hygiene Facilities),
to add Subtitle G (Body Art Establishment Regulations),
Chapters 1 - 10, and Ch. 99 (Definitions),
to provide regulations for body art establishments;
Fourth Proposed Rulemaking to incorporate review
changes from rulemaking published on October 16, 2015
at 62 DCR 013466008422 - 008480

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PROPOSED RULEMAKING CONT'D

Public Service Commission - RM23 –2017-01 - Natural Gas
to Amend 15 DCMR (Public Utilities and Cable Television),
Ch. 23 (Natural Gas), Sec. 2315 (Gas Procurement Report),
to update the Gas Procurement Report requirements.....008481 - 008482

**NOTICES, OPINIONS, AND ORDERS
MAYOR’S ORDERS**

2017-185 Delegation of Authority – Collection of Employee
Debt and Waiver of District Government Claims
for Erroneous Payments to Employees..... 008483 - 008484

2017-186 Appointment – Interim Director, Department of
Small and Local Business Development (Tene Dolphin) 008485

2017-187 Designation of Grant-Managing Entity Under the
Innovation Fund Establishment Act of 2013..... 008486

2017-188 Appointment – Interim Director, District Department
of Transportation (Jeffrey Marootian)..... 008487

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

City Arts and Prep Public Charter School -
Request for Proposals - HVAC Services.....008488 - 008489

Criminal Code Reform Commission, DC -
Advisory Group Meeting - September 6, 2017 008490

DC Bilingual Public Charter School -
Request for Proposals - COO Services008491

Elections, Board of -
Certification of ANC/SMD Vacancy in 1B02008492

Employment Services, Department of -
Notice of Funding Availability -
Fiscal Year 2018 - Evaluation of Mayor’s Opportunity
Scholarship Program (MOSEVAL2018)008493 - 008494

In-School Youth Innovation Grants – Pilot.....008495 - 008496

Energy and Environment, Department of -
Notice of Funding Availability - RiverSmart Rooftops
Green Roof Rebate Program008497

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

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

Health, Department of -
 HIV/AIDS, Hepatitis, STD & TB Administration (HAHSTA) -
 Notice of Funding Availability - Effi Barry HIV/AIDS
 Capacity Building Program - RFA # HAHSTA_EBP_09.08.17008498

Ideal Academy Public Charter School -
 Request for Proposals - Multiple Services008499

KIPP DC Public Charter Schools -
 Request for Proposals -
 Security Camera Platform Standardization008500
 Door Installation.....008500

Public Charter School Board, DC -
 Notice of August Board Meeting Cancellation008501

Notice of October Board Meeting Date Change -
 October 23, 2017008502

Zoning Adjustment, Board of - Cases -
 17535-A Mary Goodman - ANC 2E - Order008503 - 008517
 19475 DC Boathouse, LLC - ANC 2A - Order008518 - 008521
 19477 Kingman Park Civic Association - ANC 7D -
 Order (Appeal).....008522 - 008527

Zoning Commission - Cases -
 05-38C Mill Creek Residential Trust, LLC - Order.....008528 - 008531
 10-21A V Street S.W., LLC - Order008532 - 008539
 14-02A Preservation of Affordable Housing, Inc., et als. - Order008540 - 008543
 14-11E Text Amendments - 11 DCMR - Technical Corrections
 to Z.C. Order 14-11B (Rear Yard Extensions) - Notice
 of Final Rulemaking and Order 008544
 16-07 W-G 9th & O, LLC - Order No. 16-07(1).....008545 - 008546
 16-21 North Capitol Hospitality, LLC - Order.....008547 - 008554

ENROLLED ORIGINAL

A RESOLUTION

22-34

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 7, 2017

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to clarify that the Council is an independent entity for personnel purposes and create a new process by which certain Council attorneys shall file a certificate of good standing with the Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Council Independent Authority Clarification Congressional Review Emergency Declaration Resolution of 2017”.

Sec. 2. (a) On December 17, 2014, the Council passed the District of Columbia Certificate of Good Standing Filing Requirement Amendment Act of 2014, effective March 13, 2015 (D.C. Law 20-241; 62 DCR 1335) (the “2014 Act”), which clarified that hearing officers and administrative law judges are required to file certificates of good standing if their employment requires that they be members of the District of Columbia Bar. Previously, the law required only attorneys to file such certificates, but it was discovered in 2014 that certain administrative law judges and hearing officers were allegedly presiding over cases without being in good standing with the District of Columbia Bar. In order to close this loophole, the Council passed the 2014 Act.

(b) Additionally, the 2014 Act transferred responsibility for collecting certificates of good standing from the Department of Human Resources (“DCHR”) to the Board of Ethics and Government Accountability (“BEGA”). However, enforcement and regulatory authority remains with the DCHR. Thus, the 2014 Act creates a bifurcated process in which one agency, BEGA, acts solely as a repository for the certificates of good standing, but another agency, DCHR, is responsible for ensuring that attorneys, hearing officers, and administrative law judges comply with the law and has rulemaking authority. In order to streamline the process, it is necessary to transfer collection authority back to DCHR.

(c) Further, section 881 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective July 25, 2002 (D.C. Law 14-182; D.C. Official Code § 1-608.81), requires an attorney employed by an independent agency to file a certificate of good standing with DCHR if he or she meets the applicable requirements. The District of Columbia

ENROLLED ORIGINAL

Government Comprehensive Merit Personnel Act confusingly, and incorrectly, defines the Council of the District of Columbia as an “independent agency.”

(d) To address issues related to the certificate of good standing filing requirement, the Council adopted emergency legislation, the Council Independent Authority Clarification Emergency Amendment Act of 2016, effective December 6, 2016 (D.C. Act 21-551; 63 DCR 15022) (“Emergency Act”), on November 15, 2016, and adopted identical permanent legislation, the Council Independent Authority Clarification Amendment Act of 2016, enacted on January 24, 2017 (D.C. Act 21-616; 64 DCR 876) (“Permanent Act”), on final reading on December 6, 2016.

(e) The Emergency Act and the Permanent Act also clarified throughout the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), that the Council is distinct from independent agencies and that, with respect to a certificate of good standing, an employee of the Council shall file his or her certificate with the Council and not DCHR. And, in order to further aid DCHR and the Council in streamlining this process, and to reduce the burden on the District of Columbia Court of Appeals, DCHR, and the Council, the Emergency Act and the Permanent Act allowed DCHR and the Council to verify the good standing of attorneys, hearing officers, and administrative law judges through electronic means.

(f) The Emergency Act expired on February 15, 2017. However, the Permanent Act is not expected to complete congressional review until April 1, 2017. Therefore, a congressional review emergency act is necessary to prevent a gap in legislative authority, retroactive to February 15, 2017.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Council Independent Authority Clarification Congressional Review Emergency Amendment Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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

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

ANNOUNCES A PUBLIC HEARING ON

**BILL 22-0170, THE “AT-RISK TENANT PROTECTION CLARIFYING AMENDMENT
ACT OF 2017”**

**BILL 22-0329, THE “TRAFFICKING SURVIVORS RELIEF AMENDMENT
ACT OF 2017”**

**Thursday, September 21, 2017, 9:30 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Thursday, September 21, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0170, the “At-Risk Tenant Protection Clarifying Amendment Act of 2017”, and on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017”. The hearing will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:30 a.m.

The stated purpose of Bill 22-0170, the “At-Risk Tenant Protecting Clarifying Amendment Act of 2017”, is to amend Chapter 39 of Title 28 of the District of Columbia Official Code to clarify that the Office of the Attorney General is authorized to enforce the Consumer Protection Procedures Act against housing providers that violate certain consumer protection laws that protect tenants.

The stated purpose of Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017”, is to amend the Prohibition Against Human Trafficking Amendment Act of 2010 to allow for the vacatur of certain convictions and expungement of certain arrest records when such convictions or arrests are a direct result of an offender having been a victim of trafficking.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, September 18**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony

and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

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

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

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE**

on

**The Department of Consumer and Regulatory Affairs:
Inspection and Enforcement of Tenant Housing**

on

**Monday, October 2, 2017
4:00 p.m., Council Chambers, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public oversight roundtable before the Committee of the Whole seeking public comment on the Department of Consumer and Regulatory Affairs (“DCRA”) inspection and enforcement of housing code violations. The roundtable will be held at 4:00 p.m. on Monday, October 2, 2017 in the Council Chambers (Room 500) of the John A. Wilson Building.

This is the second in a series of roundtables to be held by the Committee to provide a forum for tenants discuss the inspection and enforcement of the District’s housing codes regulated by DCRA. This roundtable is to be an opportunity for tenants and housing advocates to discuss the issue of unsafe, non-compliant, and substandard housing conditions in the District. The Committee is especially interested in hearing feedback specifically regarding DCRA’s inspection and enforcement programs of tenant housing.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Randi Powell, Legislative Policy Advisor, at 202-724-8196, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Thursday, September 28, 2017. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Friday, September 29, 2017 the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 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 October 16, 2017.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 25, 2017
Petition Date: October 10, 2017
Hearing Date: October 23, 2017
Protest Hearing: December 13, 2017

License No.: ABRA-107325
Licensee: Anchor, LLC
Trade Name: Anchor
License Class: Retailer's Class "B"
Address: 709 Wharf Street, S.W.
Contact: Stephen J. O'Brien: 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 October 23, 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 December 13, 2017 at 1:30 p.m.

NATURE OF OPERATION

Anchor will provide marine supplies, clothing and apparel, and also offer packaged food, beer and wine. Applicant is requesting a Tasting Endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 9 am to 9:30 pm

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

Placard Posting Date: August 25, 2017
Protest Petition Deadline: October 10, 2017
Roll Call Hearing Date: October 23, 2017
Protest Hearing Date: December 13, 2017

License No.: ABRA-106046
Licensee: SRG Waterfront, LLC
Trade Name: La Vie
License Class: Retailer's Class "C" Restaurant
Address: 88 District Square, S.W.
Contact: Faisal Gill: (310) 418-6675

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 October 23, 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 **December 13, 2017 at 1:30 p.m.**

NATURE OF OPERATION

A retailer "C" Restaurant that will be serving French Mediterranean food. The restaurant is requesting to have a Summer Garden with 131 seats and an Entertainment Endorsement to provide live entertainment. Total Occupancy Load is 501, with 361 seats inside.

HOURS OF OPERATION INSIDE PREMISES

Sunday 11:00 am – 12:00 am, Monday through Saturday 11:00 am – 3:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES

Sunday through Saturday 11:00 am – 2:00 am

HOURS OF LIVE ENTERTAINMENT INDOORS

Sunday through Saturday 4 pm – 2 am

HOURS OF OPERATION FOR SUMMER GARDEN

Sunday through Thursday 11:00 am – 12:00 am, Friday and Saturday 11:00 am – 2:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN

Sunday through Friday 11:00 am – 12:00 am, Saturday 11:00 am – 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: August 25, 2017
Protest Petition Deadline: October 10, 2017
Roll Call Hearing Date: October 23, 2017

License No.: ABRA-105058
Licensee: Library Tavern, LLC
Trade Name: Library Tavern
License Class: Retailer's Class "C" Tavern
Address: 5420 3rd Street, N.W.
Contact: Siyamak Sadeghi: (240) 602-6667

WARD 4 ANC 4D SMD 4D02

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on October 23, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Sidewalk Café Endorsement with 30 seats.

CURRENT HOURS OF OPERATION INSIDE PREMISES

Sunday through Thursday 8 am – 1 am, Friday and Saturday 8 am – 2 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES

Sunday 8 am – 1 am, Monday through Thursday 8 am – 12:30 am, Friday and Saturday 8 am – 1:30 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR THE OUTDOOR SIDEWALK CAFÉ

Sunday through Saturday 8 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: August 25, 2017
Protest Petition Deadline: October 10, 2017
Roll Call Hearing Date: October 23, 2017

License No.: ABRA-087558
Licensee: Hoost, LLC
Trade Name: Nomad Hookah Bar
License Class: Retailer's Class "C" Tavern
Address: 1200 H Street, N.E.
Contact: Anise Amri: (202) 326-6623

WARD 6

ANC 6A

SMD 6A01

Notice is hereby given that this licensee has requested to a substantial change under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on October 23, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF OPERATION

Applicant requests a Change of Hours of Operation and Alcoholic Beverage Sales for Sidewalk Cafe.

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISES

Sunday through Thursday 11:00 am to 2:00 am, Friday and Saturday 11:00 am to 3:00 am

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE

Sunday through Thursday 11:00 am to 11:00 pm, Friday and Saturday 11:00 am to 12:00 am

PROPOSED HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE

Sunday through Thursday 11:00 am to 11:00 pm, Friday and Saturday 11:00 am to 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 25, 2017
Petition Date: October 10, 2017
Hearing Date: October 23, 2017
Protest Hearing: December 13, 2017

License No.: ABRA-106995
Licensee: 1313 Ventures, LLC
Trade Name: TBD
License Class: Retailer's Class "C" Tavern
Address: 1313-1317 14th Street, N.W.
Contact: Ben Sislen: 202-436-4595

WARD 2

ANC 2F

SMD 2F03

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 October 23, 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 **December 13, 2017 at 1:30 p.m.**

NATURE OF OPERATION

New tavern, serving beer, wine and cocktails. Request for Entertainment Endorsement to include dancing and cover charge. Establishment also includes a small stage. Total Occupancy Load is 399 with seating for 200.

HOURS OF OPERATION AND LIVE ENTERTAINMENT

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

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE /CONSUMPTION

Sunday through Saturday 8 am to 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date: July 28, 2017
Protest Petition Deadline: September 11, 2017
Roll Call Hearing Date: September 25, 2017
Protest Hearing Date: November 15, 2017

License No.: ABRA-107060
Licensee: 200 Mass Signature Restaurant, LLC
Trade Name: Union Square Cafe
License Class: Retailer's Class "C" Restaurant
Address: 200 Massachusetts Avenue, N.W.
Contact: Michael Fonseca: (202) 625-7700

WARD 2

ANC 2C

SMD 2C02

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 25, 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 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Restaurant serving contemporary American cuisine. The restaurant will serve seasonal fare in a semi-formal, refined setting, with 175 seats and a Total Occupancy Load of 220, including a Summer Garden with 45 seats.

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

Sunday – Thursday 10:00 am – 1:00 am
Friday – Saturday 10:00 am – 2:00 am

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SUMMER GARDEN

Sunday – Thursday 10:00 am – **11:00pm
Friday – Saturday 10:00 am – **12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: July 28, 2017
Protest Petition Deadline: September 11, 2017
Roll Call Hearing Date: September 25, 2017
Protest Hearing Date: November 15, 2017

License No.: ABRA-107060
Licensee: 200 Mass Signature Restaurant, LLC
Trade Name: Union Square Cafe
License Class: Retailer's Class "C" Restaurant
Address: 200 Massachusetts Avenue, N.W.
Contact: Michael Fonseca: (202) 625-7700

WARD 2

ANC 2C

SMD 2C02

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 25, 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 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Restaurant serving contemporary American cuisine. The restaurant will serve seasonal fare in a semi-formal, refined setting, with 175 seats and a Total Occupancy Load of 220, including a Summer Garden with 45 seats.

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

Sunday – Thursday 10:00 am – 1:00 am

Friday – Saturday 10:00 am – 2:00 am

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SUMMER GARDEN

Sunday – Thursday 10:00 am – **12:00 am

Friday – Saturday 10:00 am – **1:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 25, 2017
Petition Date: October 10, 2017
Hearing Date: October 23, 2017
Protest Hearing: December 13, 2017

License No.: ABRA-107437
Licensee: Union Trust 740 15th St NW, LLC
Trade Name: Union Trust
License Class: Retailer's Class "D" Tavern
Address: 740 15th Street, N.W.
Contact: Arthur A. Tomelden: 202-258-3095

WARD 2

ANC 2B

SMD 2B05

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 October 23, 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 December 13, 2017 at 4:30 p.m.

NATURE OF OPERATION

New tavern, specializing in higher end spirits, draft beer, and possibly light pre-prepared snacks. Recorded music. Total Occupancy Load is 79.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Monday through Thursday 8 am to 2 am, Friday and Saturday 8 am to 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: August 25, 2017
Protest Petition Deadline: October 10, 2017
Roll Call Hearing Date: October 23, 2017

License No.: ABRA-104228
Licensee: 2335, LLC
Trade Name: XS Lounge
License Class: Retailer's Class "C" Tavern
Address: 2335 Bladensburg Road, N.E.
Contact: Andrew Kline, Esq.: (202) 686-7600

WARD 5 ANC 5C SMD 5C04

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on October 23, 2017 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests a Summer Garden Endorsement with 96 seats.

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

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

CURRENT HOURS OF LIVE ENTERTAINMENT ON PREMISE

Sunday through Thursday 6 pm - 2 am, Friday and Saturday 6 pm - 3 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR THE OUTDOOR SUMMER GARDEN

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

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, OCTOBER 11, 2017
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

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

TIME: 9:30 A.M.

WARD THREE

19571
ANC 3D **Appeal of Carl and Hallie Smith**, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on May 5, 2017 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue building permit B1708004, extending retaining wall permit RW1600005, to construct a new retaining wall in the R-1-A Zone at premises 5019 Lowell Street N.W. (Square 1436, Lot 46).

WARD EIGHT

19572
ANC 8A **Application of SIM Development, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the non-conforming structure requirements of Subtitle C § 202, and the parking requirements of Subtitle C § 701.5, to add two stories containing sixteen units to an existing two-story, nine-unit mixed use building in the MU-4 at premises 1916 15th Street S.E. (Square 5766, Lot 845).

WARD SIX

19583
ANC 6E **Application of Jemal's East 451 LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle I § 203.3 from the front build-to-line requirements of Subtitle I § 203.1, under Subtitle I § 205.5 from the rear yard requirements of Subtitle I § 205, and under Subtitle C § 1500.3(c) from the penthouse regulations of Subtitle C § 1500 and pursuant to Subtitle X, Chapter 10, for area variances from the loading requirements Subtitle C § 901.1, and from the court requirements of Subtitle I § 207.1 to construct a 13-story hotel in the D-4-R zone at premises 601 K Street N.W. (Square 451, Lot 23, 24, 25, 823, 822).

WARD SIX

19584
ANC 6D **Application of Christopher and Katelyn Kimber**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5021 from the rear yard requirements of Subtitle E § 306.1, and pursuant to Subtitle X, Chapter 10, for a variance from the lot occupancy requirements of Subtitle E § 304.1, to construct a rear addition to an existing one-family dwelling in the RF-1 Zone at premises 1215 Carrollsburg Place S.W. (Square 651, Lot 69).

BZA PUBLIC HEARING NOTICE

OCTOBER 11, 2017

PAGE NO. 2

WARD EIGHT

19585 **Application of Leonard and Sheryl Bennett**, pursuant to 11 DCMR Subtitle X, ANC 8A Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.3, to construct a three-story rear addition to an existing one-family dwelling in the R-3 Zone at premises 1644 U Street S.E. (Square 5765, Lot 855).

WARD SIX

19586 **Application of GH Group, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, ANC 6D for a special exception under Subtitle I § 205.5 from the rear yard requirements of Subtitle I § 205.1, to construct a twelve-story mixed-use building in the D-5 Zone at premises 100 K Street S.E. (Square 738, Lot 26).

WARD ONE

19594 **Application of 1469 Florida LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, ANC 1B for a special exception under Subtitle F § 5201 from the rear yard requirements of Subtitle F § 305.1, to construct an eight-unit rear addition to an existing three-unit apartment house in the RA-2 Zone at premises 1469 Florida Avenue N.W. (Square 2660, Lot 864).

PLEASE NOTE:

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

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

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

BZA PUBLIC HEARING NOTICE
OCTOBER 11, 2017
PAGE NO. 3

and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

Do you need assistance to participate?

Amharic

ለሙከራ ሰርዳታ 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 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。这些是免费提供的服务。

French

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

Korean

참여하시는데 도움이 필요하세요?

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

회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로

이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

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

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

BZA PUBLIC HEARING NOTICE
OCTOBER 11, 2017
PAGE NO. 4

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**NOTICE OF FINAL RULEMAKING****AND****Z.C. ORDER NO. 14-11E****Z.C. Case No. 14-11E****(Text Amendments – 11 DCMR)****(Technical Corrections to Z.C. Order 14-11B (Rear Yard Extensions))****July 24, 2017**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938, as amended (52 Stat. 597; D.C. Official Code § 6-641.01 (2012 Rep1.)) and the Consent Calendar provisions of 11 DCMR § 703, hereby gives notice of its adoption of amendments to: Subtitle D (Residential House (R) Zones); Subtitle E (Residential Flat (RF) Zones); and Subtitle U (Use Permissions) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR) that make technical corrections to certain amendments adopted in Z.C. Order No. 14-11B.

The amendments clarify the Commission’s intent that the matter-of-right rear yard additions permitted under Z.C. Case No. 14-11B (Z.C. Case No. 14-11B) are meant to be measured from “any” of the adjoining or adjacent lots. The Office of Planning (OP) had apprised the Commission that the use of phrases “an adjoining property” and “an adjacent property” throughout the adopted text has resulted in assertions by building permit applicants for projects adjoining buildings on two adjacent lots that either lot can be used to measure a proposed rear addition (Applicants’ Interpretation). This interpretation is contrary to the Commission’s intent when it approved Z.C. Case No. 14-11B. The amendments, therefore, replace the phrases “an adjoining property” and “an adjacent property” with the phrase “any adjacent property” in the applicable regulations. In addition, the words “further” and “furthest” are replaced by “farther” and “farthest” and the word “adjoining” is added to the phrase “principal dwelling in 11-U DCMR §§ 301.2 and 320.2 to conform with the terminology used in the Subtitles D and E provisions being amended.

A Notice of Proposed Rulemaking was published in the June 23, 2017 edition of the *D.C. Register* at 64 DCR 5850. Through a report dated July 21, 2017, Advisory Neighborhood Commission (ANC) 6C advised the Commission that on July 12, 2017, at a duly noticed, regularly scheduled monthly meeting, with a quorum of six out of six commissioners and the public present, the ANC voted 6-0 to express its opposition to the amendments. (Exhibit 5.) The ANC believed the amendments were unnecessary because the Applicants’ Interpretation “...ignores the plain English meaning of the text.” The ANC was also concerned that the Commission’s correction of the text could be viewed as acknowledging the legitimacy of the Applicants’ Interpretation. This in turn could lead to DCRA approving permits based upon that interpretation until the effective date of these amendments. Lastly, the ANC’s report indicates that if the Commission nevertheless adopts the amendments, the order giving notice of its adoption should “...make clear that these changes—because they do not substantively alter the meaning of the original rulemaking—are effective as of the same date as Order 14-11B itself.”

The Commission agrees that the Applicants' Interpretation is baseless, but understands why DCRA believes the clarification would be useful to it by putting an end to the controversy. The Commission disagrees with the ANC that adopting the amendment lends credence to the Applicants' Interpretation such that DCRA will be compelled to follow it until amendments become effective. When the Commission makes a technical correction to a rule, it is not confessing error. A technical correction by its terms is not substantive, which is why no hearing need be held. OP requested the amendments because although DCRA believed that the Applicant's Interpretation was erroneous, adopting clarifying language would assist it to end the controversy. It is implausible that DCRA would respond to the Commission's vote to adopt the requested rule by then reversing itself and accepting the Applicants' Interpretation.

As to the ANC's recommendation that the Commission make the amendments retroactively effective to the effective date of Z.C. Order No. 14-11B, the Commission has no such authority. The term "rule" is defined by the District of Columbia Administrative Procedure Act to mean "the whole or any part of any Mayor's or agency's statement of general or particular applicability *and future effect*." (D.C. Official Code § 2-502(6)(A) (emphasis added).) Therefore, an amendment cannot be made to apply retroactively, and, in this instance, there is no reason why it should, since all permits pending as of the date these rules become effective must be processed in accordance with the revised text and permits issued prior to the effective date are vested. (11-X DCMR § 301.4.)

The amendments shall become effective upon publication of this notice in the *D.C. Register*.

Title 11-D DCMR, RESIDENTIAL HOUSE (R) ZONES, is amended as follows:

Chapter 3, RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3, is amended as follows:

Subsections 306.3 and 306.4 of § 306, REAR YARD, are amended to read as follows:

306.3 Notwithstanding Subtitle D §§ 306.1 and 306.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property.

306.4 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 7, NAVAL OBSERVATORY RESIDENTIAL HOUSE ZONES – R-12 AND R-13, is amended as follows:

Subsections 706.3 and 706.4 of § 706, REAR YARD, are amended to read as follows:

- 706.3 Notwithstanding Subtitle D §§ 706.1 and 706.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property.
- 706.4 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 10, FOGGY BOTTOM RESIDENTIAL HOUSE ZONE – R-17, is amended as follows:

Subsections 1006.2 and 1006.3 of § 1006, REAR YARD, are amended to read as follows:

- 1006.2 Notwithstanding Subtitle D § 1006.1, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property.
- 1006.3 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, is amended as follows:

Subsections 1206.3 and 1206.4 of § 1206, REAR YARD, are amended to read as follows:

- 1206.3 Notwithstanding Subtitle D § 1206.2, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property.
- 1206.4 In the R-20 zone, a rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6.

Title 11-E DCMR, RESIDENTIAL FLAT (RF) ZONES, is amended as follows:

Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), is amended as follows:

Subsections 205.4 and 205.5 of § 205, REAR YARD, are amended to read as follows:

205.4 Notwithstanding §§ 205.1 through 205.3, a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property.

205.5 A rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6.

Title 11-U DCMR, USE PERMISSIONS, is amended as follows:

Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, is amended as follows:

Paragraph (d) of § 301.2 of § 301, MATTER-OF-RIGHT USES (RF), are amended to read as follows:

301.2 Conversion of an existing non-residential building or structure to an apartment house shall be permitted as a matter of right in an RF-1, RF-2, or RF-3 zone subject to the following conditions:

...¹

(d) An addition shall not extend farther than ten feet (10 ft.) past the farthest rear wall of any adjoining principal residential building on any adjacent property;

...

Paragraph (e) of § 320.2 of § 320, SPECIAL EXCEPTION USES (RF), is amended to read as follows:

320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:

¹ The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

...

- (e) An addition shall not extend farther than ten feet (10 ft.) past the farthest rear wall of any adjoining principal residential building on any adjacent property;

...

On May, 22, 2017, upon the motion of Commissioner Turnbull, as seconded by Commissioner Shapiro, the Zoning Commission **APPROVED IMMEDIATE PUBLICATION** of the proposed rulemaking 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 July 24, 2017, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the petition 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 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 25, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 201(a) of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-902.01(a) (2014 Repl.)) and Mayor's Order 98-49, dated April 15, 1998, hereby gives notice of the intent to take rulemaking action to adopt the following amendments to Chapter 12 (Controlled Substances Act Rules) of Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty days after publication of this notice in the *D.C. Register*.

The proposed rule will update the list of Schedule I drugs by adding a new class of drugs called synthetic opioid agonists or antagonists and amending the Schedule V drugs by removing propylhexedrine from the list.

Chapter 12, CONTROLLED SUBSTANCES ACT RULES, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended as follows:

Section 1201, SCHEDULE I ENUMERATED, Subsection 1201.1, is amended by adding a new paragraph (g) to read as follows:

- (g) Synthetic compounds:
 - (1) MT-45 (1-Cyclohexyl-4-(1,2-diphenylethyl) piperazine;
 - (2) U-47700 (3,4-Dichloro-*N*-[(1*R*,2*R*)-2-(dimethylamino) cyclohexyl]-*N*-methylbenzamide; and
 - (3) W-1 4-chloro-*N*-[(2*Z*)-1-[2-(4-nitrophenyl)ethyl]piperidin-2-ylidene]benzene-1-sulfonamide.

Section 1205, SCHEDULE V ENUMERATED, Subsection 1205.1(b), is amended to read as follows:

- (b) [REPEALED].

Comments on the proposed rules should be sent in writing to the Department of Health, Office of the General Counsel, 6th Floor, 899 North Capitol Street, N.E., Washington, D.C. 20002, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, except holidays, between the hours of 8:15 A.M. and 4:45 P.M. at the same address. Questions concerning the rulemaking should be directed to Angli Black, Administrative Assistant, at Angli.Black@dc.gov or (202) 442-5977.

DEPARTMENT OF HEALTH

NOTICE OF FOURTH PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 2 of the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 7-731(a)(10) (2012 Repl.), and §§ 47-2809.01 *et seq.* (2015 Repl.)); and Mayor’s Order 2007-63(#2), dated March 8, 2007, hereby gives notice of the intent to adopt new body art regulations in Title 25 (Food Operations and Community Hygiene Facilities), Subtitle G (Body Art Establishment Regulations) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this proposed rulemaking is to provide regulatory oversight of body art pursuant to the recently enacted “Regulation of Body Artists and Body Art Establishments Act of 2012”, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code §§ 7-731(a)(10) (2012 Repl.), and §§ 47-2809.01 *et seq.* (2015 Repl.)). This legislation provides the Department of Health with exclusive regulatory oversight of body art establishments in Title 25, Subtitle G of the District of Columbia Municipal Regulations (DCMR), and will enable the District of Columbia to protect the health and safety of patrons in body art establishments.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on September 6, 2013 at 60 DCR 12675 and a Second Proposed Rulemaking was published July 25, 2014 at 61 DCR 07425. Based on public comments to the Notice of Third Proposed Rulemaking, published in the *D.C. Register* on October 16, 2015 at 62 DCR 013466, the Department of Health made substantive changes to the Notice of Fourth Proposed Rulemaking by: removing the registration requirement for suppliers and manufacturers, limiting the use of red biohazard waste bags, narrowing the definition for the term “Instruments”, and making minor revisions for better clarity.

The Director also gives notice of the intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The proposed rules shall not become effective until a Notice of Final Rulemaking is published in the *D.C. Register*.

Subtitle G, BODY ART ESTABLISHMENT REGULATIONS, of Title 25 DCMR, FOOD OPERATIONS AND COMMUNITY HYGIENE FACILITIES, is added to read as follows:

SUBTITLE G BODY ART ESTABLISHMENT REGULATIONS

- CHAPTER 1 TITLE, INTENT, SCOPE**
- 100 Title — Body Art Establishment Regulations**
- 101 Intent — Safety**
- 102 Compliance with Federal and District Laws**

**CHAPTER 2 SUPERVISION AND TRAINING, AND PRE- AND POST-
OPERATING PROCEDURES**

- 200 Operators Responsibilities — Qualifications and Training***
- 201 Pre-Operating Procedures — Age Restrictions Signs and Posting***
- 202 Pre-Operating Procedures — Health Risk Statements, Content, and Posting***
- 203 Pre-Operating Procedures — Jewelry Selection, and Equipment Setup***
- 204 Post-Operating Procedures — Aftercare Instructions, Content***

**CHAPTER 3 OPERATING PROCEDURES TO PREVENT CROSS-
CONTAMINATION, AND RECORDKEEPING REQUIREMENTS**

- 300 Preventing Contamination — Distilled Water, Inks, Pigments, and Pre-Sterilized, Single-Use Disposable Items**
- 301 Preventing Contamination — Pre-Sterilized, Single-Use Disposable Sharps**
- 302 Preventing Cross-Contamination from Body Artists — Work Areas, Construction and Design, and Restrictions**
- 303 Preventing Cross-Contamination from Customers**
- 304 Preventing Contamination — Reusable Instruments and Equipment, Design, Location, and Maintenance Log**
- 305 Preventing Contamination — Marking Instruments and Stencils***
- 306 Preventing Contamination — Pre-Sterilized, Single-Use Jewelry***
- 307 Preventing Contamination — BioHazard and Infectious Waste, Handling and Disposal***
- 308 Preventing Contamination — Infection Prevention and Exposure Control Plan**
- 309 Preventing Contamination — Reusable Instruments and Sterilization Procedures***
- 310 Maintenance Records — Sterilizers and Commercial Biological Indicator Monitoring System, and Retention***
- 311 Maintenance Records — Sterilizers***
- 312 Records of Acquisitions — Disposables, Single-Use, Pre-Sterilized Instruments, and Record Retention***
- 313 Recordkeeping Requirements — Confidential, Personnel Files***
- 314 Recordkeeping Requirements — Required Disclosures***
- 315 Recordkeeping Requirements — Retention**
- 316 Recordkeeping Requirements — Reports of Infection or Allergic Reactions**

CHAPTER 4 PHYSICAL STRUCTURE, OPERATING SYSTEM AND DESIGN

- 400 Physical Structure — Building Materials and Workmanship**
- 401 Physical Structure — Floor and Wall Junctures, Covered, and Enclosed or Sealed**
- 402 Physical Structure — Floors, Walls, Ceilings, and Utility Lines**
- 403 Operating Systems and Design — Plumbing System, Design, Water Capacity, Quantity, and Availability***
- 404 Operating Systems and Design — Handwashing Sinks, Water Temperature, and Flow**
- 405 Operating Systems and Design — Toilets and Urinals, Number, Capacity, Convenience and Accessibility, Enclosures, and Prohibition***
- 406 Operating Systems and Design — Electrical, Lighting***
- 407 Operating Systems and Design — Electrical, Smoke Alarms**

408 Operating Systems and Design — Heating and Ventilation Systems

CHAPTER 5 FACILITY MAINTENANCE

- 500 Facility Maintenance — Toilets and Urinals, Maintenance***
- 501 Facility Maintenance — Handwashing Sinks, Cleanser Availability, Hand Drying Provision, and Handwashing Signage**
- 502 Facility Maintenance — Handwashing Sinks, Disposable Towels, and Waste Receptacles**
- 503 Facility Maintenance — Floor Covering, Restrictions, Installation, and Cleanability**
- 504 Facility Maintenance — Floors, Public Areas**
- 505 Facility Maintenance — Cleanability, Sanitization and Maintenance of Plumbing Fixtures**
- 506 Facility Maintenance — Refuse, Removal Frequency**
- 507 Facility Maintenance — Unnecessary Items, Litter, and Controlling and Removing Pests**
- 508 Facility Maintenance — Professional Service Contracts**
- 509 Facility Maintenance — Prohibiting Animals***

CHAPTER 6 APPLICATION AND LICENSING REQUIREMENTS

- 600 License and Certificate of Occupancy Requirements***
- 601 Application Procedure — Period and Form of Submission, Processing**
- 602 Application Procedure — Contents of the Application Packet**
- 603 Denial of Application for License – Notice**
- 604 Issuance of License — New, Converted or Remodeled, Existing Operations, and Change of Ownership or Location**
- 605 Issuance of License — Required Plan Reviews and Approvals**
- 606 Issuance of License — Inspections - Preoperational, Conversions, and Renovations***
- 607 Issuance of License — Notice of Opening, Discontinuance of Operation, and Postings**
- 608 Issuance of License — Not Transferable**
- 609 Issuance of License — Duplicates**
- 610 Conditions of License Retention — Responsibilities of the Operator**

CHAPTER 7 INSPECTIONS, REPORTS, VIOLATIONS, CORRECTIONS, AND PROHIBITED CONDUCT AND ACTIVITIES

- 700 Access & Inspection Frequency — Department Right of Entry, Denial - Misdemeanor***
- 701 Report of Findings — Documenting Information and Observations**
- 702 Report of Findings — Specifying Time Frame for Corrections**
- 703 Report of Findings — Issuing Report and Obtaining Acknowledgement of Receipt**
- 704 Report of Findings — Refusal to Sign Acknowledgment**
- 705 Report of Findings — Public Information, Records Retention**
- 706 Imminent Health Hazard — Ceasing Operations and Emergency Reporting to the Department of Health***
- 707 Imminent Health Hazard — Resumption of Operations**
- 708 Prohibited Conduct — Advertisements and Activities**
- 709 Critical Violations — Time Frame for Correction ***

- 710 Critical Violation — Verification and Documentation of Correction**
- 711 NonCritical Violations — Time Frame for Correction**
- 712 Request for Reinspection**

CHAPTER 8 ADMINISTRATIVE ENFORCEMENT ACTIONS AND ORDERS

- 800 Administrative Review — Conditions Warranting Remedies**
- 801 Administrative Review — Examining, Sampling, and Testing of Equipment, Water, Inks, Pigments, Reusable Instruments, Disposable Items, Jewelry, Sharps, Marking Instruments and Stencils, and Furnishings**
- 802 Administrative Review — Condemnation Order, Justifying Conditions and Removal of Equipment, Water, Inks, Pigments, Reusable Instruments, Disposable items, Jewelry, Sharps, Marking Instruments and Stencils, and Furnishings**
- 803 Administrative Review — Condemnation Order, Contents**
- 804 Administrative Review — Condemnation Order, Official Tagging or Marking of Equipment, Water, Inks, Pigments, Reusable Instruments, Disposable Items, Jewelry, Sharps, Marking Instruments and Stencil, and Furnishings**
- 805 Administrative Review — Condemnation Order, Removing the Official Tag or Marking**
- 806 Administrative Review — Condemnation Order, Warning or Informal Conference Not Required**
- 807 Administrative Review — Summary Suspension of License, Conditions Warranting Action**
- 808 Administrative Review — Contents of Summary Suspension Notice**
- 809 Administrative Review — Summary Suspension, Warning or Informal Conference Not Required**
- 810 Administrative Review — Summary Suspension, Time Frame for Reinspection**
- 811 Administrative Review — Summary Suspension, Term of Suspension, Reinstatement**
- 812 Administrative Remedies — Revocation or Suspension of License, or Denial of Application or Renewal of License**

CHAPTER 9 SERVICE OF PROCESS AND INFORMAL CONFERENCE

- 900 Service of Process — Notice, Proper Methods**
- 901 Service of Process — Restriction of Exclusion, Condemnation, or Summary Suspension Orders**
- 902 Service of Process — Notice, Effectiveness**
- 903 Service of Process — Proof of Proper Service**

CHAPTER 10 ADMINISTRATIVE AND CRIMINAL SANCTIONS, AND JUDICIAL REVIEW

- 1000 Civil Sanctions — Notice of Infractions**
- 1001 Criminal Sanctions — Criminal Fines, Imprisonment**
- 1002 Judicial Review — Appeals**

CHAPTER 99 DEFINITIONS

- 9900 General Provisions**
- 9901 Definitions**

CHAPTER 1 TITLE, INTENT, SCOPE

100 TITLE — Body Art Establishment Regulations

100.1 These provisions shall be known as the Body Art Establishment Regulations hereinafter referred to as “these regulations.”

101 INTENT — SAFETY

101.1 The purpose of these regulations is to protect the public’s health by keeping the District’s body art industry safe and sanitary.

101.2 These regulations:

- (a) Establish minimum standards for the design, construction, operation, and maintenance of body art establishments;
- (b) Establish minimum operational standards for sterilization, sanitation, cleaning and safety of the establishment, equipment, supplies, and work surface areas;
- (c) Set standards for maintenance and replacement of equipment and supplies;
- (d) Set standards for hygienic operations for personnel including vaccinations;
- (e) Establish recordkeeping and reporting requirements;
- (f) Establish prohibited conduct within body art establishments;
- (g) Establish licensing and registration requirements, and associated fee schedules;
- (h) Provide for enforcement through inspections, suspension and revocation of licenses and registrations, including the examination, embargo, or condemnation of unsanitary or unsafe jewelry, biohazard sharps containers, disposable and non-disposable equipment, single-use products, wipes, gloves, towels, ointments, inks, needles, and disinfectants;
- (i) Establish fines and penalties; and
- (j) Establish definitions for this subtitle.

101.3 In accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-193; D.C. Official Code § 47-2853.76a. (2015 Repl.)), these regulations do not apply to:

- (a) A licensed physician or surgeon performing body art services for medical reasons;
- (b) A licensed funeral director performing body-piercing or tattooing services as required by that profession;
- (c) Laser tattoo removal procedures licensed by the District of Columbia Board of Medicine; or
- (d) Skin treatment procedures such as chemical peels or microdermabrasion licensed by the District of Columbia Board of Medicine.

101.4 Certain provisions of these regulations are identified as critical. Critical provisions are those provisions where noncompliance may result in injuries, spread of communicable diseases, or environmental health hazards. A critical item is denoted with an asterisk (*).

101.5 Certain provisions of these regulations are identified as noncritical. Noncritical provisions are those provisions where noncompliance is less likely to spread communicable diseases or create environmental health hazards. A section that is denoted in these regulations without an asterisk (*) after the head note is a noncritical item. However, a critical item may have a provision within it that is designated as a noncritical item with a superscripted letter “N” following the provision.

102 COMPLIANCE WITH FEDERAL AND DISTRICT LAWS

102.1 Body art establishments shall meet the following requirements:

- (a) 29 CFR Part 1910 (Occupational Safety and Health Standard, Subpart Z – Toxic and Hazardous Substances);
- (b) 29 CFR § 1910.1030(d) – Bloodborne Pathogen Standard;
- (c) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01 (2015 Repl.));
- (d) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2853.76c, 47-2853.76d, and 47-2853.76e (2015 Repl.));
- (e) The Board of Barber and Cosmetology as specified in Chapter 37 of Title 17 of the District of Columbia Municipal Regulations, as amended; and

- (f) The District of Columbia’s Construction Codes Supplements of 2013, Title 12 of the District of Columbia Municipal Regulations, (61 DCR 13094; March 28, 2014 – Part 2), which consist of the following International Code Council (ICC):
 - (1) International Building Code (2012 edition);
 - (2) International Mechanical Code (2012 edition);
 - (3) International Plumbing Code (2012 edition);
 - (4) International Fire Code (2012 edition);
 - (5) International Existing Building Code (2012 edition); and
 - (6) The National Fire Protection Association (NFPA 70) National Electrical Code (2014 edition).

102.2 In enforcing the provisions of these regulations, the Department shall regulate certain aspects of a body art establishment’s physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings in use before the effective date of these regulations based on the following considerations:

- (a) Whether the establishment’s physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings used in a body art establishment, are in good repair or capable of being maintained in a hygienic condition in compliance with these regulations; or
- (b) The existence of a documented agreement with the operator that the physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings used in a body art establishment will be replaced by an agreed upon date.

CHAPTER 2 SUPERVISION AND TRAINING, AND PRE- AND POST-OPERATING PROCEDURES

200 OPERATORS’ RESPONSIBILITIES – QUALIFICATIONS AND TRAINING*

200.1 Operators shall ensure that prior to working in their establishments, body artists are licensed in accordance with:

- (a) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code §§ 47-2853.76b, 76c, 47-2853.7, 47-2853.6d, and 47-2853.76e (2015 Repl.)); and
- (b) The Board of Barber and Cosmetology as specified in Chapter 37 of Title 17 of the District of Columbia Municipal Regulations, as amended.

200.2 Operators shall ensure managers are on duty and on the premises during all hours of operations at each body art establishment.

200.3 Operators shall ensure body artists are on the premises during all hours of operations at each body art establishment.

200.4 Operators shall ensure body artists prior to working in a body art establishment provide proof of the following:

- (a) Proof that the body artist is eighteen (18) years of age or older. Proof of age shall be satisfied with a valid driver's license, school-issued identification, or other government issued identification containing the date of birth and a photograph of the individual;
- (b) Record of current hepatitis B vaccination, including applicable boosters, unless the body artist can demonstrate hepatitis B immunity or compliance with current federal OSHA hepatitis B vaccination declination form; and
- (c) Training in Biohazard issues and handling in accordance with Occupational Safety and Health Administration standards in accordance with 29 CFR – Part 1910 – Occupational Safety and Health Standard, Subpart Z – Toxic and Hazardous Substances, including universal precautions in accordance with 29 CFR § 1910.1030(d) – Bloodborne pathogens.

200.5 Operators shall ensure that only single-use disposable sharps, pigments, gloves, and cleansing products shall be used in connection with body art procedures in body art establishments in accordance with these regulations.

201 PRE-OPERATING PROCEDURES – AGE RESTRICTION SIGNS AND POSTING*

201.1 Operators shall ensure its customers are eighteen (18) years of age in order to receive a body art procedure in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-193; D.C. Official Code § 47-2853.76e(b) (2015 Repl.)).

201.2 Operators shall ensure that before piercing a minor's ears with an ear piercing gun, the minor shall be accompanied by a parent or legal guardian, as specified in Subsection 201.3(b) and the parent or legal guardian shall have submitted a signed

“Parental/Legal Guardian Authorization Form” to the establishment, as specified in Subsection 201.3(b).

201.3 Operators shall conspicuously post an “Age Restriction Sign” at or near the reception area with the following text:

<p>(a) INDIVIDUALS LESS THAN 18 YEARS OF AGE ARE <u>PROHIBITED</u> FROM OBTAINING <u>ANY</u> BODY ART PROCEDURE, <u>EXCEPT EAR PIERCING PROCEDURES USING A MECHANIZED, PRE-STERILIZED SINGLE-USE STUD AND CLASP EAR PIERCING GUN;</u> AND</p> <p>(b) EAR PIERCING IDENTIFIED IN SECTION “(a)” IS AUTHORIZED ONLY WITH THE WRITTEN CONSENT OF A PARENT OR LEGAL GUARDIAN SUBMITTED TO THE ESTABLISHMENT AND IF THE MINOR IS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN AT THE TIME OF THE EAR PIERCING.</p>
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202 PRE-OPERATING PROCEDURES — HEALTH RISK STATEMENTS, CONTENT, AND POSTING*

202.1 Operators shall ensure customers are reminded to consult with their physician regarding any medical condition which could be exacerbated by body art procedures.

202.2 Operators shall conspicuously post a disclosure sign in the reception area that is legible, clearly visible, not obstructed by any item for viewing by customers.

202.3 The lettering on the sign shall be at least five millimeters (5 mm) high for the phrase “REQUIRED DISCLOSURE”. All capital letters shall be at least five millimeters (5 mm) high and all lower case letters shall be at least three millimeters (3 mm) high. The disclosure sign shall read as follows:

REQUIRED DISCLOSURE
<p>The United States Food and Drug Administration has not approved any pigment color additive for injectable use as tattoo ink. There may be a risk of carcinogenic decomposition associated with certain pigments when the pigments are subsequently exposed to concentrated ultra-violet light or laser irradiation.</p>

203 PRE-OPERATING PROCEDURES — JEWELRY SELECTION, AND EQUIPMENT SETUP*

203.1 All licensed operators shall ensure customers and body artists select together the appropriate size and quality of jewelry prior to beginning the body-piercing procedure. Appropriate jewelry shall be made of:

- (a) ASTM F138, ISO 5832-1, ISO 10993-6, ISO 10993-10 and/or 10993-11, and stainless steel;
- (b) Solid 14k through 18k yellow or white gold;
- (c) Niobium;
- (d) ASTM F136 titanium or ASTM F67 titanium;
- (e) Platinum; or
- (f) Other materials found to be equally biocompatible.

203.2 All jewelry shall be free of nicks, scratches, or irregular surfaces and is properly sterilized prior to use.

203.3 All equipment and supplies, including but not limited to distilled water, inks, pigments, and all packages containing sterile instruments, pre-sterilized, single-use jewelry, and pre-sterilized, single-use disposable items shall be opened in front of the customer.

204 POST-OPERATING PROCEDURES — AFTERCARE INSTRUCTIONS, CONTENT *

204.1 Operators shall ensure after each body art procedure, the body artist provides the customer with “Aftercare Instructions”, which include the following information:

- (a) The name of the body artist who performed the procedure; and
- (b) The name, address, and telephone of the establishment where the procedure was performed.

204.2 Written “Aftercare Instructions” for tattoo procedures shall provide:

- (a) Information on the care of the procedure site;
- (b) Restrictions on physical activities such as bathing, recreational water activities, gardening, or contact with animals; and duration of the restrictions;

- (c) The need to properly cleanse the tattooed area;
- (d) The use of sterile bandages(s) or other sterile dressings(s) when necessary; and
- (e) Instructions for the customer to consult the body artist or health care practitioner at the first sign of infection or an allergic reaction, and to report a diagnosed infection, allergic reaction, or adverse reaction resulting from the application of the tattoo to the body artist and to the Department at (202) 724-8800.

204.3 Written “Aftercare Instructions” for body-piercing procedures shall state:

- (a) Proper cleansing techniques for the pierced area;
- (b) The need to minimize physical activities as specified in Subsection 204.2(b) for at least six (6) weeks;
- (c) Use of sterile bandages(s) or other sterile dressings(s) when necessary;
- (d) The name of the body artist, and the name, address, and telephone of the establishment where the procedure was performed; and
- (e) The instructions for the customer to consult the body artist or a health care practitioner at the first sign of infection or an allergic reaction, and to report any diagnosed infection, allergic reaction, or adverse reaction resulting from the body-piercing to the body artist and to the Department at (202) 724-8800.

**CHAPTER 3 OPERATING PROCEDURES TO PREVENT
CROSS-CONTAMINATION, AND
RECORDKEEPING REQUIREMENTS**

300 PREVENTING CONTAMINATION — DISTILLED WATER, INKS, PIGMENTS, AND PRE-STERILIZED, SINGLE-USE DISPOSABLE ITEMS

300.1 Operators shall ensure only distilled water is used to mix and dilute inks, or pigments and shall not use tap water.

300.2 Operators shall ensure tattoo artists use inks, and pigments that are specifically manufactured for performing body art procedures in accordance with manufacturer’s instructions.

- 300.3 Operators shall ensure tattoo artists transfer the quantity of ink and pigment to be used in the body art procedure from the ink and pigment bottle and place it into a single-use paper or plastic cup or cap immediately before a tattoo is applied and discarded immediately upon completion of a tattoo.
- 300.4 Single-use, disposable items, including but not limited to cups, cotton swabs, corks, rubber bands, and toothpicks shall be maintained in clean condition and dispensed in a manner to prevent contamination to unused single-use disposable items.
- 300.5 Single-use plastic covers shall be used to cover spray bottles or other reusable accessories and discarded immediately upon completion of the procedure.
- 300.6 Inks, pigments, soaps, and other products in multiple-use containers shall be dispensed in a manner that prevents contamination of the storage container and the remaining unused portion through the use of a single-use receptacle.
- 300.7 If a tray is used for inks or pigments, it shall be decontaminated after use on each customer.

301 PREVENTING CONTAMINATION — PRE-STERILIZED, SINGLE- USE DISPOSABLE SHARPS

- 301.1 Operators shall ensure tattoo artists use only pre-sterilized single needles and scalpel blades. For equipment that is not pre-sterilized, operators shall ensure body artists use single-use disposable equipment that is discarded immediately into a medical-grade sharps container upon completion of a tattoo.
- 301.2 Operators shall ensure body artists shall use single-use disposable needles and equipment that is specifically manufactured for performing body art procedures in accordance with manufacturer's instructions.

302 PREVENTING CROSS-CONTAMINATION FROM BODY ARTISTS — WORK AREAS, CONSTRUCTION AND DESIGN, AND RESTRICTIONS

- 302.1 Operators shall ensure body artists encountering a biohazard or other health hazards report it immediately to the manager.
- 302.2 Operators shall ensure body artists use only single-use jewelry on an individual and the single-use jewelry shall not be reused on another customer.
- 302.3 All body artists shall wear single-use aprons or lap cloths and single-use gloves which shall be disposed of after completing a procedure on a customer.

- 302.4 For equipment that is not disposable, operators shall ensure body artists use reusable equipment, such as surgical steel forceps, that is sterilized as specified in Subsections 304.13 and 304.14.
- 302.5 All operators shall ensure body artists:
- (a) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty;
 - (b) Wash their hands, wrists and arms to the elbow thoroughly using hot or tempered water with a liquid germicidal soap before and after tattooing or body-piercing and as often as necessary to remove contaminants;
 - (c) Dry hands thoroughly with single use disposable towel;
 - (d) Don new medical-grade latex, vinyl or hypoallergenic single-use disposable gloves on both hands when touching, decontaminating, or handling a surface, object, instrument, or jewelry that is soiled or that is potentially soiled with human blood; and
 - (e) Don new medical-grade latex, vinyl or hypoallergenic single-use disposable gloves while assembling tattooing and body-piercing instruments and during tattooing and body-piercing procedures, as specified in Chapter 3.
- 302.6 When a body art session is interrupted, or immediately after gloves are torn or perforated, operators shall ensure the tattoo artist or body-piercer:
- (a) Remove and discard the gloves;
 - (b) Wash and dry their hands as specified in Subsections 302.5(b) and (c); and
 - (c) Don a new pair of gloves, as specified in Subsection 302.5(d).
- 302.7 Operators shall ensure body artists use the following universal precautions for all body art procedures:
- (a) Don new gloves for routine disinfecting procedures;
 - (b) Move in such a manner as to avoid re-contamination of work surfaces;
 - (c) Discard and remove disposable items from work areas after completing a body art procedure on each customer;
 - (d) Disinfect work surface areas and all equipment that may have been contaminated during the body art procedure;

- (e) Dispose of single-use apron and/or lap cloths after use on each customer;
- (f) Remove and discard gloves and wash hands;
- (g) Discard materials contaminated with bodily fluids immediately, or in accordance with Subsection 307.2;
- (h) Disinfect all reusable equipment made of non-porous material after each use. Non-spray wipes for surfaces and liquids for soaking jewelry are preferred over spray disinfectants which may disperse pathogens into the air;
- (i) Apply iodine, bacitracin and other antiseptics with single-use applicators. Applicators that have touched a customer shall not be used to retrieve antiseptics, iodine, etc. from any containers;
- (j) Clean contaminated instruments (such as forceps or pliers) of bacitracin or other antibiotic solutions, blood and other particles with an appropriate soap or disinfectant cleaner and hot water, followed by an ultrasonic cleaner and steam autoclave; and
- (k) Use sterilization equipment, as specified in Subsections 304.13 through 304.15, and 311.

- 302.8 Workstations in a body art establishment shall be constructed and maintained to ensure customer privacy by using curtains, folding screens, or individual rooms, and shall not be used as a walk-thru to gain access to other rooms or exits.
- 302.9 All workstations shall be constructed and equipped with floors, chairs, and table tops that are non-porous, smooth and easily cleanable and maintained in a clean and sanitary manner.
- 302.10 Carpet is not permitted as a floor covering in a work area where tattooing or body piercing is conducted.
- 302.11 All workstations shall contain a medical-grade sharps container.
- 302.12 Operators shall ensure each work station for tattoo or body-piercing procedure provides a body artist with a minimum of forty-five square feet (45 sq. ft.) of floor space.
- 302.13 Each body art establishment shall have a separate cleaning area for decontamination and sterilization procedures, in which the placement of a sterilizer is at least thirty-six (36) inches away from the placement of the required ultrasonic cleaning unit and any sink.

302.14 All solid surfaces and objects in the procedure area and the decontamination and sterilization area that have come in contact with the customer or the materials used in performing the tattoo or body-piercing, including but not limited to chairs, armrests, tables, countertops, and trays, shall be immediately decontaminated after each use and then disinfected by application of a disinfectant, used according to manufacturer's instructions.

302.15 The surfaces and objects in the procedure area shall be disinfected again if an activity that poses a potential contamination occurred in the area after the area was disinfected.

303 PREVENTING CROSS-CONTAMINATION FROM CUSTOMERS

303.1 Operators shall ensure that any skin or mucosa surface to receive a body art procedure is free of a rash or any visible infection and shall comply with the following procedures in preparing the customer's skin:

- (a) Clean the area of the customer's skin subject to the body art with an approved germicidal soap according to the label directions. In the case of:
 - (1) Oral piercings, the body artist shall provide the individual with antiseptic mouthwash in a single-use cup and shall ensure that the individual utilizes the mouthwash provided; or
 - (2) Lip, labret, or cheek piercing, the body artist shall follow the procedures identified in this section for skin and oral piercings.
- (b) Use single-use disposable razors if shaving is required. The razor shall be immediately placed in a medical-grade sharps container after use;
- (c) Wash the skin and surrounding area with soap and water, following shaving, and immediately discard the washing pad after use;
- (d) Use single-use products only to stop the bleeding or to absorb blood, and discard immediately after use, or in accordance with Subsection 307.2; and
- (e) Use sterile gauze or other sterile applicator to dispense and apply petroleum jelly, soaps, and other products in the application of stencils on the area to receive a body art procedure to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded immediately, or in accordance with Subsection 307.2.

304 PREVENTING CONTAMINATION – REUSABLE INSTRUMENTS AND EQUIPMENT, DESIGN, LOCATION, AND MAINTENANCE LOG

- 304.1 Operators shall ensure reusable instruments that are used during body art procedures which may contact blood or other bodily fluids, or which come in direct contact with skin which is not intact, shall be sterilized after each use or disposed of after each use.
- 304.2 Operators shall ensure reusable instruments that are used during tattooing and body-piercing procedures which do not come in contact with broken skin but which may come in contact with mucous membranes and oral tissue shall be sterilized after each use.
- 304.3 Operators shall ensure that if it is not feasible to sterilize the reusable instruments because it will be damaged during the body art procedure, the reusable instruments, including but not limited to calipers and gauge wheels shall be treated with a germicidal solution prior to use.
- 304.4 Operators shall ensure reusable instruments that come in contact only with intact skin or mucosal surfaces shall either be single-use or cleaned and sterilized as specified in Section 309.
- 304.5 Operators shall ensure that contaminated, reusable instruments shall be placed in a labeled covered container which shall contain a disinfectant solution such as 2.0% alkaline glutaraldehyde or similar disinfectant until it can be cleaned and sterilized.
- 304.6 Operators shall ensure that all containers holding contaminated reusable instruments and container lids shall be emptied of contaminated solution and cleaned and sanitized daily or more often if needed.
- 304.7 Operators shall ensure that any part of a tattooing machine that may be touched by the tattoo artist during the procedure shall be covered with a disposable plastic sheath that is discarded upon completion of the procedure, and the tattoo machine shall be decontaminated upon completion of the procedure, as specified in Sections 308.1(c) and 309.
- 304.8 Operators shall ensure that a machine used to insert pigments shall be designed with removable parts between the tip and motor housing as specified in Sections 308.1(c) and 309, and shall be designed in a manner that will prevent backflow into enclosed parts of the motor housing.
- 304.9 Operators shall ensure that a hand tool used to insert pigment shall be disposed of in a sharps medical-grade container, with the sharps intact, unless the needle can be mechanically ejected from the hand tool and disposed of in a sharps container, and the handle is then immediately sterilized before reuse.

- 304.10 Operators shall ensure body art establishments:
- (a) Place clean instruments to be sterilized first in sealed peel-packs that contain either a sterilizer indicator or internal temperature indicator. The outside of the pack shall be labeled with the name of the instrument, the date sterilized, and the initials of the person operating the sterilizing equipment;
 - (b) Place clean instruments and sterilized instrument packs in clean, dry, labeled container, or store in a labeled cabinet that is protected from dust and moisture;
 - (c) Store sterilized instruments in the intact peel-packs or in the sterilization equipment cartridge until time of use; and
 - (d) Evaluate sterilized instrument packs at the time of storage and before use. If the integrity of the pack is compromised, including but not limited to cases where the pack is torn, punctured, wet, or displaying any evidence of moisture contamination, the pack shall be discarded or reprocessed before use.
- 304.11 Operators shall ensure that reusable instruments or jewelry that come in contact with a customer, are sterilized as specified in Section 311.
- 304.12 Operators shall ensure that all reusable instruments shall be bagged, dated, and sealed before sterilizing.
- 304.13 Operators shall ensure that reusable instruments shall be sterilized in an FDA validated medical sterilizer in accordance with manufacturer instructions.
- 304.14 Operators shall ensure that after sterilizing equipment, the equipment shall be stored in a non-porous, dark, dry, cool place, such as a medical credenza.
- 304.15 Operators shall ensure that each body art establishment shall be equipped with a working sterilizer and with appropriate cleansing equipment, such as a working ultrasonic cleaner.
- 304.16 Operators shall ensure that at least one covered, foot operated solid waste receptacle, lined with disposable bags shall be provided in each:
- (a) Workstation;
 - (b) At each handwash sink; and
 - (c) In each toilet room.

305 PREVENTING CONTAMINATION – MARKING INSTRUMENTS AND STENCILS*

- 305.1 All licensed operators shall use marking instruments that are single-use and shall be used only on intact skin that has been treated with a germicidal soap.
- 305.2 Marking instruments that come in contact with mucous membranes or broken skin shall be single-use.
- 305.3 All stencils shall be single-use.
- 305.4 Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied using an aseptic technique and in a manner that prevents contamination of the original container and its content.
- 305.5 If measuring the body-piercing site is necessary, clean calipers shall be used and the skin marked using a single-use disposable implement, which includes a toothpick and non-toxic ink or a single-use skin marker, and discarded immediately after the procedure.

306 PREVENTING CONTAMINATION – PRE-STERILIZED, SINGLE-USE JEWELRY*

- 306.1 Jewelry inserted into a healed piercing that has not been previously worn or contaminated shall be disinfected in accordance with manufacturer's instructions with a non-hazardous disinfectant approved by the EPA.
- 306.2 Jewelry placed in newly pierced skin shall be sterilized prior to piercing as specified in Subsection 304.12 or shall be purchased pre-sterilized as specified in Sections 309, 310, and 312.

307 PREVENTING CONTAMINATION – BIOHAZARD AND INFECTIOUS WASTE, HANDLING AND DISPOSAL*

- 307.1 Operators shall ensure all sharps are disposed of in medical-grade sharps containers and disposed of by professional environmental infectious waste disposal companies licensed in the District of Columbia, in accordance with Subsection 508.3.
- 307.2 All other supplies or materials that are contaminated with blood or other body fluids that are generated during a body art process, including but not limited to cotton balls, cotton tip applicators, corks, toothpicks, tissues, paper towels, gloves, single-use plastic covering, and pigment containers shall be discarded immediately; or shall be placed in red biohazard waste bags and disposed of by a professional environmental infectious waste disposal company licensed in the District of Columbia, in accordance with Subsection 508.3.

307.3 Solid waste that is not contaminated shall be placed in easily cleanable, sealed containers and disposed of in accordance with Section 506.

307.4 All solid waste containers shall be kept closed when not in use, and shall comply with Section 506.

308 PREVENTING CONTAMINATION – INFECTION PREVENTION AND EXPOSURE CONTROL PLAN

308.1 Operators shall ensure that each body art establishment develops, maintains and follows a written Infection Prevention and Exposure Control Plan provided by the operator that identifies the following;

- (a) Policies and procedures on universal precautions for exposure to bloodborne pathogens from blood and other potentially infectious materials;
- (b) Policies and procedures for decontaminating and disinfecting environmental surfaces;
- (c) Policies and procedures for decontaminating, packaging, sterilizing, and storing reusable instruments;
- (d) Policies and procedures for protecting clean instruments and sterile instrument packs from exposure to dust and moisture during storage;
- (e) Policies and procedures for setting up and tearing down workstations for all body art procedures performed at the body art establishment;
- (f) Policies and procedures to prevent the contamination of instruments or the procedure site during a body art procedure;
- (g) Policies and procedures for safe handling and disposal of sharps and bio-hazardous waste; and
- (h) Recommendations by the Centers for Disease Control and Prevention to control the spread of infectious disease and treat all human blood and bodily fluids as infectious through universal precautions.

308.2 Operators shall ensure routine on-site training on the establishment's Infection Prevention and Exposure Control Plan, and shall require additional training when a body artist:

- (a) Is exposed to an occupational hazard;

- (b) Performs a new procedure or there is a change in a procedure; and
- (c) The establishment purchases new equipment.

309 PREVENTING CONTAMINATION — REUSABLE INSTRUMENTS AND STERILIZATION PROCEDURES*

309.1 Operators shall ensure reusable instruments are cleaned by gloved personnel prior to sterilization using the following methods:

- (a) Pre-clean the items in an ultrasonic cleaning unit used according to the manufacturer's instructions. A copy of the manufacturer's recommended procedures for operation of the ultrasonic cleaning unit shall be available for inspection by an authorized agent of the Department;
- (b) Manually clean the items by using a stiff bristle brush under water with a solution of low-residue detergent, with care taken to ensure the removal of any pigment or body substances not visible to the eye, thoroughly rinse with at least warm water and then drain, and clean by soaking in a protein dissolving detergent-enzyme cleaner used according to the manufacturer's instructions; or
- (c) Rinse and dry the items prior to packaging for sterilization.

310 MAINTENANCE RECORDS — STERILIZERS AND COMMERCIAL BIOLOGICAL INDICATOR MONITORING SYSTEM, AND RETENTION*

310.1 Operators shall ensure that sterilizers are loaded, operated, decontaminated, and maintained according to manufacturer's instructions, and only equipment manufactured for the sterilization of medical instruments shall be used.

310.2 Sterilization equipment shall be tested using a commercial biological indicator monitoring systems ("monitor") after:

- (a) Initial installation;
- (b) Major repair;
- (c) At least once per month; or
- (d) At a minimum in compliance with the manufacturer's recommendation.

310.3 The expiration date of a monitor shall be checked prior to each use.

- 310.4 Each sterilization load shall be monitored with mechanical indicators for time, temperature, pressure, and at a minimum, Class V Indicators. Each individual sterilization pack shall have an indicator.
- 310.5 Biological indicator monitoring test results shall be recorded in a log that shall be kept on the premises for three (3) years after the date of the results.
- 310.6 A daily written log of each sterilization cycle shall be maintained on the premises for three (3) years for inspection by the Department and shall include the following information:
- (a) The date of the load;
 - (b) A list of the contents of the load;
 - (c) The exposure time and temperature;
 - (d) The results of the Class V Indicator; and
 - (e) For cycles where the results of the biological indicator monitoring test are positive, how the items were cleaned, and proof of a negative test before reuse.

311 MAINTENANCE RECORDS – STERILIZERS*

- 311.1 The Department shall require calibration of all sterilization equipment by an independent laboratory that will calibrate the equipment biennially or more frequently if recommended by the manufacturer and records of the calibrations shall be maintained on the premises for inspection by the Department for three (3) years.
- 311.2 Sterilizers shall be spore tested in accordance with manufacturer's recommendations and records of the spore tests shall be maintained on the premises for three (3) years after the date of the results for inspection by the Department.

312 RECORDS OF ACQUISITIONS – DISPOSABLES, SINGLE-USE, PRE-STERILIZED INSTRUMENTS, AND RECORD RETENTION*

- 312.1 Operators that do not provide access to a decontamination and sterilization area that is in compliance with these regulations, or that do not have sterilization equipment as specified in Section 310 shall:
- (a) Ensure only pre-sterilized instruments, and disposable, single-use supplies are used as specified in Subsection 200.5;

- (b) Purchase disposable, single-use latex, vinyl or hypoallergenic gloves; cleansing products; and FDA-approved medical-grade instruments as defined in these regulations; and
- (c) Maintain for ninety (90) days:
 - (1) A record of the purchase and use of all pre-sterilized medical-grade instruments, disposable, single-use supplies, and pigments as specified in Subsection 314.1;
 - (2) A record of all body art procedures, including the names of the tattoo artist or body-piercer and the customer; and
 - (3) The date of the body art procedure.

313 RECORDKEEPING REQUIREMENTS – CONFIDENTIAL, PERSONNEL FILES*

- 313.1 Operators shall maintain a procedural manual at the body art establishment which shall be available at all times to operators and the Department during each inspection.
- 313.2 Each body art establishment's personnel manual shall maintain the following information regarding body artist, in addition to Subsection 200.4:
- (a) Full legal name;
 - (b) Home address and telephone number(s);
 - (c) Professional licenses and training certifications, if applicable; and
 - (d) Proof that he or she is eighteen (18) years of age or older with a driver's license or other government issued identification containing the date of birth and a photograph of the individual, or school issued identifications; and
 - (e) Proof of compliance with pre-employment requirement of current hepatitis B vaccination, including applicable boosters, unless the body artist:
 - (1) Demonstrates hepatitis B immunity; or
 - (2) Compliance with current federal OSHA hepatitis B vaccination declination requirements.

314 RECORDKEEPING REQUIREMENTS – REQUIRED DISCLOSURES*

314.1 Each body art establishment offering tattoo procedures shall keep on the premises documentation of the following information, and shall disclose and provide this information to customers upon request:

- (a) The actual pigments used in the body art establishment;
- (b) The names, addresses, and telephone numbers of the suppliers and manufacturers of pigments used in the body art establishment for the past three (3) years; and
- (c) Identification of any recalled pigments used in the establishment for the past three (3) years and the supplier and manufacturer of each pigment.

314.2 A list of emergency contact numbers shall be easily accessible to all personnel and shall include, but is not limited to:

- (1) The nearest hospital;
- (2) The nearest fire department; and
- (3) Emergency 911 service.

314.3 All files identified in this section that are maintained electronically shall be frequently backed up and accessible from multiple locations, if applicable.

314.4 An electronic record shall be retrievable as a printed copy.

315 RECORDKEEPING REQUIREMENTS – RETENTION

315.1 The operator shall maintain all records at the establishment for at least three (3) years or longer if required by any other applicable District law or regulation. The records shall be readily available for review by the Department upon request.

316 RECORDKEEPING REQUIREMENTS – REPORTS OF INFECTION OR ALLERGIC REACTIONS

316.1 Operators shall maintain a document called a “Report of Infection or Allergic Reactions” that details infections and allergic reactions reported to the body artist or the body art establishment by a customer, as specified in Section 204.2(e).

316.2 Operators shall submit to the Department a written report of any diagnosed infections or allergic reactions resulting from a body art procedure within five (5) business days of its occurrence or knowledge thereof, as specified in Subsection 204.3(e).

- 316.3 The report shall include the following information:
- (a) Name, address, and telephone number of the affected customer;
 - (b) Name, location, telephone number and license number of the establishment where the body art procedure was performed;
 - (c) The complete legal name of the body artist and his or her license number;
 - (d) The date the body art procedure was performed;
 - (e) The specific color or colors of the tattoo or type of jewelry used for the body-piercing, and when available, the manufacturer's catalogue or identification number of each color or type of jewelry used;
 - (f) The location of the infection and the location on the body where the body art was applied;
 - (g) The name and address of the health care practitioner, if any; and
 - (h) Any other information considered relevant to the situation.
- 316.4 The Department shall use these reports in their efforts to identify the source of the adverse reactions and to take action to prevent its recurrence.
- 316.5 Operators shall maintain all reports pertaining to infections and allergic reactions at the establishment for review until the Department authorizes their disposal, as specified in Subsection 315.1.

CHAPTER 4 PHYSICAL STRUCTURE, OPERATING SYSTEMS AND DESIGN

400 PHYSICAL STRUCTURE – BUILDING MATERIALS AND WORKMANSHIP

- 400.1 Operators of a newly constructed, remodeled or renovated body art establishment shall ensure that the design, construction, building materials, and workmanship complies with the District's Construction Codes Supplements of 2013, as specified in Subsection 102.1(f) of this chapter, or later construction codes.
- 400.2 Operators of an existing body art establishment shall maintain in good condition the physical integrity of its establishment by repairing or replacing structural or design defects, operating systems, or fixtures in use before the effective date of these regulations in accordance with the District's Construction Codes Supplements of 2013, as specified in Subsection 102.1(f) of this chapter.

400.3 At least thirty (30) days before beginning construction or remodeling of a body art establishment, the operator shall submit construction plans with all schedules, including but not limited to floor plans, elevations, and electrical schematics, to the Department for review and approval, as specified in Section 604.

401 PHYSICAL STRUCTURE — FLOOR AND WALL JUNCTURES, COVERED, AND ENCLOSED OR SEALED

401.1 Exterior floor and wall junctures shall be covered and closed to no larger than one millimeter (1 mm.) or one thirty-second of an inch (1/32 in.).

401.2 Covering of floor and wall junctures shall be sealed.

402 PHYSICAL STRUCTURE — FLOORS, WALLS, CEILINGS, AND UTILITY LINES

402.1 All procedure areas and instrument cleaning areas shall have floors, walls and ceilings constructed of smooth, nonabsorbent and easily cleanable material. Outer openings shall provide protection against contamination from dust and other contaminants.

402.2 All floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

402.3 All facilities shall have a waiting area that is separate from the body art procedure area, and from the instrument cleaning, sterilization, and storage areas.

402.4 The floors in the restrooms and locker rooms that are next to showers or toilets, or any other wet areas, shall be constructed of smooth, durable, nonabsorbent, and easily cleanable material.

402.5 Every concrete, tile, ceramic, or vinyl floor installed in bathrooms, restrooms, locker rooms, and toilet rooms, which are next to showers or toilets, shall be covered at the junctures between the floor and the walls.

402.6 All material used to cover the junctures shall be fitted snugly to the floor and the walls so that they are water tight and there are no openings large enough to permit the entrance of vermin.

402.7 The material used in constructing the walls and ceilings must be joined along their edges so as to leave no open spaces or cracks.

402.8 Utility service lines and pipes shall not be unnecessarily exposed.

402.9 Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

402.10 Exposed horizontal utility service lines and pipes shall not be installed on the floor.

403 OPERATING SYSTEMS AND DESIGN — PLUMBING SYSTEM, DESIGN, WATER CAPACITY, QUANTITY, AND AVAILABILITY*

403.1 Each body art establishment's plumbing system shall be designed, constructed, installed, and maintained according to the International Plumbing Code (2012 edition), Subtitle F (Plumbing Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations and shall be of sufficient size to:

- (a) Meet the water demands of the body art establishment.
- (b) Meet the hot water demands throughout the body art establishment.
- (c) Properly convey sewage and liquid disposable waste from the premises;
- (d) Avoid creating any unsanitary condition or constituting a source of contamination to potable water, or tattoo or body-piercing equipment, instruments; and
- (e) Provide sufficient floor drainage to prevent excessive pooling of water or other disposable waste in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

403.2 Each plumbing fixture such as a handwashing facility, toilet, or urinal shall be easily cleanable.^N

403.3 Each body art establishment shall be equipped with at least one janitorial sink.

403.4 Each body art establishment shall be equipped with effective plumbing and sewage facilities and adequate accommodations.

404 OPERATING SYSTEMS AND DESIGN — HANDWASHING SINKS, WATER TEMPERATURE, AND FLOW

404.1 All handwashing sinks, including those in toilet rooms, shall be equipped to provide water at a temperature of at least one hundred degrees Fahrenheit (100 °F) (thirty-eight degrees Celsius (38 °C)) through a mixing valve, a combination faucet, or tempered water and a single faucet.

404.2 A steam mixing valve shall not be used at a handwashing sink.

404.3 A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.

404.4 Any automatic handwashing facility shall be installed in accordance with the manufacturer's instructions.

404.5 At least one (1) handwashing sink is required at a workstation. However, for every four (4) workstations, beyond the first workstation, an additional handwashing sink is also required. All handwashing sinks shall be conveniently located and used exclusively by body piercers or tattoo artists for washing their hands and preparing their clients for body piercing or tattooing. Use of the handwashing sink in the toilet area identified in Subsection 505.2 is prohibited for this purpose.

405 OPERATING SYSTEMS AND DESIGN – TOILETS AND URINALS, NUMBER, CAPACITY, CONVENIENCE AND ACCESSIBILITY, ENCLOSURES, AND PROHIBITION*

405.1 Toilet facilities shall be provided in accordance with the International Plumbing Code (2012 edition), Subtitle F (Plumbing Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations and maintained as specified in Section 500.

405.2 The operator shall, at a minimum:

- (a) Maintain the toilet facilities in a sanitary condition that is clean and free of solid waste and litter;
- (b) Keep the facilities in good repair at all times; and
- (c) Provide self-closing doors or locking door.

405.3 All single-stall toilet rooms shall display gender-neutral signs on the door that read "Restroom," or have a universally recognized picture/symbol indicating that persons of any gender may use each restroom, in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c) (2016 Repl.)).

405.4 Body art establishments employing:

- (a) Five (5) or fewer body artists may provide a single toilet facility with a gender-neutral sign on the door in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c) (2016 Repl.)); or
- (b) More than five (5) body artists shall have multiple toilet facilities that are either:

- (1) Single-stall toilet rooms with a gender-neutral sign on each door as specified in Subsection 3101.2 in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c) (2016 Repl.)); or
 - (2) Multiple-stall toilet rooms with gender-specific signs on the doors that read “Men” and “Women” or contain gender-specific, universally recognized pictorials of “Men” and “Women”.
- 405.5 A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door or locking doors, except that this requirement does not apply to a toilet room that is located outside a body art establishment.
- 405.6 Toilet room doors shall be kept closed except during cleaning and maintenance operations.
- 405.7 Each body art establishment shall maintain toilet facilities for body artists, which shall consist of a toilet room or toilet rooms with proper and sufficient water closets and lavatories. Toilet facilities shall be conveniently located and readily accessible to all personnel and customers.
- 405.8 Toilet facilities shall be deemed conveniently located and accessible to body artists during all hours of operation if they are:
- (a) Located within the same building as the business they serve; and
 - (b) Accessible during working hours without going outside the building.
- 405.9 At no time shall consumers or body artists enter the bathroom, restroom, or locker room during routine cleaning or maintenance emergency.
- 406 OPERATING SYSTEMS AND DESIGN – ELECTRICAL, LIGHTING***
- 406.1 All rooms of a body art establishment shall have at least one (1) electrical source of light. Lighting luminaries and fixtures may be of incandescent, fluorescent, high density discharge, or light emitting diode (LED) types.
- 406.2 At least fifty (50) foot-candles of artificial light shall be provided in each procedure area that is positioned at the height of the workstation, and shall be provided in all decontamination and sterilization areas.
- 406.3 At least twenty (20) foot-candles of light shall be provided in each restroom, locker room, toilet room, or other areas when fully illuminated for cleaning.

406.4 An average illumination value of ten (10) foot-candles of light, but never less than seven and a half (7.5) foot-candles of light, shall be provided in other areas within a body art establishment, including offices, lobbies, retail shops, and waiting areas.

406.5 The above illumination levels shall be attainable at all times while the body art establishment is occupied.

407 OPERATING SYSTEMS AND DESIGN — ELECTRICAL, SMOKE ALARMS

407.1 Each distinct area of a body art establishment separated by a doorway, whether or not a door is currently present, shall be equipped with at least one (1) working smoke alarm which is installed, maintained, and tested according to the International Fire Code (2012 edition), Subtitle H (Fire Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations.

407.2 The smoke alarm shall be free of foreign matter such as tape or paint which could impair its proper function.

408 OPERATING SYSTEMS AND DESIGN — HEATING AND VENTILATION SYSTEMS

408.1 All restrooms, locker rooms, and toilet rooms shall be adequately ventilated so that excessive moisture is removed from the room. Acceptable ventilation includes mechanical exhaust ventilation, a recirculating vent, or screened windows.

408.2 Each system for heating, cooling, or ventilation shall be properly maintained and operational at all times when the rooms are occupied.

408.3 All restrooms, locker rooms, and toilet rooms shall be capable of being maintained at a temperature between sixty-eight degrees Fahrenheit (68 °F) (twenty degrees Celsius (20 °C)) and eighty degrees Fahrenheit (80 °F) (twenty-seven degrees Celsius (27 °C)) while being used by customers.

CHAPTER 5 FACILITY MAINTENANCE

500 FACILITY MAINTENANCE — TOILETS AND URINALS, MAINTENANCE*

500.1 Each body art establishment's plumbing system shall be:

- (a) Repaired according to the International Plumbing Code (2012 edition), Subtitle F (Plumbing Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations; and

(b) Maintained in good repair.

500.2 The operator shall provide a supply of toilet tissue and waste receptacle at each toilet room, and covered waste receptacles for hygienic products in any toilet room used by women.

501 FACILITY MAINTENANCE — HANDWASHING SINKS, CLEANSER AVAILABILITY, HAND DRYING PROVISION, AND HANDWASHING SIGNAGE

501.1 There shall be at least one (1) handwashing sink in a body art establishment.

501.2 Each handwashing sink or group of two (2) adjacent sinks shall be provided with hand cleaning liquid or powder.

501.3 Each handwashing sink or group of adjacent sinks shall be provided with:

(a) Individual, disposable towels; or

(b) A heated-air, hand-drying device.

501.4 A sign or poster that notifies employees to wash their hands shall be provided at all handwashing sinks.

502 FACILITY MAINTENANCE — HANDWASHING SINKS, DISPOSABLE TOWELS, AND WASTE RECEPTACLES

502.1 A handwashing sink or group of adjacent sinks that is supplied with disposable towels or suitable drying devices shall be provided with a waste receptacle.

503 FACILITY MAINTENANCE — FLOOR COVERING, RESTRICTIONS, INSTALLATION, CLEANABILITY

503.1 A floor covering such as carpeting or similar material shall not be installed as a floor covering in toilet room areas where handwashing sinks, toilets, or urinals are located; refuse storage rooms; or other areas where the floor is subject to moisture.

503.2 The operator or manager shall inspect the premises prior to opening each day and throughout the day as necessary to ensure that the floors are clean and dry.

503.3 Mats and duckboards shall be designed to be removable and easily cleanable.

504 FACILITY MAINTENANCE — FLOORS, PUBLIC AREAS

504.1 The physical facilities shall be maintained in good repair and cleaned as often as necessary to keep them clean.

504.2 Every floor and floor covering shall be kept clean and in good repair, sanitized, or replaced so that it does not become a hazard to health or safety.

504.3 All public areas of a body art establishment, such as the lobbies and merchandising and retail areas shall be maintained in a clean and sanitary manner, free of litter, rubbish, and nuisances.

505 FACILITY MAINTENANCE — CLEANABILITY, SANITIZATION AND MAINTENANCE OF PLUMBING FIXTURES

505.1 Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean and well-maintained.

505.2 All body art establishments shall be equipped with toilet facilities, which include a water closet and handwashing sinks, including hot and cold running water, hand cleaning liquid or powder, and a paper towel dispenser or equivalent hand drying equipment.

505.3 Each body art establishment used for tattoo or body piercing shall contain a mop sink and a hand sink with hot and cold running water, antibacterial soap and single-use towels in dispensers.

505.4 All restrooms shall be kept in sanitary condition and good repair.

506 FACILITY MAINTENANCE — REFUSE, REMOVAL FREQUENCY

506.1 An inside storage room or area, outside storage area or enclosure, and receptacles shall be of sufficient capacity to hold the refuse that accumulate.

506.2 Refuse, excluding biohazardous waste, shall be placed in a lined waste receptacle and disposed of at a frequency that does not create a health or sanitation hazard.

506.3 Receptacles and waste handling units shall be designed and constructed with tight-fitting lids, doors, or covers.

506.4 Receptacles and waste handling units shall be durable, cleanable, insect- and rodent-resistant, leakproof, nonabsorbent, and maintained in good repair.

506.5 If used, an outdoor enclosure for refuse shall be constructed of durable and cleanable materials and shall be located so that a public health hazard or nuisance is not created.

506.6 An outdoor storage surface for refuse shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

506.7 Storage areas, enclosures, and receptacles for refuse shall be maintained in good repair.

506.8 Storage areas and enclosures for refuse shall be kept clean and maintained free of unnecessary items, as specified in Subsections 507.1 and 507.2.

507 FACILITY MAINTENANCE – UNNECESSARY ITEMS, LITTER, AND CONTROLLING AND REMOVING PESTS

507.1 The grounds surrounding a body art establishment under the control of the operator shall be kept in a clean and litter-free condition.

507.2 The methods for adequate maintenance of grounds include, but are not limited to, the following:

- (a) Properly storing or removing unnecessary equipment that is nonfunctional or no longer used, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the physical facility that may constitute an attractant, breeding place, or harborage for pests;
- (b) Maintaining roads and parking lots so that they do not constitute an attractant, breeding place, or harborage for pests; and
- (c) Adequately draining areas that may provide an attractant, breeding place, or harborage for pests.

507.3 If a body art establishment's grounds are bordered by grounds not under the operator's control and not maintained in the manner described in Subsections 507.1 and 507.2, care shall be exercised by the operator through inspection, extermination, or other means to exclude pests, dirt, and filth that may become an attractant, breeding place, or harborage for pests.

507.4 Methods for maintaining a sanitary operation include providing sufficient space for placement and proper storage of equipment, instruments, and supplies.

507.5 The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by:

- (a) Routinely inspecting the premises for evidence of pests;
- (b) Using methods, if pests are found, such as trapping devices or other means of pest control; and
- (c) Eliminating harborage conditions.

507.6 Dead or trapped birds, insects, rodents, and other pests shall be removed from a trap or the traps shall be discarded from the premises at a frequency that prevents accumulation, decomposition, or the attraction of other pests.

508 FACILITY MAINTENANCE – PROFESSIONAL SERVICE CONTRACTS

508.1 The operator shall maintain a copy of the body art establishment’s professional service contract and service schedule, which documents the following information:

- (a) Name and address of its D.C. licensed pest exterminator/contractor;
- (b) Frequency of extermination services provided under the contract; and
- (c) The date on which extermination services were last provided to the establishment.

508.2 The operator shall maintain a copy of the body art establishment’s professional service contract and service schedule, which documents the following information:

- (a) Name and address of its District-licensed solid waste contractor; and
- (b) Frequency of solid waste collection provided under the contract.

508.3 Operators shall maintain a record of the body art establishment’s receipts and service schedule, which documents the following information:

- (a) Name and address of its D.C. licensed environmental Biohazard Waste Disposal Company; and
- (b) Frequency of pickup services of biohazard waste, including but not limited to sharps; medical-grade gloves; disposable, single use cleaning products; and when necessary, materials requiring “red bag” (biohazard) disposal shall comply with 29 CFR § 1910.1030(d)(4)(iii)(A) – Contaminated Sharps Discarding and Containment; and 29 CFR § 1910.1030(d)(4)(iii)(B) – Other Regulated Waste Containment.

509 FACILITY MAINTENANCE – PROHIBITING ANIMALS*

509.1 With the exception of service animals, animals shall not be allowed in the body art procedure areas, decontamination or sterilization areas, or storage areas.

509.2 Fish aquariums are not allowed in procedure areas.

CHAPTER 6 APPLICATION AND LICENSING REQUIREMENTS**600 LICENSE AND CERTIFICATE OF OCCUPANCY REQUIREMENTS**

- 600.1 No person shall operate a body art establishment in the District without a valid body art establishment license issued by the Mayor.
- 600.2 No operator shall employ or permit a body artist to perform body art procedures in their body art establishment without a valid body artist license issued by the Mayor.
- 600.3 No person shall operate a body art establishment in the District with an expired or suspended body art establishment license.
- 600.4 No operator shall employ or permit a body artist to perform body art procedures in their establishment with an expired or suspended body artist license.
- 600.5 No person shall open or operate a body art establishment in the District without a valid Certificate of Occupancy.

601 APPLICATION PROCEDURE – PERIOD AND FORM OF SUBMISSION, PROCESSING

- 601.1 An applicant shall submit an application for a license at least thirty (30) calendar days before the date planned for opening a body art establishment or at least thirty (30) calendar days before the expiration date of the current license for an existing body art establishment.
- 601.2 Licenses shall be valid for a two (2) year period and renewed every two (2) years.
- 601.3 An applicant shall submit a written application for a body art establishment license on a form provided by the Department.
- 601.4 A new application shall be filed with the Department within thirty (30) days of any change in ownership or location. An applicant shall also notify the Department immediately if the applicant decides not to open, sell, or transfer the business at the location identified in the application.
- 601.5 The Department shall not process applications for a change in ownership or location where administrative actions are pending against an existing establishment that has not been resolved.

602 APPLICATION PROCEDURE — CONTENTS OF THE APPLICATION PACKET

602.1 An application for a license to operate a body art establishment shall include the full name(s) or any other name(s), including alias used by the applicant, and the following information:

- (a) The present address and telephone number of each applicant:
 - (1) If the applicant is an individual, the individual's residential address;
 - (2) If the applicant is a corporation, the names, including aliases and residential addresses of each of the officers and directors of said corporation and each stock holder owning more than ten percent (10%) of the stock of the corporation, and the address of the corporation itself if it is different from the address of the body art establishment; or the address of the partnership itself if different from the address of the body art establishment;
 - (3) If the applicant is a partnership, the names, including aliases and residential addresses of each partner, including limited partners, and the body art establishment;
- (b) Name and address of registered agent, if applicable;
- (c) The address and all telephone numbers of the body art establishment;
- (d) A complete set of construction plans including all schedules (for example, floor plans, elevations, and electrical schematics), if applicable, as specified in Subsection 400.3;
- (e) Proof that the owner applicants and operators are at least the age of majority by a Driver's license, non-Driver's license, or other Government issued identification that displays the applicant or operator's date of birth;
- (f) Whether the owner applicants have owned or operated a body art establishment or other business in the District, another city, county or state, and if this business license:
 - (1) Has ever been suspended or revoked; and
 - (2) The reason for the suspension or revocation;
- (g) A description of any other business to be operated on the same premises or on adjoining premises owned or operated by the owner applicant(s) or manager(s); and

- (h) The name and home address (non-business address) of each licensed manager who is employed or will be employed in the body art establishment.

603 DENIAL OF APPLICATION FOR LICENSE — NOTICE

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

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

604 ISSUANCE OF LICENSE — NEW, CONVERTED OR REMODELED, EXISTING OPERATIONS, AND CHANGE OF OWNERSHIP OR LOCATION

604.1 Each applicant shall submit:

- (a) A properly completed application packet provided by the Department;
- (b) Copies of policies and procedures as specified in Sections 300 through 309;
- (c) Copies of required recordkeeping as specified in Sections 310 through 316 for license renewals;
- (d) Proof of payment of the application and license fees; and
- (e) Proof of the Department's review and approval of required plans and specifications as specified in Sections 400.3 and 604, if applicable.

604.2 If the applicant complies with Sections 600, 601, 602, 604, and 605 and the Department determines through its inspection as specified in Section 606 that the operation is in compliance with these regulations, the Department shall approve:

- (a) A new body art establishment;
- (b) An existing body art establishment that has changed ownership or location; or
- (c) An existing body art establishment's license renewal.

605 ISSUANCE OF LICENSE — REQUIRED PLAN REVIEWS AND APPROVALS

605.1 An applicant or operator shall submit to the Department for review and approval properly prepared plans and specifications before:

- (a) The construction of a body art establishment;
- (b) The conversion of an existing structure for use as a body art establishment;
or
- (c) Major renovation, remodeling, or alteration of an existing body art establishment.

605.2 Plans required by this section shall include specifications showing layout, arrangement, and construction materials, and the location, size, and type of fixed equipment and facilities.

605.3 Plans, specifications, an application form, and the applicable fee shall be submitted at least thirty (30) calendar days before beginning construction, remodeling, or conversion of a body art establishment.

605.4 The Department shall approve the completed plans and specifications if they meet the requirements of these regulations, and the Department shall report its findings to the license applicant or operator within thirty (30) days of the date the completed plans are received.

605.5 Plans and specifications that are not approved as submitted shall be changed to comply or be deleted from the project.

606 ISSUANCE OF LICENSE — INSPECTIONS - PREOPERATIONAL, CONVERSIONS, AND RENOVATIONS*

606.1 The Department shall conduct one (1) or more preoperational inspections to verify and approve that the body art establishment is constructed and equipped in accordance with plans and modifications approved by the Department as specified in Section 606; has established standard operating procedures as specified in Chapter 3; and is in compliance with these regulations.

607 ISSUANCE OF LICENSE – NOTICE OF OPENING, DISCONTINUANCE OF OPERATION, AND POSTINGS

607.1 An operator shall provide notice to the Department of its intent to operate the establishment at least thirty (30) calendar days before beginning operations.

607.2 An operator shall provide notice to the Department of its intent to shut down permanently. The operator's license and certificate of occupancy shall be returned to the Department and the owner shall be required to submit a new application for the issuance of a new license prior to reopening.

607.3 An operator shall notify the Department at least thirty (30) days in advance of its intent to close temporarily.

607.4 A current inspection report, all valid licenses, a Certificate of Occupancy, including the "Age Restriction Signs" required in Subsection 201.3, and the "Required Disclosure" required in Subsection 202.3 shall be conspicuously posted in the reception area next to the body art establishment's license.

608 ISSUANCE OF LICENSE – NOT TRANSFERABLE

608.1 A body art establishment license shall not be transferred from one person to another person or from one location to another.

609 ISSUANCE OF LICENSE – DUPLICATES

609.1 An operator shall submit a request for a duplicate body art establishment license that has been lost, destroyed or mutilated on a form provided by the Department and payment of the required fee.

609.2 Each duplicate license shall have a secured watermark of the word "DUPLICATE" across the face of the license, and shall bear the same number as the license it is replacing.

610 CONDITIONS OF LICENSE RETENTION – RESPONSIBILITIES OF THE OPERATOR

610.1 Upon receipt of a license issued by the Department, the operator, in order to retain the license, shall comply with Subsections 610.2 through 610.8.

610.2 An operator shall post a current inspection report, and all valid licenses, Certificate of Occupancy, including the "Age Restriction Sign" required in Subsection 201.3, and "Required Disclosure" required in Subsections 202.3, shall be conspicuously posted in the reception area next to the body art establishment's license.

610.3 An operator shall comply with the provisions of these regulations and approved plans as specified in Section 605.

610.4 An operator shall allow representatives of the Department access to its body art establishment as specified in Section 700.

- 610.5 An operator shall immediately discontinue operations and notify the Department if an imminent health hazard exists as specified in Section 706.
- 610.6 The Department may direct the replacement of existing operating systems, or equipment, devices, fixtures, supplies, or furnishings where existing equipment, devices, fixtures, supplies, or furnishings are not safe to operate, are not in good repair or are not capable of being maintained in a hygienic condition in compliance with these regulations as specified in Subsection 102.2(a).
- 610.7 An operator shall replace existing operating systems, or equipment, devices, fixtures, supplies, or furnishings that do not comply with these regulations pursuant to a documented agreement with the Department by an agreed upon date with an operating system, equipment, devices, fixtures, supplies, or furnishings that comply with these regulations as specified in Subsection 102.2(b).
- 610.8 An operator shall maintain all records in accordance with these regulations.

**CHAPTER 7 INSPECTIONS, REPORTS, VIOLATIONS, CORRECTIONS,
AND PROHIBITED CONDUCT AND ACTIVITIES**

700 ACCESS & INSPECTION FREQUENCY – DEPARTMENT RIGHT OF ENTRY, DENIAL - MISDEMEANOR*

- 700.1 The Department shall determine a body art establishment's compliance with these regulations by conducting on-site:
- (a) Preoperational inspections;
 - (b) Unannounced, routine and follow-up inspections; and
 - (c) Unannounced, complaint-generated inspections.
- 700.2 After representatives of the Department present official credentials and provide notice of the purpose and intent to conduct an inspection in accordance with these regulations, the applicant or operator shall allow the Department access to any part, portion, or area of a body art establishment, except when a private session is in progress.
- 700.3 The Department may enter and inspect all aspects of a body art establishment, including but not limited to work stations, locker rooms, bathrooms, lounge areas, or other areas of a body art establishment for any of the following purposes:
- (a) To determine if the body art establishment is in compliance with these regulations;

- (b) To investigate an emergency affecting the public health if the body art establishment is or may be involved in the matter causing the emergency;
- (c) To investigate, examine, and sample or swab equipment, devices, fixtures, supplies, or furnishings, except during any procedural session as specified in Subsection 700.2; or
- (d) To obtain information and examine and copy all records on the premises including but not limited to instruments, equipment, manufacturers, records and maintenance logs, supplies and suppliers, service contracts, or furnishings used in a body art establishment.

700.4 If a person denies the Department access to any part, portion, or area of a body art establishment, the Department shall inform the individual that:

- (a) The applicant or operator is required to allow access to the Department, as specified in Subsection 700.2;
- (b) Access is a condition of the receipt and retention of a license as specified in Subsection 610.4;
- (c) If access is denied, an inspection order allowing access may be obtained as specified in Subsection 700.6(c); and
- (d) The Department is making a final request for access.

700.5 If the Department presents credentials and provides notice as specified in Subsection 700.2, explains the authority upon which access is requested, and makes a final request for access as specified in Subsection 700.4(d), and the applicant or operator continues to refuse access, the Department shall provide details of the denial of access on the inspection report.

700.6 If the Department is denied access to a body art establishment for an authorized purpose, after complying with Subsections 700.2 through 700.5, the Department may:

- (a) Summarily suspend a license to operate a body art establishment in accordance with Section 807;
- (b) Revoke or suspend a license to operate a body art establishment in accordance with Section 812; or
- (c) Request that the Office of the Attorney General for the District of Columbia commence an appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief

from the court including but not limited to administrative search warrants, to enforce these regulations in accordance with the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2012 Repl.)).

701 REPORT OF FINDINGS — DOCUMENTING INFORMATION AND OBSERVATIONS

701.1 The Department shall document on an inspection report form:

- (a) Administrative information about the body art establishment's legal identity, street and mailing addresses, inspection date, and other information such as status of the license and personnel certificates that may be required or other inspectional findings; and
- (b) Specific factual observations of violations of these regulations that require correction by the operator including:
 - (1) Nonconformance with critical items of these regulations;
 - (2) Failure of an operator to correct cited violations, as specified in Section 709 or 711; or
 - (3) Failure of an operator to ensure that personnel are licensed as specified in Sections 200 and 600.

702 REPORT OF FINDINGS — SPECIFYING TIME FRAME FOR CORRECTIONS

702.1 The Department shall specify on the inspection report the time frame for correction of violations as specified in Sections 709 and 711.

703 REPORT OF FINDINGS — ISSUING REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT

703.1 At the conclusion of the inspection, the Department shall provide a copy of the completed inspection report and the notice to correct violations to the operator and request a signed acknowledgment of receipt. The most recent inspection report shall contain a listing of violations by area in the operation and inspection item with corresponding citations to applicable provisions in these regulations and shall be conspicuously posted in the reception area next to the body art establishment's license.

704 REPORT OF FINDINGS — REFUSAL TO SIGN ACKNOWLEDGMENT

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

- (a) An acknowledgment of receipt is not an agreement with the finding;
- (b) Refusal to sign an acknowledgment of receipt will not affect the operator's obligation to correct the violations noted in the inspection report within the time frames specified; and
- (c) A refusal to sign an acknowledgment of receipt will be noted in the inspection report for the body art establishment.

705 REPORT OF FINDINGS — PUBLIC INFORMATION, RECORDS RETENTION

705.1 The Department shall keep and maintain in-office as an active record a copy of each inspection report, complaint, inspector's sample reports, license suspension, and other correspondence regarding a body art establishment within the District for a period of one (1) year, and then as an inactive record for a period of two (2) additional years. Inactive records shall be destroyed in-house at the end of the two (2)-year inactive period.

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

705.3 The Department shall treat the inspection report as a public document.

706 IMMINENT HEALTH HAZARD — CEASING OPERATIONS AND EMERGENCY REPORTING TO THE DEPARTMENT OF HEALTH*

706.1 The Department shall summarily suspend operations, or an operator shall immediately discontinue operations and notify the Department, whenever a body art establishment is operating with any of the following conditions:

- (a) Extensive fire damage that affects the body art establishment's ability to comply with these regulations;
- (b) Serious flood damage that affects the body art establishment's ability to comply with these regulations;
- (c) Loss of electrical power to critical systems, including but not limited to lighting, heating, cooling, or ventilation controls for a period of two (2) or more hours;

- (d) No water, or insufficient water capacity, or inadequate water pressure to any part of the body art establishment in violation of Subsection 403.1(a);
- (e) No hot water, or an unplanned water outage, or the water supply is cut off in its entirety for a period of one (1) or more hours in violation of Subsection 403.1(b);
- (f) Incorrect hot water temperatures that cannot be corrected during the course of the inspection in violation of Subsection 404.1;
- (g) A plumbing system supplying potable water that may result in contamination of the potable water;
- (h) A sewage backup or sewage that is not disposed of in an approved and sanitary manner;
- (i) A cross-connection between the potable water and non-potable water distribution systems, including but not limited to landscape irrigation, air conditioning, heating, or fire suppression system;
- (j) A back siphonage event;
- (k) Toilet or handwashing facilities that are not properly designed, constructed, installed, or maintained in violation of Subsections 403, 404, and 405;
- (l) Work surfaces, including but not limited to workstations, solid surfaces and objects in the procedure and decontamination areas within a body art establishment that are stained with blood or bodily fluids, or soiled; or infested with vermin; or are in an otherwise unsanitary condition;
- (m) Gross insanitary occurrence or condition that may endanger public health including but not limited to an infestation of vermin; or
- (n) Fails to eliminate the presence of insects, rodents, or other pests on the premises in violation of Subsection 507.3.

706.2

In addition to the imminent health hazards identified in Subsection 706.1, the Department shall summarily suspend operations if it determines through an inspection, or examination of records or other means as specified in Subsection 700.1, the existence of any other condition which endangers the public health, safety, or welfare, including but not limited to:

- (a) Operating a body art establishment or performing a body art procedure without a license in violation of Subsection 600.1;

- (b) Employing a body artist without a valid body artist license issued by the Mayor in violation of Subsection 600.2;
- (c) Operating a body art establishment with an expired or suspended license in violation of Subsection 600.3;
- (d) Employing a body artist who is performing body art procedures with an expired or suspended body artist license in violation of Subsection 600.4;
- (e) Operating a body art establishment without a valid Certificate of Occupancy in violation of Subsection 600.5;
- (f) Operating a body art establishment without posting required signage in violation of Subsection 607.4;
- (g) Operating a body art establishment without a manager who is on duty and on the premises during all hours of operation in violation of Subsection 200.2;
- (h) Operating a body art establishment without a body artist who is on duty and on the premises during all hours of operation in violation of Subsection 200.3
- (i) Failing to allow access to Department representatives during the facility’s hours of operation and other reasonable times as determined by the Department; or hindering, obstructing, or in any way interfering with any inspector or authorized Department personnel in the performance of his or her duty in violation of Section 700; or
- (j) Operating in violation of any provision specified in Section 708.

707 IMMEDIATE HEALTH HAZARD – RESUMPTION OF OPERATIONS

707.1 If operations are discontinued as specified in Section 706 or otherwise according to applicable D.C. laws and regulations, the operator shall obtain approval from the Department before resuming operations.

707.2 The Department shall determine whether an operator needs to discontinue operations that are unaffected by the imminent health hazard in a body art establishment as determined by the Department or other District agency.

708 PROHIBITED CONDUCT – ADVERTISEMENTS AND ACTIVITIES

708.1 No operator shall permit a person to perform or offer to perform body art procedures, use any words or letters, figures, titles, signs, cards, advertisement, or any other symbols or devices indicating or tending to indicate that the person is

authorized to perform such services, or use other letters or titles in connection with that person's name which in any way represents himself or herself as being engaged in the practice of body art, or authorized to do so, unless the person is licensed by and registered with the Mayor to perform body art procedures in the District of Columbia.

708.2 No operator shall permit a person to perform any body art procedure on anyone under the age of eighteen (18) years of age, except as specified in Subsection 201.2.

708.3 An operator shall not allow an ear piercing system to be used on any part of a customer's body other than the lobe of the ear.

708.4 No operator shall allow a body art procedure to be performed if the customer is unable to exercise reasonable care and safety or is otherwise impaired by reason of illness, while under the influence of alcohol, or while using any controlled substance or narcotic drug as defined in 21 USC § 802(6) or (17), respectively, or other drug in excess of therapeutic amounts or without valid medical indication, or any combination thereof.

708.5 No one shall be tattooed or pierced at any location in the establishment other than in a designated work area.

708.6 No customer shall be allowed to perform their own tattoo, piercing or insertions anywhere on the premises.

708.7 No food, drink, tobacco product, or personal effects shall be allowed to contaminate a procedural area.

708.8 Body artists shall not eat or drink while performing a procedure. If a customer requests to eat, drink or smoke, the procedure shall be stopped and the procedure site shall be protected from possible contamination, and, if possible, the customer may leave the procedure area to eat or drink. The customer shall leave the procedure area to smoke.

708.9 During a branding procedure, an operator shall ensure the body artist and the customer wear appropriate protective face filter masks.

708.10 Body art procedures shall not be performed on animals in a body art establishment.

709 CRITICAL VIOLATIONS — TIME FRAME FOR CORRECTION*

709.1 An operator shall, at the time of inspection, correct a critical violation no later than five (5) business days after the inspection.

709.2 The Department may consider the nature of the potential hazard involved and the complexity of the corrective action needed and agree to specify a longer timeframe, not to exceed an additional five (5) business days, for the operator to correct a critical violation of these regulations.

709.3 Failure to correct violations in accordance with this section may subject an operator to a condemnation order pursuant to Section 802, summary suspension of a license pursuant to Section 807, revocation or suspension of a license pursuant to Section 812, or sanctions pursuant to Sections 1000 and 1001.

710 CRITICAL VIOLATION – VERIFICATION AND DOCUMENTATION OF CORRECTION

710.1 After receiving notification that the operator has corrected a critical violation, the Department shall verify correction of the violation, document the information on an inspection report, and enter the report in the Department's records.

711 NONCRITICAL VIOLATIONS – TIME FRAME FOR CORRECTION

711.1 The operator shall correct noncritical violations no later than fourteen (14) business days after the inspection.

711.2 The Department may consider the nature of the violation and the corrective action needed and agree to specify a longer timeframe, not to exceed an additional fourteen (14) business days for the operator to correct the violation.

711.3 Failure to correct violations in accordance with this section may result in the revocation or suspension of an operator's license pursuant to Section 812, or sanctions pursuant to Sections 1000 and 1001.

712 REQUEST FOR REINSPECTION

712.1 If a license is summarily suspended pursuant to Section 807 or suspended or revoked pursuant to Section 812 because of violations of these regulations, the operator shall submit a handwritten, email, or fax request for a reinspection and pay the required reinspection fee.

712.2 Upon receipt of a request for reinspection, the Department shall conduct the reinspection of a body art establishment within three (3) business days of receipt of the request.

712.3 A body art establishment shall not resume operations or remove from public view any signage, license, Certificate of Occupancy, or current inspection result as specified in Subsection 607.4, or any enforcement order as specified in Subsection 707.1 until the Department has reinspected the body art establishment and certified that it is in compliance with these regulations.

CHAPTER 8 ADMINISTRATIVE ENFORCEMENT ACTIONS AND ORDERS**800 ADMINISTRATIVE REVIEW — CONDITIONS WARRANTING REMEDIES**

800.1 The Department may seek an administrative or judicial remedy to achieve compliance with the provisions of these regulations if an operator, person operating a body art establishment, or employee:

- (a) Fails to have a valid license as specified in Section 600;
- (b) Fails to pay the required fee as specified in Subsection 604.1(d);
- (c) Violates any term or condition of a license as specified in Section 610;
- (d) Fails to allow the Department access to a body art establishment as specified in Subsection 700.6;
- (e) Fails to comply with directives of the Department including time frames for corrective actions specified in inspection reports as specified in Subsections 709.1 and 711.1;
- (f) Fails to comply with a condemnation order as specified in this chapter;
- (g) Fails to comply with a summary suspension order by the Department as specified in this chapter;
- (h) Fails to comply with an administrative order;
- (i) Makes any material false statement in the application for licensure;
- (j) Falsifies or alters records required to be kept by these regulations; or
- (k) Seeks to operate with conditions revealed by the application or any report, records, inspection, or other means which would warrant the Department refusal to grant a new license.

800.2 The Department may simultaneously use one or more of the remedies listed in this chapter to address a violation of these regulations.

801 ADMINISTRATIVE REVIEW — EXAMINING, SAMPLING, AND TESTING OF EQUIPMENT, WATER, INKS, PIGMENTS, REUSABLE INSTRUMENTS, DISPOSABLE ITEMS, JEWELRY, SHARPS, MARKING INSTRUMENTS AND STENCILS, AND FURNISHINGS

801.1 The Department may examine, collect samples, and test equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings without cost and test as necessary to determine compliance with these regulations.

802 ADMINISTRATIVE REVIEW — CONDEMNATION ORDER, JUSTIFYING CONDITIONS AND REMOVAL OF EQUIPMENT, WATER, INKS, PIGMENTS, REUSABLE INSTRUMENTS, DISPOSABLE ITEMS, JEWELRY, SHARPS, MARKING INSTRUMENTS AND STENCILS, AND FURNISHINGS

802.1 A duly authorized agent of the Department may condemn and forbid the sale of, or cause to be removed and destroyed, any equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings found in a body art establishment which does not comply with these regulations, or that is being used in violation of these regulations, or that because of dirt, filth, extraneous matter, corrosion, open seams, or chipped or cracked surfaces is unfit for use.

803 ADMINISTRATIVE REVIEW — CONDEMNATION ORDER, CONTENTS

803.1 The condemnation order shall:

- (a) State that the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings subject to the order may not be used, sold, moved from the body art establishment, or destroyed without a written release of the order from the Department;
- (b) State the specific reasons for placing the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings under the condemnation order with reference to the applicable provisions of these regulations and the hazard or adverse effect created by the observed condition;
- (c) Completely identify the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings subject to the condemnation order by the common name, the label or manufacturer's information, description of the item, the quantity, the Department's tag or identification information, and location;
- (d) State that the operator may request an informal conference in accordance with Subsection 806.2. A request for an informal conference does not stay the Department's imposition of the condemnation order;

- (e) State that the Department may order the destruction, replacement or removal of equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings if a timely request for a hearing is not received; and
- (f) Provide the name and address of the Department representative to whom a request for a hearing may be made.

804 ADMINISTRATIVE REVIEW – CONDEMNATION ORDER, OFFICIAL TAGGING OR MARKING OF EQUIPMENT, WATER, INKS, PIGMENTS, REUSABLE INSTRUMENTS, DISPOSABLE ITEMS, JEWELRY, SHARPS, MARKING INSTRUMENTS AND STENCILS, AND FURNISHINGS

- 804.1 The Department shall place a tag, label, or other appropriate marking to indicate the condemnation of equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings that do not meet the requirements of these regulations.
- 804.2 The tag or other method used to identify the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings that are the subject of a condemnation order shall include a summary of the provisions specified in Section 803 and shall be signed and dated by the Department.

805 ADMINISTRATIVE REVIEW – CONDEMNATION ORDER, REMOVING THE OFFICIAL TAG OR MARKING

- 805.1 No person shall remove the tag, label, or other appropriate marking except under the direction of the Department as specified in Subsection 805.2.
- 805.2 The Department shall issue a notice of release from a condemnation order and shall remove condemnation tags, labels, or other appropriate markings from body art equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings if:
 - (a) The condemnation order is vacated; or
 - (b) The operator obtains authorization from the Department to discard equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings in a body art establishment identified in the condemnation order.

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

806.1 The Department may issue a condemnation order to an operator, or to a person who owns or controls the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings as specified in Section 802, without prior warning, or informal conference on the condemnation order.

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

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

807.1 The Department may summarily suspend a license to operate a body art establishment if it is denied access to the body art establishment to conduct an inspection, or determines through an inspection, or examination of operators, employees, records, or other means as specified in the regulations, that an imminent health hazard exists.

808 ADMINISTRATIVE REVIEW — CONTENTS OF SUMMARY SUSPENSION NOTICE

808.1 A summary suspension notice shall state:

- (a) That the license of a body art establishment is immediately suspended and that all operations shall immediately cease;
- (b) The reasons for summary suspension with reference to the provisions of these regulations that are in violation;
- (c) The name and address of the Department representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and
- (d) That the operator may request an informal conference in accordance with Subsection 809.2. A request for an informal conference does not stay the Department's imposition of the summary suspension.

809 ADMINISTRATIVE REVIEW – SUMMARY SUSPENSION, WARNING OR INFORMAL CONFERENCE NOT REQUIRED

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

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

810 ADMINISTRATIVE REVIEW – SUMMARY SUSPENSION, TIME FRAME FOR REINSPECTION

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

811 ADMINISTRATIVE REVIEW – SUMMARY SUSPENSION, TERM OF SUSPENSION, REINSTATEMENT

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

812 ADMINISTRATIVE REVIEW – REVOCATION OR SUSPENSION OF LICENSE, OR DENIAL OF APPLICATION OR RENEWAL OF LICENSE

812.1 Failure to comply with any of the provisions of these regulations shall be grounds for the revocation or suspension of any license issued to a body art establishment pursuant to the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2012 Repl.)). The Department may revoke a license of a body art establishment upon a showing of a subsequent violation when there is a history of repeated violations or where a license has been previously suspended.

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

- 812.3 Before the Department denies an application for license, or denies the renewal of a license as specified in Section 603, an applicant or licensee shall be given an opportunity to answer and to be heard on the violations before the Office of Administrative Hearings in accordance with the Office of Administrative Hearings Rules of Practice and Procedure in Section 2808, Title 1 DCMR, as amended.

CHAPTER 9 SERVICE OF PROCESS

900 SERVICE OF PROCESS – NOTICE, PROPER METHODS

- 900.1 A notice issued in accordance with these regulations shall be deemed properly served if it is served by one (1) of the following methods:
- (a) A Department representative, a law enforcement officer, or a person authorized to serve a civil process, personally services the notice to the operator, or the person operating the body art establishment without a license; or
 - (b) The Department sends the notice to the last known address of the operator or person operating a body art establishment without a license, in accordance with Section 205 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1802.05 (2016 Repl.)), or by other public means so that a written acknowledgment of receipt may be acquired.

901 SERVICE OF PROCESS – RESTRICTION OR EXCLUSION, CONDEMNATION, OR SUMMARY SUSPENSION ORDERS

- 901.1 An employee restriction order, exclusion order, condemnation order, or summary suspension order shall be:
- (a) Served as specified in Subsection 900.1(a); or
 - (b) Clearly posted by the Department at a public entrance to the body art establishment and a copy of the notice sent by first class mail to the operator or manager of a body art establishment, as appropriate.

902 SERVICE OF PROCESS – NOTICE, EFFECTIVENESS

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

903 SERVICE OF PROCESS – PROOF OF PROPER SERVICE

- 903.1 Proof of proper service may be made by certificate of service signed by the person making service or by admission of a return receipt, certificate of mailing, or a written acknowledgment signed by the operator or person operating a body art establishment without a license or an authorized agent.

**CHAPTER 10 ADMINISTRATIVE AND CRIMINAL SANCTIONS,
AND JUDICIAL REVIEW****1000 ADMINISTRATIVE SANCTIONS – NOTICE OF INFRACTIONS**

- 1000.1 The Department may impose civil infraction fines penalties for violations of any provision of these regulations pursuant to the Department of Consumer & Regulatory Affairs Civil Infractions Act of 1985, (Civil Infraction Act), effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801, *et seq.* (2016 Repl.)).
- 1000.2 An operator who receives a Notice of Infraction as specified in Subsections 900.1 and 901.1, may pay the assessed fine or appear before the Office of Administrative Hearings as directed on the reverse side of the Notice of Infraction in accordance with the “Office of Administrative Hearings Rules of Practice and Procedure” in Section 2808, Title 1 DCMR, as amended.

1001 CRIMINAL SANCTIONS – CRIMINAL FINES, IMPRISONMENT

- 1001.1 An operator whose body art establishment is operating in violation of Subsections 200.5, 201, 202, 311, and 314.1 of these regulations shall be subject to license suspension or revocation as specified in Section 812 and a maximum fine of two thousand, five hundred dollars (\$2,500) in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01(c)(5) (2015 Repl.)).
- 1001.2 Any person who violates Subsections 600.1 and 600.2 of these regulations shall, upon conviction, be deemed guilty of a misdemeanor and may be punished by a fine not to exceed two thousand five hundred dollars (\$2,500), imprisonment for not more than three (3) months, or both in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01(d)(3) (2015 Repl.)).

1002 JUDICIAL REVIEW – APPEALS

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

CHAPTER 99 DEFINITIONS

9900 GENERAL PROVISIONS

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

9901 DEFINITIONS

9901.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

Aftercare Instructions – written instructions given to a customer, specific to the body art procedure received and caring for the body art and surrounding area, including information about when to seek medical treatment, if necessary.

Antiseptic solution – a liquid or semi-liquid substance that is approved by the U.S. Food and Drug Administration to reduce the number of microorganisms present on the skin and on mucosal surfaces.

Bloodborne pathogens – a microorganism present in human blood and other bodily fluids that can cause disease. Bloodborne pathogens include the hepatitis B virus, hepatitis C virus, and human immunodeficiency syndrome.

Board – the Department of Consumer and Regulatory Affairs (DCRA) Board of Barber and Cosmetology.

Body art establishment – any structure or venue, whether temporary or permanent, where body art procedures are performed, including training facilities.

Body art or body art procedure – the process of physically modifying the body for cosmetic or other non-medical purposes, including tattooing, body-piercing, and fixing indelible marks or figures on the skin through scarification, branding, tongue bifurcation, and tissue removal.

Body artist – an individual licensed to perform body art procedures in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-193; D.C. Official Code § 47-2809.01 (2015 Repl.)).

Body piercing – the perforation of any human body part followed by the insertion of an object, such as jewelry, for cosmetic or other nonmedical purposes by

using any of the following instruments, methods, or processes: stud and clasp, captive ball, soft tissue, cartilage, surface, surface-to-surface, microdermal implantation or dermal anchoring, subdermal implantation, and transdermal implantation. The term “body-piercing” does not include nail piercing.

Branding – the process of applying extreme heat with a pen-like instrument or other instrument to create an image or pattern.

Cleaning area – the area in a body art establishment used in the decontamination, sterilization, sanitization or other cleaning of instruments or other equipment used body art procedures.

Cleaning products – any material used to apply cleansing agents to the skin, such as cotton balls, tissue and paper products, paper or plastic cups, towels, gauze, or sanitary coverings.

Communicable disease – a disease that can be transmitted from person to person directly or indirectly, including diseases transmitted via blood or body fluids.

Condemnation order – a written administrative notice: (1) to remove any body art equipment or supplies, or (2) to cease conducting any particular procedures because the equipment or supplies are not being used or the procedures are not being conducted in accordance with the requirements of these regulations.

Contaminated – the presence or reasonably anticipated presence of blood, infectious materials or other types of impure materials that have corrupted a surface or item through contact.

Contaminated waste – any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; contaminated sharps and pathological and microbiological wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations, Part 1910.1030, known as “Occupational Exposure to Bloodborne Pathogens”.

Customer – an individual upon whom a body art procedure is performed.

Decontamination – the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where the

pathogens are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

Decontamination and sterilization area – a room, or specific section of a room, that is set apart and used only to maintain supplies, and to clean, decontaminate and sterilize jewelry and instruments.

Department – the Department of Health.

Disinfectant – an EPA registered hospital grade disinfectant which is effective against *Salmonella choleraesuis*, *Staphylococcus aureus* and *Pseudomonas aeruginosa*; or to reduce or eliminate the presence of disease-causing microorganisms, including human immunodeficiency virus (HIV) and hepatitis B virus (HBV) for use in decontaminating inanimate objects and work surfaces.

Ear piercing – the creation of an opening in an individual’s ear lobe with an ear piercing gun to insert jewelry or other decoration.

Ear piercing gun – a mechanical device that pierces an individual’s ear using a single-use stud and clasp ear piercing system.

Exposure – an event whereby the eye, mouth or other mucous membrane, non-intact skin or parenteral contact with the blood or bodily fluids of another person, or contact of an eye, mouth or other mucous membrane, non-intact skin or parenteral contact with other potentially infectious matter.

Exposure control plan – a written action plan that specifies precautionary measures taken to manage and minimize potential exposure to bloodborne pathogens in the workplace.

FDA-Approved Instruments – sharps, such as, needles, needle bars, needle tubes, hemostats, forceps, pliers, and other items that may come in contact with a customer’s body or possible exposure to bodily fluids during the body art procedures.

Germicidal soap – an agent designed for use on the skin that kills disease-causing microorganisms, including but not limited to, products containing povidone-iodine, chloroxylenol, triclosan, and chlorhexidine gluconate.

Germicidal solution – an agent that kills disease-causing microorganisms on hard surfaces; a disinfectant or sanitizer registered with the Environmental Protection Agency and/or a 1:100 dilution of 5.25% sodium hypochlorite (household chlorine bleach) and water, made fresh daily, dispensed from a spray bottle, and used to decontaminate inanimate objects and surfaces.

Gloves – protective hand covers that reduce the risk of injury and exposure to bloodborne pathogens; those which are medical-grade latex, vinyl or hypoallergenic single-use disposable gloves and are labeled for surgical or examination purposes, for instrument cleaning shall be heavy-duty, multi-use and waterproof.

Ink cup – a small container for an individual portion of pigment that may be installed in a holder or palette and in which a small amount of pigment of a given color is placed.

Manager – a person licensed by the Department of Consumer and Regulatory Affairs to manage a body art establishment.

Medical-grade sharps container – a puncture-resistant, leak-proof, rigid container that can be closed for handling, storage, transportation and disposal and is labeled with the International Biohazard Symbol:



Minor – any person under the age of eighteen (18).

Mucosal surface – the moisture-secreting membrane lining of all body cavities or passages that communicates with the exterior, including but not limited to the nose, mouth, vagina, and urethra.

Multi-type establishment – an operation encompassing both body-piercing and tattooing in the same establishment and under the same management.

Operator – any person who owns, controls, or operates a body art establishment, whether or not the person actually performs body art procedures.

Permanent cosmetics – the application of pigments in human skin tissue for the purpose of permanently changing the color or other appearance of the skin, including but not limited to permanent eyeliner, eyebrow, or lip color.

Pre-sterilized instruments – instruments that are commercially sterilized and packaged by the manufacturer and bear a legible sterilization lot number and expiration date.

Procedure or procedural area – a room or designated portion of a room that is set apart and only used to perform body art.

Procedure site – an area or location on the human body selected for the placement of body art.

Sanitary – clean and free of agents of infection or disease.

Sanitization – reduction of the population of microorganisms to safe levels, as determined by the Department of Health, by a product registered with the Environmental Protection Agency (“EPA”) or by chemical germicides that are registered with the EPA as hospital disinfectants.

Sanitized – effective bactericidal treatment by a process that provides sufficient concentration of chemicals for enough time to reduce the bacteria count including pathogens to a safe level on instruments, equipment, and animate objects.

Scarification – placing of an indelible mark on the skin by the process of cutting or abrading the skin to bring about permanent scarring.

Sharps – any sterile or contaminated object that penetrates the skin or mucosa, including but not limited to pre-sterilized single needles, scalpel blades; and disposable, single-use razor blades; but not including disposable safety razors which have not broken the skin.

Single-use – products or items intended for one-time use that are disposed of after use on a customer.

Sterilization – process of destruction of all forms of microbial life, including spores by physical or chemical means.

Sterilizer – an autoclave that is designed and labeled by the manufacturer as a medical instrument sterilizer and is used for the destruction of microorganisms and their spores.

Tattoo – placing of pigment into the skin dermis for cosmetic or other nonmedical purposes, including the process of micropigmentation or cosmetic tattooing.

Tissue removal – placing an indelible mark or figure on the skin through removal of a portion of the dermis.

Tongue bifuraction – cutting of the human tongue from tip to part of the way toward the base, forking at the end into two or more parts.

Valid license or registration – a current license or registration issued by the Mayor that is not suspended, revoked, or expired.

Workstation – the area within a procedure area where body-artists perform body art procedures. The workstation includes but is not limited to the customer’s chair or table, counter, mayo stand, instrument tray, storage drawer, and body artist’s chair.

All persons wishing to comment on these proposed rules should submit written comments no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the Office of the General Counsel, Department of Health, 899 North Capitol Street, N.E., Room 547, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the above address, excluding weekends and holidays. You may also submit your comments to Angli Black at (202) 442-5977 or email Angli.Black@dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA**NOTICE OF PROPOSED RULEMAKING****RULEMAKING NUMBER 23 –2017-01 - NATURAL GAS**

1. The Public Service Commission of the District of Columbia (“Commission”), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2012 Repl.), hereby gives notice of its intent to adopt the following amendments to Chapter 23 (Natural Gas) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (“DCMR”).

The proposed rules update the Gas Procurement Report requirements.

The Commission shall take final rulemaking action not less than forty-five (45) days after publication of this notice in the *D.C. Register*.

Chapter 23, NATURAL GAS, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 2315, GAS PROCUREMENT REPORT, is amended to read as follows:

2315 GAS PROCUREMENT REPORT

2315.1 On December 1st, biennially, the Washington Gas Light Company (WGL or Company), shall file a Gas Procurement Report (GPR) setting forth the Company's gas procurement strategies and practices.

2315.2 The GPR shall contain the following information:

- (a) Actual annual and monthly gas supply, billing determinants and costs, including weighted average cost of gas, as allocated to major classes of service by jurisdiction;
- (b) Actual margins for delivery to Interruptible Sales and special contract customers;
- (c) An outline of the efforts made to obtain and maintain a reliable gas supply at reasonable costs; and
- (d) An outline and discussion of the decision-making basis and planning procedures utilized by WGL in its gas procurement activities.

2315.3 The GPR shall consist of information that the Commission has directed be included, as well as other considerations agreed upon by the members of the Gas Procurement Working Group (GPWG). The GPWG, which shall consist of representatives from the Staff of the Commission (Staff), the Office of the

People's Counsel (OPC) and WGL, shall meet periodically to discuss and refine the GPR. However, WGL, not the GPWG, shall formulate the GPR.

- 2315.4 The GPWG shall review and discuss gas procurement planning activities and strategies. The GPWG shall transfer technical knowledge to the Staff which will ultimately assist in the Commission's review and evaluation of the Company's planning activities and strategies.
- 2315.5 OPC and the public may file comments not later than ninety (90) days from the date of the GPR's submission to the Commission.
- 2315.6 WGL should submit reply comments, if any, not later than thirty (30) days from the submission of comments of OPC or the public.
- 2315.7 The Commission shall review the GPR, OPC's comments, along with any public comments, and any reply comments and thereafter make public its evaluation of the GPR.

2. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit written comments and reply comments not later than thirty (30) and forty-five (45) days, respectively, after publication of this notice in the *D.C. Register* with Brinda Sedgwick-Westbrook, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005. Copies of the proposed rules may be obtained by visiting the Commission's website at www.dcpssc.org or at cost, by contacting the Commission Secretary at the address provided above.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-185
August 16, 2017

SUBJECT: Delegation of Authority – Collection of Employee Debt and Waiver of District Government Claims for Erroneous Payments to Employees


ORIGNATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2016 Repl.), and by sections 2901, 2902, 2903, and 2904 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (“**CMPA**”), effective March 3, 1979, D.C. Law 2-139; D.C. Official Code §§ 1-629.01, 1-629.02, 1-629.03, and 1-629.04 (2016 Repl.), it is hereby **ORDERED** that:

1. The Mayor’s authority under section 2901 of the CMPA (D.C. Official Code § 1-629.01 (2016 Repl.)) to waive, in whole or in part, a claim of the District government against a current or former employee of the District government arising under section 2902 of the CMPA (D.C. Official Code § 1-629.02 (2016 Repl.)) is delegated as follows:
 - a. The Chief Financial Officer (“**CFO**”) shall have authority to grant or deny requested waivers of any amount less than one thousand dollars (\$1,000.00) for current or former District government employees;
 - b.
 - i. The Director of the Department of Human Resources (“**Director, DCHR**”) shall have authority to deny a requested waiver of any amount between one thousand dollars (\$1,000.00) and five thousand dollars (\$5,000.00) for current or former District government employees;
 - ii. The Director, DCHR, shall have authority to grant a requested waiver of any amount between one thousand dollars (\$1,000.00) and five thousand dollars (\$5,000.00) for current or former District government employees with the concurrence of the CFO or his or her designee;
 - c.
 - i. The Director, DCHR, shall have authority to deny a requested waiver of any amount over five thousand dollars (\$5,000.00) for current or former District government employees;
 - ii. The Director, DCHR, shall have authority to grant a requested waiver of any amount that exceeds five thousand dollars (\$5,000.00) for current or former District government employees with the concurrence of both the CFO, and the Mayor or the City Administrator, or their designees; and

- d. Notwithstanding paragraphs (a), (b), and (c) of this section, the CFO shall have sole authority to grant or deny all requested waivers for current or former employees of the Office of the Chief Financial Officer (“OCFO”).
- 2. The authority delegated pursuant to paragraph 1 of this Order must be exercised consistent with section 2901 of the CMPA (D.C. Official Code § 1-629.01), including the limitations in subsection (b) of that section that the authority to waive a claim may not be exercised if there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, former employee, or any other person having an interest in obtaining a waiver of the claim.
- 3. The CFO is delegated the Mayor’s authority and duties specified in sections 2902, 2903, and 2904 of the CMPA (D.C. Official Code §§ 1-629.02, 1-629.03, and 1-629.04 (2016 Repl.)).
- 4. Denial of waivers made pursuant to this Order shall constitute the final administrative decisions of the District government and are not subject to further administrative appeal.
- 5. Except as otherwise noted in this Order, the authority delegated to the CFO in paragraphs 1 and 3 of this Order may be re-delegated to any “at will” employee in the OCFO. Additionally, the authority delegated to the Director, DCHR, in paragraph 1 (b) and (c) of this Order may be re-delegated to any “at-will” employee in DCHR.
- 6. Mayor’s Order 2009-27, dated March 9, 2009, is rescinded.
- 7. **EFFECTIVE DATE:** This Order shall become effective immediately.


 MURIEL BOWSER
 MAYOR

ATTEST: 
 LAUREN C. VAUGHAN
 SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

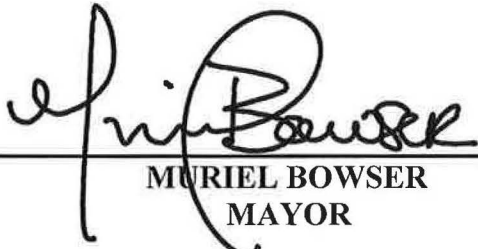
Mayor's Order 2017-186
August 18, 2017

SUBJECT: Appointment - Interim Director, Department of Small and Local Business Development


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 2312 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005, D.C. Law 16-33, D.C. Official Code § 2-218.12 (2016 Repl.), it is hereby **ORDERED** that:

1. **TENE DOLPHIN** is appointed Interim Director, Department of Small and Local Business Development and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2015-123, dated April 29, 2015.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to August 11, 2017.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-187
August 18, 2017

SUBJECT: Designation of Grant-Managing Entity Under the Innovation Fund Establishment Act of 2013


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11), and by the Innovation Fund Establishment Act of 2013, effective December 24, 2013, D.C. Law 20-61, D.C. Official Code § 1-325.221 *et seq.* (2016 Repl.) ("**Innovation Fund Establishment Act**"), it is hereby **ORDERED** that:

1. The Community Foundation for the National Capital Region is designated as the grant-managing entity under the Innovation Fund Establishment Act for fiscal year 2018.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-188
August 21, 2017

SUBJECT: Appointment - Interim Director, District Department of Transportation


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and by section 3(a) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002, D.C. Law 14-137, D.C. Official Code § 50-921.02(a) (2012 Repl. and 2017 Supp.), it is hereby **ORDERED** that:

1. **JEFFREY MAROOTIAN** is appointed Interim Director, District Department of Transportation, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2015-104, dated March 26, 2015.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to August 11, 2017.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

CITY ARTS AND PREP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****HVAC SERVICES****ABOUT THE SCHOOL**

City Arts + Prep Public Charter School (City Arts), formerly the William E Doar Jr Public Charter School (WEDJ), blends rigorous academics with world-class arts instruction provided by accomplished artists from renowned dance, musical, theatrical, and visual arts institutions. City Arts is the only public school in Washington, DC to provide professional-caliber arts training for students in Pre-K through eighth grade at no cost to families.

City Arts serves more than 450 students, a majority of whom are African American, and 85 percent of whom qualify for free/reduced priced lunch. City Arts employs over 40 faculty members.

While City Arts has developed a strong arts program that includes partnerships with nationally recognized arts groups, its academic program is developing to meet the increased expectations of DC's high-stakes educational environment.

SCOPE OF WORK

The Board of Directors of City Arts is seeking proposals from HVAC vendors with experience in servicing schools. We would like for you to include two references. We are interested in retaining services from September 1, 2017 – June 30, 2018.

REQUIRED INFORMATION

The following information shall be provided in each proposal in order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of City Arts. Please provide specific details on:

- Thermostat setting assessment
- Electrical connection check
- Lubrication
- Condensate drain examination
- General operation assessment
- Outdoor unit inspection
- Fan assessment
- Air filter replacement
- Coil cleaning
- Refrigerant check
- Blower maintenance
- Examine heating elements

General Evaluation Requirements

- Experience and reputation
- Cost

COSTS AND PAYMENT SCHEDULES

All contract costs must be detailed specifically in the Vendor's cost proposal. No charges other than those specified in the proposal shall be allowed without written consent of the CityArts + Prep. The proposal costs shall include NET 30 and full compensation for all taxes that the selected vendor is required to pay.

GUIDELINES

The school must receive a PDF version of your proposal no later than 5:00 P.M., Tuesday, September 5, 2017. Proposals should be emailed to: bids@cityartspcs.org

Questions regarding the bid can be e-mailed to joycewn@gmail.com.

No telephone submissions or late responses will be accepted. Interviews, samples, and demonstrations may be scheduled at our request only after the review of the proposals.

**D.C. CRIMINAL CODE REFORM COMMISSION
NOTICE OF PUBLIC MEETING**

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, September 6, 2017 at 2pm. The meeting will be held in Room 1112 of the Citywide Conference Center on the 11th Floor of 441 Fourth St., N.W., Washington, DC. The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements

- II. Discussion Items:
 - a. Advisory Group Written Comments on Specified General Provisions:
 - (1) First Draft of Report No. 6, Recommendations for Chapter 8 of the Revised Criminal Code—Penalty Enhancements
 - (2) First Draft of Report No. 7, Recommendations for Chapter 3 of the Revised Criminal Code—Definition of a Criminal Attempt

 - b. Property Offenses:
 - (1) First Draft of Report #8 Property Offense Definitions, Aggregation, Multiple Convictions
 - (2) First Draft of Report #9 Theft and Damage to Property Offenses
 - (3) First Draft of Report #10 Fraud and Stolen Property Offenses
 - (4) First Draft of Report #11 Trespass and Burglary Offenses
 - (5) Advisory Group Memo #12 Property Offense Supplementary Materials

- III. Adjournment.

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

D.C. Bilingual Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide:

- COO Services

Please email bids@dcbilingual.org to view a full RFP offering and/or submit your proposal. Proposals should be received no later than 4:00 P.M., Wednesday, September 6, 2017.

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: 1B02

Petition Circulation Period: **Monday, August 28, 2017 thru Monday, September 18, 2017**

Petition Challenge Period: **Thursday, Sept. 21, 2017 thru Wednesday, Sept. 27, 2017**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001**

For more information, the public may call **727-2525**.

**DEPARTMENT OF EMPLOYMENT SERVICES
NOTICE OF FUNDING AVAILABILITY (NOFA)**

FISCAL YEAR 2018 (FY18)

Evaluation of Mayor's Opportunity Scholarship Program (MOSEVAL2018)

Request for Application (RFA) Release Date: August 23, 2017

Notice of Intent to Apply Due: August 28, 2018

Application Conference Webinar: August 31, 2017

GRANT APPLICATIONS DUE: September 15, 2018

The Department of Employment Services – Office of Youth Programs is soliciting grant applications for the Mayor's Opportunity Scholarship (MOS) Program which is a pilot program to support the post-secondary endeavors of participants in the Marion S. Barry Summer Youth Employment Program (MBSYEP). As a result, MOS provided scholarships in the amount of \$2,000 each for young adults ages 18-24, who have successfully attained a high school diploma or equivalent and participated in 2017 MBSYEP and enrolled in post-secondary education or occupational skills training or the military.

DOES understands the success of this program is dependent on the ongoing sustainability and effectiveness in aiding MBSYEP participant in reaching their educational goals. OYP is seeking an organization with expertise in conducting research studies on the return on investment of youth programs. The research conducted shall be gold standard and yield data analysis, research reports for public consumption, and make recommendations on ways to improve such programming. The program evaluator shall track the scholarship program's performance, and make recommendations on the feasibility of the program going forward including, but not limited to:

- Program performance such as fiscal management, recruitment, and general outcomes;
- Feedback from program staff, youth, parents, and other community stakeholders;
- Areas of successes and growth on major aspects of the scholarships; and
- Other areas identified by the agency's director or designee

Eligibility: Applications shall meet all applicable eligibility requirements to conduct business in the District of Columbia Government. Organizations that are eligible to apply for this grant include public and private non-profit and for-profit organizations with demonstrated effectiveness providing gold standard research services including, but not limited to:

- Non-profit, community, or faith-based organizations;
- Community colleges or other postsecondary institutions;
- Public, charter, or alternative secondary schools;
- Trade associations or chambers of commerce;
- Private, for-profit service providers; or
- Labor unions, labor-management partnerships, or registered apprenticeship programs.

Length of Award: This is a one year grant. Successful applicants may be granted additional years as appropriate and if necessary.

Available Funding for Award: The total funding available for FY18 will not exceed \$50,000.

Anticipated Number of Awards: DOES has funding available for at least one award but contingent upon available funding.

An external review panel will be convened to review, score, and rank each application. The review panel will be composed of neutral, qualified, professional individuals selected for their expertise, knowledge or related experiences. The application will be scored against a rubric and application will have multiple reviewers to ensure accurate scoring. Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s). DOES will make all final award decisions.

For additional information regarding this grant competition, please contact:

Office of Youth Programs
Department of Employment Services
oypgrants@dc.gov

The RFA and all supporting documents will be available on <https://does.dc.gov/page/grant-opportunities> or by contacting Deborah Ali at Deborah.Ali3@dc.gov.

**DEPARTMENT OF EMPLOYMENT SERVICES
OFFICE OF YOUTH PROGRAMS**

Notice of Funding Availability

Release Date- Request for Applications: August 22nd, 2017

Notice of Funding August 22, 2017

Pre-Application Meeting Webinar: August 23th 2:00 PM

Letter of Intent to Apply Due: September 1st, 2017 12:00 PM

GRANT APPLICATIONS DUE: September 8, 2017 12:00 PM

In-School Youth Innovation Grants– Pilot

The District of Columbia Department of Employment Services (DOES) is pleased to announce a funding opportunity soliciting grant applications to support the delivery of innovative workforce solutions and education that will drastically improve the opportunities for in-school youth between the ages of 14-21. Organizations will be asked to support workforce related programming with case management services and follow-up services for four (4) months in one or more of five (5) Career Pathways. The pathways include Information Technology, Science, Engineering, Math & Technology, Law, Public Safety, Corrections & Human Services, Entrepreneurship, Business Management, Arts, and AV Technology & Communications.

The innovative workforce development programming is aimed at:

- the attainment of a secondary school diploma or its recognized equivalent,
- entry into postsecondary education,
- career readiness for teens and young adult participants,
- paid and unpaid internships or job shadowing in an emerging career pathway, and
- other innovative solutions that have been shown to drastically improve opportunities and academic outcomes for In-School Youth (ISY) and young adults between the ages of 14- to 21-years-old.

Youth with Disabilities

The DOES Office of Youth Programs supports all eligible youth, including those that are identified as youth with disabilities. Increasing services to this population is critical for serving all eligible youth in the District. We encourage providers to partner with organizations that serve youth with disabilities. Youth with disabilities must be afforded more opportunities to practice and improve their workplace skills, explore their career interests and receive services to assist with eliminating barriers. Any provider who submits a proposal with specific programming for this demographic may receive special consideration and preference points during the review process.

Please refer to the WIOA guidelines and Fact Sheet for Youth Programs when determining eligibility criteria to be met. https://www.doleta.gov/wioa/Docs/WIOA_YouthProgram_FactSheet.pdf

Eligible Applicants

Applicants must be an entity who is eligible to do business with the District Government or an eligible training provider with documented experience providing training for DC's youth. A pre-application meeting/webinar will be held on Wednesday August 23, 2017 at 2:00 p.m. This meeting will afford interested parties an opportunity to learn more about the grant opportunity and ask questions. To apply for this grant opportunity, applicants should go to the grants portal at the below web address and complete a Letter of Intent (LOI) by Friday September 1, 2017 12:00 PM. Once your organizations LOI is submitted and approved your organization will receive an approval email and then be able to respond to the official RFA located within the grants portal. Please be advised if organizations do not submit an LOI through the grant portal your organization will not be able to submit a proposal for the grant.

Up to five (5) awards at \$100,000 each, totaling \$500,000 in grant funds will be made available.

Organizations that are eligible to apply for this grant include public and private non-profit and for-profit organizations with demonstrated effectiveness providing the requested services and meeting the needs of the target population, including but not limited to:

- Non-profit, community, or faith-based organizations;
- Public, Local Education Agencies, charter, or alternative secondary schools;
- Community colleges or other postsecondary institutions;
- Trade associations or chambers of commerce;
- Private, for-profit service providers; or
- Labor unions, labor-management partnerships, or registered apprenticeship programs.

The grant portal can be found at: [Grants Management System](#).

Determinations regarding the number of innovative grant awards will be based on the quality and number of applications received and available funding.

A review panel(s) will be convened to review, score, and rate each application for a competitive grant. The review panel(s) will be composed of external neutral, qualified, professional individuals selected for their expertise, knowledge or related experiences. Each application will be scored against a rubric and applications will have multiple reviewers to ensure accurate scoring.

Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s). The Agency Director or his designee will make all final award decisions.

For more information or questions, please contact:

Frederick Rogers
Program Manager, Office of Youth Programs
4058 Minnesota Ave, NE, 2nd Floor
Washington, DC 20019
Email: oyprgrants@dc.gov

The RFA and all supporting documents will be available on <https://does.dc.gov/page/grant-opportunities> and <http://opgs.dc.gov> or by contacting Frederick Rogers at Frederick.Rogers@dc.gov.

**DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY**

RiverSmart Rooftops Green Roof Rebate Program

The Department of Energy and Environment (the Department) seeks eligible entities to encourage the installation of green roofs on private property in the District and strengthen public awareness of stormwater issues and management. The amount available for the project is approximately \$300,000.00 per year with a project period of three years, evaluated annually for a total potential amount of \$900,000.00 over the full grant period.

Beginning 8/18/2017, 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. 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 2017RiverSmartRooftopsRFA.grants@dc.gov with "Request copy of RFA 2017-1726-WPD" 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 Cecilia Lane at 535-1961 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Cecilia Lane RE:2017-1726-WPD" on the outside of the envelope.

The deadline for application submissions is 10/2/2017, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2017RiverSmartRooftopsRFA.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: 2017RiverSmartRooftopsRFA.grants@dc.gov.

**DEPARTMENT OF HEALTH (DOH)
HIV/AIDS, HEPATITIS, STD & TB ADMINISTRATION (HAHSTA)**

**NOTICE OF FUNDING AVAILABILITY (NOFA)
RFA # HAHSTA_EBP_09.08.17**

Effi Barry HIV/AIDS Capacity Building Program

The Department of Health (DOH) HIV/AIDS, Hepatitis, STD and TB Administration (HAHSTA) is soliciting applications from District organizations to participate in the Effi Barry HIV/AIDS Program (EBP). The EBP is a capacity-building initiative that seeks to strengthen District medical and non-medical providers to implement the strategies framed in the National HIV/AIDS Strategy, the District's 90/90/90/50 Plan and Integrated HIV Care and Prevention Plan, and adapt to the changes in the health care system and funding mechanisms. HAHSTA intends to make a single award to fund the Effi Barry HIV/AIDS Institute for facilitation and provision of training, technical assistance and capacity building to support providers and organizations in the Washington, DC metropolitan area, including the District of Columbia, Suburban Maryland and Northern Virginia.

Up to **\$300,000** will be made available for the EBP through FY18 DC Appropriated funds. The funds are authorized by the "Effi Slaughter Barry HIV/AIDS Initiative Act of 2008." DOH is soliciting applications to support one program area under this RFA:

- **Effi Barry HIV/AIDS Institute:** one (1) award for a capacity building and technical assistance provider. The Effi Barry HIV/AIDS Institute is designed to strengthen capacity and competency of individuals and organizations in the field of HIV, sexual and behavioral health, and support services, including prevention, housing, care, and treatment. The awardee will provide trainings and technical assistance to support current and prospective HAHSTA grantees and community-based organizations in the Fee-for-Service business process; basic HIV service competencies; advanced skills in health care systems, data and health informatics; high-impact prevention programs, including biomedical; and emerging evidence-based or informed approaches through a series of group-level trainings, boot camps, community forums, and individual consultation. Additionally, the awardee will provide logistical support for other training classes determined by HAHSTA based on needs assessed or requested from organizations.

The release date for RFA # HAHSTA_EBP_09.08.17 is Friday, September 08, 2017. The RFA will be available for pick up at 899 North Capitol Street, NE, 4th Floor, Washington, DC and on the website at <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> under the District Grants Clearinghouse on **Friday, September 08, 2017**. Submission deadline is **Friday, September 29, 2017 by 6:00 p.m.** The Pre-Application meeting will be held in the HAHSTA offices located at 899 North Capitol Street, NE, 4th Floor, Washington, DC 20002 on **Wednesday, September 13, 2017** from 2:30pm – 4:00pm.

Please contact Anthony E. Fox at Anthony.Fox@dc.gov or (202) 671-4937 for additional information.

IDEAL ACADEMY PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS

Ideal Academy Public Charter School hereby solicits proposals to provide:

- School Supplies
- Office Supplies
- Transportation Services
- Janitorial Services
- Security Services
- Landscaping and Snow Removal
- General Contracting Services – Miscellaneous small projects and repairs
- Annual Audit Services
- Special Education Services
- Accounting Services
- Foreign Language Programs
- Professional Development & Consulting Services
- Assessment & Instructional data support & services

Please email zuella.evans@iapcs.com for more details about requirements.
Bids are DUE BY Friday, September 15, 2017 at 5pm.

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****Security Camera Platform Standardization**

KIPP DC is soliciting proposals from qualified vendors for Security Camera Platform Standardization. The RFP can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on September 15, 2017. Questions can be addressed to kevin.mehm@kippdc.org.

Door Installation

KIPP DC is soliciting proposals from qualified vendors for Door Installation. The RFP can be found at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00PM EST, on September 13, 2017. Questions can be addressed to denocencia.wade@kippdc.org and lorraine.ramos@kippdc.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF AUGUST BOARD MEETING CANCELLATION**

The District of Columbia Public Charter School Board (“PCSB”) hereby gives notice that there will be no public board meeting held in August. For more information, please visit our website at www.dcpsb.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF DATE CHANGE FOR OCTOBER BOARD MEETING**

The District of Columbia Public Charter School Board (“PCSB”) hereby gives notice of a date change for its October 2017 public board meeting. The October board meeting will be on Monday, October 23, 2017 at 6:30pm. An agenda will be published on our website at www.dcpsb.org.

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

Application No. 17535-A of Mary Goodman, as amended¹, pursuant to 11 DCMR § 3104.1², for a special exception from the accessory apartment requirements under § 202.10, and a special exception under § 223, not meeting the rear yard requirements under § 404.1, to construct a building connection and second-story addition to an existing accessory garage and establish an accessory apartment in the R-3 District at premises 3254 O Street, N.W. (Square 1230, Lots 125 and 825).

HEARING DATES: April 5 and May 17, 2016
DECISION DATE: June 21, 2016

DECISION AND ORDER

Mary Goodman, the property owner of the subject premises (the “Owner” or the “Applicant”), filed an application with the Board of Zoning Adjustment (the “Board”) on January 28, 2016, for a special exception from the accessory apartment requirements under § 202.10, and a special exception under § 223 of the Zoning Regulations (Title 11 DCMR), to establish an accessory apartment above an existing garage, wherein the completed project will not conform to the rear yard requirements under § 404.1 of the Zoning Regulations. For the reasons explained below, the Board voted to approve the application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 7 (original) and 32 (revised).) In granting the certified relief, the Board 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.

¹ The Applicant amended the application for special exception under § 202.10 by adding a request for a special exception under § 223, not meeting the rear yard requirements under § 404.1. (Exhibit 32.)

² This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was 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. Pursuant to Subtitle A § 104 of the 2016 Regulations, the construction authorized by this Order is vested as to the area requirements contained in 1958 Regulations as of September 5, 2016.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (“ANC”) 2E, and the District of Columbia Office of Planning (“OP”). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 29.)

ANC Report. In its report dated March 2, 2016, ANC 2E indicated that, at a regularly scheduled monthly meeting on February 29, 2016, with a quorum present, the ANC voted 8-0-0 to request that the Board “defer consideration of Application No. 17535A until a pending dispute between the District of Columbia and Mr. Kebreab Zere concerning, among other things, whether homeowners whose properties abut the alley behind 3254 O Street have the right to access and traverse that alley” and in the alternative, to deny the Applicant’s request to allow the issuance of a special exception “that would allow the applicant to construct a ‘trellised walkway’ to connect her existing single-family dwelling to her existing free-standing garage and to expand the garage to include an accessory apartment.” The ANC noted its concern that the waiver of § 202.10(d) would conflict with the intent of the R-3 District to maintain a single-family residential appearance and character. The ANC also raised concerns that the proposed trellis-covered walkway does not meet the definition of “meaningful connection” and that the project does not meet the definition of “row dwelling.” (Exhibit 27.)

ANC 2E Commissioner Jeff Jones testified on behalf of the ANC in opposition to the application at the hearing on April 5, 2016 and submitted his testimony to the record. (Exhibit 37.)

The ANC filed a response to the Applicant’s Supplemental Submission, dated May 13, 2016, which further argued that the waiver of the preamble of § 202.10, as requested by the Applicant, is not authorized by the regulations. In addition, the ANC’s response raised concerns about the letters of support submitted by the Applicant, requesting that the Board not admit the 27 form letters to the record, or in the alternative, noting that the letters do not represent the opinions of the neighbors most affected by the project. (Exhibit 47.)

Requests for Party Status. ANC 2E was automatically a party to this proceeding. No other requests for party status were submitted in this case.

Persons in Opposition. The Board received a petition signed by nine neighbors in opposition to the application (Exhibit 24) as well as a letter from one of these neighbors requesting that the Board defer action on the application until an issue regarding ownership and access to an alley, access to which the Applicant and the other neighbors that abut the alley share, is resolved. (Exhibit 25.) Mr. Kebreab Zere, the owner of five vacant lots designated as Square 1230, Lots 0804, 0814, 0818, 0820, and 0822, submitted a letter (Exhibit 35) and testified in opposition to the application. (Exhibit 43.) In addition to Mr. Zere, Robert Jones, Mary Carter, Florence Ald, and Gerald Turner also testified in opposition to the application.

Persons in Support. The Applicant submitted 27 letters of support from neighbors within 0.1 miles of the Property. (Exhibit 46A.)

OP Report. OP submitted a report, dated March 29, 2016, recommending approval of the application for special exceptions from §§ 202.10 (Accessory Apartments) and 223 (20-foot rear yard required, 2 feet, 9.5 inches proposed) subject to two conditions:

1. The design reflect [sic] other accessory buildings along the private alley and the alley to the west, west of 33rd Street, including matching the brick, roofing colors and materials, windows and doors. Windows and doors should be painted in colors consistent with those on surrounding and nearby garage buildings; and
2. The Applicant revises the drawings to indicate that the trellis connects completely with the rear door of the principal dwelling, including the stairs leading up to the rear door of the house.

(Exhibit 30, p. 1.)

At the public hearing on April 5, 2016, OP testified that the Applicant had made the requested revisions and therefore the conditions no longer were needed.

DDOT Report. The District Department of Transportation (“DDOT”) submitted a report stating that it had no objection to the application. (Exhibit 31.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The Property is located at 3254 O Street, N.W. (Square 1230, Lots 125 and 825) (the “Property”) in the R-3 District.
2. The Property consists of two lots comprising approximately 5,533 square feet of land area.
3. The Property is improved with a two-story, one-family detached dwelling that occupies approximately 22% of the lot and a one-story detached garage, which occupies approximately 19% of the lot.
4. Lot 125, the primary lot, contains approximately 5,400 square feet of lot area, and is improved with the dwelling and garage described herein. Lot 825 is adjacent to the southwestern portion of Lot 125 and contains approximately 133 square feet of land. Lot 125 is partially improved with an addition to the garage that permits pedestrian access to the rear of the Property.
5. The Property abuts a 22-foot private alley to the south. The alley runs east to west between Potomac Street and 33rd Street, paralleling N Street to the south and O Street to the north.

6. The Property is located within the Georgetown Historic District³ and is in the jurisdiction of the Commission of Fine Arts.
7. Square 1230 is occupied primarily by row dwellings, one-family detached and semi-detached dwellings, a few flats and one condominium. In close proximity, approximately three blocks west of the Subject Property, is the undergraduate campus of Georgetown University. Approximately three blocks south of the Subject Property is M Street, N.W.

The Proposed Project

8. The Applicant proposes to construct a trellis-covered walkway between the existing one-family dwelling and the existing accessory garage and to construct a second-story addition to the existing garage to be used as an accessory apartment. The Property would continue to be used for residential purposes.
9. The covered walkway will be located at grade level beginning at the rear entrance of the main house to the entrance at the rear of the detached garage. (Exhibit 34.)
10. The connection will extend from the exterior stairs at the rear of the one-family detached dwelling to an existing back door of the existing detached garage. (Exhibit 34.)
11. The trellis will have a roof that will provide at least 51% coverage over the walkway. (Transcript of BZA Public Hearing on April 5, 2016, pg. 77-78.)
12. The trellis will serve as a meaningful connection between the existing principal structure and existing accessory structure, thereby creating a single structure. (Exhibit 34.)
13. The structure will extend lot line to lot line and therefore will eliminate the side yards.
14. Based on the elimination of the side yards, the structure would therefore be a row dwelling, as defined in the Zoning Regulations at 11 DCMR § 199.1.
15. The Property will have a lot occupancy of 43.5%, which is under the maximum of 60% for a row dwelling in the R-3 District. (Exhibit 32.)
16. The gross floor area of the dwelling is at least 2,000 square feet. (Exhibit 5.)
17. The accessory apartment would consist of 22.1 % of the gross floor area of the dwelling. (Exhibit 5.)
18. Additional entrances are proposed to the garage portion of the structure, but none would have street frontage on O Street, N.W. (Exhibit 5.)

³ The Applicant elected to seek the Board's approval before going to the Historic Preservation Review Board.

19. The Applicant will occupy the principal dwelling. (Exhibit 5.)
20. The accessory apartment contains one bedroom and is intended for no more than two inhabitants. No more than six persons will occupy the principal dwelling and accessory apartment combined. (Exhibit 5.)
21. No home occupation is currently located on the Subject Property. (Exhibit 5.)

Zoning Relief

22. The Applicant requests special exception relief under § 202.10 of the Zoning Regulations in order to add an accessory apartment.
23. Pursuant to § 202.10(i), the Applicant requests that the Board waive two of the requirements of the subsection, the preamble and § 202.10(d).
24. Additionally, the Applicant requests special exception relief under § 223 from the rear yard requirements of § 404.1. A 20-foot rear yard is required under § 404.1, and the proposed project would provide no rear yard.

The Impact of the Addition

25. From the street frontage on O Street, N.W., the Subject Property would continue to appear as a one-family detached dwelling, as neither the trellis nor the second-floor addition on the garage would be visible.
26. The second-story above the existing garage would be visible from the private alley, 33rd Street, and Potomac Street, but would not differ significantly from the alley structures within the neighborhood, including the two-story garage building directly across the private alley from the subject property, maintaining the character of the neighborhood.
27. The accessory apartment would be located at the rear of the Subject Property and substantially set back from adjacent properties.
28. The Applicant submitted a shadow study depicting the impacts of the project. (Exhibit 46B.) The shadow study demonstrates that the addition does have some minor impact on adjacent properties, but that the additional shadows created do not amount to a substantial impact.
29. The east and west façades of the Project's addition will not have any windows. The south façade, facing the alley and rear properties, will have four small windows.
30. The north façade, facing the rear of the existing main house, will have about ten windows.

31. The windows on the proposed additional will not have an undue adverse impact on the privacy of adjacent properties, as the majority of the windows provided will face the principal dwelling on the Subject Property.
32. The properties that abut the alley are barricaded by rear garages, blocking views into those properties. Adjacent properties to the east and west are all separated from the Property by fences. (Exhibit 49.)

CONCLUSIONS OF LAW

The Applicant seeks a special exception under § 223 to construct a building connection and second-story addition to an existing accessory garage that eliminate the rear yard required by § 404.1 and a special exception under § 202.10 establish an accessory apartment in the R-3 District at 3254 O Street N.W. (Square 1230, Lots 125 and 825). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Special Exception Under § 223

Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, despite not meeting certain zoning requirements, subject to the enumerated conditions. Specifically, the light and air available to neighboring properties must not be unduly affected (§ 223.2(a)), the privacy of use and enjoyment of neighboring properties must not be unduly compromised (§ 223.2(b)), and the addition, together with the original building, must not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (§ 223.2(c)).

(a) The light and air available to neighboring properties shall not be unduly affected;

Based on the Findings of Fact, and the shadow study submitted by the Applicant under Exhibit 46B, the Board concludes that the light and air available to neighboring properties shall not be unduly affected by the proposed addition. The Board finds that the adjacent properties to the east and west are currently well-shaded by trees and, accordingly, the proposed addition to the existing rear garage will not create an undue impact on light and air available to those properties.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

Based on the Findings of Fact, the Board finds that the addition will not unduly compromise the privacy of use and enjoyment of neighboring properties. The Project's addition will not have windows on the east or west side, thereby not compromising the privacy of either adjacent

neighbor. The south façade will be modestly fenestrated, with several windows, and is facing the alley. The structures that abut the alley are one or two-story garages, and the Project will not impact the use and enjoyment of those properties.

- (c) **The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and**

The Board finds that the proposed addition will not visually intrude upon the character, scale, and pattern of houses along the subject street frontage, O Street, N.W. The addition has been designed to reflect the character of the two-story alley structures in the neighborhood and thus complements the view of houses as viewed from the alley. The Board finds that relief can be granted without substantial detrimental impact on adjoining properties in the neighborhood.

Pursuant to the requirement in § 223.3, the structure shall not exceed a lot occupancy of 70% in the R-3 District. The Board finds that the proposed structure will have a lot occupancy of 43.5% and will comply with § 223.3.

For the reasons discussed above, and as required by § 3104.1, the Board also finds that the proposed addition will not adversely affect the use of neighboring properties. The proposed accessory apartment addition will not be visible from O Street; no windows or doors will face the adjoining properties to the east or west, thus maintaining the privacy and use of neighboring properties; and there is a detached, unchanged view of the property. Further, the Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Board concludes that the Applicant meets the requirements of § 3104.1.

Special Exception Under § 202.10

Pursuant to § 202.10, “an accessory apartment may be added within an existing one-family detached dwelling if approved by the Board of Zoning Adjustment as a special exception under § 3104,” subject to certain requirements. As set forth in paragraphs (a) through (h), the requirements for approval in the R-3 Zone include: (a) the lot must have an area of at least 4,000 square feet; (b) the house must have at least 2,000 square feet of gross floor area, exclusive of garage space; (c) the accessory apartment may not occupy more than 25% of the gross floor area of the house; (d) the accessory apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area, and garage space may not be converted; (e) any additional entrance created to the house must not be located on the wall of the house that faces a street; (f) either the principal dwelling or the accessory apartment must be owner-occupied; (g) the aggregate number of persons who may occupy the house, both the principal dwelling and the accessory apartment, must not exceed six; and (h) an accessory apartment may not be added where a home occupation is already located at the premises.

Request for Waivers

Pursuant to § 202.10(i), the Board may modify or waive up to two of the requirements listed in paragraphs (a) through (h), provided that:

- (1) The owner-occupancy requirement of paragraph (f) shall not be waived;
- (2) Any modification(s) approved shall not conflict with the intent of this section to maintain a single-family residential appearance and character in the R-1, R-2, and R-3 Districts; and
- (3) Any request to modify *more than two (2) of the requirements of this subsection* shall be deemed a request for a use variance.
(Emphasis added.)

The Applicant seeks two waivers from the requirements of § 202.10. First, the Applicant seeks a waiver from the preamble of § 202.10 (“the Preamble”), which requires the apartment to be located within an existing one-family detached dwelling. Although the existing dwelling is currently a one-family detached dwelling, the Applicant proposes to convert the structure into a one-family row dwelling through the construction of a trellis prior to the addition of the accessory apartment. As such, the property would no longer meet the “detached dwelling” requirement. Second, the Applicant requests to waive the requirement in § 202.10(d) that the “new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted.” For the following reasons, the Board finds that these two requests meet the requirements of § 202.10(i), and therefore grants the waivers from both applicable provisions.

Waiver from the Preamble of § 202.10

With regard to the first waiver request, the reference to “one-family detached dwelling” occurs in the introductory provision of § 202.10, not as a requirement listed in paragraphs (a) through (h). However, the Applicant argued and the Board accepted that it may consider, as a special exception, a request for a waiver of any requirement of § 202.10, not only those requirements listed in paragraphs (a) through (h).

The ANC argues, first, that the Board is not authorized to waive the requirements of the Preamble, as it is not a requirement listed in paragraphs (a) through (h). Second, the ANC argues that the Preamble contains not one, but three, discrete requirements. Namely, that the proposed accessory apartment be added: (1) within (2) an existing (3) detached dwelling. The ANC argued that, even if the Board finds the Preamble waivable, it must consider each of these three elements as a separate requirement, resulting in the Applicant’s need to waive three requirements and seek use variance relief.

The Board is not persuaded by the ANC's arguments and finds that its decision to treat the Preamble as a waivable requirement is consistent with its precedent. The Board held in *Order No. 18232 of Herbert J. Sanborn, Jr.* that the Preamble can be waived. In making that determination, the Board in *Sanborn* noted that § 202.10(i)(3) specifies that “[a]ny request to modify more than two (2) of the requirements of *this subsection* shall be deemed a request for a use variance” (emphasis added), which implies that the Board may consider, as a special exception, a request for a waiver of any requirement of § 202.10, not only those requirements listed in paragraphs (a) through (h). The Board has continued to follow this precedent. (See *BZA Application No. 18649 of Rosalyn G. Millman* (2013) (The Board granted a special exception to allow an accessory apartment in an existing one-family semi-detached dwelling under § 202.10); *BZA Application No. 19036 of Jeanette M. Corley* (2015) (The Board granted a special exception from § 202.10 to allow an accessory apartment in a row dwelling). As noted by the Court of Appeals, “agencies, like courts, must and do favor a policy of *stare decisis* unless unusual circumstances intervene.” *Reichley v. District of Columbia Dep't of Employment Services*, 531 A.2d 244, 247 (D.C.1987); accord, *Washington Metropolitan Area Transit Authority v. District of Columbia Dep't of Employment Services*, 683 A.2d 470, 476 (D.C.1996). The Board finds no such exceptional standard exists to justify a departure from this precedent.

The Board also disagrees with the ANC that the preamble contains three separate requirements. The requirement that the apartment be within an existing detached dwelling means that the section does not allow an accessory apartment in a new detached dwelling. Here there is an existing detached dwelling that will be converted to a row dwelling. The fact that the conversion will occur through an addition requires a separate waiver of § 202.10(d) and therefore is not relevant to the Preamble. Therefore, the only conflict between the preamble and what is proposed is a difference in the type of principal use – a detached dwelling instead of a row dwelling – within which an accessory apartment may be established.

As to the compliance with the waiver conditions, the Board finds that the waiver of the Preamble shall not conflict with the intent of the regulations to maintain a residential appearance and character of the R-3 District. As discussed in the special exception criteria of § 223, the Subject Property would continue to appear as a one-family detached dwelling from O Street, N.W., as the addition of the trellis or second-story of the accessory structure would not be visible. The addition would be visible from the alley, 33rd Street N.W., and Potomac Street N.W., but was designed to fit in with the character of other alley structures within the neighborhood. The waiver of the Preamble would not affect the appearance and character of the R-3 District in this case.

Waiver from § 202.10(d)

The second waiver requested by the Applicant applies to the requirement in § 202.10(d) that the “new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted.”

The Board finds that the waiver of § 202.10(d) will also not conflict with the intent of the regulations to maintain a single-family residential appearance and character of the R-3 District. The Board finds that the design proposed creates an appearance that is similar to other two-story garages located in the alley and other garages around the neighborhood. Further, the Board gives credit to OP's finding that the design maintains the appearance and character in the neighborhood.

The ANC argues that converting the one-family detached unit to a one-family row house is not consistent with the appearance and character of the R-3 District. The Board is not persuaded by the ANC's argument because, although the addition will be visible from the alley, 33rd Street N.W., and Potomac Street N.W., the accessory structure addition was designed to be in keeping with other accessory structures in the alley and would not alter the character of the area. Therefore, the Board grants the Applicant's request to waive the requirements of the Preamble and § 202.10, pursuant to § 202.10(i).

Special Exception Criteria of § 202.10

As set forth in paragraphs (a) through (h), the requirements for approval of a special exception to allow an accessory apartment in the R-3 Zone include:

(a) The lot shall have a minimum lot area for the following zone Districts:

(3) Four thousand square feet (4,000 ft.²) for R-2 and R-3;

The Board finds that this requirement is met, as the Subject Property has a lot area of 5,533 square feet.

(b) The house shall have at least two thousand square feet (2,000 ft.²) of gross floor area, exclusive of garage space;

The Board finds that this requirement is met, as the existing dwelling has at least 2,000 square feet of gross floor area.

(c) The accessory apartment unit may not occupy more than twenty-five percent (25%) of the gross floor area of the house;

The Board finds that this requirement is met, as the proposed accessory apartment will occupy 1,018 square feet of gross floor area, which is approximately 22% of the gross floor area of the principal structure.

(d) The new apartment may be created only through internal conversion of the house, without any additional lot occupancy or gross floor area; garage space may not be converted;

The Board has granted a waiver of this requirement.

- (e) If an additional entrance to the house is created, it shall not be located on a wall of the house that faces a street;**

The Board finds that the proposal will create no new entrances to the dwelling from O Street N.W., therefore this requirement is met.

- (f) Either the principal dwelling or accessory apartment unit must be owner-occupied;**

The Applicant has stated for the record that she will occupy the principal dwelling, therefore the Board finds that this requirement is met.

- (g) The aggregate number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, shall not exceed six (6);**

The Applicant has stated for the record that she will limit the aggregate number of persons occupying the principal dwelling and accessory apartment to six occupants. The Applicant further indicates that the proposed accessory apartment will have one bedroom and the intended maximum occupancy would be two persons. The Board finds that the maximum occupancy requirement is met.

- (h) An accessory apartment may not be added where a home occupation is already located on the premises;**

The Applicant has asserted that no home occupation is located on the premises, therefore the Board finds that this requirements is met.

General Special Exception Criteria

The Board also finds that the proposed accessory apartment will not adversely affect the use of neighboring properties as required by § 3104.1. The Board finds that the criteria in the regulations adequately address potential impacts of the accessory apartment and that the project proposed is designed in a way to prevent negative impacts on the neighborhood by limiting the number of inhabitants and ensuring that the property remains owner-occupied. The Board also finds that the accessory apartment will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

Accordingly, the Board finds that the application meets the special exception criteria of § 202.10 and the general special exception criteria of § 3104.1.

Great Weight

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, for the reasons discussed, the Board concurs with OP’s recommendation to approve the application, as reflected in its report under Exhibit 30.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) The ANC submitted a written report and a supplemental filing to the record, both raising various issues and concerns.

In its report dated March 2, 2016, ANC 2E indicated that, at a regularly scheduled monthly meeting on February 29, 2016, with a quorum present, the ANC voted 8-0-0 to request that the Board defer consideration of the application until a pending dispute between the District of Columbia and Mr. Kebreab Zere concerning the alley, or in the alternative that the Board deny the request for special exception relief. (Exhibit 27.) In its report, the ANC further detailed the following concerns: (1) the requested waiver from § 202.10(d) would conflict with the intent of the R-3 District to maintain a single-family residential appearance and character; (2) the proposed trellis-covered walkway does not meet the definition of “meaningful connection;” and (3) the project does not meet the definition of “row dwelling.” (Exhibit 27.)

In addition, ANC 2E filed a response to the Applicant’s Supplemental Submission, dated May 13, 2016, which raised the following additional issues and concerns: First, the ANC argued that the waiver of the preamble of § 202.10, as requested by the Applicant, is not authorized by the regulations. Second, the ANC raised concerns about the letter of support submitted by the Applicant, requesting that the Board not admit the 27 form letters, or in the alternative, noting that the letters do not represent the opinions of the neighbors most affected by the project. (Exhibit 47.)

Request to Defer Proceedings

The Board determined to continue with the hearing proceedings on the requests for special exception relief because the pending dispute is outside the Board’s jurisdiction and because neither party to the dispute could offer a likely timeframe for its resolution. For these reasons, the Board was not persuaded to defer the proceedings.

Waivers Pursuant to § 202.10(i)

The Board has addressed the ANC’s objections to the Applicant’s request for waivers pursuant to § 202.10(i) in its discussion granting those waivers above. In summary, the Board was not persuaded by the ANC to depart from its established precedent of treating the Preamble as a single, waivable provision. In addition, the Board found that waiver of the requirement in §

202.10(d) would not conflict with the intent to maintain a single-family residential appearance and character in the R-3 District, based on the determination that the addition would not be visible from the street frontage and was designed to be in keeping with other nearby alley structures.

Trellised Walkway Addition

The ANC raised several concerns related to the proposed trellised walkway addition: first, that it does not constitute a “meaningful connection,” and second, that the walkway does not serve to convert the structure into a “row dwelling,” as defined in the Zoning Regulations.

The definition of “building” under § 199.1 permits separate portions of a structure to be considered as a single building for zoning purposes provided that a communication exists between those separate portions at or above the main floor. For purposes of this definition, “communication” typically means access between the separate portions of the structure. (*See BZA Appeal No. 16646 of Daniel Serwer and James W. McBride* (2001).) The definition of “building” has been interpreted to mean that a single building can be created when there is a “communication between separate portions of the structure” at or above the main floor of the building. (*See BZA Appeal No. 18664 of Charles C. Parsons* (2013).) The Zoning Commission has used the term “meaningful connection” to describe a communication sufficient to create a single building. (*See Z.C. Order No. 08-34, Center Place Holdings, LLC* (2011).)

The Board has previously determined that a trellised walkway meets the definition of “meaningful connection” when it has a roof that provides at least 51% coverage, is supported by columns, and is used for the shelter, enclosure or support of persons. (*See Application No. 17331 of JPI Apartment Development LP* (2005).) The Board finds that, based on the plans provided by the Applicant, the proposed walkway would meet this definition and would serve as a meaningful connection, in keeping with the Board’s precedent on this matter. Accordingly, the addition would create a single building on the property for zoning purposes.

The definition of a one-family detached dwelling under § 199.1 is a “one-family dwelling, completely separated from all other buildings and having two side yards.” The definition of a row dwelling under § 199.1 is a “one-family dwelling having no side yards.” Under § 199.1, a side yard is “a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure.” Because the structure will expand from the eastern lot line and to the western lot line, the proposed project eliminates both side yards. Accordingly, the proposed structure meets the regulatory definition for “row dwelling,” and the Board is not persuaded by the ANC’s argument.

Request to Not Admit Letters in Support

The letters in support contested by the ANC were submitted by the Applicant as a part of its supplemental submission on May 6, 2016. The letters were properly filed and accepted into the

record, pursuant to the Board's procedural regulations, and therefore, the Board will not remove that filing from the record. Nonetheless, when considering whether to grant special exception relief in this case, the Board considered the concerns of the residents who expressed their opposition to the project, in addition to noting the receipt of letters in support. The Board also considered the reports of OP and DDOT, as well as the shadow study provided by the Applicant, in evaluating the potential impact of the proposed project on adjacent property owners.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under §§ 210.10 and 223 to allow the construction of a building connection and second-story addition to an existing accessory garage and the establishment of an accessory apartment.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 34.**

VOTE: 4-1-0 (Marnique Y. Heath, Peter G. May, Anita Butani D'Souza, and Jeffrey L. Hinkle to APPROVE; Frederick L. Hill to DENY.)

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

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

FINAL DATE OF ORDER: August 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

BZA APPLICATION NO. 17535-A

PAGE NO. 14

THERE TO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Application No. 19475 of DC Boathouse, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the penthouse restaurant use requirements of Subtitle C § 1500.3(c) and the retail use requirements of Subtitle U § 504.1(j), to construct an addition to an existing dormitory to create an apartment building with a ground-floor retail use and a penthouse café in the MU-2 Zone¹ at premises 2601 Virginia Avenue N.W. (Square 6, Lot 42).

HEARING DATE: April 19, 2017

DECISION DATES: May 31, 2017² and June 7, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 15, 2017, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 35.)

The Office of Planning ("OP") submitted a timely report dated April 7, 2017, in support of the application. (Exhibit 39.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application with conditions. DDOT's recommended

¹ The Zoning Commission voted to approve a map amendment to rezone this property from the RA-5 zone to the MU-2 zone on March 30, 2017 in Z.C. Case No. 16-25. Final action by the Zoning Commission was scheduled for May 8, 2017. Z.C. Order No. 16-25 was issued on July 28, 2017 (64 DCR 7253.)

² At the May 31st meeting, the Board granted the Applicant's request to reopen the record and postponed its decision to June 7 in order to allow a seven-day period for any party responses.

conditions included requests that a minimum of 83 secure long-term bicycle parking spaces be provided, one 20-foot delivery space be provided, and that trash dumpsters should be stored on private property. (Exhibit 38.) The Board adopted all of DDOT's conditions in this order.

The West End Citizens Association ("WECA") requested party status in support of the application. (Exhibit 34.) At the April 19, 2017, the Board granted WECA party status in support of the application. WECA testified and participated in the hearing. (Exhibit 42.) The Applicant's proposal includes a residents-only café use in the penthouse. The Applicant and WECA entered into a Memorandum of Agreement related to the proposal that includes provisions for residents and their guests only, no liquor license, limited hours, and no outdoor entertainment. (Exhibit 13.) The Board adopted terms of the agreement as conditions to this order.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under the penthouse restaurant use requirements of Subtitle C § 1500.3(c) and the retail use requirements of Subtitle U § 504.1(j), to construct an addition to an existing dormitory to create an apartment building with a ground-floor retail use and a penthouse café in the MU-2 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C § 1500.3, and Subtitle U § 504.1(j), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 36A AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide a minimum of 83 secure long-term bicycle parking spaces.
2. The Applicant shall provide one 20-foot delivery space.
3. Trash dumpsters shall be stored on private property.

4. The Applicant shall not seek an application for a liquor license for the limited penthouse use.
5. The Applicant shall not seek an application for any outdoor entertainment use, including any outdoor speakers or any amplified music, both in the ground-floor retail and in the penthouse.
6. The Applicant shall limit the hours of operation of the penthouse to end by 11 p.m. on Sunday through Thursday evenings and midnight on Friday through Saturday evenings.

VOTE: **4-0-1** (Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Robert E. Miller, to APPROVE; one Board seat vacant.)

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

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

FINAL DATE OF ORDER: August 9, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

BZA APPLICATION NO. 19475

PAGE NO. 3

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

Appeal No. 19477 of Kingman Park Civic Association, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on February 6, 2017 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue building permit B1613608, to permit the construction of a third-floor addition and rear three-story addition to convert an existing one-family dwelling into a flat in the RF-1 District at premises 429 20th Street, N.E. (Square 4550, Lot 89).

HEARING DATE: May 3, 2017
DECISION DATE: May 3, 2017

DISMISSAL ORDER

Appeal No. 19477 was submitted to the Board of Zoning Adjustment (“BZA” or “Board”) on February 16, 2017 by the Kingman Park Civic Association (“KPCA” or “Appellant”). (Exhibits 1-7.) The appeal challenged a decision of the Zoning Administrator (“ZA”) at the Department of Consumer and Regulatory Affairs (“DCRA”) to issue Building Permit B1613608 (the “Permit”). The Permit was issued on February 6, 2017 and authorized construction of a third-floor addition and rear three-story addition and conversion of an existing one-family dwelling into a flat at premises 429 20th Street, N.E. (Square 4550, Lot 89) (“Subject Property”). The Subject Property is located in the RF-1 District under the 2016 Zoning Regulations.¹

In its appeal, the KPCA objected to the issuance of the Permit on the grounds that DCRA, by issuing the Permit, had violated unspecified Zoning Regulations and had violated other laws based on the Permit Holder’s failure (i) to obtain the required business license, (ii) to register as a corporate entity as required, (iii) to comply with the notification requirements of the Construction Codes, (iv) to comply with environmental laws, and (v) to comply with the D.C. Historic Preservation Act.

In response, on April 27, 2017, DCRA filed a motion to dismiss, arguing that the appeal should be dismissed because it failed to state a specific claim based on the Zoning Regulations and the remaining involve laws and regulations other than the Zoning Regulations and are therefore outside of the Board’s jurisdiction. In its motion to dismiss, DCRA also asserted that the ZA properly reviewed the permit application and properly applied the Zoning Regulations when the ZA approved the Permit. (Exhibit 24.)

After hearing argument from and reviewing the written submissions of the Appellant and DCRA, the Board dismissed the appeal, finding that the appeal had failed to state a claim under the

¹ Unless otherwise specified, all references to the “Zoning Regulations” refer to the 2016 Zoning Regulations, which became effective on September 6, 2016. The 2016 Zoning Regulations were the zoning regulations in effect when the Permit application was made on September 27, 2016 and when it was issued on February 6, 2017.

Zoning Regulations and that the Board lacked subject matter jurisdiction as to other alleged errors.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated March 10, 2017, the Office of Zoning (“OZ”) provided a referral memorandum and notice of public hearing for the appeal to the ZA at DCRA, Advisory Neighborhood Commission (“ANC”) 7D, the ANC Single Member District Commissioner 7D01, the Office of Planning; the Councilmember for Ward 7, and the Chairman and At-Large Members of the Council. Also on March 10, 2017, OZ mailed letters providing notice of the hearing to the Appellant and to the owner of the Subject Property. Notice was also published in the *D.C. Register* on March 17, 2017. (64 DCR 002776.)

Parties. Pursuant to 11-Y DCMR § 501.1, the parties to this appeal are Kingman Park Civic Association, DCRA (the “Appellee”), 429 20th Street Land Trust, which is the owner of the Subject Property (“Property Owner”), and ANC 7D, which is the ANC for the area within which the property that is the subject of the appeal is located. The Property Owner testified at the public hearing. ANC 7D did not participate in the public hearing or submit a written submission to the record.

FINDINGS OF FACT

1. The property is located at 429 20th Street, N.E. (Square 4550, Lot 89) (the “Subject Property”). The Subject Property is currently improved with an existing principal dwelling.
2. The Subject Property is located in the RF-1 District.
3. 429 20th Street Land Trust (the “Permit Holder” or “Property Owner”) applied for a building permit on September 27, 2016, to add a third floor addition and three-story rear addition to the existing structure and convert the existing one-family dwelling into a flat.
4. Building Permit No. B1613608 (the “Permit”) was issued by the Department of Consumer and Regulatory Affairs (“DCRA”) on February 6, 2017.
5. On February 16, 2017, KPCA filed this appeal, challenging DCRA’s decision to issue the Permit. (Exhibits 1-7.) The Appellant supplemented its appeal with a Motion Requesting Revocation and Appropriate Financial Sanction on April 7, 2017 and a supplemental motion on April 10, 2017. (Exhibits 21-21F and 22.)

6. In its appeal, the Appellant asserted that the Permit was unlawfully issued because it was issued in contravention of “Sections 200 and 201” of “D.C. Code Title 11” (Exhibit 5)² and because the Property Owner failed (i) to obtain a required business license; (ii) to register as a foreign or domestic business entity as required by an unspecified D.C. law; and (iii) to provide neighbor notification required by the D.C. Building Code, 12A DCMR § 3307A, thereby violating these laws and regulations. In addition, the Appellant alleged that issuing the Permit (iv) violated unspecified “environmental laws” due to the impact on the sewer system; (v) violated unspecified “building construction laws and regulations” for fire and structural safety; and (vi) violated unspecified provisions of the D.C. Historic Preservation Act because an application for an historic district is under review at the D.C. Historic Preservation Review Board. (Exhibits 5 and 21.)
7. The Appellant also claimed that the 2016 Zoning Regulations were unconstitutional and “at risk” because the 2016 Regulations changed the use of single-family homes in the Kingman Park neighborhood in violation of the substantive rights of hundreds of neighbors who have invested hundreds of thousands of dollars in order to enjoy the peace and quiet of single family living. (Exhibit 27 and Transcript, May 3, 2017 (“Tr.”) at 158.)
8. At the hearing, without citing any specific Zoning Regulations which had been violated, the Appellant argued that “we see these new constructions as nonconforming uses” because “you’re adding these pop-ups that are aluminum siding, [which] is causing damage to these long-time brick homes. You’re going under the structures. They are putting underpinnings.” (Tr. at 157.)
9. The Appellant asserted, again without citing any Zoning Regulations violated, that such construction would cause damage to the neighboring homes and raise a general safety and welfare issue. (Tr. at 157.)
10. Throughout the proceedings, the Board provided multiple opportunities for the Appellant to clarify which provisions of the Zoning Regulations it was alleging were being violated. (Tr. at 134-135, 141, 145-147, 149-151, 154, 156.)

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to hear and decide appeals where it is alleged by the appellant that there is error in

² It is unclear to what the Appellant is referring. The Appellant refers to no subtitle, so the provisions could not be part of the Zoning Regulations of 2016. Sections 200 and 201 of the 1958 version of Title 11 concerned permitted uses in R-1 zones. There is no section 200 or 202 in Title 11 of the D.C. Code. In any event, the Appellant claimed that whatever these sections are were violated because of (i) a new third floor that would prevent the quiet and peaceful enjoyment of neighboring homes; (ii) a non-conforming use; (iii) construction that “would destroy the current single family water and sewer system in the neighborhood and city”; and (iv) construction that would destroy existing fire and life safety materials in existing structures.

any decision made by any administrative officer in the administration of the Zoning Regulations. The decision must be based “in whole or in part” on the Zoning Regulations. D.C. Official Code § 6-641.07(f).

Based on the complete record before it, the Board concludes that the Appellant has failed to state a claim of error under the Zoning Regulations and also that it has made claims for which the Board does not have subject matter jurisdiction. Consequently, the appeal is dismissed for the reasons discussed below.

Failure to State a Claim of Error Under the Zoning Regulations

As noted, the Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. No such violations are alleged here.

The Board considered the Appellant’s allegations and finds the Appellant failed to state specific violations of the Zoning Regulations. The only provisions cited by the Appellant were “Sections 200 and 201” of “D.C. Code Title 11.” The Appellant claims that these provisions were violated because (i) a new third floor that would prevent the quiet and peaceful enjoyment of neighboring homes; (ii) create a non-conforming use; (iii) construction that “would destroy the current single family water and sewer system in the neighborhood and city”; and (iv) construction that would destroy existing fire and life safety materials in existing structures.

The current Zoning Regulations consist of Subtitles B through K, U and W of Title 11 DCMR, all of which have sections 200 and 201, and none of which pertain to the issues asserted above. While the allegations asserting violations of peace and enjoyment and non-conforming use might have been an attempt of articulating zoning-related violations, the appeal fails because the only provisions ever cited by the Appellant did not apply to these claims and those claims were insufficient for the Board to review them.

If the Appellant intended to refer to the 1958 Zoning Regulations, which do not apply in this matter in any event, Sections 200 and 201 of the 1958 Zoning Regulations concern use permissions authorized in an R-1 zones, which in many instances are carried through to the R-4 zone, the predecessor to the RF-1 zone in which the subject property is located. The Appellant does not claim any violation of the applicable R-1 use permissions.

Both prior to and at the hearing, the Board gave the Appellant ample opportunities to clarify what Zoning Regulations it was alleging were being violated. Despite this, the Appellant repeatedly failed to state what provisions of the Zoning Regulations it was claiming were violated, as required by 11-Y DCMR § 302.12(g). Instead of providing specific provisions of the Zoning Regulations, the Appellant responded by claiming that “we see these new constructions as nonconforming uses” because “you’re adding these pop-ups that are aluminum siding, [which]

is causing damage to these long-time brick homes. You're going under the structures. They are putting underpinnings." (Tr. at 157.) Although the Appellant asserted that such construction would cause damage to the neighboring homes and raised a general safety and welfare issue, it failed to cite to a single provision in the Zoning Regulations. Finally, instead of providing specific provisions of the Zoning Regulations, the Appellant argued that they had been "entitled" to receive the plans prior to the issuance of the permit and because they had not been given those plans, they "had no way of determining [any meritorious violations] prior to the permit being issued." (Tr. at p. 163-165.)

The Appellant's argument is flawed. The Board's rules do not contemplate that appellants will review plans before the building permit is issued, because that ordinarily occurs when the 60-day period to bring the appeal commences. That 60-day period is presumptively sufficient to obtain all of the information needed to file a good faith appeal. Here, the Appellant filed the appeal within 10 days of the issuance of the Permit; it could have taken an additional 50 days in which to perfect its allegations. As noted, the burden is on the Appellant to state a claim based on the Zoning Regulations. (11-Y DCMR § 302.2.)

Despite ample opportunities to do so, the Appellant repeatedly failed to state specific provisions of the Zoning Regulations that were being violated to provide specificity with respect to those violations, such as nonconforming use, for which a provision can be readily identified. Consequently, the Appellant failed to state a claim based on the Zoning Regulations and there was nothing to which DCRA could respond. After a public hearing and deliberating on the record before it, the Board agrees with DCRA and finds that the Appellant has failed to state a violation of the Zoning Regulations and consequently, the appeal must be dismissed.

Dismissal for Lack of Board Subject Matter Jurisdiction

As the Board has held several times, the Board has no authority to hear an appeal that is not based upon an interpretation of a zoning regulation. For instance, in one case, this Board indicated that it lacked the subject matter jurisdiction to consider the claim that DCRA misapplied environmental requirements in issuing a building permit because those requirements were not part of the Zoning Regulations. *Appeal No. 17769 of ANC 6A*, 56 DCR 156 (2009). *Accord, Appeal No. 18154 of Capitol Hill Restoration Society*, 58 DCR 3655 (2011) ("Board has no authority to hear an appeal that is not based to some degree upon an interpretation of a zoning regulation"); citing *Appeal No. 17444 of Kuri Brothers, Inc.*, 55 DCR 4442 (2008) ("The Board has no jurisdiction to hear allegations of error concerning the DCRA Director's interpretation of a provision not contained in the Zoning Regulations.")

The Appellant claimed violations of laws and regulations other than the Zoning Regulations. Because these claims are outside of the Board's jurisdiction, they must be dismissed. The Appellant claimed that granting the Permit violated the laws that required the Permit Holder to obtain a Basic Business License; (ii) to register as a foreign or domestic business entity; (iii) to provide neighbor notification required by the D.C. Building Code, 12A DCMR § 3307A; and

also violated (iv) unspecified “environmental laws” due to the impact on the sewer system; (v) unspecified “building construction laws and regulations” for fire and structural safety; and (vi) unspecified provisions of the D.C. Historic Preservation Act because an application for an historic district is under review at the D.C. Historic Preservation Review Board. The one thing all of these claims have in common is that none of them alleges a violation of the Zoning Regulations. The claims alleging violations of the business licensing laws and regulations, Construction Codes, environmental laws, and the Historic Preservation Act do not arise from the Zoning Regulations; consequently, the Board does not have the jurisdiction to hear them and they must be dismissed.

The Appellant also asserted that the 2016 Zoning Regulations were unconstitutional and “at risk.” As the issue of the constitutionality of the Zoning Regulations also is not a claim based on the Zoning Regulations, this claim too must fail as being outside the jurisdiction of the Board to hear. *See Appeal No. 17504 of JMM Corporation, 54 DCR 9871 (2007)* (in denying an appeal of DCRA’s revocation of a Certificate of Occupancy, Board held that it had “no jurisdiction to decide questions of constitutionality, as its authority is limited to hearing appeals alleging error in the administration and enforcement of the Zoning Regulations”).

Based on the findings of fact, the Board concludes that the appeal does not satisfy the requirements of stating a zoning appeal based on the Zoning Regulations as set forth in 11-X DCMR §§ 1100.2 and 1100.3. Accordingly, it is therefore **ORDERED** that the appeal is **DISMISSED**.

VOTE: 3-0-2 (Carlton E. Hart, Michael G. Turnbull, and Lesylleé M. White to DISMISS; Frederick L Hill 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.

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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-38C
Z.C. Case No. 05-38C
Mill Creek Residential Trust, LLC
(PUD Modification of Consequence @ Square 499, Lots 855-859)
June 26, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on June 26, 2017. At that meeting, the Commission approved the application of Mill Creek Residential Trust, LLC (“Applicant”) for a modification of consequence to an approved planned unit development (“PUD”) for property located at Square 499, Lots 855-859 (“Property”). The modification request was made pursuant to § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

BACKGROUND INFORMATION

1. Pursuant to Z.C. Order No. 05-38, dated May 14, 2007, the Commission approved a PUD and a related Zoning Map amendment to rezone the Property from the R-5-D Zone District to the C-3-C Zone District.¹ Z.C. Order No. 05-38 authorized the construction of two new residential buildings on Lots 855 and 859 (“North and South Residential Towers”) and the renovation of the two existing residential buildings on Lots 856 and 858 (“Pei Towers”).
2. Pursuant to Z.C. Order No. 05-38A, dated December 8, 2008, and Z.C. Order No. 05-38B, dated July 13, 2015, the Commission approved modifications to the approved PUD. The modifications included reducing the height of the North and South Residential Towers, reducing the density and number of residential units across the PUD Site, and modifying the approved public benefits and project amenities. As it relates to the modification requested in the present case, pursuant to Decision No. C(3)(c) of Z.C. Order No. 05-38B, the Applicant was required to provide a total of 248 long-term bicycle parking spaces on the Property, with 124 spaces located in the garage of each new Residential Tower.

PROPOSED MODIFICATION

3. By letter dated May 9, 2017, and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a modification of consequence to reallocate the approved number of long-term bicycle parking spaces among the four buildings on the Property. (Exhibit [“Ex.”] 2.) The application included the request to modify the language of Condition No. C(3)(c) of Z.C. Order No. 05-38B, which states the following:

¹ The original PUD and subsequent modifications were approved under the 1958 Zoning Regulations. On September 6, 2016, the provisions of the 1958 Zoning Regulations were repealed and replaced with the 2016 Zoning Regulations. Under the 2016 Zoning Regulations, the approved C-3-C Zone District converts to the MU-9 District.

- “3. Prior to the issuance of a certificate of occupancy for the South Residential Tower and for the life of the North and South Residential Towers, the Applicant shall establish the following TDM strategies...
- (c) Provide 248 long-term bicycle parking spaces with 124 spaces located in the garage of each new Residential Tower.”
4. The Applicant requested to modify the above quoted language to reallocate the 248 total long-term bicycle parking spaces among the two Pei Towers and the North and South Residential Towers, and to increase the total number of long-term bicycle parking spaces to 256 spaces across the Property. The revised condition would read as follows:
- (c) Provide a total of 256 long-term bicycle parking spaces, with 53 spaces located in the P1 level of the North Residential Tower, 53 spaces located in the P1 level of the South Residential Tower, and 150 spaces distributed evenly between the P1 levels of the Pei Towers (75 spaces in each).
5. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service, which noted that Advisory Neighborhood Commission (“ANC”) 6D, the only party in the original proceeding, was served with the application. (Ex. 2.)
6. On May 12, 2017, the Office of Planning (“OP”) submitted a report recommending that the Commission approve the application. (Ex. 4.) In its report, OP found that the proposed modification was appropriately considered a modification of consequence, and that the changes proposed are consistent with the original approval and not inconsistent with the Comprehensive Plan. OP also requested that the Applicant submit plans showing the locations of the proposed long-term bicycle parking.
7. At the Commission’s May 22, 2017, public meeting, the Commission determined that the application was properly submitted as a modification of consequence within the meaning of 11-Z DCMR §§ 703.3 and 703.4, and that no public hearing was necessary pursuant to 11-Z DCMR § 703.1. The Commission was therefore required by 11-Z DCMR § 703.17(c)(2) to establish a timeframe for ANC 6D to file a response in opposition to, or in support of, the request, and for the Applicant to respond thereto, and to schedule the application for deliberations.
8. On May 30, 2017, the Applicant submitted the plans requested by OP, which depicted the location and number of proposed bicycle parking spaces within each building on the Property. (Ex. 6.)
9. On June 12, 2017, ANC 6D submitted a letter indicating that at its regularly scheduled and properly noticed public meeting of June 12, 2017, with a quorum of Commissioners present, ANC 6D voted 7-0-0 to support the modification application. (Ex. 7.)

10. At its June 26, 2017, public meeting, the Commission reviewed the Applicant's supplemental submission and confirmed that it adequately provided the additional information requested by OP.

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make "modifications of consequence" to final orders and plans without a public hearing. A modification of consequence means "a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance." (11-Z DCMR § 703.3.) Examples of modifications of consequence "include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission." (11-Z DCMR § 703.4.)

The Commission concludes that the modifications described in the Applicant's submissions are modifications of consequence and therefore can be granted without a public hearing. (Ex. 4, 6.)

The Commission concludes that the proposed modification of consequence is entirely consistent with the Commission's previous approval of the project. Reallocating the bicycle parking spaces as described in the proposed Condition C(3)(c) will ensure that bicycle parking is easily accessible for residents of the Property and will maximize convenience by ensuring that none of the project residents will have to go outside of their respective building to park or access their bicycle.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.) to give "great weight" to the issues and concerns contained in the written report of an affected ANC. In this case, ANC 6D submitted a report stating its unanimous (7-0-0) vote in support of the modification application. The Commission gives great weight to ANC 6D's recommendation to approve the application.

The Commission is also required to give great weight to the recommendation of OP. (*see* D.C. Official Code § 6-623.04 (2012 Repl.)) The Commission concurs with OP's recommendation to approve this modification of consequence application.

The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for a modification of consequence to reallocate the approved number of long-term

bicycle parking spaces among the four buildings on the Property, subject to the plans included at Exhibit 6A of the case record. Condition No. C(3)(c) of Z.C. Order No. 05-38B shall be revised as follows:

- (c) Provide a total of 256 long-term bicycle parking spaces, with 53 spaces located in the P1 level of the North Residential Tower, 53 spaces located in the P1 level of the South Residential Tower, and 150 spaces distributed evenly between the P1 levels of the Pei Towers (75 spaces in each).

On Jun 2, 2017, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, 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, and Peter G. May to approve; Michael G. Turnbull to approve by absentee ballot).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on August 25, 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. 10-21A
Z.C Case No. 10-21A
V Street S.W., LLC
(Modification of Consequence – Capitol Gateway Overlay Review)
March 13, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on February 16, 2017, to consider an application for a modification of significance, pursuant to 11-Z DCMR § 704, to an approved design review application for property owned by V Street S.W., LLC (“Applicant”) for review and approval of a new development previously approved pursuant to the Capitol Gateway (CG) Overlay District provisions (“CG Overlay District Review”) set forth in former §§ 1603 and 1610 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The property that is the subject of this application consists of Lots 4, 5, 6, and 804 in Square 667S (“Property” or “Subject Property”).

As indicated in the Notice of Public Hearing for this case, the original application was decided at the time when the Subject Property was zoned in the Capitol Gateway Overlay District and was approved pursuant to former §§ 1603 and 1610 of Title 11 DCMR. Pursuant to Z.C. Order No. 08-06A, the Subject Property was rezoned to the CG-5 zone, a district in which medium-density mixed-use developments generally in the vicinity of the waterfront are permitted as a matter of right but are subject to design review approval by the Commission pursuant to the Capitol Gateway Zone provisions set forth in Subtitle K, Chapter 5.

A public hearing was conducted in accordance with the contested case provisions of 11 DCMR Subtitle Z, Chapter 4. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. By Z.C. Order No. 10-21, dated June 27, 2011 and effective August 12, 2011, the Commission approved the design of a mixed-use residential/retail project to include 75-110 residential units, approximately 1,800 square feet of retail space located on the ground floor, 116 vehicle parking spaces, and 48 bike spaces (“Project”).
2. The Property is located on the south side of V Street, S.W. between Half Street and 1st Streets, on a site consisting of Lots 4, 5, 6, and 804 in Square 0667S in the neighborhood known as Buzzard Point.
3. On November 8, 2016, the Applicant submitted an application requesting approval of a modification of significance for the approved Project. The Applicant requested approval to modify the previous half-circular plan to permit a more standard rectangular plan. Changes to the penthouse in accordance with the new penthouse regulations, which permit the inclusion of habitable space, were also proposed.

4. No new areas of zoning relief were proposed. Rather, the Applicant indicated that two areas of relief previously approved for the roof top structures and loading facilities were no longer needed. The design modifications were detailed on plans submitted with the application and subsequent submissions. (Exhibits [“Ex.”] 1-1E, 11, 24, 29.)
5. There were no requests for party status. Advisory Neighborhood Commission (“ANC”) 6D was an automatic party to this case pursuant to 11-Z DCMR § 403.5. On 2017, ANC 6D submitted a report into the record which indicated that at a duly noticed regularly scheduled public meeting on January 9, 2017, the ANC voted 5-0-2 to offer support with concerns and suggestions regarding the application. (Ex. 9-9B.) The articulated concerns related to excessive density, the proposed projections into public space, a lack of green space in the project, inadequate area provided for pet comfort, the need to protect the Anacostia and Potomac Rivers from waste runoff, and the lack of a comprehensive traffic plan for the entire Buzzards Point area. The ANC’s report included a letter from the Applicant to the ANC committing to work with other area developers and the District Department of Transportation (“DDOT”) to address area transportation issues including advocating for additional bus service, a water taxi, and Bikeshare station. The Applicant also assured the ANC that they will try to locate a grassy area alongside 1st Street for pet comfort, they will provide a pet waste station, and contract for a pet waste pick up service. Finally, the Applicant committed to providing a construction management plan and notifying the ANC, should there be any exceptions to permitted construction hours.
6. The Office of Planning (“OP”) submitted a Public Hearing Report dated January 27, 2017. (Ex. 13.) OP’s Public Hearing Report indicated support for the revised design pending resolution of the following issues: eliminating projections into public space on 1st Street and Half/Water Street, ensuring that projections on V Street meet public space regulations and Buzzards Point design guidelines, achieving a higher LEED score, revising penthouse design to conform to height regulations, and providing more information on penthouse materials.
7. DDOT submitted a hearing report dated January 27, 2017. DDOT indicated that it had no objections to the Project with the following conditions: funding installation and first year’s operation expenses for a Capitol Bikeshare station, adding 37 bike spaces, enhancing the loading management plan, and constructing a minimum six-foot sidewalk along the east side of 1st Street between T and V Streets. (Ex. 12.)
8. The Department of Energy and Environment (“DOEE”) submitted a hearing report dated January 27, 2017. (Ex. 14.) The DOEE report outlined the following concerns regarding the Project: the level of commitment to sustainability, the Project’s design relative to floodplain and climate resilience, and the ability of the Project to meet stormwater and air quality requirements.
9. The Applicant submitted two supplemental submissions including revised plans in response to the OP, DDOT, and DOEE reports. (Ex. 17-17B, 18-18D.) The Applicant’s submission included view shed studies and analysis, which the Applicant indicated

showed that the projections cited by OP do not have a significant impact on views. The Applicant noted that the bays and projections in the revised design include deeper setbacks along 1st Street. The Applicant provided a new drawing adjusting the measuring point of the penthouse and in compliance with the 15-foot height standard. In response to the additional sidewalk and Bikeshare public benefits requested by DDOT, the Applicant's submission referenced Subtitle Z § 704.4, which provides that the scope of a hearing for modifications of significance "shall be limited to the impact of the modification on the subject of the original application." However, the Applicant agreed to increase the number of bike parking spaces to 48. Regarding DOEE's comments, the Applicant indicated that the floodplain issues would undergo a more detailed review at the permitting stage of the Project but that the Applicant's floodplain consultant was confident that the project would comply. A letter from the floodplain consultant to that effect was included in the Applicant's submission. The Applicant also indicated that it was infeasible to achieve LEED-Gold status as recommended by DOEE due to the lack of transit in the area.

10. The Applicant, OP, DDOT, and DOEE presented additional testimony on the views, public space, floodplain, and LEED issues addressed in the agencies reports and the Applicant's supplemental submissions. At the conclusion of the hearing, the Commission expressed support for the new design. The Commission requested that the Applicant continue to work with OP, DDOT, and DOEE to address their concerns. The Commission also asked the Applicant to provide additional plans for the penthouse, view sheds, entrance ramp, and building signage. Finally, the Commission requested additional information on the housing trust fund contribution relative to the penthouse habitable space and possible additional LEED scorecard points.
11. A representative from ANC 6D presented testimony at the hearing and reiterated the ANC's concerns. There were no parties or persons that testified in opposition to the application.
12. The Applicant submitted the materials requested by the Commission in a post-hearing submission dated February 21, 2017. (Ex. 24-24L9.)
13. OP submitted a Supplemental Report dated February 28, 2017. (Ex. 28.) OP recommended approval of the application subject to a commitment by the Applicant to use public space materials as set forth in the Buzzard Point design guidelines. Regarding OP's projection concerns, OP indicated that due to the limited length of the projections and the fact that they were shown on the plans previously approved in Z.C. Case No. 10-21, OP is not opposed to them provided that the Applicant obtains any necessary public space permits. Regarding the ground-level projections designed to hide the garage ramp, OP requested that the Applicant provide further information, which the Applicant provided for the record. (Ex. 29.)
14. DDOT submitted a supplemental report dated February 28, 2017. (Ex. 25.) DDOT stated that the Applicant agreed to install a 950-foot-long sidewalk on the east side of 1st Street

between T and V Streets, but the Applicant did not specify the width of the sidewalk which should be six feet to comply with DDOT's minimum sidewalk width standard. DDOT indicated that the Applicant's commitment to provide 39 bike spaces on the P1 level is appropriate, and that the Applicant committed to limit truck sizes to 30 feet or less and require a flagger at the loading dock per DDOT's request.

15. DOEE submitted a supplemental report dated February 28, 2017. (Ex. 26.) DOEE indicated its continued concerns with regard to the Project's commitment to sustainability, floodplain considerations, and long-term resilience. Further, DOEE indicated that it did not consider the building to be mixed use, but residential, and that the regulations applicable to Special Flood Hazard Areas provide that construction of a new residential structure must be at least one and one-half feet above the base flood elevation. DOEE therefore recommended increasing the amount of community-serving retail to include the majority of the first floor or eliminating the below-grade parking. In response, the Applicant requested flexibility to increase the ground-floor area of the retail use, if necessary, to meet floodplain requirements. (Ex. 29.)
16. At its public meeting on March 13, 2017, the Commission decided various unresolved matters before taking final action:
 - (a) LEED Score. DOEE had encouraged the Applicant to prioritize green building goals in order to achieve LEED-Gold status. (Ex. 26). The Commission finds that LEED Gold status is infeasible, and notes the Applicant's concerns about the site's lack of transit, connectivity, and availability of neighborhood amenities that are typical of other locations of the District. (Ex. 24). However, the Project includes sustainable design features such that the building will achieve a total of 56 points towards LEED-Silver status;
 - (b) Penthouse Height. The unusual configuration of the penthouse raised speculation as to whether or not the Project complies with the 15-foot height limit. The Commission finds that the penthouse height is 15 feet above the upper roof, but is 18.5 feet above the lower roof. The Zoning Administrator concluded measurement from the upper roof was appropriate, and the Commission will accept that interpretation for this case. The Commission wishes to make it clear that no precedent is being established and encourages OP to bring forward text to address how penthouse height should be measured under similar circumstances;
 - (c) Signage Plan. The Commission sought greater specificity on the entrance signage; the maximum heights as proposed were indeterminable. Per the Commission's request, the Applicant submitted a revised signage plan on March 15, 2017 that clearly identified the dimensions; and (Ex. 30.)
 - (d) Floodplain Requirements. The Commission noted that the Applicant requested flexibility to increase the ground-floor area of the retail use, if necessary, to meet floodplain requirements. (Ex. 29.) This was in response to DOEE's concerns that are described in Finding of Fact No. 15. Upon learning that such flexibility would

result in no change to the external design of the Project, the Commission decided this matter to be resolved, with the understanding that should external redesign prove to be needed, the Applicant must return to the Commission for a modification.

17. There were no parties or persons that testified in opposition to the Project.

CONCLUSIONS OF LAW

1. The Commission provided proper and timely notice of the public hearing on the Application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and the owners of property within 200 feet of the Property.
2. The Commission is required under D.C. Official Code § 13(d) of the Advisory Neighborhood Commission Act of 1975 (D.C. Law 1-21; D.C. Official Code Section 1-309.10(d) to give “great weight” to the issues and concerns contained in the written report of an affected ANC. As is reflected in the Findings of Fact, ANC 6D expressed concerns related to excessive density, the proposed projections into public space, a lack of green space in the project, inadequate area provided for pet comfort, the need to protect the Anacostia and Potomac Rivers from waste runoff, and the lack of a comprehensive traffic plan for the entire Buzzards Point area. The Commission finds that the Applicant’s response to the ANC, as described in Finding of Fact No. 5, adequately addresses and alleviate the concerns expressed by ANC 6D.
3. The Commission is also required to give great weight to the recommendations of OP (See D.C. Official Code § 6-623.04 (2001)). The Commission concurs with OP’s conclusion that the proposed projections are an improvement over the original design and are acceptable. The Commission also finds that the Applicant has adequately addressed OP’s recommendation that the Project’s public space elements will meet the Buzzard Point design guidelines.
4. The Commission also considered the recommendations of DDOT and DOEE. The Commission notes that the Applicant has adequately responded to DDOT’s request for additional bike spaces in the Project as well as an offsite sidewalk improvement. The Applicant has also improved the LEED scorecard requirements in response to DOEE and is requesting flexibility to extend the retail use of the ground floor, if necessary, to meet the floodplain requirements.
5. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the report and testimony OP, DDOT, and DOEE provided in this case, the Applicant’s submissions and testimony, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1610 a. The Commission finds that the Project satisfies the goals and objectives of the CG Overlay District. The Commission finds that the proposed modifications are consistent in height and bulk zoning standards for the area and an overall improvement over the previous design. The proposed application also adds bike

Z.C. ORDER NO. 10-21A

Z.C. CASE NO. 10-21A

PAGE 5

spaces and a sidewalk improvement as well as a higher LEED checklist score in response to DDOT and DOEE recommendations.

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 a modification of consequence to the design of the project approved in Z.C. Case No. 10-21. This approval is subject to the following guidelines, standards and which supersede those guidelines, standards, and conditions in Z.C. Order No. 10-21:

1. The Project shall be developed in accordance with the plans marked as Exhibits 24L1-24L9, as modified by Exhibit 27, and Exhibits 29-30 of the record in Z.C. Case No. 10-21A.
2. The Applicant shall submit with its building permit application a LEED checklist indicating that the Project includes sustainable design features such that the building achieves a total of 56 points towards LEED-Silver status.
3. The Applicant will provide a total of 48 bike parking spaces in the Project, 39 of which shall be provided on the P1 level.
4. The Applicant will design the public space elements adjacent to the Project in compliance with the Buzzard Point design guidelines.
5. The Applicant will construct a 950-foot-long, six-foot-wide asphalt sidewalk on the east side of 1st Street between T and V Streets, S.W.
6. The Applicant will implement a loading management plan to include the following elements: assign an on-site management coordinator, require tenants to schedule deliveries and require that the loading management coordinator schedule deliveries such that capacity is not exceeded, require that the dock manager monitor truck maneuvers to limit conflicts with vehicular traffic, limit truck size to 30 feet or shorter, and require a flagger to be present whenever a vehicle is accessing the loading dock.
7. The Applicant shall have flexibility with the design of the project in the following areas:
 - (a) To vary the final number of units from 75 to 110 total units and the amount of retail space on the ground floor of the Project by 10% or to the extent needed to comply with floodplain requirements which may be applicable to the Project;
 - (b) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, windows, stairways, bicycle storage rooms, shower and changing room, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

Z.C. ORDER NO. 10-21A

Z.C. CASE NO. 10-21A

PAGE 6

- (c) To vary the final selection of the exterior materials within the color ranges and material types proposed, based on cost, availability and market trends at the time of construction, provided that there is no overall reduction in quality;
 - (d) To make minor refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
 - (e) To make refinements to the garage configuration, including layout, location, and design of parking spaces. To add a third level of below grade parking in the event the Applicant cannot obtain City approval to provide up to 46 parking spaces in the adjacent vault space at terms deemed acceptable to the Applicant. The total number of parking spaces for the project shall not exceed a ratio of 1:1 for residential units plus four spaces to accommodate building staff and the retail operations;
 - (f) To adjust the placement of windows, balconies, balcony railings, and privacy screens as necessary based upon the final unit count and layout of demising walls, so long as the adjustments do not materially change the exterior appearance of the building;
 - (g) To install awnings and/or signage for retail space based upon the retail leasing after construction of the Project;
 - (h) To extend the retail use of the ground floor, if necessary, to meet the floodplain requirements, so long as the extension does not change the external design of the Project; and
 - (i) Exceed by not more than two percent the percentage of lot occupancy or gross floor area of the Project.
8. This Order shall be valid for a period of two years from its effective date. Within such time, an application must be filed for a building permit for the construction of the Project. Construction of the Project must commence within three years of the effective date of the Order. (*See* 11-Z DCMR §§ 702.2 & 702.3.)
9. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business.

Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On March 13, 2017, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, 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 August 25, 2017.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-02A
Z.C. CASE NO. 14-02A**

**Preservation of Affordable Housing, Inc., *et als.*
(Two-Year Extension of Time for a First-Stage PUD and Related Map Amendment
@ Various Lots in Squares 5862, 5865, 5866, and 5867)
June 12, 2017**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on June 12, 2017. At the meeting, the Commission approved a request from the District of Columbia ("District"), the District of Columbia Housing Authority ("DCHA"), and Preservation of Affordable Housing, Inc. ("POAH") (together, the "Applicant") for a two-year extension of the time period in which to file a second-stage PUD application for four parcels within the first-stage planned unit development ("PUD") approved pursuant to Z.C. Order No. 14-02. The Commission considered the application pursuant to Subtitle Z, Chapter 7 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 14-02, dated December 8, 2014, and effective on May 29, 2015, the Commission approved a first-stage PUD and a PUD-related zoning map amendment to rezone Square 5862, Lots 137-143; Square 5865, Lots 243, 249, 254, 259, 260-280, 893, 963-978, and 992; Square 5866, Lots 130, 133-136, 141-144, 147-150, 152, 831-835; and Square 5867, Lots 143, 172-174, 890-891, and 898 (collectively the "PUD Site") from the R-5-A Zone District to the R-5-B and C-2-A Zone Districts.¹
2. Condition No. E(1) of Z.C. Order No. 14-02 required the Applicant to file a second-stage application for at least four parcels within the PUD Site within two years of the effective date of Z.C. Order No. 14-02 (i.e., by May 29, 2017). These first four parcels were described as Phase I of the development. The condition also provided specific deadlines for filing second-stage applications for what it described as Phases III and IV of the development. Lastly, the condition established an overall expiration date for the first-stage PUD as being 10 years from the effective date of the order (i.e., May 29, 2025).
3. On April 24, 2017, the Applicant filed a request for a two-year extension of this approved time period, such that a second-stage application for at least four parcels within the first-stage PUD must be filed no later than May 29, 2019. This was the first extension request made by the Applicant.
4. The Applicant submitted evidence showing the existence of pending litigation that rendered the Applicant unable to comply with the time limits of Z.C. Order No. 14-02. As

¹ Z.C. Order No. 14-02 was approved under the 1958 Zoning Regulations. Under the 2016 Zoning Regulations, which repealed and replaced the 1958 Zoning Regulations on September 6, 2016, the R-5-A Zone District was re-designated to the RA-1 zone, the R-5-B Zone District was re-designated to the RA-2 zone, and the C-2-A Zone District was re-designated to the MU-4 zone.

demonstrated in the Notice of Appeal submitted by the Applicant, an appeal of Z.C. Order No. 14-02 was filed in the D.C. Court of Appeals on August 31, 2015, regarding development of the PUD Site. (Exhibit ["Ex."] 1B; *See* Case No. 15-AA-1000.) The appeal was filed by the Barry Farm Tenants and Allies Association ("BFTAA"), which participated as a party in opposition in Z.C. Case No. 14-02. As indicated in the court docket for Case No. 15-AA-1000, the oral argument for the appeal was held on September 28, 2016, and additional pleadings were subsequently filed. (Ex. 1C.) However, at the time of filing the extension request, the Court had not yet issued a decision in the appeal. The Applicant indicated that after the Court issues a decision and the Applicant resolves any and all issues identified in that decision, it will be able to move forward with filing a second-stage application. The Applicant also indicated that it anticipates that resolution of the appeal will occur prior to May 29, 2019, such that it will be able to file a second-stage PUD application prior to May 29, 2019.

5. On June 1, 2017, the Office of Planning ("OP") submitted a report recommending approval of the application (Ex. 4).
6. The only other parties to the application were BFTAA and Advisory Neighborhood Commission ("ANC") 8C. As indicated in the Applicant's Certificate of Service (part of Ex. 1), the Applicant served BFTAA and ANC 8C with the PUD extension application. However, neither BFTAA nor ANC 8C submitted a letter in support of or in opposition to the application.
7. Because the Applicant demonstrated good cause with substantial evidence pursuant to Subtitle Z § 705.2(c) of the Zoning Regulations, the Commission finds that the request for the two-year time extension should be granted.

CONCLUSIONS OF LAW

1. Pursuant to 11-Z DCMR § 705.2, the Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided:
 - (a) The request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond;
 - (b) There is no substantial change in any material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and
 - (c) The applicant demonstrates with substantial evidence that there is good cause for such extension. 11-Z DCMR § 702.2. Subtitle Z § 702.2(c) provides the following criteria for good cause shown:
 - (1) An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such

financing, because of changes in economic and market conditions beyond the applicant's reasonable control;

- (2) An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
 - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order.
2. The Commission concludes that the Applicant complied with the notice requirements of Subtitle Z § 702.2(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
 3. The Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.
 4. 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)) (the "ANC Act") to give great weight to the affected ANC's recommendations. In this case, ANC 8C received notice of the application and was given 30 days to respond, but did not submit a report.²
 5. 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 (2001)), to give great weight to OP recommendations. The Commission has considered the OP's recommendation in support of the application and agrees that approval of the requested two-year time extension is appropriate.
 6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by Subtitle Z § 702.2(c). Specifically, the Applicant provided substantial evidence that there is pending litigation over the approved first-stage PUD that needs to be resolved before the Applicant can file a second-stage application for at least four parcels within the PUD Site.
 7. Subtitle Z § 705.7 provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in Subtitle Z § 702.2 of the Zoning Regulations.

² A time extension request is not the type of action for which notice is required to be given by the ANC Act. Therefore, it is appropriate for the Zoning Commission to require a response from an affected ANC within 30 calendar days, whereas Saturdays, Sundays, and holidays are not counted when ANC notice is required.

8. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in Subtitle Z § 702.2 of the Zoning Regulations.
9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year extension of the time period in which the Applicant must file a second-stage PUD application for at least four parcels within the first-stage PUD (i.e. until May 29, 2019). The interim deadlines for filing additional second-stage applications, as set forth in Condition No. E(1)(b) through (c) of Z.C. Order No. 14-02 remain unchanged, as does overall the overall first-stage PUD expiration date of May 29, 2025.

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 identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, 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.

On June 12, 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 *D.C. Register*; that is on August 25, 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
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 14-11E
Z.C. Case No. 14-11E
(Text Amendments – 11 DCMR)
(Technical Corrections to Z.C. Order 14-11B (Rear Yard Extensions))
July 24, 2017**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-07(1)
Z.C. Case No. 16-07
W-G 9th & O, LLC
(Consolidated PUD and Related Map Amendment @ Square 399)
April 24, 2017

**ORDER DENYING REQUEST TO ACCEPT LATE-FILED MOTION FOR
RECONSIDERATION FILED BY A NON-PARTY**

By Z.C. Order No. 16-07, the Zoning Commission for the District of Columbia (“Commission”) granted the application of W-G 9th & O, LLC (“Applicant”) for approval of a consolidated planned unit development (“PUD”) and related zoning map amendment from the C-2-A Zone District to the C-2-B Zone District for property located at 810 O Street, N.W. (Square 399, Lot 66) (“PUD Site”).

The parties to Z.C. Case No. 16-07 were the Applicant and Advisory Neighborhood Commission (“ANC”) 6E.

Z.C. Order No. 16-07 (the “Order”) was published in the *DC Register* on March 10, 2017, and became final and effective upon publication. 11-Z DCMR § 604.9.

11-Z DCMR § 700.3 provides:

A motion for reconsideration, rehearing, or re-argument of a final order in a contested case under Subtitle Z § 201.2 may be filed **by a party within ten (10) days of the order having become final.** The motion shall be served upon all other parties.

(Emphasis added).

Therefore, any motion to reconsider the Order had to have been filed by a party no later than March 20, 2017.

On April 3, 2017, OneDC, which was neither a party nor a participant in the case, filed a Form 153 (the “Request”) asking the Commission to waive 11-Z DCMR § 700.3 and accept an untimely filing of a motion for reconsideration the (“Proposed Motion”) and to reopen the record of Z.C. Case No. 16-07¹. (Exhibit [“Ex.”] 46.) The Commission interpreted the Request as also seeking a waiver of the requirement that any motion for reconsideration, whether timely or not, be filed by a party (the “Party Status Requirement”).

By letter dated April 20, 2017, the Applicant requested the Commission to deny the Proposed Motion (“Opposition.”). (Ex. 47.) Since the Proposed Motion could not be filed unless the

¹ The request to reopen the record was unnecessary. A motion for reconsideration is always filed after the record is closed. The only issue here is whether the Commission should permit the untimely filing of such a motion by a non-party.

Request were granted, the Commission will consider the Applicant's filing as asking the Commission to deny the Request. The Applicant contended that denial was appropriate because OneDC failed to establish good cause for the two waivers sought. The Commission agrees.

As to the request to request to waive the Party Status Requirement, the Commission has repeatedly stated the importance of 11-Z DCMR § 700.3 (and its predecessor 11 DCMR § 3029.5 of the 1958 Zoning Regulations). *See, e.g.* Z.C. Order No. 11-24, p. 3, denying a motion for reconsideration filed by a non-party and reiterating that "only the existence of 'extraordinary circumstances' would justify the waiver of the requirement that only a party may file a motion for reconsideration, such as when no notice of a hearing is given." OneDC makes no effort to explain why it as a non-party should be able to file a motion for reconsideration, but instead expresses concerns over impacts of the Application that it could have presented during the hearing had it chose to participate. With respect to the waiver of the requirement that a motion for reconsideration of the Order be filed on or before March 20, 2017, OneDC offers no explanation as to why the March 20th deadline could not have been met.

The Request therefore is denied.

On April 24, 2017, upon the motion of Commissioner Shapiro, as seconded by Chairman Hood, the Zoning Commission **DENIED** the Request by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter A. Shapiro to deny).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 25, 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. 16-21
Z.C Case No. 16-21
North Capitol Hospitality, LLC
(Map Amendment @ Square 617)
May 22, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on April 20, 2017 to consider an application by North Capitol Hospitality, LLC (“Applicant”) for approval of a Zoning Map Amendment pursuant to Subtitle X, § 500.1 of the 2016 Zoning Regulations of the District of Columbia (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations (11 DCMR). The application is to amend the Zoning Map from the MU-4 zone to the MU-5-A zone for Lots 152-156, 239, 801, and 802 in Square 617.

The Commission considered the application for the map amendment pursuant to Subtitles X and Z of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11-Z DCMR § 500 et seq. 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. As set forth below, the Commission hereby approves the application.

FINDINGS OF FACT

1. The property that is the subject of the Map Amendment consists of Lots 152-156, 239, 801, and 802 in Square 617 (“Property”).
2. On October 4, 2016, the Office of Zoning received an application from the Applicant requesting that the Commission rezone the Property from the MU-4 zone to the MU-5-A zone. (Exhibits [“Ex.”] 1, 2-2I, 3.)
3. The Property is generally flat and regularly shaped, and is located in the eastern portion of the Square 617, at the northwestern corner of the intersection of North Capitol Street and Hanover Place, N.W. The Property consists of approximately 9,401 square feet of land area, and has approximately 94 linear feet of frontage along North Capitol Street, N.W., and approximately 100 linear feet of frontage along Hanover Place, N.W. An existing 12-foot-wide public alley is located along the west side of the Property. The aforementioned north-south public alley intersects a 20-foot-wide, east-west public alley near the northwest corner of the Property.
4. Prior to filing the application, on June 15, 2016, the Applicant mailed a notice of intent to file the map amendment application to all property owners within 200 feet of the Property as well as Advisory Neighborhood Commission (“ANC”) 5E, the ANC within which the Property is located. The Applicant also attended the June 21, 2016, regularly scheduled public meeting of ANC 5A to inform the community and ANC 5E of its intent to file the map amendment application. Accordingly, the Applicant satisfied the notice requirements of 11-Z DCMR §§ 304.5, 304.6. (Ex. 2H.)

5. The application satisfied the filing requirements of 11-X DCMR § 500 et seq. and 11-Z DCMR § 300 et seq.
6. The properties to the north and south of the Property, along North Capitol Street, primarily contain two- to four-story structures devoted to range of commercial and residential uses and are within the MU-4 and RA-4 zones, which permit moderate-density mixed-use development and medium- to high-density residential development, respectively. (11-G DCMR § 400.3(a), 11-F DCMR § 300.5.) The properties to the west of the Property primarily consist of two- and three-story row dwellings with some commercial uses scattered throughout and are within the RF-1 and MU-4 zones. The RF zones permit low-, moderate-, and medium-density residential development. (11-E DCMR § 100.2.) The properties to the east of the Property, across North Capitol Street, are currently vacant and are within the D-5 zone, which permits high-density commercial and mixed-use development. (11-I DCMR § 538.1.)
7. The subject property is currently zoned MU-4. The MU-4 zone is intended to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside the central core with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate-bulk mixed-use centers. (11-G DCMR § 400.3.)
8. The MU-4 zone permits, as a matter of right, a maximum density of 2.5 floor area ratio (“FAR”), of which no more than 1.5 FAR can be devoted to nonresidential uses, and a maximum height of 50 feet. The maximum permitted matter-of-right density for developments subject to Inclusionary Zoning (“IZ”) is 3.0 FAR. (11-G DCMR §§ 402.1 and 403.1.). Under the Planned Unit Development (“PUD”) regulations of Subtitle X, Chapter 3 of the Zoning Regulations, developments in the MU-4 zone can achieve a maximum density of 3.6 FAR (with IZ), of which no more than 2.01 FAR can be devoted to nonresidential uses. (11-X DCMR § 303.3.)
9. The Applicant requests to amend the Zoning Map to rezone the Property to MU-5-A. As a matter of right, the MU-5-A zone permits a maximum overall density of 3.5 FAR (4.2 FAR with IZ), of which no more than 1.5 FAR can be devoted to nonresidential uses, and a maximum height of 65 feet. This represents an overall density increase of 1.0 FAR (1.2 FAR with IZ) compared to the existing MU-4 zoning, and no increase in the permitted density for nonresidential uses. Under the PUD regulations, developments in the MU-5-A zone can achieve a maximum density of 5.04 FAR with IZ, of which no more than 2.01 FAR can be devoted to nonresidential uses. (11-X DCMR § 303.3.)
10. The Property is located on the Comprehensive Plan Generalized Policy Map (“GPM”) within an area designated as a Main Street Mixed Use Corridor. (Ex. 2D.)
11. The Property is designated on the Comprehensive Plan Future Land Use Map (“FLUM”) as Mixed-Use: Low-Density Commercial and Moderate-Density Residential. (Ex. 13A.)

12. The Property is located within the boundary of the Mid-City East Small Area Plan (“SAP”), which was adopted by the Council of the District of Columbia on November 18, 2014. The SAP includes recommendations for strategic land use designation changes on key sites, and the infill of privately held vacant lots and increased site utilization in order to strengthen neighborhood fabric and workplaces. The SAP specifically recommends changing the FLUM designation for the Property to Mixed-Use: Moderate-Density Commercial and Medium-Density Residential. (Ex. 2C.)
13. According to the Comprehensive Plan Framework Element, the Moderate-Density Commercial land use designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low-density commercial areas but generally do not exceed five stories in height. (10-A DCMR 225.9.) The Medium-Density Residential land use designation is used to define neighborhoods or areas where mid-rise (four-seven stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. (10-A DCMR § 225.5.)
14. By memorandum dated December 29, 2016, and through testimony at the public meeting held on January 9, 2017, the Office of Planning (“OP”) recommended that the Commission set down the application for a hearing, as the request was not inconsistent with the Comprehensive Plan, as supplemented by the SAP (“OP Setdown Report”). (Ex 11.)
15. The Commission set the case down for a public hearing at its January 9, 2017, public meeting as a contested case. At the public meeting, the Commission requested the Applicant to submit additional information regarding the consistency of the requested map amendment with the existing Comprehensive Plan FLUM designation.
16. On February 3, 2017, the Applicant filed a pre-hearing submission that included the additional information requested by the Commission at the January 9, 2017, public meeting, regarding the consistency of the requested map amendment with the existing Comprehensive Plan FLUM designation.
17. One letter of support was submitted by a resident of Hanover Place, N.W., who resides within 200 feet of the Property. (Ex. 16.) No other letters were submitted to the record.
18. Notice of the public hearing was provided in accordance with the requirements of 11-Z DCMR § 500 et seq. A description of the proposed map amendment and the notice of the public hearing for the application were published in the *D.C. Register* on March 10, 2017. The notice of public hearing was mailed on February 24, 2017, to all property owners within 200 feet of the Property as well as to ANC 5E. (Ex. 17, 21.)

19. On April 7, 2017, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the subject application. The DDOT report stated that the zoning map amendment will have no adverse impacts on the travel conditions of the District’s transportation network. (Ex. 23.)
20. On April 10, 2017, OP submitted a report recommending approval of the subject application stating that the requested zoning map amendment would not be inconsistent with the Comprehensive Plan, as supplemented by the SAP (“OP Final Report”). (Ex. 24.) The OP Final Report provided information on how the various parts of the Comprehensive Plan, including the policies of the Citywide Elements and the Area Elements, with Policy Focus Areas, are to read and balanced, as well as how to incorporate additional guidance provided in Council approved small area plans and other plans. The OP Final Report also included information from the Comprehensive Plan regarding how the GPM and FLUM are intended to be interpreted and balanced against other planning policies, priorities, and initiatives.
21. With respect to the FLUM, the OP Final Report stated that the requested zoning map amendment would not be inconsistent with the land use designations surrounding the Property, and is further supported by the direct language of the SAP, which specifically encourages development of the Property at a moderate-density commercial/medium-density residential level.
22. The OP Setdown Report and OP Final Report also included an analysis describing the consistency of the requested zoning map amendment with several policies contained within the Comprehensive Plan Citywide Elements and Area Elements.
23. On March 21, 2017, ANC 5E submitted a report in support of the proposed zoning map amendment (“ANC Report”). (Ex. 25.) The ANC Report indicated that at a properly noticed meeting, and with a quorum present, ANC 5E voted 9-0-0 in support of the subject application to rezone the Property from MU-4 to MU-5-A.
24. The ANC Report stated in order to ensure that the requested map amendment not negatively impact the community, the ANC worked with the Hanover Area Civic Association (“HACA”), the civic association which represents residents most directly affected by the subject application, and further stated that HACA and the Applicant established an agreement containing a set of conditions related to the future redevelopment of the Property (“Agreement”). In its report, ANC 5E recommended to the Commission that the Agreement be incorporated into the Commission’s order as a condition to approval. The Agreement was included as an attachment to the ANC Report.
25. On April 20, 2017, the Commission held a public hearing to consider the map amendment request. At the public hearing, the Applicant presented one expert witness, Mr. Shane L. Dettman, Director of Planning Services, Holland & Knight LLP. Mr. Dettman was accepted by the Commission as an expert in land use for the subject application. In addition to the Applicant’s expert witness, DDOT and OP also testified at the public hearing.

26. No representative(s) from ANC 5E, nor any property owners within 200 feet of the Property attended the public hearing. Further, no persons or organizations testified in support or opposition of the requested map amendment.
27. As part of the Applicant's presentation, Mr. Dettman provided testimony regarding the standard for evaluation applicable to a map amendment, the structure of the Comprehensive Plan, and the role Council-approved small area plans play in providing supplemental guidance to the Comprehensive Plan and in requests to amend the Zoning Map. Specifically, Mr. Dettman referred to the guidance provided in the Comprehensive Plan Implementation Element which addresses the manner in which land use planning policies are interpreted and applied on a day-to-day basis. This includes the development review, small area planning, zoning, long-range planning, and community involvement activities that are used to carry out the Comprehensive Plan policies. (10-A DCMR §2501.1.)
28. Mr. Dettman cited to Policy IM-1.3.3: Consultation of the Comprehensive Plan in Zoning Decisions which states that decisions on requests for rezoning shall be guided by the [FLUM] read in conjunction with the text of the [Comprehensive Plan] (Citywide and Area Elements) as well as Small Area Plans pertaining to the area proposed for rezoning. (10-A DCMR § 2504.5).
29. With regard to consistency with the FLUM, Mr. Dettman testified that with respect to the density and height that can be achieved on the Property, the density and height permitted under the existing MU-4 zone through a PUD, and the density and height permitted as a matter of right under the requested MU-5-A zone are comparable. Mr. Dettman testified that the requested MU-5-A zone is not inconsistent with the Property's Mixed Use: Low-Density Commercial/Moderate-Density Residential FLUM designation, and further testified that the Commission has made similar determinations in prior cases for properties with the same FLUM designation and similar surrounding contexts. (*See* Z.C. Case Nos. 06-04, 11-17, and 15-29.) Furthermore, Mr. Dettman testified that the SAP further supports approval of the requested map amendment as the SAP specifically recommends modifying the FLUM designation for the Property to Mixed-Use: Moderate-Density Commercial/Medium-Density Residential.
30. With respect to the Comprehensive Plan Citywide Element and Area Element policies, Mr. Dettman testified that the requested map amendment has the potential to advance several of the policies contained in the Land Use Element, Economic Development Element, Housing Element, Urban Design Element, and the Near Northwest and Mid-City Area Elements.
31. Based upon the guidance provided in the Implementation Element stating that requests for rezoning shall be guided by the FLUM in conjunction with the text of the Comprehensive Plan, as well as small area plans, Mr. Dettman testified that the subject application is not inconsistent with the Comprehensive Plan, and thus satisfies the required standard of review.

32. Based upon the guidance provided in Comprehensive Plan Policy IM-1.3.3: Consultation of the Comprehensive Plan in Zoning Decisions, the Applicant's exhibits in the record, the testimony of Mr. Dettman concerning the consistency of the requested map amendment with the Citywide and Area Elements of the Comprehensive Plan, FLUM, and the SAP, the reports and testimony of DDOT and OP, and the report of ANC 5E, the Commission finds that the requested map amendment is not inconsistent with the Comprehensive Plan.
33. Pursuant to § 492(b)(2) of the District of Columbia Home Rule Act, approved Dec. 24, 1973 (87 Stat. 810; D.C. Official Code § 6-641.05), the Commission referred the map amendment application to the National Capital Planning Commission ("NCPC") for review and comment on April 20, 2017 (Ex. 28). NCPC did not submit a report on the case.
34. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on May 22, 2017.

CONCLUSIONS OF LAW

The Commission's authority to amend the Zoning Map derives from the Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797. D.C. Official Code § 6-641.01, et seq.) ("Zoning Act"). Section 1 of the Zoning Act authorizes the Commission to regulate the uses of property in order to "promote health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital." (D.C. Official Code § 6-641.01.)

Section 2 of the Zoning Act provides that the:

zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection or property, civic activity, and recreational , educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

(D.C. Official Code § 6-641.02.)

Section 3 of the Zoning Act, among other things, authorizes the Commission to amend the zoning regulations and maps. (D.C. Official Code § 6-641.03.)

The Commission concludes that approval of an amendment to the MU-5-A zone is consistent with the purpose of the Zoning Act, and also concludes that the request is not inconsistent with the policies and maps of the Comprehensive Plan, as supplemented by the Council approved Mid-City East Small Area Plan.

In amending the Zoning Map, the Commission is constrained by the limitation in the District Charter that the Zoning Map be “not inconsistent” with the Comprehensive Plan. § 492(b)(1) of the District of Columbia Home Rule Act: D.C. Official Code § 6-641.02. As stated above, the Commission concludes that approval of the requested map amendment is not inconsistent with the Comprehensive Plan. The requested map amendment furthers the goals of the Comprehensive Plan, and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Map.

The Commission concludes that the requested map amendment is in the best interest of the District of Columbia and will benefit the community in which the Property is located. The requested map amendment will advance redevelopment of a longstanding vacant site along the important North Capitol Street corridor; facilitate economic development and support the District’s core industries; facilitate upgrades to the North Capitol and Florida Avenue business district; and strengthen the North Capitol Street, Florida Avenue and New York Avenue Main Street corridor which will benefit new and existing businesses, improve the public realm adjacent to the Property, and improve pedestrian circulation along the North Capitol Street corridor.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (“ANC Act”) (D.C. Law 1-21: D.C. Official Code § 1-309.10(d)) to give great weight to the affected ANC’s written recommendation. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC’s concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. D.C. Official Code § 1-309.10(d)(3)(A) and (B).

Accordingly, the Commission considered the written report submitted by ANC 5E in this case. ANC 5E’s report states it was “...concerned that the future development of the subject property, if the map amendment were to be granted, not negatively impact the current residents of the community. To alleviate that concern, the ANC sought counsel from the Hanover Area Civic Association ... and the civic association and the applicant came to terms as to what benefits the developer would provide the community.” (Ex. 25.) The ANC 5E report recommended that the Commission approve the map amendment on the condition that the Commission incorporate the agreement between the Applicant and HACA into this Order as a condition to approval of the requested map amendment, and attached a copy of the Agreement.

The Commission does not adopt this recommendation. The concern about the future development of the site is not relevant to the decision before the Commission, which is limited to whether the MU-5-A zone is consistent with the purposes of the Zoning Act, and not inconsistent with the Comprehensive Plan. Likewise, since the Agreement includes, among other things, several items agreed to by the Applicant regarding various contributions to HACA, construction-

related activities, resident employment opportunities, and other commitments related to post-construction operation of development on the Property. The terms of the agreement are not relevant to the decision before the Commission, which is limited to whether the MU-5-A zone is consistent with the purposes of the Zoning Act, and not inconsistent with the Comprehensive Plan.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP's recommendations. The Commission concurs with the OP's recommendation for rezoning the Property to the MU-5-A zone and has given its recommendation the great weight to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for an amendment of the Zoning Map to change the zoning for Lots 152-156, 239, 801, and 802 in Square 617 that are currently zoned MU-4 to MU-5-A.

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 affirmation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On April 20, 2017, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Commission took **PROPOSED ACTION** to **APPROVE** the application at 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).

On May 22, 2017, upon the motion of Commissioner Turnbull, as seconded by Commissioner Shapiro, the 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).

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

In accordance with the provisions of 11 DCR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register* on August 25, 2017.

District of Columbia REGISTER – August 25, 2017 – Vol. 64 - No. 34 008398 – 008554