VOL. 64 – NO. 35 SEPTEMBER 1, 2017

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Law 22-11, Child Care Study Act of 2017
- D.C. Council schedules a public hearing on Bill 22-124, DC Circulator Tech-Friendly Feasibility Study Act of 2017
- Department of Behavioral Health announces funding availability for the Strategic Prevention Framework Partnership for Success High Need Communities Grants
- Board of Ethics and Government Accountability publishes an advisory opinion on the proposed OCTO Statehood Portal
- Department of For-Hire Vehicles solicits grant applications from licensed taxicab companies to provide transportation services for MetroAccess clients
- Department of Health Care Finance publishes the Medicaid Fee Schedule Updates for Durable Medical Equipment Services
- Department of Human Resources updates regulations on salary offers for new hires, military leave, and time-off for FLSA-exempt employees and certain members of the Metropolitan Police Department
- Department of Human Services announces funding availability for the Strengthening Foundations Youth Stabilization Program

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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

Deadlines for Submission of Documents for Publication

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

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

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Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-7

"Child Neglect and Sex Trafficking
Temporary Amendment Act of 2017"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-254 on first and second readings May 2, 2017, and May 16, 2017, respectively. Following the signature of the Mayor on June 2, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-68 and was published in the June 9, 2017 edition of the D.C. Register (Vol. 64, page 5302). Act 22-68 was transmitted to Congress on June 15, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-68 is now D.C. Law 22-7, effective July 28, 2017.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

June	15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30
July	3, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-8

"Grocery Store Restrictive Covenant Prohibition Temporary Act of 2017"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-270 on first and second readings May 2, 2017, and May 16, 2017, respectively. Following the signature of the Mayor on June 2, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-69 and was published in the June 9, 2017 edition of the D.C. Register (Vol. 64, page 5304). Act 22-69 was transmitted to Congress on June 15, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-69 is now D.C. Law 22-8, effective July 28, 2017.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

June 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30

July 3, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-9

"Early Learning Equity In Funding Amendment Act of 2017"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-26 on first and second readings May 2, 2017, and May 16, 2017, respectively. Following the signature of the Mayor on June 9, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-70 and was published in the June 16, 2017 edition of the D.C. Register (Vol. 64, page 5606). Act 22-70 was transmitted to Congress on June 19, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-70 is now D.C. Law 22-9, effective August 1, 2017.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

June 19, 20, 21, 22, 23, 26, 27, 28, 29, 30

July 3, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-10

"Child Development Facilities Regulations Amendment Act of 2017"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-50 on first and second readings May 2, 2017, and May 16, 2017, respectively. Following the signature of the Mayor on June 5, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-71 and was published in the June 16, 2017 edition of the D.C. Register (Vol. 64, page 5608). Act 22-71 was transmitted to Congress on June 19, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-71 is now D.C. Law 22-10, effective August 1, 2017.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

June 19, 20, 21, 22, 23, 26, 27, 28, 29, 30

July 3, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 22-11

"Child Care Study Act of 2017"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 22-103 on first and second readings May 2, 2017, and May 16, 2017, respectively. Following the signature of the Mayor on June 5, 2017, as required by Section 404(e) of the Charter, the bill became Act 22-72 and was published in the June 16, 2017 edition of the D.C. Register (Vol. 64, page 5610). Act 22-72 was transmitted to Congress on June 19, 2017 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 22-72 is now D.C. Law 22-11, effective August 1, 2017.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

June	19, 20, 21, 22, 23, 26, 27, 28, 29, 30
July	3, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

B22-124, the DC Circulator Tech-Friendly Feasibility Study Act of 2017;
B22-175, the Transportation Benefits Equity Amendment Act of 2017;
B22-181, the Proper Planning for Future Growth Amendment Act of 2017; and
B22-351, the Daytime School Parking Zone Amendment Act of 2017

Friday, September 22, 2017 at 11:00 a.m.
in Room 412 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Friday, September 22, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B22-124, the DC Circulator Tech-Friendly Feasibility Study Act of 2017; B22-175, the Transportation Benefits Equity Amendment Act of 2017; B22-181, the Proper Planning for Future Growth Amendment Act of 2017; and B22-351, the Daytime School Parking Zone Amendment Act of 2017. The hearing will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B22-124, the DC Circulator Tech-Friendly Feasibility Study Act of 2017, would require the District Department of Transportation to conduct a study to determine the feasibility of upgrading Circulator buses with technology services such as Wi-Fi and USB charging ports. B22-175, the Transportation Benefits Equity Amendment Act of 2017, would require certain employers to provide alternate transit benefits—such as access to a commuter highway vehicle, transit, or bicycling benefits—in an amount equal to that of the market value of an employer's currently offered parking benefit. B22-181, the Proper Planning for Future Growth Amendment Act of 2017, would require the District Department of Transportation, in conjunction with the Office of Planning, to submit a bi-annual transportation study for each Ward. Finally, B22-351, the Daytime School Parking Zone Amendment Act of 2017, would permit the Mayor to establish areas near public schools where eligible employees may park during designated hours with a display permit issued by the District Department of Transportation.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on October 6, 2017.

Council of the District of Columbia
Committee on Government Operations
Notice of a Public Hearing **REVISED**

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 117 Washington, DC 20004

Councilmember Brandon Todd, Chair
Committee on Government Operations

Announces a Public Hearing

on

B22-165 - The Grant Administration Amendment Act of 2017
B22-324 - Notary Public Electronic Establishment and Enhancement Amendment Act of 2017

Tuesday, October 24, 2017, 1:00 P.M.
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Councilmember Brandon Todd announces the scheduling of a public hearing by the Committee on Government Operations on B22-165, the "Grant Administration Amendment Act of 2017". The public hearing is scheduled for Tuesday, October 24, 2017 at 1:00 p.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004. **This notice has been revised to announce that B22-324 has been added to the agenda for this hearing date.**

B22-165 makes it unlawful for a grantor to require a person applying for a grant to disclose whether the applicant or the applicant's agents have been charged, indicted, or convicted of an offense, or is the subject of legal proceedings related to the applicant's organization.

B22-324 updates the District's notary laws to conform with current best practices. It does not require the notary's sole place of residence or business be in the District. It gives the Mayor the authority to revoke the commission of notary publics who take higher fees than what is permitted by law. Among other things it requires that upon death, resignation, or revocation, notaries must return the official notarial seal to the District, along with other official documents and establishes an electronic notary system.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Government Operations at (202) 724-6663 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address, and organizational affiliation, if any, by close of business Monday, October 23, 2017. Each witness is requested to bring 20 copies of his/her written testimony. Representatives

of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Friday, November 3, 2017. Copies of written statements should be submitted to the Committee on Government Operations, Council of the District of Columbia, Suite 117 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY
REVISED 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"

BILL 22-0288, THE "HUMAN RIGHTS AMENDMENT ACT OF 2017"

AND

PROPOSED RESOLUTION 22-0357, THE "SENSE OF THE COUNCIL SUPPORTING PASSAGE OF THE EQUALITY ACT RESOLUTION 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", Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017", Bill 22-0288, the "Human Rights Amendment Act of 2017", and Proposed Resolution 22-0357, the "Sense of the Council Supporting Passage of the Equality Act Resolution 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. *Please note that this notice has been revised to reflect the inclusion of B22-0288 and PR22-0357.*

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 stated purpose of Bill 22-0288, the "Human Rights Amendment Act of 2017", is to amend the Human Rights Act of 1977 to permit a complainant to bring a civil action in any court of competent jurisdiction *de novo* and without regard to any Office of Human Rights or Commission on Human Rights proceedings or findings, and to require complainants to be notified of these rights when they file a complaint with the Office and at the time of a determination or withdrawal of the matter.

The stated purpose of Proposed Resolution 22-0357, the "Sense of the Council Supporting Passage of the Equality Act Resolution of 2017", is to declare the Sense of the Council that the Congress of the United States pass the Equality Act of 2017 to ensure that federal civil rights laws are fully inclusive of protections on the basis of sex, gender identity, and sexual orientation in employment, housing, and public accommodations.

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 HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 22-280, Closing of a Public Alley in Square 772, S.O. 16-25615, Act of 2017
And
Bill 22-295, Closing of a Portion of a Public Alley in Square 3594, S.O. 16-25309, Act of 2017
on

Thursday, September 28, 2017
10:30 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **Bill 22-280**, the "Closing of a Public Alley in Square 772, S.O. 16-25615, Act of 2017" and **Bill 22-295**, the "Closing of a Public Alley in Square 3594, S.O. 16-25309, Act of 2017." The hearing will be held at 10:30 a.m. on **Thursday, September 28, 2017** in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of **Bill 22-280** is to order the closing of a portion of the public alley system in Square 772, bounded by N Street, and Florida Avenue to the north, a public alley to the south, 4th Street to the east and 3rd Street to the west in Northeast Washington, D.C. in Ward 6. The closing would support a mixed-use development project consisting of residential units, retail and office space, a hotel, and parking spaces. The stated purpose of **Bill 22-295** is to order the closing of a public alley system in Square 3594, bounded by New York Avenue to the north, Brentwood Parkway to the east, Penn Street to the south, and 4th Street to the west in Northeast, Washington, D.C. in Ward 5. The closed portion of the alley will become part of a hotel development with space dedicated to an art gallery, studios, and classrooms. The developer has agreed to provide an easement so that the public may continue to use the alley.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or to call Sydney Hawthorne, Legislative Counsel at (202) 724-7130, and to provide your name, address, telephone number, organizational affiliation, and title (if any) by close of business **Tuesday, September 26, 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 September 26, 2017 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted 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 Thursday, October 12, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004 ****REVISED****

CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

ANNOUNCES A PUBLIC HEARING ON

B22-401, "WORKFORCE DEVELOPMENT SYSTEM TRANSPARENCY ACT OF 2017"

Tuesday, September 26, 2017, 11:00 a.m.
Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Elissa Silverman, Chair of the Committee on Labor and Workforce Development, announces a hearing on B22-401, the "Workforce Development System Transparency Act of 2017." The hearing will be held at 11 a.m. on Tuesday, September 26, 2017, in Room 123 of the John A. Wilson Building. **This notice has been updated to reflect a new time.**

The purpose of B22-401, the "Workforce Development System Transparency Act of 2017," is to require the Mayor to develop and update annually a report outlining all District government spending on workforce development across agencies, including programs and activities, their funding, services, providers, and performance outcomes.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at laborworkforcedevelopment@dccouncil.us or (202) 724-7772 by 5:00 p.m. on Friday, September 22, 2017, to provide their name, address, telephone number, organizational affiliation and title (if any), as well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and other individuals will have three minutes to present their testimony; less time may be allowed if there are a large number of witnesses.

If a witness is unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at laborworkforcedevelopment@dccouncil.us or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 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 Tuesday, October 10, 2017.

This notice has been updated to reflect a new time.

COUNCIL OF THE DISTRICT OF COLUMBIA
EXCEPTED SERVICE APPOINTMENTS AS OF JULY 31, 2017

NOTICE OF EXCEPTED SERVICE EMPLOYEES

D.C. Code § 1-609.03(c) requires that a list of all new appointees to Excepted Service positions established under the provisions of § 1-609.03(a) be published in the D.C. Register. In accordance with the foregoing, the following information is hereby published for the following positions.

COUNCIL OF THE DISTRICT OF COLUMBIA			
NAME	**POSITION TITLE**	**GRADE**	**TYPE OF APPOINTMENT**
Harris, Karin	Information Technology Technician	3	Excepted Service - Reg Appt
Brantley, Emmanuel	Communications Director	5	Excepted Service - Reg Appt

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	September 1, 2017
Protest Petition Deadline:	October 16, 2017
Roll Call Hearing Date:	October 30, 2017
Protest Hearing Date:	December 13, 2017

License No.:	ABRA-107410
Licensee:	California St. Hospitality, Inc.
Trade Name:	Alfresco Tap and Grill
License Class:	Retailer's Class "C" Restaurant
Address:	2009 18th Street, N.W.
Contact:	Andrew Kline: (202) 686-7600

WARD 1 ANC 1C SMD 1C07

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 30, 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 Class "C" Restaurant serving American comfort food and offering alcoholic beverages. Total Occupancy Load of 350. Offering Summer Garden with total capacity of 150 seats.

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

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	September 1, 2017
Protest Petition Deadline:	October 16, 2017
Roll Call Hearing Date:	October 30, 2017
Protest Hearing Date:	December 13, 2017
License No.:	ABRA-107488
Licensee:	Buredo Tenleytown LLC
Trade Name:	Buredo
License Class:	Retailer's Class "C" Restaurant
Address:	4235 Wisconsin Avenue, N.W.
Contact:	Andrew Kline: (202) 686-7600

WARD 3 ANC 3E SMD 3E05

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 30, 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, 2017at 4:30 p.m.**

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NATURE OF OPERATION

New Restaurant serving burrito-sized sushi rolls. Total Occupancy Load of 29 with seating for 18 patrons.

HOURS OF OPERATION

Sunday through Thursday 7 am – 2 am, Friday and Saturday 7 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Saturday 8 am – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/1/2017

Notice is hereby given that:
License Number: ABRA-080635 **License Class/Type: B Retail - Grocery**
Applicant: El Gavilan, LLC
Trade Name: El Gavilan Grocery
ANC: 1C06

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

1646 COLUMBIA RD NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/16/2017

A HEARING WILL BE HELD ON:
10/30/2017

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 8 pm	9 am - 8 pm
Monday:	9 am - 9 pm	9 am - 9 pm
Tuesday:	9 am - 9 pm	9 am - 9 pm
Wednesday:	9 am - 9 pm	9 am - 9 pm
Thursday:	9 am - 9 pm	9 am - 9 pm
Friday:	9 am - 9 pm	9 am - 9 pm
Saturday:	9 am - 9 pm	9 am - 9 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/1/2017

Notice is hereby given that:
License Number: ABRA-016999 **License Class/Type: B Retail - Grocery**
Applicant: Nicholas & Alexis Inc.
Trade Name: Glover Park Market
ANC: 3B02

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

2411 37TH ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/16/2017

A HEARING WILL BE HELD ON:
10/30/2017

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	8:30 am - 12 am	9 am - 12 am
Monday:	8:30 am - 10:30 pm	9 am - 10 pm
Tuesday:	8:30 am - 10:30 pm	9 am - 10 pm
Wednesday:	8:30 am - 10:30 pm	9 am - 10 pm
Thursday:	8:30 am - 12 am	9 am - 12 am
Friday:	8:30 am - 12 am	9 am - 12 am
Saturday:	8:30 am - 12 am	9 am - 12 am

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
9/1/2017

Notice is hereby given that:
License Number: ABRA-094313 **License Class/Type: B Retail - Class B**
Applicant: Alexander Market, Inc.
Trade Name: Newton Food Mart
ANC: 5B02

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

3600 12TH ST NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:
10/16/2017

A HEARING WILL BE HELD ON:
10/30/2017

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 am - 9 pm	7 am - 9 pm
Monday:	7 am - 9 pm	7 am - 9 pm
Tuesday:	7 am - 9 pm	7 am - 9 pm
Wednesday:	7 am - 9 pm	7 am - 9 pm
Thursday:	7 am - 9 pm	7 am - 9 pm
Friday:	7 am - 9 pm	7 am - 9 pm
Saturday:	7 am - 9 pm	7 am - 9 pm

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

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 "C" 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

****RESCIND**

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

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, OCTOBER 18, 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 SIX

19587 ANC 6C — **Application of Ace Cash Express, Inc.**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle H § 1200 from the designated use requirements of Subtitle H § 1101.3(a), to permit a financial services use in the NC-9 Zone at premises 512 H Street, N.E. (Square 832, Lot 13).

WARD THREE

19588 ANC 3B — **Application of John Goodwyn**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 and the rear yard requirements of Subtitle D § 306.2, to construct a rear deck addition to a one-family dwelling in the R-3 Zone at premises 2334 Huidekoper Place N.W. (Square 1301, Lot 680).

WARD FIVE

19595 ANC 5B — **Application of Robert and Kim Segers**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the maximum building area requirements of Subtitle D § 5006.1 and the pervious surface requirements of Subtitle D § 308.1, and pursuant to Subtitle X, Chapter 10, for an area variance from the maximum height requirements of Subtitle D § 5002.1, to construct an accessory two car garage in the R-1-B Zone at premises 1355 Monroe Street N.E. (Square 3963, Lot 22).

WARD SIX

19597 ANC 6A — **Application of Jonathan and Carol Sandford**, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from minimum alley width requirements of Subtitle C § 303.3, to subdivide the existing tax lot into two record lots and construct two one-family dwellings in the RF-1 Zone at premises 619 11th Street N.E. (rear). (Square 983, Lot 853).

WARD SIX

19598
ANC 6A

Application of Jonathan and Carol Sandford, pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from minimum alley width and minimum lot area requirements of Subtitle C § 303.3, to subdivide the existing tax lot into two record lots and construct two one-family dwellings in the RF-1 Zone at premises 629 11th Street N.E. (rear). (Square 983, Lot 854).

WARD ONE

19603
ANC 1A

Application of MDG 435 Park Road, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5203.3 from the rooftop architectural element restrictions in Subtitle E § 206.1, to remove an existing bay window in an existing one-family dwelling in the RF-1 Zone at premises 435 Park Road N.W. (Square 3036, Lot 17).

WARD ONE

19573
ANC 1A

Appeal of Nefretiti Makenta, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on May 26, 2017 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue building permit B1707364, amending building permit B1603868, to alter the approved third floor addition in the RF-1 Zone at premises 3616 11th Street N.W. (Square 2829, Lot 169).

PLEASE NOTE:

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

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.
Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form**.* This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests

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

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

Do you need assistance to participate?

Amharic
ለመካተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይምየቋንቋ እርዳታአገልግሎቶች (ትርጉምወይምመስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባውአምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይምበኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ 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
Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, November 2, 2017 @ 6:30 p.m.**
Monday, November 6, 2017 @ 6:30 p.m.
Thursday, November 9, 2017 @ 6:30 p.m.

Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 11-03J (Wharf Phase 3 REIT Leaseholder LLC – Second-Stage Planned Unit Development and Modification of Significance to First-Stage Planned Unit Development @ Square Map Amendment @ Square 473, Lots 878, 881, 887, 888, and 921)

THIS CASE IS OF INTEREST TO ANC 6D

On May 12, 2017, the Office of Zoning received an application from Wharf Phase 3 REIT Leaseholder LLC ("Applicant") for a second-stage planned unit development ("Second-Stage PUD") and a modification of significance to an approved first-stage planned unit development ("First-Stage PUD") for Phase 2 of the Southwest Waterfront redevelopment / the Wharf project, collectively referred to herein as the "Phase 2 PUD." The application was submitted in accordance with Subtitle X, Chapter 3 and Subtitle Z of the 2016 Zoning Regulations of the District of Columbia, 11 DCMR, and in accordance with the Zoning Commission's approval of the First-Stage PUD as promulgated in Zoning Commission Order No. 11-03 ("Order No. 11-03"). The Office of Planning provided its report on July 14, 2017, and the case was setdown for hearing on July 24, 2017. The Applicant provided its prehearing statement on August 4, 2017.

The Wharf project is generally bounded by the pier head line of the Washington Channel of the Potomac River on the southwest and Maine Avenue on the northeast between 6th and 11th Streets, S.W. ("PUD Site"). The Maine Avenue Municipal Fish Market is located immediately northwest of the PUD Site. Overall, the Wharf project contains approximately 991,113 square feet (22.75 acres) of land area, and approximately 167,393 square feet (3.8 acres) of piers and docks located within in the adjacent riparian area. The First-Stage PUD divides the landside portion of the Wharf project into 11 principal building parcels, a number of smaller landside and waterside structures, four major plazas, one large park, a waterfront promenade/shared space, as well as public and private piers. The waterside portion of the project includes club buildings for the marinas, buildings on existing Piers 3 & 4, and other minor waterside buildings and facilities. In addition, the parks included in the Wharf project include smaller retail structures and pavilions.

The area comprising the Phase 2 PUD contains the principal landside buildings and structures located on Parcels 6–10 of the Wharf project, two below-grade parking structures, three principal waterside buildings known as WB1, WB2, and WB3, and the completion of the Wharf Marina.

The Phase 2 PUD also includes various landside and waterside accessory structures and kiosks; public areas and open spaces, and several improvements to public and private streets and alleys. The landside portion of the Phase 2 PUD is located in Record Lot 89 of Square 473, and includes Assessment & Taxation ("A&T") Lots 878, 881, and 921, which collectively comprise approximately 322,738 square feet of land area. The waterside portion of the Phase 2 PUD includes A&T Lots 887 and 888, which collectively comprise approximately 666,683 square feet of riparian area.

The proposed modification to the First-Stage PUD includes a change in the approved mix of uses for the building proposed on Parcel 8. Under the First-Stage PUD, Parcel 8 is approved for residential or office use above ground-floor retail. The Applicant proposes to change the approved mix of uses on Parcel 8 to include residential and hotel uses above ground-floor retail. In addition, the Applicant is proposing to modify the First-Stage PUD to make changes to the size and location of the waterside buildings, and to the configuration of the docks and piers within Wharf Marina.

For the landside portion of the Second-Stage PUD, the Applicant proposes a mixed-use building on Parcels 6 and 7 (the "Parcel 6/7 Building") containing approximately 523,770 square feet of gross floor area ("GFA") of office and retail/service uses. The Parcel 6/7 Building will have a maximum height of approximately 130 feet and a penthouse with a maximum height of 20 feet. On Parcel 8, the Applicant proposes a mixed-use building containing approximately 370,859 GFA of mixed-income residential, hotel, and retail/service uses (the "Parcel 8 Building"). The Parcel 8 Building will have a maximum height of approximately 130 feet and a penthouse with a maximum height of 20 feet. On Parcel 9, the Applicant proposes a mixed-use building containing approximately 227,962 GFA of residential and retail/service uses (the "Parcel 9 Building"). The Parcel 9 Building will have a maximum height of approximately 130 feet and a penthouse with a maximum height of 20 feet. On Parcel 10, the Applicant proposes a mixed-use building containing approximately 76,314 GFA of office and retail/service uses (the "Parcel 10 Building"). The Parcel 10 Building will have a maximum height of approximately 60 feet, and a penthouse with a maximum height of approximately 18'-6". The Applicant will also construct two parking garages below Parcels 6 - 10 that will collectively contain approximately 846 vehicle parking spaces and approximately 610 long-term bicycle parking spaces. In addition, approximately 129 short-term bicycle parking spaces will be provided on the surface and within the parking garages.

For the waterside portion of the Phase 2 PUD, the Applicant will construct three principal water buildings and complete the Wharf Marina. The first water building, WB1, will contain approximately 11,886 GFA of maritime service/retail uses and be constructed to a maximum height of approximately 35 feet, not including penthouse. The second water building, WB2, will contain approximately 16,150 GFA of maritime service/retail uses and will be constructed on a fixed pier to a maximum height of approximately 35 feet, not including penthouse. Finally, the third water building, WB3, will contain approximately 5,175 GFA of marina services and support for use primarily by the liveaboard slip license holders and non-profit groups located within Wharf Marina. The WB3 will be constructed on a floating platform to a maximum height of approximately 38 feet.

The Phase 2 PUD application also includes the development of various accessory structures and kiosks; public areas and open spaces including M Street Landing, the Grove, and Café Terrace; and several improvements to public and private streets and alleys.

At its public meeting of July 24, 2017, the Commission decided to schedule multiple public hearings on the Phase 2 PUD because of the number of buildings and other development components contained in the subject application, and the breadth of information contained in the case record. The Commission determined that the scope of the hearings would generally follow the organization of the separate volumes of plans that were submitted by the Applicant, as follows:

Hearing Date	Topics
November 2, 2017 6:30 p.m.	**Overall Plan Elements / Volume C** (Master Plan, Parcel 10, Water Building 3, M Street Landing, The Terrace, and Wharf Marina)
November 6, 2017 6:30 p.m.	**Volume B** (Parcel 8, Parcel 9, Water Building 2, The Grove, and Marina Way)
November 9, 2017 6:30 p.m.	**Volume A** (Parcel 6, Parcel 7, Water Building 1, and The Oculus)

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Commission's Rules of Practice and Procedure, 11 DCMR Subtitle Z, Chapter 4.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearings. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. Witnesses are also requested to identify the date of the hearing in which they wish to give testimony. If the testimony would be limited to the development described in a single volume, it is requested that the witness make its best experts to testify on the date. In order words, a witness whose testimony would be limited to Volume B is encouraged to testify on November 6. If the witness wishes to testify concerning development described in more than one volume, that witness is encourage to testify on the earliest date.

How to participate as a party.

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

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to

exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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

Hearing Date	Topics	Party Status Deadline
November 2, 2017 6:30 p.m.	**Overall Plan Elements / Volume C** (Master Plan, Parcel 10, Water Building 3, M Street Landing, The Terrace, and Wharf Marina)	October 19, 2017
November 6, 2017 6:30 p.m.	**Volume B** (Parcel 8, Parcel 9, Water Building 2, The Grove, and Marina Way)	October 23, 2017
November 9, 2017 6:30 p.m.	**Volume A** (Parcel 6, Parcel 7, Water Building 1, and The Oculus)	October 26, 2017

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

Time limits.

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

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

1. Applicant and parties in support 60 minutes collectively

2. Parties in opposition	60 minutes collectively
3. Organizations	5 minutes each
4. Individuals	3 minutes each

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

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

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

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

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.
¿Necesita ayuda para participar? Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

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

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

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

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

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health ("Department"), pursuant to § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Health Occupations Revision Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2012 Repl.)), the LGBTQ Cultural Competency Continuing Education Amendment Act of 2016, effective April 6, 2016 (D.C. Law 21-95; 63 DCR 2203 (February 26, 2016)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 64 (Optometry) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the rulemaking is to set forth rule amendments regarding new continuing education requirements imposed by the LGBTQ Cultural Competency Continuing Education Amendment Act of 2016 for optometrists. In addition, the rulemaking clarifies the number of continuing education credits that must be submitted for the purpose of reactivating a license that has been in inactive status and establishes the number of hours that must be submitted for reinstatement of a license. Finally, the rulemaking defines the term "good cause" and the conditions under which "good cause" is recognized by the Board of Optometry.

These amendments were published as Notice of Proposed Rulemaking in the *D.C. Register* on April 14, 2017, at 64 DCR 003499. No comments were submitted in response to this Notice of Proposed Rulemaking during the thirty (30)-day comment period and no changes have been made to the rulemaking.

These rules were adopted as final on July 24, 2017 and will become effective upon their publication in the *D.C. Register*.

Chapter 64, OPTOMETRY of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 6406, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:

Subsection 6406.4 is amended to read as follows:

6406.4 An applicant for renewal of a license shall submit proof of having completed thirty-six (36) hours of approved continuing education credit during the two (2) year period preceding the date the license expires. Such proof shall be submitted within thirty (30) days after it is requested by the Board. An applicant for renewal of a license expiring on March 31, 2020 and all subsequent licensure terms shall complete two (2) additional hours of approved continuing education credit in cultural competence and appropriate clinical treatment specifically for individuals who are lesbian, gay, bisexual, transgender, gender nonconforming, queer, or

questioning their sexual orientation or gender identity and expression for a total of thirty-eight (38) hours.

Subsection 6406.5 is amended to read as follows:

6406.5 To qualify for a license, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11 (2012 Supp.), who submits an application to reactivate a license shall submit to the Board satisfactory proof of completion of continuing education hours required of a practitioner on active status during the period of inactivity, not to exceed ninety (90) hours.

Subsection 6406.6 is amended to read as follows:

6406.6 Any optometrist whose license has been expired for less than five (5) years and who has not been put on inactive status may apply for reinstatement of his or her license. The Board may reinstate the license if the optometrist submits to the Board satisfactory proof of having subsequently met the continuing education requirements required of a practitioner on active status consistent with § 6406.4 during the period the license was expired, not to exceed ninety (90) hours.

Subsection 6406.12 is amended to read as follows:

6406.12 The Board may, in its discretion, grant an extension of the sixty (60)-day period to renew after expiration if the applicant's failure to submit proof of completion was for good cause. For the purpose of this section, "good cause" includes the following:

(a) Serious and protracted illness of the applicant; or

(b) The death or serious and protracted illness of a member of the applicant's immediate family.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health ("Department"), pursuant to § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Health Occupations Revision Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), the LGBTQ Cultural Competency Continuing Education Amendment Act of 2016, effective April 6, 2016 (D.C. Law 21-95; 63 DCR 2203 (February 26, 2016)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendment to Chapter 68 (Podiatry) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to set forth a rule amendment regarding new continuing education requirements imposed by the LGBTQ Cultural Competency Continuing Education Amendment Act of 2016 for podiatrists.

These amendments were published as Notice of Proposed Rulemaking in the *D.C. Register* on April 14, 2017, at 64 DCR 003504. No comments were submitted in response to this Notice of Proposed Rulemaking during the thirty (30)-day comment period and no changes have been made to the rulemaking.

The Director adopted these rules as final on July 24, 2017, and they will become effective upon its publication in the *D.C. Register.*

Chapter 68, PODIATRY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 6806, CONTINUING EDUCATION CREDIT, Subsection 6806.4, is amended to read as follows:

6806.4 An applicant for renewal of a license expiring on March 31, 2018, shall submit proof pursuant to § 6806.7 of having completed fifty (50) hours of approved continuing education credit directly related to the practice of podiatric medicine during the two (2) year period preceding the date the license expires. An applicant for a renewal, reactivation, or reinstatement of a license expiring on March 31, 2020, and all subsequent licensure terms shall submit proof pursuant to § 6806.7 of having completed fifty (50) hours of approved continuing education credit directly related to the practice of podiatric medicine during the two (2) year period preceding the date the license expires that shall also include two (2) hours in cultural competence and appropriate clinical treatment specifically for individuals who are lesbian, gay, bisexual, transgender, gender nonconforming, queer, or questioning their sexual orientation or gender identity and expression. Twenty five (25) of the fifty (50) required continuing education credits may be completed on line. Proof of successful completion shall be submitted within ten (10) days after it is requested by the Board.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, ("Department"), pursuant to the authority set forth in section 19(a) of the District of Columbia Pharmacist and Pharmacy Regulation Act of 1980, effective September 16, 1980 (D.C. Law 3-98; D.C. Official Code § 47-2885.18(a)); Mayor's Order 98-48, dated April 15, 1998; Section 4902 of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731); and Mayor's Order 2007-63, dated March 8, 2007, hereby gives notice of the adoption of final rules that amend Chapter 19 (Pharmacies) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to codify the minimum temperature at which the sink in a pharmacy's dispensing and compounding area shall provide hot running water, and to clarify that the pharmacy's dispensing and compounding area must include soap or detergent that can be dispensed from a dispenser.

Notice of the proposed rulemaking was published in the *D.C. Register* on June 30, 2017 at 64 DCR 6126. The Department did not receive any comments in response to the notice. Therefore, no changes have been made to the rulemaking.

These rules were adopted as final on August 5, 2017 and will be effective upon publication of this notice of final rulemaking in the *D.C. Register*.

Chapter 19, PHARMACIES, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended as follows:

Section 1907, PHYSICAL STANDARDS, is amended as follows:

Subsection 1907.4 is amended as follows:

Paragraph (g) is amended to read as follows:

(g) Have a sink and goose-neck faucet within the dispensing and compounding area for the immediate access and use of all pharmacy personnel, maintained in a sanitary condition, which shall provide hot running water no less than one hundred and ten degrees Fahrenheit (110° F) (forty-three and one-third degrees Celsius (43.3° C)), cold running water, and shall include:

(1) Soap or detergent from a dispenser; and

(2) Air-driers or single-use towels.

DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the District of Columbia Department of Human Resources (DCHR), with the concurrence of the City Administrator, and pursuant to Sections 404(a), 1103, and 1203(m) 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 §§ 1-604.04(a), 1-611.03, and 1-612.03(m) (2016 Repl.)); and Mayor's Order 2008-92, dated June 26, 2008, hereby gives notice of the adoption of the following amendments to Chapters 11 (Classification and Compensation) and 12 (Hours of Work, Legal Holidays, and Leave) of Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking notice is to (1) amend Sections 1126 and 1130 to require that District agencies offer new hires and District employees appointed to new positions through a competitive process salaries based on the relative value of the position and the candidate's qualifications, without regard to the candidate's salary history, unless the salary history is raised by the candidate; (2) note that salary schedules under the Wage Service Rate System were changed from a six (6)-step system to a ten (10)-step system a number of years ago, and DCHR is amending Section 1129 to reflect this change; (3) amend Section 1139 to authorize agencies to grant exempt time-off to FLSA-exempt employees at any grade level and authorize the Chief of Police to grant exempt time-off to certain members of the Metropolitan Police Department, consistent with the amendment to Section 1103(g) of the CMPA (D.C. Official Code § 1-611.03(g)) made by Section 211(b) of the Neighborhood Engagement Achieves Results Amendment Act of 2016, effective June 30, 2016 (D.C. Law 21-125; 63 DCR 4659 (April 1, 2016)); (4) amend Section 1155 to implement the amendment to Section 1103(a)(7)(A) of the CMPA (D.C. Official Code § 1-611.03(a)(7)(A)) made by Section 2 of the Active Duty Pay Differential Amendment Act of 2016 (D.C. Law 21-273; 64 DCR 949 (February 3, 2017)), which provides employees with military pay differential if they were or will be called to active duty for any contingency operations as defined in 10 U.S.C. § 101(a)(13) following the formal inception of Operation Odyssey Dawn in 2011; (5) amend Section 1199 to provide a definition of the term "competitive appointment"; and (6) amend Subsection 1262.2 to provide employees who are on military leave for training fifteen (15) days of military leave each fiscal year, consistent with Section 1203(m) of the CMPA (D.C. Official Code § 1-612.03(m)).

No comments were received on the proposed rules that were published on June 23, 2017, at 64 DCR 5843, and no changes have been made from the proposed rulemaking. These rules were adopted as final on August 11, 2017, and will be effective upon the date of publication of this notice in the *D.C. Register.*

Chapter 11, CLASSIFICATION AND COMPENSATION, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

Subsections 1126.5, 1126.6, 1126.7 and 1126.11(c) of Section 1126, DISTRICT SERVICE SALARY SYSTEM - GENERAL PROVISIONS, are amended to read as follows:

1126.5 Except as provided in Subsections 1126.6 through 1126.11, 1126.21, 1126.22, and 1126.29, a new appointment shall be made at the minimum rate of the grade or pay level.

1126.6 At the discretion of the agency head, initial or first appointments to the Career Service may be made at any salary up to step 4, for positions paid on the Career Service Salary Schedule. The following factors should be considered when setting the pay:

(a) Skill set the selectee brings to the job in addition to the minimum qualifications for the position;

(b) Effect on agency and budget limitations;

(c) Market value of the position; and

(d) Internal compensation relationships.

The lead-in language in Subsection 1126.7 is amended to read as follows:

1126.7 For positions paid from an open range salary schedule, the employing agency may set the initial rate of pay at any amount up to the midpoint of the applicable grade or level. The following factors should be considered when setting the pay at an amount up to the midpoint of an open range:

TYPE OF APPOINTMENT	PAY-SETTING RULE
Initial or First (1st) Appointment with the District government	(a) The employing agency may set the initial rate of pay at any amount up to the midpoint range of the grade or pay level for the position. The following factors* should be considered when setting the pay at an amount up to the midpoint range: (1) Skill set the selectee brings to the job in addition to the minimum qualifications for the position; (2) Effect on agency and budget limitations; (3) Market value of the position; and (4) Internal compensation relationships. (b) For extraordinary cases, the employing agency shall request approval from the personnel authority to set the initial rate of pay at an amount above the midpoint range of the grade or pay level for the position. The personnel authority shall establish the criteria for the request, which shall be made in writing by the employing agency.

	*__Note__: The employing agency may not seek information about or base compensation offers on salary history, unless selectee introduces salary history into the negotiation process.

Paragraph (c) of Subsection 1126.11 is amended to read as follows:

(c) The candidate's rate of basic pay or salary history, only if raised by the candidate in salary negotiation during the hiring process.

Subsections 1129.4, 1129.5, and 1129.13 of Section 1129, WAGE SERVICE RATE SYSTEM – WITHIN-GRADE INCREASES, is amended to read as follows:

1129.4 Except as provided in Subsection 1129.6, the waiting periods for advancement to the next rate in all grades for a wage employee with a scheduled tour of duty shall be as follows:

(a) Rates 2, 3, 4, and 5: fifty-two (52) calendar weeks of creditable service; and

(b) Rates 6, 7, 8, 9, and 10: one hundred four (104) calendar weeks of creditable service.

1129.5 Except as provided in Subsection 1129.7, the waiting period for advancement to the next rates in all grades for a wage employee without a scheduled tour of duty shall be as follows:

(a) Rates 3, 4, and 5: two hundred sixty (260) days of creditable service in a pay status over a period of not less than twenty-six (26) calendar weeks; and

(b) Rates 7, 8, 9, and 10: five hundred twenty (520) days of creditable service in a pay status over a period of not less than one hundred four (104) calendar weeks.

…

1129.13 For a wage employee with a scheduled tour of duty, time in a nonpay status, except as provided in Subsections 1129.15 through 1129.19, shall be creditable service in the computation of a waiting period when it does not exceed an aggregate of any of the following:

(a) Two (2) administrative workweeks in the waiting period for rates 2, 3, 4, or 5;

(b) Four (4) administrative workweeks in the waiting period for rates 7, 8, 9, or 10.

Section 1130, CAREER SERVICE POSITION CHANGES-SETTING PAY, is amended as follows:

Subsections 1130.3 and 1130.4 are amended to read as follows:

1130.3 When any action moves an employee from a CS salary schedule ("current" schedule) to another grade within the same CS salary schedule or to any grade within another CS salary schedule or Wage Service rate schedule ("new" schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:

(a) If the representative rate of the employee's grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a promotion, and the employee shall be entitled to one (1) of the following:

(1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus two (2) step increases of the current grade;

(2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or

(3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.

(b) If the representative rate of the new position is less than the representative rate of the employee's existing position, the movement constitutes a "change to a lower grade." If the representative rate of the new position is equal to the representative rate of the employee's existing position, the movement constitutes a "reassignment." When the movement is either a "change to a lower grade" or a "reassignment," the agency may pay the employee as follows:

(1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate;

(2) If the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate; or

(3) For competitive appointments to a different position, an agency may pay the employee in accordance with the pay-setting rules for initial or first-time appointments with the District government outlined in Subsection 1126.6.

1130.4 When any action moves an employee from one Wage Service rate schedule ("current" schedule) to another grade within the same rate schedule or to any grade within another Wage Service rate schedule or CS salary schedule ("new" schedule), the rate of pay on the new schedule shall be determined under one (1) of the following, as appropriate:

(a) If the representative rate of the employee's grade in his or her current schedule is less than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a promotion, and the employee shall be entitled to one (1) of the following:

(1) Basic pay at the lowest rate of the new grade that is equivalent to his or her existing rate of basic pay plus a two (2) step increase of the current grade (for a rate schedule with ten (10) steps);

(2) If the rate determined in (1) above falls between two (2) rates of the new grade, he or she shall be entitled to the higher rate; or

(3) If the rate determined in (1) above is higher than any rate of the new grade, he or she shall be entitled to the maximum rate of the new grade.

(b) If the representative rate of the employee's grade in his or her current schedule is equal to or more than the representative rate of the grade to which he or she is being assigned in either the same schedule or a new schedule, the movement constitutes a reassignment (when "equal to") or a change to lower grade (when "more than"), and the agency may pay the employee in accordance with either of the following:

(1) The agency may pay the employee at any rate of the new grade that does not exceed his or her highest previous rate; or

(2) If the employee's highest previous rate falls between two (2) rates of the new grade, the agency may pay the employee at the higher rate.

A new Subsection 1130.17 is added to read as follows:

1130.17 When an employee is converted from a term or temporary appointment to a

permanent appointment at the same grade level in the Career Service pursuant to Chapter 8 of these regulations, there shall be no change to the rate of pay.

Subsections 1139.2 and 1139.5 of Section 1139, EXEMPT TIME OFF, are amended to read as follows:

1139.2 This section applies to employees subject to the District Service Salary System, the Wage Service Rate System, or the Recreation Service Rate System who are exempt from the Fair Labor Standards Act (FLSA).

…

1139.5 An agency head may credit an employee with up to eighty (80) hours of exempt time off per leave year; provided, that with the approval of the personnel authority, an agency may credit an employee with an additional forty (40) hours of exempt time off within the leave year, when the hours justifying exempt time off under Subsection 1139.3 are granted because of emergencies or other unforeseen circumstances, such as:

(a) Work resulting from severe weather events, including excessive snow and hurricanes;

(b) Work resulting from publicly scheduled events in the District of Columbia requiring infrastructure support; and

(c) Emergency situations so declared by the Mayor.

Subsection 1139.9 is added to read as follows:

1139.9 The Chief of Police may grant exempt time off to uniformed members at the rank of Inspector and above, and the civilian equivalents in the Metropolitan Police Department not to exceed a total of eighty (80) hours in any consecutive twelve (12) month period in accordance with this section.

Section 1155, OPERATION ENDURING FREEDOM AND OPERATION IRAQI FREEDOM PAY DIFFERENTIAL, is amended as follows:

The section title is amended to read as follows "MILITARY ACTIVE DUTY PAY DIFFERENTIAL".

Subsection 1155.1(a) is amended to read as follows:

1155.1

(a) Any full-time permanent, indefinite, or term employee who serves in a reserve component of the United States armed forces and who has been or will be called to active duty in preparation for, or as a result of Operation New Dawn, Operation Odyssey Dawn, or any contingency operation as

defined in 10 U.S.C. § 101(a)(13), shall be entitled to apply for and receive, as applicable, a pay differential to compensate the employee for any difference between the employee's District government basic pay and basic military pay.

Subsection 1199.99 of Section 1199, DEFINITIONS, is amended by adding a new definition for "Competitive appointment" as follows:

Competitive appointment – an appointment or reassignment to a position within the District government made through open competition to the general public.

Chapter 12, HOURS OF WORK, LEGAL HOLIDAYS, AND LEAVE, is amended as follows:

Subsection 1262.2 of Section 1262, MILITARY LEAVE, is amended to read as follows:

1262.2 An employee serving in a permanent appointment, temporary appointment pending establishment of a register (TAPER), term appointment, or indefinite appointment, who is a member of a reserve component of the Armed Forces, shall be entitled to military leave for each day, but no more than fifteen (15) calendar days per fiscal year and, to the extent that it is not used in a fiscal year, it will accumulate for use in the succeeding fiscal year until it totals fifteen (15) calendar days at the beginning of a fiscal year in which he or she is on active duty, inactive-duty training under 37 U.S.C. § 101, funeral honors duty under 10 U.S.C. § 12503 and 32 U.S.C. § 115, or engaged in field or coast defense training under 32 U.S.C. §§ 502 through 505.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 08-06L
Z.C. Case No. 08-06L
(Text Amendment – 11 DCMR)
(Technical Corrections to Z.C. Order No. 08-06A)
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. 797; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its adoption of amendments to Subtitle B (Definitions, Rules of Measurement, and Use Categories); Subtitle C (General Rules); Subtitle D (Residential House (R) Zones); Subtitle E (Residential Flat (RF) Zones); Subtitle I (Downtown (D) Zones); Subtitle Y (Board of Zoning Adjustment Rules of Practice and Procedure); and Subtitle Z (Zoning Commission Rules of Practice and Procedure) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR), to make minor modifications and technical corrections to the amendments made by Z.C. Order No. 08-06(A) (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted comprehensive amendments to the Zoning Regulations that became effective on September 6, 2016.

A full explanation for the corrections and modifications adopted may be found in the Office of Planning report, which appears as Exhibit 1 in this case, and which may be accessed on the Office of Zoning website at http://dcoz.dc.gov.

A Notice of Proposed Rulemaking was published in the June 16, 2017 edition of the *D.C. Register* at 64 DCR 5700. No comments were received and no changes were made to the text as proposed.

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

Title 11-B DCMR, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is amended as follows:

Chapter 3, GENERAL RULES OF MEASUREMENT, is amended as follows:

The section heading of § 315, RULES OF MEASUREMENT FOR FRONT SETBACKS FOR RESIDENTIAL HOUSE (R) ZONES, is amended to read as follows:

315 RULES OF MEASUREMENT FOR FRONT SETBACKS FOR RESIDENTIAL HOUSE(R) AND RESIDENTIAL FLAT (RF) ZONES

Title 11-C DCMR, GENERAL RULES, is amended as follows:

Chapter 2, NONCONFORMITIES, is amended as follows:

Subsection 204.6 of § 204, NONCONFORMING USE, is amended by read as follows:

204.6 A nonconforming use that is discontinued for any reason for a period of three (3) years or less shall be allowed to resume operation provided there was no intervening conforming use, there are no changes to the nonconforming use, and it conforms with Subtitle C § 204.1.

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

Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, is amended as follows:

Table D § 5201.3 of paragraph (e) of § 5201.3 of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, is amended as follows:

5201.3 An applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(a) ... [1]

(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot as specified in the following table:

TABLE D § 5201.3: MAXIMUM PERMITTED LOT OCCUPANCY

Zone	Maximum Lot Occupancy
R-3 R-13 R-17	70%
R-20 – attached dwellings only	70%
R-20 – detached and semi-detached dwellings All Other R zones	50%

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

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

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

Subsection 206.2 of § 206, ROOF TOP OR UPPER FLOOR ADDITIONS, is amended to read as follows:

206.2 In an RF zone district, relief from the design requirements of Subtitle E § 206.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X Chapter 9, subject to the conditions of Subtitle E § 5203.3.

Title 11-I DCMR, DOWNTOWN (D) ZONES, is amended as follows:

Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, is amended as follows:

Subsection 510.2 of § 510, HEIGHT (D-2), is amended to read as follows:

510.2 The maximum permitted building height, not including the penthouse, in the D-2 zone shall be limited to ninety feet (90 ft.) on the portion of the site occupied by a historic landmark or a contributing building within a historic district.

Chapter 6, LOCATION-BASED REGULATIONS FOR DOWNTOWN SUB-AREAS AND DESIGNATED STREET SEGMENTS, is amended as follows:

Subsection 607.2 of § 607, DOWNTOWN ARTS SUB-AREA, is amended to read as follows:

607.2 The general location of the Downtown Arts sub-area is between 6th and 14th Streets, N.W. between Pennsylvania Avenue, N.W. and G Place, N.W., including all or parts of Squares 254, 290, 291, 321, 322, 347, 348, 375, 376, 377, 405, 406, 407, 408, 429, 431, 455, 456, 457, 458, and 459 as outlined in Figure I § 607: Illustration of the Downtown Arts Sub-Area and Designated Street Segments.

Title 11-Y DCMR, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

Chapter 5, PRE-HEARING AND HEARING PROCEDURES: ZONING APPEALS, is amended as follows:

§ 506, HEARING PROCEDURES: GENERAL PROVISIONS, is amended as follows:

Subsection 506.3 is deleted:

506.3 [DELETED]

Subsection 506.4 is amended to read as follows:

506.4 The Board may grant additional or lesser time than that allowed under Subtitle Y §§ 506.2 to present a case, provided that the presiding officer shall ensure reasonable balance in the allocation of time between the appellant and those parties in support of the appeal and the appellee and those parties in opposition to the appeal.

Chapter 7, APPROVALS AND ORDERS, is amended as follows:

Subsection 701.3 of § 701, STAY OF FINAL DECISION AND ORDER, is amended to read as follows:

701.3 Except for stays granted upon its own motion, the Board shall grant a stay only upon finding that all four of the following criteria are present:

(a) ...

Title 11-Z DCMR, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is amended as follows:

Chapter 3, APPLICATION REQUIREMENTS, is amended as follows:

Subsections 300.1 and 300.7 of § 300, PLANNED UNIT DEVELOPMENT (PUD) APPLICATION REQUIREMENTS, are amended as follows:

300.1 Each application seeking approval of a PUD, including a modification of significance, pursuant to Subtitle X, Chapter 3 shall meet the requirements of this section before it will be accepted by the Commission for processing.

…

300.7 At least forty-five (45) calendar days prior to filing an application under this chapter, including a modification of significance, the applicant shall mail written notice of intent (NOI) to file the application to the affected ANC and to the owners of all property within two hundred feet 200 ft. of the perimeter of the property in question.

§ 301, DESIGN REVIEW APPLICATION REQUIREMENTS, is amended as follows:

Subsections 301.1 and 301.6 are amended to read as follows:

301.1 Each application for design review approval, including a modification of significance, pursuant to Subtitle X, Chapter 6 shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

301.6 At least forty-five (45) days prior to filing an application under this chapter, including a modification of significance, the applicant shall serve a written notice of intent (NOI) on the affected ANC and on the owners of all property within two hundred feet 200 ft. of the perimeter of the property in question.

A new § 301.13 is added, as follows:[2]

301.13 For design review applications, approval shall be treated as a whole. Specific flexibility or special exception uses approved as part of the design review development shall not be bifurcated without approval of the Zoning Commission.

Subsections 302.1 and 302.6 of § 302, PLAN/FURTHER PROCESSING AND MEDICAL CAMPUS PLAN APPLICATION REQUIREMENTS, are amended to read as follows:

302.1 Each application for campus plan/further processing and medical campus plan, including a modification of significance, approval pursuant to Subtitle X, Chapter 1 shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

…

302.6 At least forty-five (45) days prior to filing an application under this chapter, including a modification of significance, the applicant shall serve a written notice of intent (NOI) to file the application on the affected ANC and on the owners of all property within to hundred feet (200 ft.) of the perimeter of the property in question.

Subsections 303.1 and 303.4 of § 303, AIR SPACE DEVELOPMENT APPLICATION REQUIREMENTS, are amended to read as follows:

303.1 Each application for approval of an air space development, including a modification of significance, pursuant to Subtitle X, Chapter 7 shall meet the requirements of this section before it will be accepted by the Office of Zoning for processing.

…

303.4 At least forty-five (45) days prior to filing an application under this chapter, including a modification of significance, the applicant shall serve a written notice of intent (NOI) to file the application on the affected ANC and on the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.

[2] Presently 11-Z DCMR § 702.9. (*See* fn. 3.)

Chapter 4, PRE-HEARING AND HEARING PROCEDURES: CONTESTED CASES, is amended as follows:

Subsection 400.7 of § 400, SETDOWN PROCEDURES: SCHEDULING CONTESTED CASE APPLICATIONS FOR HEARING, is amended to read as follows:

400.7 For contested cases enumerated under Subtitle Z § 400.5, except for map amendments, the Director shall also refer the application to the affected ANC, along with an ANC Setdown Form, which the affected ANC may submit to provide feedback on whether the matter should be set down for hearing.

Subsection 406.2 of § 406, ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT, is amended to read as follows:

406.2 The Commission shall give "great weight" to the issues and concerns included in the written report of the ANC, pursuant to § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, as amended, that is received at any time prior to the date of a Commission meeting to consider final action including any continuation thereof on the application. All written reports shall contain the following:

(a) ...

Chapter 5, PRE-HEARING AND HEARING PROCEDURES: RULEMAKING CASES, is amended as follows:

Section 500, SETDOWN PROCEDURES: SCHEDULE RULEMAKING CASE PETITIONS FOR HEARING, is amended as follows:

Subsection 505.1 of § 505, ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT, is amended to read as follows:

505.1 The Commission shall give "great weight" to the issues and concerns included in the written report of the ANC, pursuant to § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, as amended, that is received at any time prior to the date of a Commission meeting to consider final action including any continuation thereof on the application. All written reports shall contain the following:

(a) ...

Chapter 7, APPROVALS AND ORDERS, is amended as follows:

§ 702, VALIDITY OF APPROVALS AND IMPLEMENTATION, is amended as follows:

Subsection 702.3 is amended to read as follows:

702.3 Construction shall start within three (3) years after the effective date of order granting the application, unless a longer period is established by the Commission at the time of approval.

Subsection 702.9 is deleted:[3]

702.9 [DELETED]

Subsection 703.17 of § 703, CONSENT CALENDAR – MINOR MODIFICATION, MODIFICATION OF CONSEQUENCE, AND TECHNICAL CORRECTIONS TO ORDERS AND PLANS, is amended to read as follows:

703.17 The Commission may take one (1) of the following actions at a public meeting:

(a) At the request of a Commissioner, remove an item from the Consent Calendar and direct the applicant to file an application for a modification of significance;

(b) ...

(c) For a modification of consequence:

(1) Determine that the request is actually for a modification of significance and, in which case, direct the applicant to file an application for a modification of significance for which a hearing must be held pursuant to Subtitle Z § 704; or

(2) ...

On May 8, 2017, upon the motion of Chairman Hood, as seconded by Commissioner Shapiro, the Zoning Commission **APPROVED IMMEDIATE PUBLICATION** of the proposed rulemaking at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve; Robert E. Miller not present, not voting).

[3] The text of 11-Z DCMR § 702.9 is proposed to be added as a new § 303.13 to 11-Z DCMR § 303, which applies to Design Review applications.

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, Michael G. Turnbull, and Peter G. May 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 September 1, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2003, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code §§ 25-211(b) (2012 Repl. & 2016 Supp.)), the Alcoholic Beverage Enforcement Act of 2008, effective March 25, 2009 (D.C. Law 17-0361; D.C. Official Code § 25-830(f) (2012 Repl. & 2016 Supp.)), and Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102, dated July 23, 2001, hereby gives notice of the intent to amend the existing ABRA civil penalty schedule set forth in Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations ("DCMR").

The proposed rules are intended to update the civil penalty schedule ("Schedule") by (1) incorporating new infractions and penalties, including those passed by the Council for the District of Columbia in the Omnibus Alcoholic Beverage Regulation Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-260; 64 DCR 2079 (February 24, 2017)); (2) changing the tier for certain infractions from "primary to secondary" or "secondary to primary"; (3) allowing the Board to issue discretionary warnings for infractions that are not presently eligible for receiving a warning; and (4) correcting D.C. Official Code and DCMR citations. ***Those infractions not listed on the Schedule below shall remain in full effect and not be impacted by the proposed rulemaking.***

On June 21, 2017, the Board voted, six (6) to zero (0) to approve the proposed rules which, pursuant to D.C. Official Code § 25-211(b)(2) (2012 Repl.), will be transmitted to the Council of the District of Columbia, for a ninety (90) day period of review. The proposed rules will become effective in not less than thirty (30) days from publication of this notice in the *D.C. Register*, or upon approval by the Council by resolution, whichever occurs later. If the Council does not approve or disapprove the proposed rules by resolution, in whole or in part, within the ninety (90) day review period, the proposed rules shall be deemed disapproved.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 800, ABRA CIVIL PENALTY SCHEDULE, Subsection 800.1, is amended by inserting and replacing the following infractions to the ABRA Civil Penalty Schedule in numerical order:

Section	Description	Violation	Warning
25-110	Violating Terms of Manufacturer's License	Primary	Y
25-111	Violating Terms of Wholesaler's License	Primary	Y
25-112(a)-(c)	Violating Terms of Off-Premise Retailer's License	Primary	Y
25-113	Violating Terms of On-Premise Retailer's	Primary	Y

	License		
25-113(a)(5)(A)	Retailer's Class C or D Purchased Alcoholic Beverages from an Off-Premises Retailer's Class A or B	Primary	N
25-113a(b)(1)	Failure to Obtain Entertainment Endorsement	Primary	Y
25-113a(b)(1)	Cover Charge Without Endorsement	Secondary	Y
25-113a(b)(1)	Dancing Without Endorsement	Secondary	Y
25-113a(c)	Operating a Summer Garden or a Sidewalk Café Outside of Allowed Hours	Primary	Y
25-114(a)	Violating Terms of Arena C/X License	Primary	Y
25-115(a)	Violating Terms of Temporary License	Primary	Y
25-116	Violating Terms of Solicitor's License	Primary	Y
25-117	Violating Terms of Brew Pub Permit	Primary	Y
25-118	Failure to Obtain Tasting Permit, or Exceeding Scope of Tasting Permit	Primary	Y
25-120(i)(A)(i)	A Manager Directly Sold an Alcoholic Beverage to a Minor	Primary	Y
25-120(i)(A)(ii)	A Manager Directly Interfered with an ABRA or MPD Investigation	Primary	N
25-120(i)(A)(iii)	A Manager Made False or Misleading Statements During or After a RI or Investigation	Primary	N
25-120(i)(A)(iv)	A Manager Aided, Abetted, or Conspired with a Licensed or Unlicensed Person to Evade Compliance with ABRA Requirements	Primary	N
25-120(i)(A)(v)	A Manager Allowed the Manager's License to be Used by an Unlicensed Person	Primary	N
25-123	Violating Terms of Farm Winery License	Primary	Y
25-126(a)	Sale, Service and/or Consumption Without the On-Site Sale and Consumption Permit – Manufacturer Licenses	Primary	Y
25-126(b)	Sale, Service, and/or Consumption Outside of the On-Site Sale and Consumption Permit Approved Hours- Manufacturer Licenses	Primary	Y
25-127	Violating Terms of Festival License	Primary	Y
25-371	Allowing Nude Dancing Without a License	Primary	Y
25-372	Violating Restrictions on Nude Dancing Performances	Primary	Y
25-401	False Statement on an Application or in Any Accompanying Statement required by the Board	Primary	N
25-405	Transfer of Ownership Without Board Approval	Primary	Y
25-701	Board-Approved Manager Required	Secondary	Y

25-703	Licensee or Board Approved Manager Superintending the Licensed Establishment under the Influence of Alcohol or Illegal Drugs	Primary	Y
25-711(f)	Owner or Licensed Manager Failure to Produce a Valid ID to ABRA or MPD	Secondary	Y
25-721	Sale and Delivery Outside of Allowed Hours for Manufacturer & Wholesaler	Primary	Y
25-722	Sale and Delivery Outside of Allowed Hours - Off Premises Licensees	Primary	Y
25-723(b)	Sale and Delivery Outside of Allowed Hours - On-Premises Licensees	Primary	Y
25-723(b)	Sale and Service Outside of Licensed Hours	Primary	Y
25-724	Operating After Board Restricted Hours	Primary	Y
25-725	Noise from Licensed Establishment	Secondary	Y
25-753	Keg Registration Required	Primary	Y
25-762(b)(10)	Failure to Obtain Approval to Change Entertainment to Include Nude Performances	Primary	Y
25-762(b)(13)	Failure to Obtain Approval to Extend Hours of Operation	Primary	Y
25-762(b)(18)	Failure to Obtain Approval to Increase Number of Vessels Under On-Premises	Primary	Y
25-781	Sale to Minors - Egregious	Primary	Y
25-781	Sale to Minors - Non-egregious	Primary	Y - Mandatory
25-781	Sale to Intoxicated Persons	Primary	Y
25-802	Failure to Allow Examination of Premises, Books and Records	Primary	Y
25-823(a)(1)	Violation of Any Law Outside of Title 25 of the District of Columbia Code or Title 23 of the District of Columbia Municipal Regulations	Primary	Y
25-823(a)(2)	Allowing Establishment to be Used for an Unlawful or Disorderly Purpose	Primary	N
25-823(a)(3)	Failure by Owner or ABC Manager to Superintend Licensed Business	Secondary	Y
25-823(a)(4)	Allowing Employees or Agents to Engage in Prostitution, Sexual Acts, or Sexual Contact	Primary	Y
25-823(a)(5)	Failure to Allow/Delays ABRA or MPD to Inspect Premises or Books and Records	Primary	N
25-823(a)(5)	Interferes With ABRA or MPD Investigation	Primary	Y
25-823(a)(6)	Failure to Follow Settlement Agreement	Secondary	Y
25-823(a)(6)	Failure to Follow Security Plan	Primary	Y
25-823(a)(6)	Failure to Follow a Board Order	Primary	Y

25-828(c)	Licensee Defaces Notice of Suspension Placard	Secondary	Y
25-833	Tampering or Refilling Bottles	Primary	N
25-834	Sell or Offer to Sell Powdered Alcohol	Primary	N
25-835	Forged, Counterfeit, or Endorse a Document Issued by ABRA	Primary	N
23 DCMR 705.9	Retailer's Class C, D, F, G, or Caterer Permits the Consumption of Alcoholic Beverages After Hours	Primary	Y
23 DCMR 706	Remaining Open Without Securing Beverages or Having an ABC Manager or Owner Present	Secondary	Y
23-DCMR 707.1	Licensee or Board Approved Manager on Licensed Premises During Hours of Sale, Service or Consumption	Secondary	Y
23-DCMR 721.1	Allowing Establishment to Provide Bottle Service of Alcoholic Beverages to One (1) or More Non Seated Patrons	Secondary	Y
23-DCMR 721.2	Allowing Establishment to Serve a Bucket filled with Containers of Beer to One (1) or More Non-Seated Patrons	Secondary	Y
23-DCMR 721.3	Failure by the Server to Open All Closed Containers Before Serving Them to the Seated Patrons	Secondary	Y
23-DCMR 721.4	Allowing Patrons to Remove the Bottle or Pitcher from the Table, Bar or Other Seating Area Where Served	Secondary	Y
23 DCMR 902	Open Container or Package in Vehicle	Primary	Y
23 DCMR 1207.9	False Statement on a Quarterly Statement or Annual Report	Primary	N
23 DCMR 2002.2	Failure to Maintain Caterer Records	Primary	Y

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009. All persons desiring to comment on the emergency and proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*, to the above address or via email to martha.jenkins@dc.gov.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF SECOND PROPOSED RULEMAKING

The Director of the Department of Behavioral Health (DBH), as the successor-in-interest to the Department of Mental Health, pursuant to the authority set forth in Sections 5113, 5117(10) and (13), and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.06(10) and (13), and 7-1141.7 (2012 Repl.)), hereby gives notice of the intent to add a new Chapter 38 (Mental Health Community Residence Facilities) to Title 22 (Health), Subtitle A (Mental Health), of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

The Notice of Second Proposed Rulemaking will supersede and repeal Title 22-B DCMR Chapter 38 (Community Residence Facilities for Mentally Ill Persons), and will locate rules governing mental health community residence facilities (MHCRFs) in Title 22-A DCMR, together with other mental health rules. The proposed Chapter 38 also includes licensing provisions specifically applicable to MHCRFs, including prerequisites for obtaining a license, licensure categories, the inspection process, licensure renewal, licensure conversion, suspension, or revocation, and hearing requirements. Therefore, the provisions of Title 22- B DCMR Chapter 31 pertaining to licensing of healthcare and community residence facilities regulated by the Department of Health, will no longer apply to MHCRFs regulated by DBH. The proposed rules update the current 22-B DCMR Chapter 38 rules adopted in 1995, to reflect changes in the Department's policies and requirements for MHCRFs since that time. More specifically, the rules address general eligibility requirements for living in a MHCRF, different categories of MHCRFs offering different levels of care, environmental and physical plant requirements, Operator and Residence Director responsibilities, staffing qualifications and requirements, and requirements for records maintenance. The proposed rulemaking also provides additional requirements to comply with the Center for Medicare and Medicaid Services' residential setting requirements.

The first Notice of Proposed Rulemaking was published on June 19, 2015 in the *D.C. Register* at 62 DCR 008611. The Department received written comments from the Legal Counsel for the Elderly Long Term Care Ombudsmen, University Legal Services, and Community Connections. As a result of the comments received, the Department made the following changes to the proposed rules:

The Department added the goal of "person-centered" care in Subsection 3800.1.

The Department added a reference to an individual's preference in Subsection 3800.3.

The Department added in Subsection 3803.3 that investigative inquiries and interviews may be conducted on or off-site to address confidentiality or retaliation concerns.

In Subsection 3803.4, the Department prohibited providers from refusing or denying official inspections.

The Department clarified in Subsection 3805.6(c) that the internal process for resident grievances must conform to DBH's grievance process, as specified in the Mental Health Consumers' Rights Protection Act.

The Department added a requirement in Subsection 3805.6(g) that the program statement shall also explain discharge processes. The Department also added a requirement in Subsection 3823.29 that new residents be provided a copy of the program statement.

The Department added a requirement in Subsection 3805.6(i) that MHCRFs shall include a description of "consultant services, if any" in their program statements.

The Department revised Subsection 3805.10 by stating that DBH shall conduct a background check on an applicant which may include other officers and principals within the organization.

The Department added language in Subsection 3805.11 cross-referencing the prohibition on discrimination under the DC Human Rights Act.

The Department removed the requirement in Subsection 3810.3 that a broken window or clogged toilet shall be treated as a Major Unusual Incident, and added a resident's failure to take prescribed medications for more than forty-eight (48) hours and a lack of air conditioning as a requirement.

The Department added a requirement in Subsection 3810.15 that no MHCRF shall delay, hinder, obstruct, impede or otherwise interfere with the emergency relocation of residents.

The Department deleted provisions addressing administrative hearings in Sections 3819 through 3821 that have been subsumed by the Office of Administrative Hearing rules.

The Department deleted "other persons" from Subsection 3822.1.

The Department added the phrase "reasonable visitation" in Subsection 3823.13 to balance the rights of residents to have visitors with the needs of the facility and the privacy of other residents.

The Department added "psychotropic medication" in the list of items that each resident has a right to refuse in Subsection 3823.19.

The Department added access by the protection and advocacy system (P&A) in Subsection 3823.20.

The Department added in Subsection 3823.30 "Each MHCRF shall encourage resident input and participation in the development and implementation of house rules."

The Department added: "3823.33 Each MHCRF shall assist the resident in registering and exercising the resident's right to vote."

The Department added requirements in Subsection 3824.2 that the residency contract permit residents to furnish and decorate their rooms and afford protections surrounding the eviction process.

The Department added the requirement to comply with the Americans With Disabilities Act in Subsections 3825.5, 3825.6, and 3827.4.

The Department added a provision in Subsection 3825.8 that permits the Department to order admission of a person to a MHCRF under certain circumstances.

The Department added in Subsection 3826.3 that MHCRFs should be located away from known sources of loud and irritating noises to foster a home-like environment.

The Department added in Subsection 3827.4 that all facilities are required to comply with all applicable accessibility provisions of the ADA.

The Department capped the indoor temperature in Subsection 3830.6 at seventy-eight degrees (78°)Fahrenheit between May 15 and September 15 in order to prevent residents from overheating and from living at potentially unsafe temperatures.

The Department added the requirement to provide eighty (80) square feet of habitable room area in Subsection 3831.1.

The Department added requirements to Subsections 3831.3, 3831.5 and 3823.13 of locked bedroom doors, keys, and reasonable visitation and choice of roommates to comply with Centers for Medicare and Medicaid Services' (CMS) Home and Community Based Services setting requirements.

The Department added "or luminance equivalent bulb" in Subsection 3831.4(c).

The Department added in Subsection 3834.8 that MHCRF shall "Provide for a variety of foods at each meal taking into consideration the residents' personal and cultural preferences".

The Department removed the prohibition on folding chairs from Subsection 3834.31.

The Department added a requirement of new pillows and sufficient blankets in Subsection 3836.2, in addition to the clean linens required in Subsection 3836.6.

The Department added a requirement in Subsection 3836.9 that the MHCRF shall maintain a written laundry log.

The Department clarified in Subsection 3838.2 that the prohibition on MHCRFs serving as representative payees applies to new representative payee relationships following the effective date of the regulations.

The Department added a requirement in Subsection 3839.6 that MHCRFs coordinate with licensed caregivers to ensure that residents take their medications.

The Department added a requirement in Subsection 3840.8 that a MHCRF shall report medical conditions that a resident refuses to treat.

The Department added in Subsection 3841.3, "In accordance with a person-centered treatment plan, each resident shall have the freedom and support to control his or her own schedule and activities."

The Department added internet to the list of required services in Subsection 3841.4.

The Department added Subsection 3844.4 "The resident shall have the right to participate in planning all phases of his or her IRP, may request participation of a family member, and shall be offered the opportunity to sign his or her IRP or indicate disagreement with particular aspects of the plan or the whole of the plan."

The Department added a reference to DBH Policy 482A, which requires allegations of abuse, neglect, and exploitation to be reported as an MUI, in Section 3848.

The Department added a requirement in Subsection 3853.1 that a MHCRF must post conspicuously the numbers to University Legal Services, the Long Term Care Ombudsmen, and the Department in the facility to assist residents in contacting representatives or advocates.

Given the flexibility in the regulation to proposed alternative staffing plans, the Department deleted the weekend hour requirements in Subsection 3858.6 while keeping the daily requirement of two (2) staff during the hours of 6 a.m. to 9 a.m. and 5 p.m. to 8 p.m.

The Department added the hours of 6 a.m. to 10 p.m. daily for 2:8 staffing for Intensive Residence facilities in Subsection 3859.3 and clarified the specific peak hour time periods.

The Department clarified the role and function of SR-Transitional in Section 3860.

The Department added in Subsection 3860.7 that Residence Directors of Transitional Residences shall have one additional year of experience in working with homeless persons.

In Subsection 3899.1, the Department added multiple definitions from the existing rule that were erroneously omitted in the proposed rule and incorporated the statutory definition of restraint to include drugs used as a restraint.

One commenter requested information on how the prohibition on medical marijuana complies with D.C. law. The law allows medical marijuana to be used at a qualifying patient's residence only if permitted by the residence. Therefore, a regulatory ban on use and possession of marijuana while on MHCRF premises does not violate the medical marijuana law.

One commenter expressed concern that Subsection 3860.8 seems to permit MHCRFs with transitional beds to maintain a higher ratio than a one (1) to ten (10) staff to resident ratio as when the Department requires so via contract. The commenter misunderstood the language. The regulation allows the Department to require a higher staff to resident ration pursuant to a contract.

Finally, one commenter expressed concern that the proposed language addressing temporary, emergency transfers and discharges caused by a natural disaster, extreme heat or cold, extended power outage, or other emergency where the MHCRF cannot safely care for residents at the facility and residents need to be temporarily moved to another location violates the discharge and transfer procedures in D.C. law. As the wording suggests, the temporary, emergency transfer and discharge provision only applies to temporary transfers and discharges when residents are expected to return to the original facility. The D.C. law does not address these temporary moves. To address the commenter's concern, the Department added language in Subsection 3861.10 that "The MHCRF shall comply with the notice requirements in the CRF Residents' Protection Act and the Department's Model Discharge Policy for any temporary move or relocation that is expected to exceed thirty (30) days."

Title 22-A DCMR, MENTAL HEALTH, is amended by adding a new Chapter 38 to read as follows:

CHAPTER 38 MENTAL HEALTH COMMUNITY RESIDENCE FACILITIES

3800 PURPOSE AND SCOPE OF CHAPTER

3800.1 The purpose of these regulations is to provide for the health, safety, and person-centered welfare of individuals with mental illness residing in mental health community residence facilities (MHCRFs). Each MHCRF shall meet the requirements of this chapter as of its effective date, unless otherwise specified in this chapter. No person shall operate an MHCRF in the District of Columbia without a license issued by the Department.

3800.2 A MHCRF is a publicly- or privately-owned community residence facility that provides twenty-four hour (24 hr.) supervised care and a home-like environment in a house or apartment building for individuals, age eighteen (18) or older:

(a) With a principal diagnosis of mental illness;

(b) Who require twenty-four hour (24 hr.) on-site staff supervision, monitoring, personal assistance with activities of daily living, lodging, and meals; and

(c) Who are not in the custody of the Department of Corrections.

3800.3 There shall be three (3) principal categories of MHCRFs designed to meet different levels of resident need and preference licensed under and subject to this chapter: Supported Residence (SR), Supported Rehabilitative Residence (SRR) and Intensive Residence (IR). In addition to meeting the other requirements of this chapter, the SR shall comply with § 3857, the SRR shall comply with § 3858 and the IR shall comply with § 3859.

3800.4 In addition, this chapter provides for short-term transitional beds, which shall meet the minimum licensure requirements for a SR facility, as well as the additional requirements in § 3860. A MHCRF with transitional beds shall be designated "SR-Transitional."

3800.5 The number of residents allowed to reside in a MHCRF shall be as follows:

(a) An SR, SRR or IR MHCRF may have up to eight (8) residents, exclusive of staff.

(b) Notwithstanding § 3800.5(a), an SR MHCRF with a regular license that was issued prior to December 23, 1991 may continue to house the number of residents previously authorized, up to twenty-five (25) residents exclusive of staff;

(c) An SR with transitional beds may have up to ten (10) residents in accordance with § 3860;

(d) The Director may grant a waiver to the residency limitations set forth in (a) or (c) upon a determination that:

(1) The facility has demonstrated that it meets the other requirements of this chapter and will be able to meet residents' needs and provide a home-like non-institutional environment;

(2) The health, safety, and welfare of residents will not be adversely affected; and

(3) The authorized increase is consistent with the occupancy limits in the Certificate of Occupancy for the facility.

3800.6 This chapter shall not apply to:

(a) Crisis beds;

(b) Independent living arrangements; or

(c) Supported independent living arrangements.

3800.7 A MHCRF license is not an entitlement. The issuance of new licenses is subject to the availability of funds and the Department's determination that new or additional MHCRFs are necessary to adequately serve the public behavioral health system.

3800 REQUIREMENT TO HOLD A MHCRF LICENSE

3801.1 No person shall operate or hold himself or herself out as operating a MHCRF in the District of Columbia, whether public or private, profit or not-for-profit, without being licensed as required by this chapter. Any person who violates this section is subject to civil fines and penalties in accordance with Title 16 DCMR, Chapters 31, 32, and 35.

3802 MHCRF LICENSE AND INSPECTION FEES

3802.1 Each MHCRF license shall be issued in the name of the Operator of the MHCRF business. A MHCRF license is not transferable and shall be valid only with respect to the Operator and only for the facility location identified on the license.

3802.2 Each MHCRF license shall be designated Supported Residence or SR, Supported Rehabilitative Residence or SRR, Intensive Residence or IR, or SR-Transitional and shall be issued as a regular, provisional or restricted license.

3802.3 License fees for an initial MHCRF license and for each renewal license are as follows:

(a)	1 to 5 Beds	
	Annual Fee	$50
	Late Fee	$25
(b)	6 to 10 Beds	
	Annual Fee	$75
	Late Fee	$37.50
(c)	11 to 25 Beds	
	Annual Fee	$100
	Late Fee	$50

3802.4 A fee in the amount of fifty dollars ($50) shall be charged to a MHCRF for each inspection after the first follow-up annual license renewal inspection. This includes follow-up inspections based on the Operator's prior non-compliance.

3803 DISTRICT GOVERNMENT RIGHT OF ENTRY AND INSPECTION

3803.1 The Director, any other duly authorized official of the Department, or any other District government agency having jurisdiction or responsibility over a MHCRF or a resident in a MHCRF, after presenting credentials of identification and authority issued by the Director of the relevant District agency, may, either with or without prior notice, enter and inspect the premises of the following:

(a) A MHCRF licensed pursuant to this chapter;

(b) A facility for which an Operator is applying for licensure as a MHCRF to determine the facility's compliance with applicable requirements; and

(c) Subject to § 3803.5, any unlicensed premises that the Director or any other District agency has reason to believe is being operated or maintained as a community residence facility in violation of this chapter or other applicable laws of the District of Columbia.

3803.2 The authorized official shall have access to the following:

(a) Facility administrative, personnel, financial, and resident records required by this chapter including records required by §§ 3824, 3825, 3837, 3838, 3839, 3840, 3846, 3848, and 3850 through 3855;

(b) Facility staff;

(c) Facility residents;

(d) The entire premises including all indoor rooms and outdoor areas; and

(e) Any other information necessary to determine the facility's compliance with this chapter or other applicable law.

3803.3 When conducting an inspection pursuant to this section, the authorized official may:

(a) Interview and make inquiries of staff and residents, on or off-site, relevant to compliance with all applicable requirements;

(b) Scan or make copies of any facility records, subject to federal and District law pertaining to the confidentiality of medical records; and

(c) Photograph or videotape conditions at the facility that the official reasonably believes to be in violation of this chapter or any other applicable law or regulation.

3803.4 Any licensed MHCRF Operator that refuses an authorized official entry and inspection to the premises violates this Chapter and shall be subject to fines, the suspension or revocation of the facility's license, and the removal of residents.

3803.5 The Director may refer a case involving an unlicensed facility that the Director determines is operating as a MHCRF to the Office of the Attorney General for the District of Columbia for appropriate legal action.

3804 ELIGIBILITY REQUIREMENTS FOR LICENSURE

3804.1 In order to qualify for a MHCRF license, an Applicant shall:

(a) Submit a completed application pursuant to § 3805 to the Department together with all required documents;

(b) Ensure that the facility meets all structural and environmental requirements set forth in this chapter, or otherwise required by law,

including correcting any deficiencies identified in the pre-licensure inspection pursuant to § 3806;

(c) Demonstrate that, prior to accepting residents, the Operator will have the required staff in place who have met all applicable criminal background check, education, training, reference, health, and certification requirements pursuant to § 3850;

(d) Demonstrate that, if the Operator will not personally manage the facility and serve as Residence Director, or if the Operator is a corporation, agency, or partnership, the Operator has employed a Residence Director who shall be responsible for the management and operation of the facility as provided in § 3852 and § 3853;

(e) Demonstrate that the Operator and the Residence Director (where there is a separate Residence Director) have the ability to direct and operate a MHCRF as evidenced by the applicable background checks, criminal background checks, proof of requisite education, training, certifications, experience, and letters of reference pursuant to §§ 3850 and 3851;

(f) Demonstrate the ability to comply with this chapter, the Licensure Act, and the Human Rights Act; and

(g) Demonstrate that the facility meets all applicable District of Columbia Construction Code requirements, including the Property Maintenance Code, Fire Prevention Code, and Housing Code requirements, by submitting appropriate documentation of Department of Consumer and Regulatory Affairs (DCRA) and Fire and Emergency Medical Services Department (FEMSD) inspections and approvals, as described in § 3805.4 (h) and (i) and the application for licensure.

3805 APPLICATION FOR LICENSE

3805.1 An application for licensure as a MHCRF shall be submitted in the name of the Operator, who shall have an ownership or leasehold interest in the real property where the MHCRF will be located. The application shall be in the format established by the Department. If the Operator is a corporation or agency, the Applicant shall designate an officer or director who shall act on behalf of the corporation or agency for all matters pertaining to licensure. If the Operator is a partnership, the application shall identify all partners and the designated authorized agent for the partnership.

3805.2 An application for initial licensure as a MHCRF shall be submitted to the Director at least thirty (30) days prior to the date that the Operator intends to begin operations. A renewal application shall be submitted in accordance with § 3813.

3805.3 The application shall include:

(a) The Applicant's name, address, telephone number, e-mail address, Social Security number or federal tax identification number, birth date (or date and state of incorporation), and whether the Applicant is an individual, partnership, or corporation;

(b) The identity of the owner, and contact information, of the building in which the facility is located;

(c) The identity of the Residence Director for the facility, including Social Security number and birth date, if the Operator will not be personally managing the facility or if the Operator is a corporation, agency, or partnership;

(d) The names of the persons submitting the letters of reference for the Operator and Residence Director required by § 3805.4(a);

(e) Requested information pertaining to the building in which the facility will be operated including its address;

(f) The maximum number of beds at the facility;

(g) All documentation required under § 3805.4;

(h) Any additional information requested by the Director on the application form, including information specific to an SR, SRR, IR, or SR - Transitional;

(i) The signature of the Applicant or a legally authorized signatory of the Applicant if the Applicant is a corporation, agency or partnership; and

(j) The license fee required by § 3802.

3805.4 The application for licensure shall be accompanied by the following documents:

(a) Three (3) letters of reference on a form prescribed by the Department for the Operator and for any Residence Director of the facility. The letters of reference shall be from unrelated persons who have known the Operator or Residence Director for five (5) years or more and can verify their experience working with persons who are mentally ill;

(b) Documentation of required education, experience, training, and certifications for the Operator and Residence Director, as set forth in §§ 3850 and 3851;

(c) A Certificate of Incorporation or Certificate of Authority for corporations or documentation of appropriate partnership registration with the DCRA Corporations Division, as applicable;

(d) An original, current Certificate of Good Standing for a corporation;

(e) Verification of required insurance coverage from the company or broker providing insurance, including the dates of coverage and the specific coverage provided;

(f) Verification of compliance with criminal background check requirements, as set forth in §§ 3850.10 through 3850.14, conducted within forty-five (45) days prior to commencing work at the facility for each "unlicensed person" as defined in this chapter, including an Operator, Residence Director, employee, contract worker or volunteer, who, upon licensure of the facility, will work in the facility or have unsupervised access to the facility and residents.

(g) A copy of a valid Certificate of Occupancy from DCRA for any MHCRF that will house more than six (6) residents;

(h) Proof of a satisfactory pre-licensure inspection and approval by DCRA (and FEMSD as applicable) for Housing Code and Construction Codes compliance, including a copy of the inspection report and proof of abatement by DCRA and FEMSD of all deficiencies identified during the inspection(s). The approval shall be dated not more than forty-five (45) days prior to the date of submission. The pre-licensure inspection(s) shall demonstrate compliance with requirements of the Housing Code and Construction Codes, specifically including the Property Maintenance Code and Fire Prevention Code requirements applicable to a community residence facility;

(i) Copies of all building, electrical, plumbing, or other permits and approvals required by DCRA under the Construction Codes for new construction, renovations, repairs, or other work conducted at the facility within the twelve (12) months prior to applying for licensure;

(j) A Clean Hands Certification on a form prescribed by DCRA;

(k) A statement from the Office of Tax and Revenue that the Applicant does not owe taxes in excess of one hundred dollars ($100.00) or has entered into an approved payment plan, pursuant to the Clean Hands Act;

(l) Proof of the Applicant's ownership of the premises where the facility will be located or, if the building is not owned by the Applicant, a copy of a

current lease agreement for the building naming the Applicant as lessee and authorizing operation of a community residence facility;

(m) A copy of the standard residency contract for room, board, and care to be signed by the MHCRF and the resident, prepared in accordance with § 3824;

(n) A copy of the house rules for the facility prepared in accordance with § 3823.29;

(o) A Program Statement as described in § 3805.6;

(p) An Emergency Preparedness Plan, Continuity of Operations Plan, and health-related emergency policies and procedures as described in § 3805.7;

(q) A current staffing pattern on a form prescribed by the Department and signed by the Applicant;

(r) Documentation of required medical examinations and vaccinations, criminal background check, and education, experience, and training certifications for each staff person who will be working in the facility upon licensure, as provided in § 3850; and

(s) Proof that utility accounts are in the name of the Applicant, including water, heat, electricity, telephone, and internet service, and that payments are current where Applicant has had prior service at the facility.

3805.5 The Department in its sole discretion may accept and review a license application for a MHCRF prior to receiving documents required pursuant to §§ 3805.4(q) and (r), and may authorize the Applicant to provide the staffing pattern and documentation of staff eligibility after the Department has determined that the Applicant has satisfied the other licensure requirements set forth in §§ 3805.3 and 3805.4.

3805.6 Each Applicant shall submit a written Program Statement, on a form prescribed by the Director, which shall include a description of the following:

(a) The MHCRF's program and facilities, including any population-specific programs;

(b) The services provided;

(c) The internal process for resident grievances which shall conform to the Department's grievance regulations;

(d) The monthly rental fee for room, board, and care, and any fees or charges not included in the monthly rental fee;

(e) The payment and refund policies;

(f) The group or groups of persons to be served, including any gender, age, health, or language characteristics, and the justification for any limitations described;

(g) Admission and discharge criteria;

(h) Transition planning provided to residents to assist in moving to a lower level of care; and

(i) A description of any services provided by independent contractors.

3805.7 The Application shall also include a copy of:

(a) The Emergency Preparedness Plan required by § 3833 and FEMSD;

(b) A Continuity of Operations Plan (COOP), to include a description of equipment, appliances, special supplies, and procedures that the MHCRF has in place to address extended power outages, heat emergencies, natural disasters, or other situations not addressed in the FEMSD approved plan. The MHCRF shall review and update, as necessary, the COOP annually and provide a copy to the Department at the time of licensure renewal and upon request. The COOP shall include provisions and emergency supplies for the MHCRF to remain in operation during the emergency, as well as procedures for emergency evacuation and temporary relocation of residents; and

(c) Written policies and procedures governing the care of residents in health-related emergencies, including a communicable disease episode, food poisoning outbreak, critical illness or death of a resident, or a change in the mental status of a resident that endangers himself, herself, or others.

3805.8 The Director will review each application for a MHCRF license for completeness and submission of the required documents and fee. The Director may request additional information in order to evaluate the applicant's eligibility for a license.

3805.9 The Director may terminate review of an application that is incomplete, is not accompanied by the required fee, or is not accompanied by all required documents. The Director shall provide the Applicant with written notice stating why review has been terminated.

3805.10 The Director shall conduct background checks on the Applicant, which may include the officers, directors, or partners of a corporation, agency, partnership, or employees to determine the Applicant's suitability or capability to operate a MHCRF. Background checks may include:

(a) Verification of professional or occupational licensure status (if applicable);

(b) Verification of training, educational credentials, and certifications;

(c) Contacts with District and other state or federal officials to determine the existence and content of outstanding warrants, complaints, criminal convictions, debts to District government, and records of civil actions or judgments; and

(d) Review of the record of regulatory compliance for other businesses owned or operated by the Applicant that provide residences, room or board, or involve care of vulnerable persons.

3805.11 Notwithstanding Subsection 3825.5, the Director may approve licenses for single sex, age specific, or other specific populations, such as the hearing impaired, where the MHCRF program is necessary to meet the special needs of the population and will not unfairly limit choices for other individuals seeking a MHCRF placement.

3805.12 At the time of license application, or renewal application, the MHCRF shall pay any outstanding Notice of Infraction (NOI) fines.

3806 INSPECTION FOR INITIAL LICENSURE

3806.1 Prior to initial licensure of a MHCRF, the Director shall conduct an on-site inspection to determine compliance with this chapter. The Director shall send a written Statement of Deficiencies identified as a result of the on-site inspection to the Applicant no later than ten (10) days after the inspection is completed.

3806.2 A MHCRF with deficiencies shall be allowed a reasonable period of time, not to exceed thirty (30) days from the date of the written Statement of Deficiencies, to correct the deficiencies while an application for initial licensure is pending. The facility may submit written proof of correction of deficiencies where appropriate.

3806.3 The Director shall conduct a follow-up inspection to determine correction of deficiencies within ten (10) days following the thirty (30) day correction period or within ten (10) days after notification by the Applicant that the deficiencies have been corrected.

3807 DENIAL OF INITIAL LICENSURE

3807.1 The Director shall deny an initial MHCRF license for a new MHCRF if the MHCRF is not in compliance with this chapter, the Applicant provided false or misleading information during the application process, or the Applicant has failed to comply with the Department's plan of correction.

3807.2 If the Director denies an initial MHCRF license, the Director shall issue written notice to the Applicant stating the reasons for the denial. The denial shall be effective immediately.

3807.3 The Applicant may request a review of the denial by the Director within ten (10) days after service of the notice of denial. The request for review shall be in writing and shall state the reasons why the license should be granted. The Director shall consider and respond in writing to a request for review within ten (10) days after receipt of the request. The Director's decision in response to a request shall be final.

3808 NINETY-DAY PROVISIONAL LICENSE FOR NEWLY LICENSED FACILITIES: ISSUANCE, RENEWAL, AND ACTION UPON EXPIRATION

3808.1 All Applicants approved by the Director for a new MHCRF license shall receive a ninety (90) day provisional license.

3808.2 The Director shall conduct at least one (1) inspection of the facility within ninety (90) days after it begins to operate to assess whether the facility and its operations are in compliance with this chapter.

3808.3 The Director may, in his or her discretion, renew a provisional license once for up to an additional ninety (90) days for a MHCRF that is not in full compliance with this chapter; provided The MHCRF is taking action to correct cited deficiencies in accordance with a mutually agreed-upon timetable.

3808.4 The Director may issue a regular license for not to exceed one (1) year from the date the initial provisional license was issued to a MHCRF that is in full compliance with the requirements of this chapter, as determined by the Director.

3808.5 Upon expiration of the provisional license, including an extension under § 3808.3, the Director shall deny a regular license if the MHCRF fails to demonstrate compliance with this chapter.

3808.6 If the Director denies an Applicant a regular license or renewal of a provisional license pursuant to §§ 3808.3 or 3808.5, the Applicant may make a written request for reconsideration to the Director within ten (10) days after service of the notice.

3808.7 Upon receipt of a request for reconsideration pursuant to § 3808.6, the Director shall hold an informal hearing within the Department within fifteen (15) days to consider the request. The Director shall provide reasonable notice to the Applicant of the date and time of the informal hearing and any applicable hearing procedures.

3808.8 At the informal hearing, the Applicant shall have an opportunity to present written and oral statements to the Director in response to the notice of license denial.

3808.9 The Director shall notify the Applicant in writing of the Director's determination on the request for reconsideration within ten (10) days after the informal hearing, and shall include the reasons if the license denial is upheld.

3808.10 The Director's determination pursuant to § 3808.9 shall be final. In his or her discretion, the Director may extend the license for a reasonable period of time to ensure the safe discharge of residents in accordance with Section 3861.

3808.11 If the MHCRF has previously held a regular license for the facility, the procedures set forth in § 3815 through § 3821 shall apply to actions by the Director to non-renew, revoke, suspend, convert, or deny a license.

3809 RE-APPLICATION AFTER LICENSE DENIAL, NON-RENEWAL, OR REVOCATION

3809.1 Except as provided in § 3809.2, an Applicant may not reapply for licensure for ninety (90) days following the Department's denial of a license.

3809.2 An Applicant may not reapply for licensure for three (3) years from the effective date of the Director's determination to deny renewal of or revoke the license pursuant to § 3816, or, if the Director's determination is appealed, from the date of a final decision denying renewal of or revoking the license.

3809.3 The Director may in his or her discretion grant a waiver of the time periods set forth in this section for good cause shown.

3810 GENERAL MHCRF OPERATIONAL RESPONSIBILITIES

3810.1 The MHCRF shall not willfully fail or refuse to comply with a statute or regulation governing MHCRFs.

3810.2 The MHCRF shall cooperate with inspections by the Director or other District government officials conducted pursuant to § 3803 and shall cooperate with the Department's investigation of a complaint made against the MHCRF.

3810.3 The MHCRF shall immediately inform the Director of any Major Unusual Incident pursuant to § 3848, the absence of required staff, a resident's failure to

take prescribed medications for more than forty-eight (48) hours, or significant deficiencies including: a lack of heat, air conditioning, water, hot water, or electricity; bug or rodent infestation; or the need to move a resident or residents due to an emergency.

3810.4 The MHCRF shall inform the Director of a change in the operation, program, or services of a MHCRF of a degree or character that may affect its licensure, including a change in the Residence Director or other staff. The MHCRF shall inform the Director as soon as feasible after the MHCRF is aware that the change will occur, but no later than five (5) days after the change.

3810.5 The MHCRF shall promptly correct deficiencies. Serious deficiencies or conditions immediately affecting resident health and safety, such as conditions described in § 3810.3, shall be corrected within no more than twenty-four (24) hours.

3810.6 If the Operator of a MHCRF receives a Statement of Deficiencies, the MHCRF shall correct the deficiencies within the time frame required by the Department in accordance with § 3811, or within such extended time as the Director may grant, for good cause shown, upon written request.

3810.7 The MHCRF shall submit a signed and dated Plan of Correction on a form prescribed by the Director within five (5) days after receiving the Statement of Deficiencies. The Plan of Correction shall describe the corrective actions that the MHCRF plans to take to correct the deficiencies or verify that the deficiencies have been corrected.

3810.8 Before a person begins working or providing volunteer or other services at the MHCRF, the MHCRF shall ensure that the person has met all prerequisites and has submitted all required documents as set forth in §§ 3850, 3851 and 3852.

3810.9 If the Director receives a complaint of abuse or neglect of a resident by a Residence Director or staff member, upon direction by the Director, the MHCRF shall immediately remove the Residence Director or staff member from the MHCRF until the complaint is found to be unsubstantiated.

3810.10 If a criminal investigation or an investigation by the Department of Human Services pursuant to the Adult Protective Services Act is initiated, the removal of the Residence Director or staff member shall remain in effect until the investigation is completed and the complaint is found to be unsubstantiated. During the removal period, the Residence Director or staff member shall not be employed at another MHCRF in a direct patient care capacity.

3810.11 Each MHCRF license in an Operator's possession shall be the property of the District government. The MHCRF shall return the license to the Director upon

request after license suspension, revocation, termination, replacement, or expiration.

3810.12 Each MHCRF shall maintain personnel records, resident records, administrative records, and MHCRF financial records as required by §§ 3824, 3825, 3837, 3838, 3839, 3840, 3846, 3848, 3850 through 3855. All resident and personnel records shall be maintained at the MHCRF. MHCRF financial records shall be maintained at the MHCRF or at the Operator's business office in the District of Columbia and shall be made available to the Department upon request.

3810.13 Each MHCRF shall meet each of the specific requirements for operation of MHCRFs set forth in this chapter.

3810.14 In an emergency caused by a natural disaster, extreme heat or cold, extended power outage, or a similar situation, the MHCRF shall contact the Director as soon as possible. The MHCRF shall inform the Director whether the MHCRF is fully functional or, if there are problems or deficiencies that affect residents, how these problems are being addressed and if there is a need to temporarily transfer residents to another location.

3810.15 No MHCRF resident shall be relocated outside of the District of Columbia without the prior written approval of the Director.

3810.16 No MHCRF shall delay, hinder, obstruct, impede or otherwise interfere with the emergency relocation of residents.

3811 DEPARTMENTAL OVERSIGHT AND INVESTIGATIONS

3811.1 Any person may file a complaint with the Director alleging violations of the requirements of this chapter, and the Director may conduct unannounced investigations and inspections to determine the validity of the complaint.

3811.2 The Director shall conduct licensure inspections and review records including resident records, personnel records, administrative and financial records as authorized by §§ 3803 and 3811.1, and as required by §§ 3806, 3808.2, and 3813.3. In addition, the Director shall inspect facilities:

(a) As appropriate, when a complaint is received;

(b) In accordance with any schedule adopted by the Department; and

(c) When the Director, in his discretion, determines that an inspection is needed or appropriate.

3811.3 The Director shall require an Operator to correct any condition that violates this chapter within fourteen (14) days after the date the Operator is notified of the

violation, except where the seriousness of the condition and its impact on residents requires a shorter time period, including the conditions provided in § 3811.4. The Director, in his or her discretion, may grant a reasonable extension of time for compliance, upon written request by the MHCRF, for good cause shown.

3811.4 The Director may require an Operator to immediately correct an emergency condition affecting resident health and safety within a time specified by the Director. These conditions include, but are not limited to the a lack of heat, extreme heat, lack of water, lack of hot water, lack of electricity, a stopped toilet, a broken window or door, lack of staff coverage, or a bug or rodent infestation.

3811.5 The Director shall issue a Statement of Deficiencies to the Operator, including the deadlines for correction of the deficiencies and for the Operator's submission of a written Plan of Correction.

3811.6 The Director, in his or her discretion, may grant a reasonable extension of time for correction of the deficiencies, upon written request by the MHCRF with good cause shown.

3811.7 Nothing in this section or § 3810 shall require the Director to issue a Statement of Deficiencies or allow the MHCRF an opportunity to abate a deficiency, prior to issuing a Notice of Infraction for violations of this chapter.

3811.8 NOIs shall be issued upon observation of violations of this chapter, especially when they are recurrent, endanger resident or staff health or safety, or when there is a failure to comply with core requirements of operating a MHCRF.

3811.9 If, after an investigation or inspection, the Director finds failure to meet or maintain the standards required by this chapter or violations of this chapter the Director may take appropriate action to deny renewal of, suspend, revoke or convert a license in accordance with the provisions of §§ 3814, 3815 or 3816.

3811.10 In addition to, or in lieu of, issuing a notice to deny renewal, suspend, revoke or convert a license, the Director may pursue any other available enforcement option, including those authorized by Section 10 of the Licensure Act (D.C. Official Code § 44-509) and the Civil Infractions Act.

3812 APPROVAL OF VARIANCES

3812.1 The Director may grant a variance from any of the requirements of this chapter, if the Applicant or Licensee can show undue hardship and the variance:

(a) Is consistent with the provisions of the Licensure Act;

(b) Will not endanger the health or safety of residents or the public; and

(c) Would not permit a violation of other laws of the District.

3812.2 An Operator seeking a variance pursuant to § 3812.1 shall submit a written request to the Director including the following:

(a) The regulatory requirement(s) from which a variance is being requested;

(b) Specific reasons why the MHCRF cannot meet the requirement(s); and

(c) Any alternative measures provided to ensure quality care and services consistent with this chapter.

3812.3 The Director may also grant a variance, in writing, to protect the health and safety of residents when an emergency caused by a natural disaster, extreme heat or cold, an extended power outage, or similar situation requires the temporary relocation of residents to another location, the need to temporarily exceed licensed occupancy limits, or other action.

3812.4 An Operator seeking a variance pursuant to § 3812.3 shall submit a written request to the Director, with a copy to the District of Columbia Long-Term Care Ombudsman, stating:

(a) Why the variance is needed and the anticipated length of time for the variance; and

(b) The action that the Operator proposes to take to address the issue, including:

(1) The number of residents to be transferred;

(2) The address of any temporary transfer location, the identity of its owner, the location's number of bedrooms, its bathroom and kitchen facilities, the total number of its residents after the transfer, and the accommodations to be made for the transferred residents; and

(3) The continuity of care plan for each resident to ensure they continue to receive services without interruption.

3812.5 The Department shall grant a variance only to the extent necessary to ameliorate an undue hardship or emergency and only when compensating factors are present that give adequate protection to residents and the public health and safety consistent with applicable law.

3812.6 If the Director determines that the conditions in § 3812.1 or § 3812.3 are not met, the Director shall issue a written denial to the Operator stating the basis for denial. The decision of the Director shall be final.

3812.7 The Department shall maintain a record of all variances granted. The record shall contain a complete written explanation of the basis for each variance and shall be open to inspection by the public.

3813 RENEWAL OF LICENSE

3813.1 An Operator shall submit an application for license renewal to the Director, together with the fee required by § 3802, no later than ninety (90) days before the expiration date of the current license. The application shall meet the requirements of § 3805, except that supporting documents shall be submitted with the application in accordance with this section:

(a) Letters of reference required by § 3805.4(a), if there is a change in Residence Director;

(b) Documentation of required medical examinations, annual physician certifications, vaccinations, education, experience, and training certifications as provided in §§ 3805.4(b) and (r) for any new Residence Director or new staff, and updated information as required in § 3850 for the current Operator, Residence Director, or staff;

(c) An original current Certificate of Good Standing for a corporation;

(d) Verification of the required insurance coverage from a company or broker providing insurance, including dates and specific coverage provided;

(e) Verification of compliance with criminal background check requirements in accordance with § 3805.4(f) and §§ 3850.10 through 3850.14 for any new hires and for any "unlicensed person" currently working at the facility or having unsupervised access to the facility and residents;

(f) New Certificate of Occupancy as required by § 3805.4(g) for a MHCRF housing more than six (6) residents, if there is an increase in occupancy;

(g) FEMSD Fire Inspection Approval, if not current;

(h) If requested by the Director after a DBH inspection of the premises, a satisfactory pre-licensure renewal inspection by DCRA, and copies of any permits for work being done on the premises, as provided in § 3805.4(h) and (i);

(i) Clean Hands Certification;

(j) A statement from the Office of Tax and Revenue that the Applicant does not owe taxes in excess of one hundred dollars ($100.00) or has entered into an approved payment plan;

(k) A copy of a current lease agreement if the premises are not owned by the Applicant; and

(l) If there have been any changes in these documents since the facility's initial licensure or last renewal, the current standard residency contract, house rules, Program Statement, Emergency Preparedness Plan, COOP, or health emergency procedures for the facility as provided in § 3805.4(m) through (p);

(m) A current staffing pattern on a form prescribed by the Department and signed by the Applicant;

(n) Proof that utility bill payments are current for water, heat, electricity, phone, and internet service; and

(o) Current resident roster.

3813.2 If the Operator fails to timely submit a license renewal application, the MHCRF license will terminate at the end of the original license period.

3813.3 The Director shall conduct an on-site inspection of the MHCRF to determine compliance with this chapter prior to the expiration of the license. Unless notified otherwise, inspections shall be unannounced.

3813.4 The Director shall send a written Statement of Deficiencies, if any, from the on-site inspection to the Operator no later than ten (10) days after the inspection is completed.

3813.5 The MHCRF shall submit a Plan of Correction and correct the deficiencies within the time frame required by the Director pursuant to §§ 3811.3, 3811.4, and 3811.5.

3813.6 The Director shall conduct a follow-up inspection to determine correction of the deficiencies within ten (10) days after the correction deadline or within ten (10) days after notification by the MHCRF that the deficiencies have been corrected.

3814 DETERMINATION ON APPLICATION FOR RENEWAL OF MHCRF LICENSE

3814.1 The Director may issue a regular renewal license for a period not to exceed one (1) year to the Operator of a MHCRF that is in full compliance with this chapter and has no deficiencies.

3814.2 The Director may issue a regular renewal license for a period not to exceed one (1) year to an Operator of a MHCRF with minor deficiencies that can be corrected within thirty (30) days, or such other time period as the Director may require, and that is in substantial compliance with this chapter.

3814.3 The Director may issue a provisional license not to exceed ninety (90) days to the Operator of a MHCRF that is not in full compliance with this chapter provided that the MHCRF;

(a) Is taking action to correct cited deficiencies;

(b) Is taking appropriate ameliorative action in accordance with the Department-approved timetable. A provisional license may not be renewed more than once.

3814.4 The Director may issue a restricted license not to exceed ninety (90) days, pursuant to § 3815, when the MHCRF has numerous deficiencies or a single serious deficiency and the MHCRF has failed to correct the violation(s) or is not taking appropriate ameliorative actions to correct the violation(s).

3814.5 The restricted license or accompanying notice shall specify the restriction or restrictions, which may include a prohibition against the facility accepting new residents or against delivering services that it would otherwise be authorized to deliver.

3814.6 At the end of the restricted license time period, the license for the facility shall terminate if the deficiencies remain unabated.

3814.7 The Director may deny an application for renewal of a MHCRF license for any of the reasons set forth in § 3816.1.

3815 SUMMARY SUSPENSION AND LICENSURE CONVERSION HEARINGS

3815.1 The Director may, prior to a hearing:

(a) Suspend the license of an MHCRF if the Director determines that existing deficiencies constitute an immediate or serious and continuing danger to the health, safety, or welfare of its residents;

(b) Convert an MHCRF's license to a provisional license if the facility has outstanding deficiencies, as set forth in § 3814.3, but is taking appropriate ameliorative actions; or

(c) Convert its license to a restricted license as set forth in § 3814.4.

3815.2 Upon summary suspension or conversion of a license pursuant to § 3815.1, the Director shall give the MHCRF written notice of the suspension or conversion.

3815.3 The written notice of the suspension or conversion shall include a copy of the order of suspension or conversion, a statement of the grounds for the action, and notification that the MHCRF may, within seven (7) business days after receipt of the written notice, file with the Director a written request for an expedited preliminary review hearing with respect to the action. The hearing shall be held before OAH or a Hearing Officer as provided in §§ 3818.1 and 3818.2.

3815.4 If the MHCRF fails to timely request an expedited preliminary review hearing, the suspension or conversion shall remain in effect until terminated by the Director, or until a non-expedited hearing is requested and held pursuant to § 3818.

3815.5 If the MHCRF makes a timely request for an expedited preliminary review hearing, a hearing shall be convened within three (3) business days following receipt of the request.

3815.6 A request for a hearing, pursuant to § 3815.5, shall not stay the suspension or conversion order.

3815.7 At a preliminary review hearing, the Department shall have the burden of establishing a *prima facie* case of failure to meet or maintain the standards required by this chapter.

3815.8 At the conclusion of the hearing, the suspension or conversion order shall be either affirmed or vacated by the Administrative Law Judge (ALJ) or a Hearing Officer appointed by the Director. If affirmed, it shall remain in effect for no longer than thirty (30) days unless extended pursuant to § 3815.9. During this period, a final hearing shall be scheduled to consider the appropriateness of revocation or continuing restrictions on licensure.

3815.9 Before expiration of a suspension or conversion order, the ALJ or Hearing Officer may grant an extension for an additional thirty (30) days upon agreement of all the parties or upon good cause shown.

3815.10 Section 3818 pertaining to Conduct of Hearings shall apply to preliminary review and final hearings on summary suspensions and conversions, except that the ALJ or Hearing Officer may limit the evidence presented at expedited preliminary review hearings in accordance with the nature of the proceeding.

3816 LICENSE SUSPENSION, LICENSE REVOCATION, AND DENIAL OF RENEWAL LICENSE

3816.1 The Director may suspend, revoke, or deny renewal of the license of a facility issued pursuant to this chapter for any of the following reasons:

(a) Violation of the Licensure Act or any other applicable provision of District of Columbia or federal law, including violation of the Criminal Background Check Act, the Nursing Home and Community Residence Facility Residents Protection Act, and the Clean Hands Act;

(b) The Operator, its governing body, chief executive officer, administrator, or Residence Director has made a material misrepresentation of fact to a government official with respect to the MHCRF's compliance with any provision of the Licensure Act, this chapter, or other provision of District of Columbia or federal law;

(c) Failure to meet or maintain the standards required by this chapter;

(d) Submission of false or misleading information to the District in connection with an application for licensure or related to licensing procedures;

(e) Failure or refusal to allow inspections pursuant to this chapter;

(f) Failure or refusal to submit information requested by the Department;

(g) Failure or refusal to obey any lawful order of the Director issued pursuant to this chapter;

(h) Conviction of the Operator, its governing body, administrator, Residence Director, the Chief Executive Officer, or other key staff member of a felony involving the management or operation of a MHCRF, or that is directly related to the integrity of the MHCRF or the public health or safety; and

(i) Any act or failure to act, which constitutes a threat to the health or safety of residents, MHCRF staff, or the public;

3816.2 Except as provided in § 3808 with respect to new provisionally licensed MHCRFs, and except for a summary suspension undertaken pursuant § 3815, every holder of a license shall be afforded notice and an opportunity for a hearing pursuant to § 3818 prior to an action of the Director to suspend, revoke, or deny renewal of a license.

3816.3 When the Director plans to suspend, revoke, or deny renewal of a license under this section, the Director shall give the Operator a written notice that includes the following:

(a) That the Director shall take the proposed action unless the Operator files a written request for a hearing, within fifteen (15) days of the receipt of the notice, with the Director and the administrative hearing body identified by the Director as described in § 3818. In lieu of requesting a hearing, the Operator may submit documentary evidence to the Director for the Department's consideration before the Department takes final action;

(b) The Director's reasons for the proposed action;

(c) A statement that if the Operator does not respond to the notice within fifteen (15) days, the proposed action is final and the Director may take the action proposed in the notice, without a hearing, and shall inform the Owner in writing of the action taken;

(d) A statement that if the Operator chooses to submit documentary evidence but does not request a hearing, the Director shall consider the material submitted and shall decide, without a hearing, whether to take the proposed action. The Director shall notify the MHCRF in writing of the action taken.

3816.4 An Operator that fails to file a written request for a hearing within fifteen (15) days of the receipt of the notice waives the right to contest or appeal the notice.

3817 SERVICE OF NOTICE

3817.1 Any formal notice issued by the Director, including any notice or order to deny, suspend, convert, deny renewal of or to revoke a license, and any notice of appeal rights or notice of a hearing shall be served:

(a) By personal service; or

(b) Electronic mail.

3817.2 If notice is served personally, it shall be effective when delivery is made personally to the MHCRF or its authorized agent.

3817.3 Each MHCRF granted a license shall provide a valid electronic mail address and consent to receive official correspondence, including licensing notices and infractions, at the electronic mail address.

3817.4 A MHCRF that fails to respond to or appeal any notice within the allotted time waives any right to appeal or contest the notice. If a MHCRF that has been served does not appear for a scheduled hearing and no continuance has been granted, the Administrative Law Judge or Hearing Officer may proceed to hear evidence, consider the matter, and render a decision on the basis of the evidence available.

3818 CONDUCT OF HEARINGS

3818.1 Hearings required by § 3815 and § 3816 shall be conducted in the manner required for contested cases pursuant to the District of Columbia Administrative Procedure Act, and shall be open to the public.

3818.2 Hearings shall be held before an ALJ of the OAH, provided the Director maintains an arrangement with OAH to adjudicate the Department's licensure and appeals cases. Hearings before OAH shall be held in conformity with OAH Rules of Practice and Procedure.

3818.3 If Department cases are not heard by OAH as provided in § 3818.2, the Director shall appoint a Hearing Officer to conduct hearings required by § 3815 and § 3816.

3819 [RESERVED]

3820 [RESERVED]

3821 [RESERVED]

3822 INSURANCE

3822.1 Each MHCRF shall carry the following types of insurance in at least the following amounts:

(a) Hazards (fire and extended coverage) or resident personal effects coverage in the amount of at least five hundred dollars ($500) per resident to protect resident belongings, with aggregate coverage of at least $500 multiplied by the number of residents;

(b) A commercial policy for general liability and professional liability for at least:

(1) Three hundred thousand dollars ($300,000) per occurrence with a six hundred thousand dollar ($600,000) aggregate for one (1) to eight (8) beds; or

(2) Five hundred thousand dollars ($500,000) per occurrence with a one million dollar ($1,000,000) aggregate for nine (9) or more beds; and

(c) Sexual abuse or molestation coverage to protect MHCRF residents from abuse or molestation by staff, for a limit of at least one hundred thousand dollars ($100,000) per occurrence.

3822.2 The insurance required by § 3822.1 shall be issued on an "occurrence" or "claims made" basis. If a "claims made" basis is used, the effective date shall be retroactive to the expiration date of the previous policy or the issuance date of the license.

3822.3 The MHCRF may substitute another form of policy that meets the minimum policy limits and the types of coverage required by § 3822.1, provided that the Operator can demonstrate through the Insurance Certificate, any policy endorsements, and any other documentation required by the Director that the policy will cover claims made against the MHCRF.

3822.4 Before the Director issues or renews a license, the MHCRF shall submit to the Director a certification of insurance issued by the insurance carrier verifying the policy coverage, dates of coverage, and policy limits. Where the MHCRF has been previously insured, the insurance certification shall be issued on or before the expiration date of the previous insurance policy.

3822.5 The Operator shall direct the insurance carrier to notify the Director if the policy is not renewed or is cancelled, and the Director may require proof that this direction has been given.

3822.6 The insurance shall be issued by an insurance carrier licensed to provide insurance in the District of Columbia, or through a surplus lines producer licensed in the District of Columbia.

3822.7 The insurance required by this section shall be maintained in force at all times that the MHCRF is licensed.

3823 RESIDENT'S RIGHTS AND RESPONSIBILITIES

3823.1 As a community-based residential facility, MHCRFs shall optimize resident initiative, autonomy, and independence in making individual life choices, including but not limited to daily activities, physical environment, and personal interactions. Each resident has a right to select among placement options that are identified and documented in the person-centered treatment plan based upon the individual's needs, preferences, and the resources available for room and board. Each MHCRF shall comply with the Consumers' Rights Act, including affording residents the consumer rights set forth in Section 204 (D.C. Official Code § 7-1231.04).

3823.2 Prior to the admission of each prospective resident, the MHCRF shall explain to the prospective resident and to the prospective resident's representative, if any, the prospective resident's rights and responsibilities, including the additional rights and responsibilities stated in the Consumers' Rights Act and this section. In combination with the resident's rights statement required in § 3823.3 below or separately, the MHCRF shall enter into a written agreement with the resident that

explains the terms of occupancy including the monthly fee or rent, the discharge or transfer process, and resident appeals.

3823.3 The MHCRF shall provide to the resident, and to the resident's representative, if any, a written statement of the resident's rights and responsibilities which shall be signed by the resident and resident's representative. The MHCRF shall maintain a copy of the signed statement in the resident's record.

3823.4 A copy of the resident's rights statement shall also be posted in a visible location in a common area of the facility where residents congregate, and individual copies shall be available to residents upon request.

3823.5 If a resident cannot read or understand English, the Operator, Residence Director, or responsible staff person shall arrange for the notice to be given orally and in writing in a language the resident can understand. The Director or the Core Services Agency shall provide assistance as needed.

3823.6 Each resident, or resident's representative acting on the resident's behalf, shall be permitted to register grievances or complaints without the threat of the resident's discharge or other reprisal by the Operator or MHCRF staff.

3823.7 Each MHCRF shall provide each resident at the time of admission with a copy of any grievance or complaint procedures. These procedures shall comply with Section 212 of the Consumers' Rights Act (D.C. Official Code § 7-1231.12) and 22-A DCMR, Chapter 3.

3823.8 Each resident shall have the right to privacy in the provision of personal and medical care and in sleeping units.

3823.9 Each resident shall have the right to actively participate in the development of the resident's Individual Recovery Plan.

3823.10 Each resident shall have the right to receive adequate and humane treatment by competent qualified staff and to be free from physical, emotional, sexual, or financial abuse, neglect, harassment, coercion, restraint and exploitation.

3823.11 Each resident shall have the right to have his or her medical and treatment records and all the information they contain kept confidential in accordance with the Mental Health Information Act and any other District or federal law that governs medical or treatment records.

3823.12 Each resident shall have the right to review copies of all treatment plans and all other medical, financial, and administrative records pertaining to the resident that the MHCRF maintains.

3823.13 Each resident shall have the right to free communication with and reasonable visitation by individuals of his or her choosing, including but not limited to a personal physician, attorney, clergy, family members, friends, significant other, personal representative, and guardian.

3823.14 Each resident shall have reasonable opportunities for social interaction with members of either sex, unless such interaction is specifically limited or withheld under the resident's Individual Recovery Plan in accordance with Section 204 of the Consumers' Rights Act (D.C. Official Code § 7-1231.04).

3823.15 Each resident shall have the right to send and receive sealed mail in conformity with Section 204 of the Consumers' Rights Act (D.C. Official Code § 7-1231.04).

3823.16 Each resident shall have the right to communicate freely and confidentially with the resident's attorney, the courts, representatives of the District of Columbia Government, the D.C. Long-Term Care Ombudsman, and University Legal Services or any other organization currently responsible for advocacy under the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. §§ 10801 *et seq.,* in the District of Columbia.

3823.17 Each resident shall have reasonable access to a telephone to make and receive confidential calls.

3823.18 Each resident shall have the right to accept or refuse life sustaining medical treatment and to execute advanced directives about medical treatment decisions.

3823.19 Each resident shall have the right to refuse psychiatric treatment, including psychotropic medication, and supportive services, subject to applicable federal or District law, court order, or Department rules governing the involuntary administration of medication.

3823.20 Representatives of the District of Columbia government, the agency responsible for the protection and advocacy system for persons with mental illness, and the LTCO, upon presentation of proper identification, shall have immediate access to residents in MHCRFs.

3823.21 No resident shall have any religious belief or practice imposed upon him or her.

3823.22 Each resident shall have the right to participate in social, religious, or community activities that do not interfere with the rights of other residents or cause a substantial disruption to the normal functioning of the residence.

3823.23 Representatives of the Office of the District of Columbia LTCO Program shall have access to residents in MHCRFs in accordance with the District of Columbia Long-Term Care Ombudsman Act.

3823.24 Representatives of the agency responsible for the protection and advocacy system for persons with mental illness shall have access to residents in MHCRFs in accordance with the Protection and Advocacy for Mentally Ill Individuals Act.

3823.25 Each resident shall have the right to manage his or her own financial affairs unless the resident has a court-appointed legal guardian or conservator or a duly appointed representative payee.

3823.26 A MHCRF shall not:

(a) Solicit or refer residents to be used as research subjects;

(b) Use residents as research subjects; or

(c) Receive any money, commission, gift or other thing of value in exchange for soliciting, referring or using residents as research subjects.

3823.27 Other than routine household duties, no resident shall be required to perform unpaid work.

3823.28 Except as provided in Title 21, Chapter 5 of the District of Columbia Official Code pertaining to hospitalization of the mentally ill, each transfer, discharge or relocation of a resident within a MHCRF shall comply with Title III of the Nursing Home and Community Residence Facility Residents' Protection Act of 1985 (D.C. Official Code, §§ 44-1003.01 to 44-1003.13) and Section 3861.

3823.29 Upon admission, each resident shall be provided a copy of the MHCRF's house rules and Program Statement.

3823.30 Each MHCRF shall have house rules that are consistent with this chapter and with Model House Rules provided to Operators by the Director. Each MHCRF shall encourage resident input and participation in the development and implementation of house rules. At a minimum, the rules shall address:

(a) The use of tobacco and alcohol;

(b) The prohibition of the use and possession of marijuana while on the MHCRF premises;

(c) The use of the telephone;

(d) Hours for viewing or listening to television, radio, CDs, DVDs, or other media;

(e) Movement of residents in and out of the facility;

(f) The prohibition against sexual relations between staff and residents; and

(g) A prohibition against children and youth under 18 residing in the MHCRF or visiting overnight at the MHCRF.

3823.31 The resident shall comply with the MHCRF's rules during his or her residency at the MHCRF, except where a rule violates other provisions of this chapter or District of Columbia law.

3823.32 Each resident shall pay the MHCRF on a monthly basis the amount that has been agreed upon in writing for the care provided to the resident as provided in § 3824.

3823.33 Each MHCRF shall assist the resident in registering and exercising the resident's right to vote.

3823.34 Each MHCRF shall, at all times, treat residents with consideration and respect for the resident's dignity, autonomy, and privacy. Respectful treatment shall also be extended to the resident's family members, personal representative, attorney-in-fact, and guardian.

3824 RESIDENCY CONTRACT BETWEEN MHCRF AND RESIDENT FOR ROOM, BOARD, AND CARE

3824.1 Prior to admission, the MHCRF shall give the resident and the resident's representative, if any, a written residency contract for room, board, and care which shall be signed by the Operator or authorized Residence Director and by the resident. An individual holding an appropriate power of attorney or a court-appointed legal guardian or conservator with authority to handle the resident's financial affairs may sign on behalf of the resident as necessary.

3824.2 The residency contract shall set forth, at a minimum, the following information and requirements:

(a) The monthly fee payable by the resident;

(b) The care and services covered by the monthly fee;

(c) Any care and services not covered by the monthly fee and the specific charges for all non-covered services;

(d) Protections that address eviction processes and appeals including the Operator's obligation to provide notice of relocations, transfers, and discharges in accordance with § 3861 of this chapter;

(e) Resident obligations upon vacating the premises and upon discharge;

(f) The residents' right to reasonably furnish and decorate their rooms.

3824.3 A new residency contract for room, care, and board shall be signed by the parties each time there is a change in the monthly fee payable by the resident or a change in services provided by the MHCRF. Any change to the monthly fee payable by the resident shall comply with § 3838.

3824.4 Residency contracts for each resident shall be maintained at the MHCRF for no fewer than five (5) years from date of the resident's discharge and shall be available for inspection by the Director.

3825 GENERAL ELIGIBILITY AND ADMISSION REQUIREMENTS

3825.1 A MHCRF shall admit and retain only those persons with a principal diagnosis of mental illness:

(a) For whom the MHCRF can safely and adequately provide care; and

(b) Who require the level of care and supervision available at the facility.

3825.2 Prior to a prospective resident's admission and in accordance with the Mental Health Information Act, each MHCRF shall obtain the following:

(a) A medical certification completed and signed by a licensed physician, nurse practitioner, or physician assistant within ninety (90) days prior to the prospective resident's admission to the MHCRF. The certification shall:

(1) Verify that the prospective resident has had a physical examination within the past year;

(2) Identify the prospective resident's known medical conditions including any significant changes in the prospective resident's health status since the last full physical examination; and

(3) Include a statement that the prospective resident is free of any communicable disease, including tuberculosis, or that any communicable disease the prospective resident has does not pose a health risk to other residents or staff and is not in an acute stage;

(b) The most recent diagnostic assessment for the prospective resident, completed not more than six (6) months prior to admission. Any significant changes since the most recent assessment, should be documented in a signed statement by a member of the treatment team;

(c) Current doctor's orders including all currently prescribed medications (medical and psychiatric), and a list of each known allergy;

(d) Special diet instructions, if applicable;

(e) Current IRP completed or updated within one hundred eighty (180) days prior to admission, or in accordance with an amended time frame set forth in a duly adopted Departmental policy published on the Department's website;

(f) For prospective residents within the Department's system of care, the Department's approved functional assessment prepared in accordance with a tool approved by DBH that defines the level of the prospective resident's housing and personal care needs and is consistent with the level of care provided at the MHCRF, including whether the prospective resident is capable of taking his or her own medication or needs assistance with medication administration;

(g) A copy of the prospective resident's records and face sheet, as described in § 3846.2 including demographic information from the MHCRF, CRF, nursing home, or other institution where the prospective resident last resided;

(h) At least a seven (7) day supply of all currently prescribed medications;

(i) Identification of representative payee, legal guardian, or conservator, if applicable; and

(j) Income verification or statement of party responsible for payment.

3825.3 When a MHCRF accepts a resident on an emergency basis, the Director may extend the time within which the MHCRF must obtain documents required by § 3825.2, except that in all cases the resident shall be tested for tuberculosis and test results shall be obtained within seven (7) days of acceptance. Current medications shall be obtained within twenty-four (24) hours.

3825.4 The MHCRF shall obtain documents from the resident's Core Services Agency or other healthcare provider and shall immediately inform the Director if a resident's CSA is not cooperating in providing the MHCRF with documents required pursuant to § 3825.2.

3825.5 A MHCRF shall comply with the Americans with Disabilities Act and the Human Rights Act in the admission, placement, and retention of residents and in the provision of services to residents. No MHCRF shall deny admission based upon the person's age, gender, race, physical or mental disability, HIV status, religion,

sexual orientation, gender identity or expression, national origin, marital status, or source of payment for the service.

3825.6 No MHCRF shall refuse to make reasonable accommodations in accordance with the Americans with Disabilities Act and the Human Rights Act necessary to admit or retain a resident who is deaf, blind, non-English speaking, non-ambulatory, or otherwise physically or mentally disabled, unless determined to be inappropriate for placement based on other criteria enumerated in this chapter.

3825.7 In addition to the requirements of § 3825.5, no MHCRF shall deny admission to an individual with a Department-approved level of care determination because the person:

(a) Needs assistance with medication administration, including injections, by a licensed health care professional or Trained Medication Employee or Medication Aide certified by the D.C. Board of Nursing and those services are available to the MHCRF;

(b) Has active substance abuse issues in addition to serious mental illness or has a history of substance abuse or has participated in a substance abuse treatment program;

(c) Needs limited or intermittent nursing care; or

(d) Does not currently attend or wish to attend a day program outside of the MHCRF.

3825.8 Whenever an MHCRF denies admission to a potential resident, it shall provide written reasons for the denial on the form prescribed by the Department within three (3) days to the Director, the person's treatment team, and, upon request, to the person denied admission. A copy of the written reason for the denial shall be included in the MHCRF's records. The Director may order the person's admission to the MHCRF if the admission is consistent with the Department-approved level of care, the MHCRF is licensed to provide the approved level of care, and the MHCRF has a vacant bed.

3825.9 An MHCRF that receives contract funding from the Department shall comply with any additional admission requirements contained in the contract.

3825.10 No MHCRF shall limit its admissions to persons served by a particular CSA or agency. Whenever a MHCRF that receives contract funding from the Department has vacancies, it shall immediately report the vacancies to the Director so that they may be listed on the Director's current vacancy listing.

3826 ENVIRONMENTAL REQUIREMENTS

3826.1 No MHCRF shall use a name on the exterior of the building or display any logo that distinguishes the MHCRF from any other residence in the neighborhood.

3826.2 The MHCRF shall properly maintain the outside and yard areas of the premises in a clean and safe condition in compliance with § 302 of the D.C. Property Maintenance Code and, if space permits, shall have a green area including plants and trees accessible to all residents.

3826.3 Each MHCRF shall be located in an area reasonably free from noxious odors, hazardous smoke, and fumes, away from known sources of loud and irritating noises, and where interior sounds may be maintained at reasonably comfortable levels.

3826.4 The interior and exterior of each MHCRF shall be maintained in a safe, clean, orderly, attractive, and sanitary condition and shall be free from accumulations of dirt, rubbish, and objectionable odors.

3826.5 Each MHCRF shall be equipped, furnished, and maintained to provide a functional, safe, and comfortable home-like setting.

3826.6 Each MHCRF shall provide at least one (1) desk or table and one (1) chair for the use of six (6) or fewer residents, and additional desks or tables and chairs to maintain a ratio of at least one (1) desk or table and chair for every six (6) residents.

3826.7 Each resident who is enrolled on a full or part-time basis in a course of academic or vocational study shall be provided with a work area in the MHCRF that is quiet and conducive to study.

3826.8 The MHCRF shall operate and maintain an effective pest control program for each MHCRF to keep the premises free from insects and rodents and from debris that might provide harbor for insects and rodents. Failure to maintain an effective pest control program to prevent infestation shall be deemed a serious deficiency and shall be grounds, standing alone, for taking adverse action against a MHCRF including fines, license suspension, conversion, or revocation. The MHCRF shall replace the personal property of a resident that has been compromised due to the presence of insects or rodents in the home.

3826.9 First aid supplies shall be maintained in a place known and readily accessible to residents and employees and shall be adequate for the number of persons living in the residence.

3826.10 Staff bedrooms shall be separate from resident bedrooms and all common living areas.

3826.11 Adequate facilities shall be provided for the collection, storage, and removal of all trash and other refuse.

3826.12 Each window shall be screened.

3826.13 Each rug or carpet in the MHCRF shall be securely fastened to the floor or shall have a non-skid pad.

3826.14 Each hallway, porch, stairway, stairwell, and basement shall be kept free from any obstruction at all times.

3826.15 Each ramp or stairway used by a resident shall be equipped with a firmly secured handrail or banister.

3826.16 Plants and pets may be permitted in a MHCRF at the discretion of the MHCRF and as specified in the Program Statement. All pets shall have current vaccinations. Pets shall be examined by a licensed veterinarian within sixty (60) days of admission to a MHCRF, at least once a year thereafter, or more frequently if necessary.

3826.17 Each MHCRF shall have a functioning doorbell or knocker.

3826.18 Each exterior stairway, landing, and sidewalk used by residents shall be kept free of snow and ice.

3826.19 The MHCRF shall be free of loose or peeling paint, and the MHCRF shall comply with all D.C. Housing Code (14 DCMR § 707) and § 304.2 of the D.C. Property Maintenance Code pertaining to lose or peeling paint and to lead-based paint.

3826.20 The MHCRF shall comply with all applicable environmental laws and regulations including rules governing lead-based paint, asbestos, heating oil tanks, and hazardous waste.

3826.21 Each MHCRF shall provide residents with access to reasonable individual storage space for private use.

3826.22 Each MHCRF shall have access to a functioning facsimile machine, a computer with internet access, and a functioning e-mail address for official business, care coordination, and incident reporting purposes.

3826.23 Each MHCRF shall be equipped with both a functioning landline and mobile telephone. The telephone numbers shall be provided to residents and the Director.

3826.24 Each MHCRF shall maintain emergency supplies in a secure location at the facility to include batteries, flashlights, Sterno, an extra First Aid kit, other

supplies identified in the MHCRF's COOP required by § 3805.7, and an adequate supply of bottled water and non-perishable foods as provided in § 3834.22.

3826.25 Each MHCRF shall timely pay the expenses of the MHCRF including its mortgage, rent, utilities, and tax and insurance payments and shall not otherwise fall into arrears.

3827 STRUCTURAL AND MAINTENANCE REQUIREMENTS

3827.1 A MHCRF may be located in a single or multi-family dwelling.

3827.2 All MHCRF repairs and construction shall be done in a workmanlike manner and comply with local code requirements. Major repairs shall be performed by licensed and bonded professionals, unless a waiver is granted by the Director. The MHCRF shall comply with the D. C. Construction Codes, , and shall obtain all permits and approvals required by the Department of Consumer and Regulatory Affairs (DCRA) or any other District agency before engaging in construction, repair or installation activities including:

(a) Any new construction, alteration, repair, or addition to the structure;

(b) A change in use or occupancy, increase in load, or modification of the floor layout of the structure;

(c) Repairing fire damage to the structure; and

(d) Installing or repairing electrical systems or fixtures, gas-fueled appliances or equipment, refrigerating and cooling systems, and plumbing systems or fixtures.

3827.3 The Operator shall maintain the MHCRF in compliance with all applicable provisions of the D.C. Property Maintenance Code and the D.C. Housing Code, except that an Operator shall not be required to provide residents with keys to the facility pursuant to § 607.2.

3827.4 The MHCRF shall comply with all applicable accessibility requirements in the ADA.

3828 LIGHTING AND VENTILATION

3828.1 Each room in a MHCRF shall have adequate lighting, and each bedroom shall have sufficient light for reading.

3828.2 Each bathroom and hallway shall contain a nightlight, and nightlights shall be offered to residents for use in their sleeping rooms.

3828.3 Each outside entrance shall be lighted.

3828.4 All habitable rooms used for living or sleeping, including the kitchen, and all bathrooms, hallways, and stairways shall meet the lighting requirements of § 402 of the D.C. Property Maintenance Code and §§ 502 through 505 of the D.C. Housing Code (14 DCMR §§ 502 – 505), except where the D.C. Housing Code requirements are superseded by the D.C. Property Maintenance Code.

3828.5 Every space intended for human occupancy shall be provided with adequate natural or mechanical ventilation as required by § 403 of the Property Maintenance Code.

3829 PLUMBING AND WATER SUPPLY

3829.1 Each MHCRF shall ensure that its water supply and distribution system, including all plumbing and water heating facilities, conform to applicable requirements of the D.C. Construction Codes, including the D.C. Property Maintenance Code and the D.C. Plumbing Code, the D.C. Housing Code, and the D.C. Water and Sewer Authority.

3829.2 Each MHCRF shall provide adequate quantities of hot and cold water to serve the number of residents and staff in the facility.

3829.3 The temperature of hot water at each fixture used by a resident shall be automatically controlled and shall be maintained within the range of five degrees Fahrenheit (5◦F.) over or under one-hundred and twenty degrees Fahrenheit (120◦F.).

3829.4 The water supply may also include a separate or boosted supply at higher temperatures for the kitchen and for dishwashing and laundry.

3829.5 Each MHCRF shall provide hot and cold running water, under pressure, to each sink, bathtub, and shower, to each area where food is prepared and where food equipment, utensils or containers are washed, and to the laundry and bathrooms.

3829.6 The MHCRF shall report to the Department any lack of water or disconnection of service within four (4) hours if it occurs during a business day, and within twelve (12) hours if it occurs after business hours or on the weekend.

3829.7 If the water to a MHCRF is disconnected or not operating, the MHCRF shall provide bottled water for drinking, which shall be maintained in a secure location at the MHCRF at all times so that a sufficient quantity of bottled water is available. If the water to a MHCRF is disconnected or not operating for more than four (4) hours, the MHCRF shall also provide water for hand-washing and flushing the toilet. The MHCRF shall coordinate an emergency transfer of

residents in the event the loss of water is expected to last more than forty-eight (48) hours.

3830 HEAT AND AIR CONDITIONING

3830.1 Each MHCRF shall have a heating and cooling system that meets the standards of, and is installed and maintained in compliance with this section, the D.C. Construction Codes, including the D.C. Property Maintenance Code, the D.C. Housing Code and any other applicable District laws or regulations. Where the standards in this section are more stringent than the standards in the D.C. Property Maintenance Code or the D.C. Housing Code, the standards in this section shall apply.

3830.2 The MHCRF shall supply sufficient heat from October 1 through May 31 to maintain the following temperatures for every occupied room throughout the residence including, bedrooms, living room, dining room, kitchen, and bathrooms:

(a) A minimum of seventy degrees Fahrenheit (70◦F.) between 6:30 a.m. and 11:00 p.m.; and

(b) A minimum of sixty-eight degrees Fahrenheit (68◦F.) between 11:00 p.m. and 6:30 a.m.

3830.3 Each heating system shall be thermostatically controlled.

3830.4 A MHCRF shall not supplement its heating system with portable room or space heaters, unless their use meets FEMSD standards.

3830.5 A fireplace shall not be utilized unless:

(a) The Operator can demonstrate that the fireplace and chimney have been inspected and determined to be safe for use within the past twelve (12) months;

(b) An annual inspection by FEMSD has not revealed any violation or deficiency in the fireplace; and

(c) An MHCRF staff member is present in the room while it is in use.

3830.6 The MHCRF shall provide air conditioning through individual units or a central system, which shall be maintained in safe and good working condition in accordance with the D.C. Property Maintenance Code. When residents are present in the facility, the MHRCRF shall provide an inside temperature no greater than seventy-eight degrees Fahrenheit (78°F) between May 15 and September 15 or whenever the outside temperature exceeds eighty-five degrees Fahrenheit (85°F).

3831 BEDROOMS

3831.1 Each bedroom shall comply with the space and occupancy requirements for habitable rooms in the D.C. Property Maintenance Code and § 402 of the Housing Code (14 DCMR § 402), and shall require at a minimum:

(a) If used for sleeping by only one (1) occupant, at least eighty square feet (80 sq. ft.) of habitable room area.

(b) If used for sleeping by two (2) or more occupants, at least fifty square feet (50 sq. ft.) of habitable room area for each occupant.

3831.2 No sleeping facilities shall be permitted in any room in which there is located a furnace, space heater using an open flame, domestic water heater or gas meter.

3831.3 Each resident shall be provided a choice of roommates in accordance with his or her level of care as articulated in the person-centered planning and treatment plan. This roommate requirement may be modified if supported by a specific assessed need and justified and agreed to in the person-centered service plan. An employee of a MHCRF and a resident of the MHCRF shall not share a bedroom under any circumstances.

3831.4 Each resident shall be provided with at least the following items:

(a) A bed, which shall not be a cot;

(b) A mattress that was purchased new by the MHCRF, has a manufacturer's tag or label attached to it, is in good, sanitary and intact condition without broken springs, and a new mattress cover;

(c) A bedside table or cabinet and an individual reading lamp with at least a seventy-five (75) watt or luminance equivalent bulb;

(d) Lockable storage space in a stationary cabinet, chest, or closet that provides at least one (1) cubic foot of space for each resident for valuables and personal items;

(e) Sufficient suitable storage space, including a dresser and closet space, for personal clothing, shoes, accessories, and other personal items; and

(f) A waste receptacle and clothes hamper with lid.

3831.5 Each bed shall be located in a room that is designed and utilized solely as a bedroom. Each bedroom shall have a door lockable by the resident, with only appropriate staff having keys to the door. This lockable door requirement may be

modified if supported by a specific assessed need and justified and agreed to in the person-centered service plan.

3831.6 Each bed shall be placed at least three (3) feet from any other bed and from any uncovered radiator.

3831.7 Each bedroom shall have direct access to a major corridor and at least one (1) window to the outside, unless DCRA has determined that it otherwise meets the lighting and ventilation requirements for habitable rooms pursuant to the D.C. Property Maintenance Code and the D.C. Housing Code.

3832 BATHING AND TOILET FACILITIES

3832.1 Each MHCRF shall provide one (1) or more bathrooms for residents that are equipped with the following fixtures that are properly installed and maintained in good working condition:

(a) Toilet (water closet);

(b) Sink (lavatory);

(c) Shower or bathtub with shower, including a handheld shower; and

(d) Grab bars in showers and bathtubs.

3832.2 Each MHCRF shall provide at least one (1) bathroom for each six (6) occupants in compliance with § 602 of the D.C. Housing Code (14 DCMR § 602), and shall comply with any subsequently adopted more stringent requirements of the D.C. Property Maintenance Code or D.C. Housing Code.

3832.3 Each MHCRF shall equip each bathroom with the following:

(a) Toilet paper holder and adequate toilet paper;

(b) Paper towel holder and adequate paper towels or clean hand towels;

(c) Soap;

(d) Mirror;

(e) Adequate lighting;

(f) Waste receptacle;

(g) Floor mat;

(h) Non-skid tub mat or decals; and

(i) Shower curtain or shower door.

3832.4 In addition to complying with § 3832.1(d), each MHCRF shall provide properly anchored grab bars or handrails near the toilet or other areas of the bathroom, if needed by any resident in the facility.

3832.5 Adequate provision shall be made to ensure each resident's privacy and safety in the bathroom.

3833 FIRE SAFETY

3833.1 Each MHCRF shall comply with all applicable provisions of the D.C. Fire Code and the Fire Safety Provisions of the D.C. Property Maintenance Code (Chapter 7).

3833.2 Each MHCRF shall obtain an annual inspection of the facility by FEMSD, which shall determine the facility's compliance or non-compliance with fire safety requirements; provided that fire safety inspections for new construction or substantial renovation of a structure may be performed by DCRA in accordance with DCRA and FEMSD procedures and the requirements of the Construction Codes.

3833.3 Each MHCRF shall have a written Emergency Preparedness Plan with instructions that is approved by FEMSD. The plan shall be followed in case of fire, explosion, or any other emergency and shall be available for review in each MHCRF.

3833.4 The plan shall be updated annually, as necessary, and include the following:

(a) Written responsibilities and specific tasks for each staff member;

(b) A plan for training staff at least twice a year on the plan;

(c) The procedures for reporting a fire or other emergency;

(d) Life safety strategies and procedures for notifying, relocating, or evacuating occupants;

(e) A site plan indicating an assembly point for occupants;

(f) Floor plans identifying the location of:

(1) Exits;

(2) Primary evacuation routes;

(3) Secondary evacuation routes;

(4) Accessible egress routes;

(5) Manual fire alarm pull stations;

(6) Fire alarm annunciators and controls; and

(7) Portable fire extinguishers;

(g) A list of major fire hazards associated with normal use of the facility, including maintenance and housekeeping procedures;

(h) Identification and assignment of personnel responsible for maintenance of systems and equipment installed in the facility to prevent or control fires;

(i) The signature of the Operator; and

(j) The signature of the FEMSD official approving the plan.

3833.5 Drills testing the effectiveness of the fire plan shall be conducted:

(a) For each resident individually upon admission;

(b) For current residents within two (2) weeks of the effective date of a new or revised plan; and

(c) At least quarterly, with at least one (1) drill per shift, in accordance with the D.C. Fire Code, as referenced in § 3833.1.

3833.6 Each MHCRF shall maintain in its records the most recent fire inspection report with the date of the latest inspection of the alarm system.

3833.7 Each MHCRF shall install and maintain smoke detectors in accordance with the requirements of the D.C. Fire Code, as referenced in § 3833.1, for smoke detection devices in residential facilities, and any additional requirements of the Smoke Detector Act of 1978, effective June 20, 1978 (D.C. Law 2-81; D.C. Official Code §§ 6-751.01 *et seq.*) as determined by DCRA or FEMSD

3833.8 Smoke detectors shall be installed to provide protection:

(a) In each room used for sleeping; or

(b) In each corridor outside of or adjacent to a room used for sleeping; and

(c) On each story within the facility.

3833.9 The MHCRF shall install and maintain a smoke detector system composed of interconnected smoke detectors, as required by DCRA and FEMSD pursuant to the requirements of the D.C. Fire Code.

3833.10 No MHCRF shall permit smoking in bedrooms.

3833.11 A fire extinguisher with a minimum rating of 210 (BC) that is effective in extinguishing grease and oil fires shall be located within fifteen feet (15 ft.) of any stove, oven, cooking burner, or other cooking device.

3833.12 Each MHCRF shall have at least one (1) working fire extinguisher with a minimum rating of 210 (BC) on each floor, including the basement and first floor, in a central location accessible to residents and employees.

3833.13 A fire extinguisher with a minimum rating of 210 (BC) of a type and capacity sufficient to extinguish fires originating in the main heating plant and hot water heater shall be located within five feet (5 ft.) of this equipment.

3833.14 Each fire extinguisher shall be:

(a) Properly maintained;

(b) Approved for its specific use by an official of the FEMSD; and

(c) Inspected by FEMSD annually and in accordance with the International Fire and Construction Codes cited in § 3833.1.

3833.15 Each fire extinguisher shall be recharged immediately after use and properly tagged.

3833.16 Each fire extinguisher shall have attached to it a tag giving the date when the service was performed, a description of the service performed, and the name and address of the person performing the service.

3833.17 Each MHCRF shall have a fire exit that is:

(a) Clearly designated on the MHCRF's emergency preparedness plan;

(b) Clearly identified for residents;

(c) Kept clear of obstructions; and

(d) Accessible from sleeping rooms.

3833.18 If the area or floor served by a fire exit door is to be occupied, the door shall not require a key to unlock the door from the inside and shall not require more than thirty (30) seconds to unlock.

3833.19 Each MHCRF that has residents in sleeping rooms above the second floor, or that has more than eight (8) residents in sleeping rooms above the street level, shall:

(a) Provide access to two (2) separate means of exit for sleeping rooms above street level, at least one (1) of which shall consist of an enclosed interior stair, a horizontal exit, or a fire escape, all arranged to provide a safe path of travel to the outside of the building without traversing any corridor or space exposed to an unprotected vertical opening; or

(b) Otherwise comply with D.C. Fire Code.

3834 DIETARY SERVICES

3834.1 Each MHCRF shall apply generally accepted principles of nutrition and food management to menu planning, food preparation and handling, kitchen maintenance, and service for residents of the facility.

3834.2 Each MHCRF shall have at least one (1) staff member who has obtained a Food Protection Manager (FPM) or Food Safety Manager (FSM) certification from an accredited national test service approved by the D.C. Department of Health. That staff member shall maintain a current certification in accordance with § 203 of the D.C. Food Code (25-A DCMR § 203).

3834.3 In addition to the requirements of § 3834.2, the MHCRF shall ensure that whenever food is being handled or served for human consumption, at least one (1) staff member is present who has a current FPM or FSM certification. That staff member shall ensure the proper preparation, handling, and service of food.

3834.4 The MHCRF shall require each certified FPM or FSM to supervise and train any staff members who are not certified as FPMs or FSMs in the storage, handling, and serving of food, and the cleaning and care of equipment used in food preparation in order to maintain sanitary conditions at all times. The kitchen, dining, and food storage areas shall be kept clean, orderly, and protected from contamination.

3834.5 Each individual engaged in food preparation, handling, or serving, shall wash their hands and exposed portions of arms frequently, and cover their hair with a net or other head covering.

3834.6 The MHCRF shall ensure that no person is involved in food preparation or service who shows signs or symptoms of a contagious illness, has exposed skin lesions, or

is otherwise prohibited or restricted from performing these functions pursuant to §§ 303(a) – (e) and 300.4 – 307.10 of the D.C. Food Code (25-A DCMR § 303(a) – (e) and 300.4 - 307.10.

3834.7 The MHCRF shall provide at least three (3) meals per day that:

(a) Provide a nourishing, well-balanced and varied diet in accordance with dietary guidelines established by the United States Department of Agriculture;

(b) Are suited to the special needs of each resident; and

(c) Are adjusted for seasonal changes, and regularly include seasonal fresh fruits and vegetables.

3834.8 The MHCRF shall prepare and post menus on a weekly basis for the residents' review. Menus shall:

(a) Provide for a variety of foods at each meal taking into consideration the residents' personal and cultural preferences;

(b) Be varied from week to week;

(c) Include special diets; and

(d) Reflect meals as planned and as actually served, including hand-written notations in pen of any substitutions made.

3834.9 The MHCRF shall retain a copy of each weekly menu and receipts and invoices for food purchases for six (6) months, which shall be subject to review by the Department.

3834.10 Each meal shall be scheduled so that the maximum interval between each meal is no more than six (6) hours, with no more than fourteen (14) hours between a substantial evening meal and breakfast the following day.

3834.11 In between designated meal times, residents shall have access to food. This requirement may be modified if supported by a medically assessed need and justified in the person-centered service plan. If a resident misses a scheduled meal, appropriate food substitutions of comparable nutritional value shall be offered.

3834.12 If the MHCRF knows or is informed in advance that a resident will be away from the MHCRF during mealtime for necessary medical care, work, a day services program, or other scheduled activities or appointments, the MHCRF shall provide the resident with an appropriate meal and in-between meal snack to carry. The

MHCRF shall ensure that the meal is nutritious and suited to the special needs of the resident as required by § 3834.7.

3834.13 Each food and drink item purchased, stored, prepared, or served by the facility shall be clean, wholesome, free from spoilage, prepared in a manner that is safe for human consumption, protected from contamination, and properly served in accordance with the requirements of §§ 600.1 and 700.1 of the D.C. Food Code (25-A DCMR §§ 600.1, 700.1) and this section.

3834.14 Each MHCRF shall have fresh water and clean drinking glasses available for each resident at all times.

3834.15 Each resident who needs assistance to eat or drink shall be given the assistance promptly upon receipt of meals.

3834.16 A MHCRF shall not permit smoking or use of tobacco products in the kitchen or in the vicinity of food preparation.

3834.17 Each MHCRF shall serve meals at proper temperatures. If an individual requires feeding assistance, food shall be maintained at serving temperature until assistance is provided. Food that is not promptly consumed shall be refrigerated or discarded.

3834.18 Food requiring refrigeration shall be promptly refrigerated after purchase and kept properly refrigerated until preparation for consumption or until consumed pursuant to §§ 1005.1 and 1005.2 of the D.C. Food Code (25-A DCMR §§ 1005.1 and 1005.2).

3834.19 Frozen foods shall be kept in the freezer and maintained frozen until preparation for consumption or until consumed pursuant to § 1000.1 of the D.C. Food Code (25-A DCMR § 1000.1).

3834.20 Food shall be protected from contamination by separating raw animal foods during storage, preparation, and holding from raw fruits and vegetables, cooked ready-to-eat foods, and other raw animal foods except when combining ingredients, as required by § 802 of the D.C. Food Code (25-A DCMR § 802).

3834.21 Raw animal foods, including eggs, fish, meat, poultry, and foods containing these raw animal foods shall be thoroughly cooked and heated to the temperatures required by § 900 of the D.C. Food Code (25-A DCMR § 900).

3834.22 Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption as required by § 806.1 of the D.C. Food Code (25-A DCMR § 806.1).

3834.23 The MHCRF shall ensure that the facility maintains at least a three (3) day supply of perishable food and a seven (7) day supply of bottled water and nonperishable food in a safe location, based on the menus for both regular and special diets in compliance with the MHCRF's Continuity of Operations Plan.

3834.24 Dry or staple food items shall be stored at least twelve (12) inches above the floor in a the kitchen or other dry room not subject to sewage or waste water back flow or contamination by condensation, leakage, rodents, or vermin. Food shall not be stored in a bathroom, garage, or mechanical room.

3834.25 All kitchen equipment, utensils, cookware and dishes shall be constructed of safe materials and maintained in good condition as required by § 3804.1 of the D.C. Food Code (25-A DCMR § 3804.1).

3834.26 All food contact surfaces, storage areas, counters, sinks and work surfaces shall be smooth, non-absorbent and easily cleanable, and shall be effectively cleaned and sanitized prior to preparation and serving of food and after each use as required by § 3804.2 of the D.C. Food Code (25-A DCMR § 3804.2).

3834.27 All eating utensils, pots, pans, cooking equipment, dishes, cups, glasses and other table ware shall be thoroughly cleaned and appropriately dried before use, and cleaned and properly stored after each meal to avoid contamination.

3834.28 Hot and cold water, soap, and towels shall be provided for hand washing in or adjacent to food preparation areas.

3834.29 Each MHCRF shall maintain a sufficient quantity of dishes, utensils, and cook ware to meet the needs of residents and staff.

3834.30 Receptacles for storage of garbage and refuse shall be waterproof and properly covered, and shall be emptied and cleaned regularly.

3834.31 The dining area shall have a sufficient number of tables and chairs to seat all individuals residing in the home at the same time. Dining chairs shall be sturdy, safe, without rollers unless retractable, and designed to minimize tilting.

3834.32 Each MHCRF shall promote each resident's participation and skill development in menu planning, shopping, food storage, and kitchen maintenance, to the extent appropriate based on the resident's IRP.

3835 THERAPEUTIC DIETS

3835.1 Each MHCRF with a resident who has been prescribed a special or therapeutic diet shall ensure that the resident's meals are planned, prepared, and served as prescribed by the attending physician, nutritionist, or other health care practitioner.

3835.2 Each MHCRF with residents who have been prescribed a special or therapeutic diet or who have a condition, such as diabetes or hypertension, that commonly requires a special or therapeutic diet, shall consult with the resident's CSA or other treatment team at least annually to determine whether there are new instructions pertaining to the resident's diet.

3835.3 The MHCRF shall allow a visiting dietitian or nutritionist to have access to each resident's record, as authorized by the Mental Health Information Act, which shall contain the physician's prescriptions for medications and special diets. The MHCRF shall advise the visiting dietitian or nutritionist to document in the record each observation, consultation, and instruction regarding the resident's acceptance and tolerance of each prescribed diet.

3835.4 Each MHCRF shall ensure that all dietary prescriptions from each resident's physician, health care practitioner, dietitian, or nutritionist are maintained in the resident's medical record and are updated at least annually.

3835.5 Each MHCRF shall ensure that all staff responsible for food preparation and service are kept informed, in writing and verbally, of any dietary restrictions, food allergies, or other special dietary needs of each resident.

3836 HOUSEKEEPING AND LAUNDRY SERVICES

3836.1 Each MHCRF shall be equipped with a washing machine and dryer in good condition in a safe, clean, and convenient location within the facility. The MHCRF shall provide adequate facilities and sufficient laundry detergent and other laundry supplies for residents and staff to properly wash and dry clothing and linens. No clothes or linens shall be air dried.

3836.2 At least three (3) washcloths, two (2) towels, two (2) sheet sets that include pillow cases, a bedspread, a new pillow, sufficient blankets, and a mattress cover shall be maintained for each resident in good and clean condition.

3836.3 Each piece of bed linen, towel, and washcloth shall be changed and cleaned as often as necessary to maintain cleanliness, provided that all towels and bed linen shall be changed at least once each week.

3836.4 Each blanket, bedspread, and mattress cover shall be cleaned regularly, whenever soiled, and before being transferred from one (1) resident to another.

3836.5 Each MHCRF shall ensure that the personal laundry of each resident is laundered in a sanitary manner, separate from bed linen. Laundry shall be done by the resident if the resident is capable or by MHCRF staff. The resident shall not be charged in excess of the resident's monthly residence fee for room, board, and care for detergent or other supplies, use of the washer or dryer, or staff assistance,

3836.6 Clean linen and clothing shall be stored in clean, dry, dust free areas that are easily accessible to residents.

3836.7 If it becomes necessary for residents to use a laundromat because the washing machine or dryer is temporarily out of order, the MHCRF shall pay for residents' laundry to be washed and dried.

3836.8 If the washing machine or dryer is out of order for more than forty-eight (48) hours, the Operator shall alert the Director, or his/her designee, of the outage.

3836.9 Each MHCRF shall keep a written laundry log and record the date when each resident washed and dried his or her personal laundry/clothing. At a minimum, the MHCRF shall launder residents' clothing and bedding weekly. More frequent launderings are required when necessary to prevent or eliminate hygiene or insect problems. If a resident refuses laundry services, then the MHCRF shall note the refusal on the laundry log and coordinate with the CSA to address this issue through person-centered treatment planning.

3837 PERSONAL PROPERTY OF RESIDENTS

3837.1 This section shall apply to the personal property of residents, except for personal funds which are subject to § 3838.

3837.2 Each MHCRF shall permit each resident to bring reasonable personal possessions, including clothing, personal articles, and furnishings to his or her living quarters in the MHCRF unless the MHCRF can demonstrate that it is not practical, feasible, or safe. Rejection of resident's personal items must be submitted to the Department for approval.

3837.3 Each MHCRF shall take appropriate measures to safeguard and account for personal property brought into the facility by a resident. Each MHCRF shall maintain a current inventory of each resident's personal property. The MHCRF shall update this inventory whenever new items are brought into the MHCRF and at least once annually, and shall provide a copy of the inventory, signed by the resident and staff, to the resident.

3837.4 The MHCRF shall provide the resident, or the resident's representative, with a receipt for any personal articles to be held by the MHCRF for safekeeping. The receipt shall include an approximate value for the article and the date it was deposited with the MHCRF. The MHCRF shall also maintain a record of all articles held for safekeeping.

3837.5 No MHCRF shall require a resident to give, transfer, or assign to the Operator, Residence Director, an employee or volunteer an interest in or title to any property

owned by the resident. No Operator, Residence Director, employee or volunteer of the MHCRF may accept such a gift, transfer, or assignment.

3837.6 Upon each resident's discharge, the MHCRF shall return to the resident, or the resident's representative, any personal articles held by the MHCRF for safekeeping. The MHCRF shall also ensure that the resident is permitted to take all of his or her personal possessions from the MHCRF. The MHCRF may require the resident or resident's representative to sign a statement acknowledging receipt of the property. A copy shall be placed in the resident's record.

3837.7 If a resident is not able to remove all of his or her personal property when the resident moves or is transferred or discharged from the facility, the MHCRF shall securely retain the resident's property for a minimum of ten (10) days.

3837.8 The MHCRF shall notify the resident's representative, the LTCO and the CSA in writing that it has the resident's property, so the resident, resident's representative or CSA can make arrangements to obtain it. The MHCRF may remove the property from the bedroom occupied by the former resident, but shall store it in a secure dry location within the facility.

3838 FINANCES OF RESIDENTS

3838.1 Except as provided in § 3838.09, no MHCRF shall increase the fee for room, care, and board in a MHCRF more often than once a year, unless:

(a) The increase is justified in writing;

(b) The increase is caused by an unusual escalation in the expenses of the facility or the cost of services to the resident;

(c) The resident and the Department are given sixty (60) days written notice of the effective date of the increase; and

(d) The resident signs a new residency contract as required by § 3824, which includes the increased fee.

3838.2 Except for representative payee relationships existing prior to the effective date of this rule, no MHCRF owner, Operator, Residence Director, staff member or volunteer shall serve as a representative payee for a resident of the MHCRF. When a resident and his or her representative payee have authorized the MHCRF to handle any portion of a resident's personal funds, including rent or the personal needs allowance, the authorization shall be in writing and signed by the resident and the resident's representative payee at least annually. A resident's personal needs allowance shall be used solely for the resident's personal needs pursuant to 29 DCMR § 1450.

3838.3 Each MHCRF shall maintain a separate and accurate record of all funds the resident or the resident's representative or representative payee deposits with the MHCRF for safekeeping in accordance with Subsection 3838.2. The record shall include the following:

(a) A written authorization signed by the resident and the resident's representative or representative payee authorizing the MHCRF to handle the resident's personal funds;

(b) Any instructions received from the resident's representative or representative payee and agreed to by the MHCRF pertaining to disbursement of the funds;

(c) The date and the amount of all money received;

(d) The date and amount of each withdrawal by the resident or disbursement by the MHCRF for the resident's benefit, including signed receipts;

(e) The items or purposes for which disbursements were made by the MHCRF;

(f) The current balance; and

(g) The signature of the resident for each withdrawal and the signature of facility staff for each deposit and disbursement made on behalf of a resident.

3838.4 Each MHCRF shall make a copy of the records required in § 3824.2 and § 3838.3 available to the resident and the resident's representative or representative payee:

(a) On at least a quarterly basis;

(b) At least ten (10) business days before the resident is to be transferred or discharged from the facility or a soon as possible prior to the discharge; and

(c) Upon request by the resident, the resident's representative, or representative payee.

3838.5 Upon admission of a resident, each MHCRF shall explain to the resident and the resident's representative or representative payee how the resident's personal needs allowance and any other personal funds shall be handled during his or her stay at the MHCRF. This explanation shall include the resident's right to manage the money himself or herself, absent a court order appointing a guardian or conservator to administer the resident's financial or personal affairs.

3838.6 Each MHCRF shall, upon request, make resident financial records available for inspection, review, and copying by the Department, the D.C. Department of Healthcare Finance, the LTCO, and any entity authorized by the resident to review such records.

3838.7 Upon each resident's discharge from the MHCRF, the MHCRF shall promptly provide the resident's remaining personal funds to the resident, the resident's court-appointed representative to administer his or her financial and personal affairs, or the resident's representative payee. The MHCRF shall require the resident, court-appointed representative, or representative payee to sign a statement acknowledging receipt of the funds. A copy shall be placed in the resident's record.

3838.8 Upon each resident's discharge from the MHCRF, the MHCRF shall promptly send rent funds, pro-rated from the date of discharge, to the new MHCRF location.

3838.9 Notwithstanding § 3838.1, any increase in a resident's Social Security or State Optional Payment shall be distributed to the MHCRF for room, board and care in accordance with § 549 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.49), unless the Department of Health Care Finance has published an increase in the personal needs allowance in 29 DCMR § 1450.

3839 MEDICATION

3839.1 When a resident is admitted, and for as long as the resident resides in the facility, the MHCRF shall maintain current doctor's orders for every medication the resident is taking, plus a list of each known allergy and each prescribed controlled substance. The MHCRF shall obtain this information from the resident's CSA, treatment team, or health care provider.

3839.2 The MHCRF shall keep each resident's medications secure in a locked drawer or cabinet, separate from those of other residents, and shall ensure they are not accessible to other residents or visitors. Each medication shall be properly identified and shall be maintained under proper conditions of light and temperature as indicated on the medication's label.

3839.3 Each medication of each resident shall be stored in its original container and shall not be transferred to another container or to another resident. Medication for external use shall be stored separately from medication for internal use.

3839.4 Each MHCRF shall comply with District and federal law and regulations governing the procurement, handling, storage, administering, recording, dispensing and disposal of medications and controlled substances.

3839.5 The Operator, Residence Director, or designated staff shall ensure that each resident who is capable of self-administering his or her medication takes his or her medication as prescribed. The staff member who supervises a resident's self-administration of medication shall properly and promptly record and initial each dose of medication taken by the resident in the resident's medication record.

3839.6 If a resident cannot self-administer a medication, the MHCRF shall coordinate appropriate assistance from a licensed or certified healthcare professional who is authorized to administer medication under District of Columbia law to administer the medication. The MHCRF shall ensure that the administration of the medication is recorded in the resident's medication record.

3839.7 Each medication error or adverse reaction to a medication shall be immediately reported to the resident's physician. If the MHCRF is unable to report to the resident's physician, the MHCRF shall report the error or adverse response to the resident's treatment team. In all cases, the MHCRF shall document the error or adverse response in the resident's record, and in cases of a severe adverse reaction shall prepare and submit a Major Unusual Incident Report to the Department pursuant to § 3848.

3839.8 Each resident's refusal of a medication shall be documented in his or her medication record and reported to the resident's physician or treatment team.

3839.9 Each MHCRF shall remove and dispose properly of expired medication and medication that is no longer in use.

3839.10 Each MHCRF shall closely monitor each resident's supply of medication. The MHCRF shall inform each resident's treatment team, by phone and in writing, when the resident has only seven (7) days of medication remaining to ensure that the resident always has a sufficient supply of the medication prescribed by his or her physician. If no contact is established with the CSA within forty-eight (48) hours, the MHCRF shall inform the Director, in writing, of the resident's medication supply.

3840 MEDICAL SERVICES

3840.1 Each resident shall have the right to choose his or her own medical and dental care, and shall provide for it at his or her own expense or under relevant provisions of the Social Security Act. Alternatively, each eligible resident may seek medical or dental care from a public agency at public expense in accordance with laws and regulations governing the agency.

3840.2 To ensure that each resident is examined by a physician at least once a year, each MHCRF shall provide written notice to the resident and the CSA ninety (90) days in advance:

(a) Reminding each resident that he or she must provide the results of a physical examination prior to renewal of a residency contract; and

(b) Advising the CSA that it is time for the resident's annual physical examination.

3840.3 If the physical examination report has not been received thirty (30) days prior to the renewal date of the residency contract, the MHCRF shall inform the Director in writing.

3840.4 The physician or other licensed healthcare professional performing the annual physical examination shall provide, at a minimum, a medical certification in accordance with § 3825.2(a), prescriptions for any medications in accordance with § 3825.2(c), and any special diet instructions in accordance with § 3825.2(d).

3840.5 Each resident's permanent records shall include copies of his or her medical certifications, all physicians' orders and reports, and the physicians' recommendations for the resident's care.

3840.6 If a resident is unable to make arrangements for his or her annual medical examination or any other medical or dental examination, the Residence Director or designee shall assist the resident in making arrangements for the examinations.

3840.7 Each MHCRF shall maintain in the residence a list of the names and telephone numbers of each resident's physician and CSA.

3840.8 If an MHCRF observes a medical condition that the resident refuses to treat, the MHCRF shall document this occurrence in the resident's file and contact the CSA to coordinate a discussion with the resident. If no contact is established with the CSA within forty-eight (48) hours, the MHCRF shall inform the Director in writing.

3841 RESIDENT ACTIVITIES

3841.1 Each MHCRF shall encourage and arrange for suitable activities for each resident to stimulate the resident, promote his or her well-being, encourage independence, and maintain normal activity and an optimal level of functioning in coordination with the resident's CSA. These activities may include education in independent living skills such as grocery shopping, cooking, housekeeping chores, personal and household laundering, money management, and use of recreational time.

3841.2 Each MHCRF shall, in accordance with each resident's person-centered treatment plan, maintain normal routines and procedures, providing for sleeping periods, meal times, social and recreational activities, responsibilities, and a level of resident autonomy similar to the living patterns of independent persons in the community.

3841.3 Each MHCRF shall encourage each resident to engage in daytime activities, including education, socialization, psycho-social day programs, and employment, and shall take advantage of public and voluntary resources in promoting resident participation in meaningful life activities. In accordance with a person-centered treatment plan, each resident shall have the freedom and support to control his or her own schedule and activities.

3841.4 Each MHCRF shall have books, periodicals, games, current newspapers, radio, internet access, and a television available and accessible to residents. The MHCRF shall, to the extent possible, provide recreational and leisure activities that reflect the residents' interests.

3841.5 Attendance at a day program shall not be mandatory for residents in a MHCRF.

3842 ASSISTING RESIDENTS TO RECEIVE MENTAL HEALTH SERVICES

3842.1 If a resident is not already enrolled with a Department-certified Core Services Agency or other provider of mental health services, the MHCRF shall encourage and assist the resident in enrolling with a CSA or other provider of the resident's choice and shall document this assistance in the resident's files.

3842.2 If the MHCRF learns that a resident is no longer receiving mental health services, the MHCRF shall encourage and offer to assist the resident in obtaining these services and shall document such assistance or the resident's refusal to accept assistance in the resident's files. The MHCRF shall immediately inform the Department when a resident has declined mental health services.

3843 SERVICE COORDINATION WITH CORE SERVICES AGENCY OR OTHER PROVIDER OF MENTAL HEALTH SERVICES AND MHCRF SERVICE COORDINATION PLAN

3843.1 Each MHCRF shall maintain regular contact with the CSA's designated staff member to determine whether the resident's needs are being met and shall be available to the resident and the CSA's designated staff member to assist when issues or concerns involving the resident arise. The MHCRF shall document all contacts with the CSA in the resident's file.

3843.2 Each MHCRF, in conjunction with the CSA's treatment team or other mental health services provider, shall regularly monitor each resident's progress and status at the MHCRF, which shall include planning for transition to a lower level of care.

3843.3 Each MHCRF shall grant access to and cooperate with CSA treatment team members and any licensed or certified health care practitioner assigned to deliver services to a resident, upon presentation of proper identification and credentials.

3843.4 Each MHCRF shall report to the designated CSA treatment team, or other mental health services provider, if it appears that the resident needs assistance obtaining financial services, social services, health care services, or recreational and leisure activities. The report shall be made both in writing and by phone or in person.

3843.5 If after contacting a resident's assigned CSA treatment team or other mental health services provider, the CSA or other provider fails to provide requested medical records, or in the opinion of the MHCRF is not providing the services that should be provided, the MHCRF shall inform the Director in writing.

3844 INDIVIDUAL RECOVERY PLAN

3844.1 Each MHCRF shall participate in the development of an Individual Recovery Plan for each resident enrolled with a CSA and shall maintain a copy of the current IRP in the resident's record.

3844.2 The MHCRF shall describe to the CSA treatment team, the following in writing:

(a) The resident's functional strengths and limitations in performing activities of daily living (ADLs);

(b) Any medical or health conditions observed that are relevant to the services needed by the resident;

(c) The resident's behaviors and any changes in the resident's behaviors; and

(d) Planning actions or activities to prepare the resident for transition to a lower level of care.

3844.3 The MHCRF shall provide the information required by § 3844.2 to any other mental health, health services, or community support provider authorized by the resident.

3844.4 The resident shall have the right to participate in planning all phases of his or her IRP, may request participation of a family member, and shall be offered the opportunity to sign his or her IRP or indicate disagreement with particular aspects of the plan or the whole of the plan.

3845 RESTRAINTS AND SECLUSION

3845.1 No restraints or seclusion shall be used in a MHCRF.

3845.2 No resident shall be confined in a locked room.

3845.3 No resident shall be locked in or out of the facility.

3845.4 No resident shall be locked in or out of his or her bedroom at any time.

3846 RESIDENT RECORDS

3846.1 Each MHCRF shall maintain a permanent record on each resident in a secure location at the MHCRF for as long as the resident remains at the MHCRF, and shall retain it for at least three (3) years after the resident's discharge or death. The permanent record may be maintained at an Owner's business office in the District of Columbia after the resident's discharge or death, provided that it shall be accessible to the Department upon request.

3846.2 Each resident's record shall include a current face sheet which documents the following information on each resident:

(a) Administrative and demographic information, including name, date of birth, sex, social security number, marital status, and last known address;

(b) Medical insurance numbers, including Medicare and Medicaid, if any;

(c) Date of admission and diagnoses;

(d) Names, addresses, and telephones numbers of the resident's representative(s), representative payee, if any, involved family members, and next-of-kin;

(e) Names, addresses and telephone numbers of the resident's current personal physician(s), dentist, and any other regular health care practitioners;

(f) Names and up-to-date contact information for the resident's CSA treatment team or other mental health services, substance use disorder or community support providers, and for his or her day program provider and employer, as applicable;

(g) Religious affiliation, if any, including the names and telephone numbers of the resident's minister, priest, or rabbi; and

(h) Resident's allergies.

3846.3 The MHCRF shall also maintain an accessible and up-to-date record that documents:

(a) The resident's medication as provided in § 3839;

(b) Any special diet;

(c) Any treatment or other procedure that is required for the safety and well-being of the resident;

(d) Any Major Unusual Incidents directly involving the resident, reported in accordance with § 3848;

(e) All records required by § 3825.2.

3846.4 Each resident's record shall be current with each entry legible, in ink, dated, and signed with the full name of the record keeper. Errors shall be corrected by crossing out, but shall not be erased.

3846.5 Each MHCRF shall maintain a roster of current residents and shall submit a copy of the roster to the Department when the residence is first occupied, whenever there is a change of one or more residents, and when an application for license renewal is submitted.

3846.6 Each MHCRF shall make resident records available to the Department within twenty-four (24) hours of request.

3847 CONFIDENTIALITY OF RECORDS

3847.1 Each resident's record and any record maintained by the MHCRF that has information identifying a resident shall be confidential and maintained in a secure location at the MHCRF.

3847.2 Disclosure and re-disclosure of information pertaining to a resident's mental health and a resident's access to his or her own records shall be governed by the Mental Health Information Act, HIPAA, and any other District or federal law or regulation governing mental health or other health records.

3847.3 If a resident authorizes release of information to a third party, a copy of the resident's written authorization on the form prescribed by the Department shall be maintained in the resident's records and shall conform to the Mental Health Information Act and HIPAA.

3848 MAJOR UNUSUAL INCIDENTS AND UNUSUAL INCIDENTS

3848.1 The Operator, Residence Director, or staff member who witnesses or discovers a Major Unusual Incident (MUI) shall orally notify the Department and the resident's representatives, if any, immediately. MUIs include death, serious illness, medical emergency, physical injury, accident, physical assault or abuse, suicide attempt, severe adverse reaction from medication, or other Major Unusual Incident involving the resident or staff. The notification shall be in compliance with this section and DMH Policy 480.1C and DMH Policy 482.1 (accessible at https://dbh.dc.gov/node/240592) or subsequently adopted Department policies concerning the reporting of abuse and neglect. The Operator, Residence Director, or staff member shall document the incident in the resident's permanent record.

3848.2 Each oral notice required by § 3848.1 shall be followed by a written unusual incident report to the Department within twenty-four (24) hours of the MUI or on the next business day. The MUI report shall be prepared in conformity with DMH Policy 480.1C by the staff member who witnessed or discovered the incident. The MHCRF shall ensure that a copy of the unusual incident report is maintained in the residence.

3848.3 The Operator, Residence Director or staff member shall prepare and submit to the Department a follow-up report within ten (10) days of the incident if full details were not provided in the initial report or if follow-up actions were needed.

3848.4 The Operator, Residence Director, or staff member who witnesses or discovers an unusual incident that does not rise to the level of a MUI, shall report the UI in writing, to the Department in conformity with DMH Policy 480.1C, within seven (7) business days of the incident and shall maintain a copy of the report at the MHCRF.

3848.5 In addition to filing the unusual incident report required by § 3848.2 each MHCRF shall thoroughly investigate all MUIs occurring at the MHCRF, including any allegations of mistreatment by a MHCRF employee, volunteer, resident, or any other person.

3848.6 The MHCRF shall promptly report findings made and actions taken as a result of the investigation to the Department. The investigation shall be documented in a report that is signed and dated by the Operator or Residence Director.

3849 RESIDENT STATUS PROCEDURES

3849.1 Each MHCRF shall provide a resident roster to DBH as admissions occur after initial licensure until at full capacity, whenever there is a new admission or change in residents within the facility, and at the time of application for annual licensure renewal.

3849.2 Each MHCRF shall maintain a "day-night book" in which emergencies and other unusual occurrences are recorded by the responsible staff person on duty. Staff on duty shall observe and assess the behavior and well-being of each resident prior to the end or his or her work day and shall record any emergencies, unusual occurrences or significant behavioral or health concerns in the day-night book, and also alert incoming staff.

3849.3 Each MHCRF shall inform the Department whenever a resident moves from the facility, is missing for twenty-four (24) hours or more, or left the facility to visit friends or relatives and has not returned within the expected time frame. This information shall also be recorded in the day and night book.

3849.4 Each MHCRF shall notify the Department of an increase in the occupancy level at the MHCRF.

3849.5 If a resident dies, the Owner, Residence Director, and staff on duty shall:

(a) Not disturb the body;

(b) Promptly notify the resident's attending physician, next-of-kin, legal guardian, if any, the Department, the resident's CSA treatment team or other mental health care provider, the District's Metropolitan Police and the LTCO;

(c) If the circumstances of the death are suspicious, the death is sudden, unexpected or unexplained, or the death is violent including accidental, homicidal or suicidal, promptly notify the Office of the Chief Medical Examiner; and

(d) Abide by the District laws governing the investigation and reporting of deaths under the jurisdiction of the Medical Examiner.

3850 MINIMUM QUALIFICATIONS FOR PERSONS WORKING IN MHCRF

3850.1 Every Residence Director and staff person employed by the MHCRF shall meet the following requirements prior to commencing work at the facility and maintain compliance with these requirements:

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

(b) Have a high school diploma or the equivalent;

(c) Have at least one (1) year of experience working with persons with mental illness or one (1) year of education in human services, or a combination of education and experience totaling at least one (1) year;

(d) Have met criminal background check requirements as set forth in §§ 3850.10 through 3850.14;

(e) Have had a physical examination completed by a licensed physician or other licensed and qualified health care provider, and submitted a certification that he or she is free of communicable disease to the MHCRF prior to commencing work and annually thereafter;

(f) Have produced a current health certification that includes the result of an intra-dermal tuberculin skin test or chest x-ray indicating no active tuberculosis and documentation of any other screenings, immunizations or

certifications that may be required by the Department of Health prior to commencing work and annually thereafter;

(g) Have a current First Aid Certificate from the Red Cross or other organization recognized by the Department, including training in the Heimlich maneuver;

(h) Have a current CPR (cardio-pulmonary resuscitation) Certificate from the Red Cross or other organization recognized by the Department;

(i) Have a current FPM or FSM certification, if engaged in any food preparation at the facility, as provided in § 3834.1 and § 3834.2;

(j) Meet any additional education, experience, licensure, or certification qualifications required pursuant to a current contract with the Department.

3850.2 The MHCRF shall also ensure timely renewal of all certifications required by §§ 3850.1 (e), (f), (g), (h) and (i), and attendance at periodic training as required by the Department, including attendance by new staff at the first Mental Health First Aide course offered by DBH after hire.

3850.3 A volunteer may provide additional support services at the MHCRF while staff is present if the volunteer meets the requirements of §§ 3850.1(a), (c), (d), (e) and (f), and, if engaged in food preparation, (i).

3850.4 No person who is not a staff member can reside at the MHCRF, unless:

(a) The MHCRF has provided written notice to the Department that the person will be residing at the facility;

(b) The individual has met the requirements of §§ 3850.1 (a), (c), (d), (e) and (f), and, if engaged in food preparation, (i); and

(c) The individual's presence does not cause the MHCRF to exceed occupancy limits.

3850.5 A home health aide or personal care aide providing services to individual residents shall provide documentation of certification by the D.C. Board of Nursing pursuant to 17 DCMR, Chapter 93, and if providing services reimbursed by Medicaid, shall meet applicable requirements in 29 DCMR, Chapter 51.

3850.6 Each personal care aide providing services to individual residents shall provide documentation of training and certification pursuant to 29 DCMR, Chapter 50, shall be employed by a District licensed home health agency in good standing with the D.C. Department of Health, and shall be supervised by a physician or nurse in accordance with 22-B DCMR, Chapter 39.

3850.7 An individual providing other support services at a MHCRF shall have the requisite professional license or certificate to perform the applicable service.

3850.8 No person shall provide services to residents at the MHCRF who does not meet the requirements of this section, except District of Columbia licensed health care professionals or identified members of the resident's CSA treatment team.

3850.9 No child or youth under the age of eighteen (18) shall reside in a MHCRF for any reason.

3850.10 Each MHCRF shall ensure that a criminal background check in accordance with the Criminal Background Check Act and any applicable District implementing regulations is obtained for each "unlicensed person" as defined in this chapter, who will work in the facility as an employee or contract worker or who will have unsupervised access to the facility and residents, including the Operator, the Residence Director, staff, or volunteers. Any unlicensed person who has not had a criminal background check must remain in the immediate presence of the Operator or a staff person at all times.

3850.11 The Operator shall ensure that the background check is completed and obtain verification that there is no disqualifying history prior to allowing an unlicensed person to work at the facility or have unsupervised access to the facility and residents.

3850.12 No person, who has been convicted of a disqualifying crime within the seven (7) years preceding the background check or whose name appears on one of the following registers or websites shall work at the MHCRF as an Operator, Residence Director, contractor, employee or volunteer, or have unsupervised access to the facility and residents:

(a) The Nurse Aide Abuse Registry maintained by the Mayor;

(b) The Dru Sjodin National Sex Offender Public Website, (or other sex offender registry or website subsequently mandated by District rules); or

(c) The D.C. Child and Family Services Agency Child Protection Register.

3850.13 The MHCRF shall ensure that each unlicensed person undergoes a criminal background check every four (4) years pursuant to 22-B DCMR, Chapter 47.

3850.14 If an MHCRF learns that a person is working at the facility or has unsupervised access to the facility and residents in violation of § 3850.12 and the Criminal Background Check Act, the MHCRF shall inform DBH within forty-eight (48) hours.

3851 ADDITIONAL QUALIFICATIONS APPLICABLE TO OPERATORS AND RESIDENCE DIRECTORS

3851.1 In addition to meeting the requirements of § 3850.1 for staff, the Operator and Residence Director shall:

(a) Have at least two (2) years of experience in human services including one (1) year of working with persons with mental illness prior to employment;

(b) Have a Bachelor of Arts ("B.A.") or Bachelor of Science ("B.S.") degree or equivalent experience in addition to the experience required in (a);

(c) Be able to demonstrate computer literacy and competence in budget planning, financial management, and program development;

(d) Demonstrate, through references, documentation of education and experience, and compliance with this chapter, the ability to carry out the responsibilities set forth in §§ 3852 and 3853 prior to employment;

(e) Participate in training, workshops, and seminars developed for Operators and Residence Directors by the Department within ninety (90) days after hire.

3851.2 If the Operator is incorporated, the Residence Director acting on behalf of the corporation shall meet the requirements of § 3851.1.

3852 MINIMUM STAFFING REQUIREMENTS

3852.1 Each MHCRF shall ensure that:

(a) Every person who provides direct services to residents at the MHCRF or who regularly visits the MHCRF is properly screened to ensure he or she meets the requirements of § 3850 and that all credentials are documented and current, except that the MHCRF shall not be required to review the credentials of Department or certified CSA personnel who may periodically visit and provide services at the facility**;**

(b) Qualified staff, who are employed by and responsible to the Operator, are on site at the MHCRF twenty-four (24) hours a day, and that the MHCRF is properly supervised by competent staff at all times. These staff shall be capable of recognizing visible changes in each resident's physical and mental condition and taking responsible action in the case of an emergency;

(c) The MHCRF maintains staffing ratios and staff qualifications consistent with:

(1) Its designated licensure category as set forth in §§ 3857, 3858, 3859 and 3860;

(2) The terms of any current contract with the Department for residential services; and

(3) The needs of the residents as determined by a needs-assessment conducted using a Department-selected assessment instrument;

(d) Its Residence Director is responsible for the overall management and operation of not more than five (5) MHCRFs housing not more than a total of thirty (30) residents, or such lesser number of MHCRFs and residents as may be required by contract with DBH;

(e) Volunteers, home health aides, personal care aides reimbursed by Medicaid, and any other persons not employed by the MHCRF are not used as substitutes for MHCRF staff and are not left in charge of the facility;

(f) Home health aides or personal care aides assigned to individual residents are not directed to perform and do not perform general staff duties at the facility;

(g) Employees and volunteers providing services at the MHCRF are properly supervised, trained, and directed in applying MHCRF policies and procedures, including the MHCRF Emergency Preparedness Plan, COOP, health care emergency procedures, and the requirements of this chapter;

(h) The facility is in compliance with District and federal wage and hour laws and staffing is adequate to ensure that no staff member is required to work an unreasonable number of hours without appropriate relief or staff rotation;

(i) Staff require each person, other than a resident, who enters or leaves the facility, to sign in and sign out, with his or her name, title, reason for visiting and time in and out.

3852.2 Staff shall be on-site and provide supervision, meals, and assistance with the tasks of daily living to the residents. On-site staff shall also ensure the overall health, safety, and welfare of the residents.

3852.3 The MHCRF shall not require residents to attend day programs or activities or be absent from the MHCRF during the day. Residents shall be permitted to remain in the MHCRF, work, or participate in a structured day program or other daily activity.

3852.4 Each person who requires licensure, certification, or registration to provide care to residents shall be licensed, certified, or registered under the laws and regulations of the District.

3852.5 Each employee shall be assigned duties consistent with his or her license, job description, training, and experience.

3853 RESPONSIBILITIES OF OPERATORS AND RESIDENCE DIRECTORS

3853.1 In addition to meeting the requirements of § 3852 and other requirements set forth in this chapter, each Operator and Residence Director shall be responsible for:

(a) Supervising the day-to-day management and operation of the MHCRF, including supervision of staff, hiring and firing, purchase of food and supplies, arranging repairs, medication management, sanitation, safety, laundry, dietary services, and other services relating to the health and welfare of each resident;

(b) Implementing the policies, practices, and procedures of the MHCRF, including required screening of prospective residents and staff;

(c) Ensuring that all MHCRF procedures, records and reports required by §§ 3824, 3825, 3838, 3839, 3846, and 3854 are properly developed and maintained in one (1) or more secure files at the facility;

(d) Keeping the Department informed of any changes in the phone number, facsimile number, or e-mail address for the MHCRF;

(e) Ensuring that residents are provided with a current telephone number where residents can, at all times, contact the MHCRF and the MHCRF staff person on duty to allow residents to inform the MHCRF and staff of an emergency or other concerns;

(f) Ensuring that the Department is provided with a current telephone number at which the MHCRF and MHCRF staff can be contacted at all times;

(g) Ensuring that a current listing of the following telephone numbers is posted conspicuously in the facility and readily accessible to all staff:

(1) 911;

(2) The Comprehensive Psychiatric Emergency Program (CPEP);

(3) The Department's Office of Consumer and Family Affairs;

(4) The organization responsible for the protection and advocacy system under the federal Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. §§ 10801 *et seq.* Mentally Ill Individuals Act;

(5) Adult Protective Services; and

(6) The LTCO; and

(h) Ensuring that staff can readily access individual information on residents including the information required by § 3846.

3853.2 The Operator and Residence Director shall ensure that no employee or volunteer provides direct services to residents while the person:

(a) Is under the influence of alcohol or any mind-altering drug, substance, or combination thereof; or

(b) Has a communicable disease that poses a health risk to residents and cannot be safely addressed by universal precautions.

3854 PERSONNEL RECORDS

3854.1 Each MHCRF shall have written personnel policies, which shall be made available to the Department and to each staff member and shall include the following:

(a) The hours of work, policies regarding on duty requirements, compensation time, night-time duties, work relief provisions for live-in employees, vacations, sick leave, insurance, and other benefits, if any;

(b) A description of the duties for each category of employee;

(c) Provisions for new staff orientation and annual in-service training of staff; and

(d) Provisions for disciplinary action or termination for illegal activity, negligence, or misconduct that occurs on the job.

3854.2 Each MHCRF shall maintain accurate personnel records for each Residence Director, staff member, and volunteer in a secure location at the facility that shall include the following information:

(a) Name, address, gender, and social security number;

(b) Current professional license or registration number, if any;

(c) Record of education, training, prior employment, and evidence of attendance at orientation, training, workshops, and seminars sponsored by the Department;

(d) Current health certification, including results of an annual intra-dermal tuberculin skin test or chest x-ray indicating no active tuberculosis;

(e) Verification of previous employment, if any;

(f) Documentation that the employee or volunteer has had a criminal background check in accordance with § 3850 and has not been convicted of a disqualifying crime, in accordance with the Criminal Background Check Act and 22-B DCMR, Chapter 47;

(g) Documentation of certification in emergency first aid, CPR, and the Heimlich Maneuver;

(h) Documentation of certification as an FPM or FSM if engaged in food preparation;

(i) Dates of employment;

(j) Position held by the employee;

(k) Documentation of any disciplinary issues;

(l) Copy of the employment agreement between the MHCRF and employee, which shall include basic terms of employment including, at a minimum:

(1) Salary or hourly rate of pay;

(2) Hours;

(3) Duties;

(4) Benefits; and

(5) A statement that employees hold a position of trust in relation to residents, that employees shall not harass, exploit, or physically, emotionally, or sexually abuse residents, or have sexual relations with residents, and that any violation of these prohibitions shall be grounds for immediate termination and may also result in a report to Adult Protective Services and the police.

3854.3 Each MHCRF shall also maintain a record of the dates and times that each volunteer is present or assisting at the facility.

3854.4 Each MHCRF shall maintain payroll records and weekly staff schedules for each Residence Director and employee for a period of at least six (6) months and provide copies to the Department upon request.

3854.5 Each MHCRF shall maintain copies of any agreements with contractors or consultants related to the operation of the MHCRF.

3855 FINANCIAL RECORDS

3855.1 Each MHCRF shall maintain all financial records related to the building where the MHCRF is located and the MHCRF business as provided in this section.

3855.2 Each MHCRF shall immediately submit or make available mortgage, rent, utilities, tax and insurance information when requested by the Department.

3855.3 Financial records related to the building where the MHCRF is located shall include all mortgage, rent, utilities, tax and insurance payments, home repairs, and renovations and shall be maintained in an orderly file for a period of at least three (3) years.

3855.4 Other business financial records shall include receipts for food purchases, household supplies, and professional infestation treatment, and shall be maintained in an orderly file for at least one (1) year.

3855.5 Financial records shall be maintained at the facility or at the Operator's business office in the District of Columbia and shall, upon request, be provided within twenty-four (24) hours for inspection by the Director.

3855.6 Where an Operator operates several facilities and buys food, bedding, or other household supplies for several facilities at one time, the Operator shall document on the financial records and receipts the dollar amount allocable to each MHCRF.

3855.7 Each MHCRF shall submit a financial report to the Director every six (6) months in accordance with DBH policies and directives and any current contract between DBH and the MHCRF Operator.

3856 PAYMENT OF DISTRICT FUNDS

3856.1 No District of Columbia funds for room and board shall be paid to any MHCRF or to any person residing in a MHCRF for his or her maintenance in that facility unless the MHCRF is licensed pursuant to this chapter.

3856.2 No person shall be referred by the Director or designee for the Optional State Payment who is residing in an unlicensed facility. Further, no unlicensed facility, rooming house, or boarding house shall be entitled to receive the Optional State Payment for the maintenance of a person residing in the facility, unless the facility is licensed pursuant to this chapter.

3857 SUPPORTED RESIDENCE

3857.1 A Supported Residence (SR) shall meet the minimum requirements for a home-like living environment, staffing, and resident care set forth in §§ 3800, 3850 and 3852.

3857.2 An SR shall be appropriate for a maximum of eight (8) adults with a principal diagnosis of serious and persistent mental illness who require twenty-four (24) hour supervision. A higher number of residents may be allowed where "grand-fathered" or specifically authorized by the Director pursuant to § 3800.5.

3857.3 Each person seeking residential placement in an SR shall have a principal diagnosis of mental illness and be in need of twenty-four (24) hour staff supervision to assist with ADLs, meals, lodging, and recreation. Residents may remain in the residence, work, or participate in a structured day program, or other daily activity. Attendance at a day program shall not be mandatory for persons seeking placement in an SR.

3857.4 There shall be an assigned Residence Director for each SR who shall provide or arrange for supervision and coordinate services to ensure that each resident's health, safety, and welfare are protected.

3857.5 An SR shall maintain a minimum ratio one (1) staff member for each eight (8) residents or fewer, at all times, for purposes of complying with this section and receipt of the per diem payments.

3857.6 An SR shall provide awake supervision a minimum of sixteen (16) hours a day, and shall provide awake supervision during the night when required to adequately address the needs of one or more residents experiencing a period of destabilization, an emergency, or other situation requiring prompt attention.

3857.7 The resident's treatment team and the facility's Residence Director, in conjunction with the Department, shall determine whether a person is appropriately placed in an SR.

3857.8 The Residence Director and staff at an SR shall also meet any additional qualifications or higher staff-to-resident ratios required pursuant to a current contract between the MHCRF and the Department for SR services.

3858 SUPPORTED REHABILITATIVE RESIDENCE

3858.1 A Supported Rehabilitative Residence (SRR) shall provide on-site rehabilitative services in addition to meeting the minimum MHCRF requirements for a home-like environment, staffing, and resident care set forth in §§ 3800, 3850 and 3852.

3858.2 An SRR shall be appropriate for a maximum of eight (8) adults (unless a higher number is specifically authorized pursuant to § 3800.5) with a principal diagnosis of serious and persistent mental illness who require twenty-four (24) hour supervision and on-site rehabilitation and who may require specialized services on-site.

3858.3 Each person seeking residential placement in an SRR shall have a principal diagnosis of mental illness, be in need of twenty-four (24) hour staff supervision to assist with ADLs, meals, lodging, and recreation, and shall also require on-site rehabilitation. Residents may remain in the residence, work, or participate in a structured day program or other daily activity. Attendance at a day program shall not be mandatory for persons seeking placement in an SRR.

3858.4 Specialized services, such as medication administration, limited or intermittent nursing care, or physical therapy, shall be provided as necessary on a scheduled basis as established in the resident's IRP. These services shall be provided by appropriate and qualified:

(a) District of Columbia licensed health care professionals; or

(b) Nursing assistive personnel, such as Trained Medication Employees, Medication Aides, or Certified Nursing Assistants certified by the D.C. Board of Nursing and working within the scope of their certification with required supervision.

3858.5 An SRR shall maintain a staff to resident ratio of at least one (1) to eight (8), twenty-four (24) hours per day, and at least two (2) staff persons for every five (5) to eight (8) residents during periods of peak activity as provided in §§ 3858.6 and 3858.7. If there are four (4) or fewer residents, a second staff person is not required, except as provided in § 3858.8.

3858.6 An SRR shall determine the hours of peak activity based upon the hours that meals are served and when most residents are home and awake. At a minimum, the following are peak hours for purposes of complying with this section and receipt of the per diem payments: 6:00 a.m. to 9:00 a.m. and 5:00 p.m. to 8:00 p.m.

3858.7 The Department may approve a written MHCRF staffing plan with different peak hours upon a showing that the MHCRF is providing adequate staffing coverage based upon the residents' individual schedules. The SRR shall maintain a record

of any changes in the peak activity hours and work schedules and the reason for the changes.

3858.8 An SRR shall provide awake supervision a minimum of sixteen (16) hours a day and shall provide awake supervision twenty-four (24) hours a day when required to adequately address the needs of one or more residents experiencing a period of destabilization or residents who require twenty-four (24) hour awake supervision on an ongoing basis in order to be maintained within the SRR and in the community.

3858.9 An SRR shall have the capacity to provide one-to-one support to residents on a periodic basis, as needed, to care for and safeguard the resident and other residents of the facility.

3858.10 In addition to the general staff requirements in this chapter, staff shall be responsible for providing rehabilitative services, therapeutic support, management, and re-direction consistent with the resident's IRP. Staff shall provide a consistent and therapeutic environment where through daily contact and interaction the resident's needs and progress are assessed.

3858.11 Rehabilitation in an SRR shall be coordinated under the direction of the resident's designated clinical treatment team in conjunction with the Residence Director and facility staff.

3858.12 There shall be an assigned Residence Director who shall provide or arrange for supervision and coordination of rehabilitative and other required services at the SRR to ensure that each resident's health, safety, and welfare are protected.

3858.13 The resident's clinical treatment team and the facility's Residence Director, in conjunction with the Department shall determine whether a person is appropriately placed in an SRR.

3858.14 The Residence Director and staff at an SRR shall also meet any additional qualifications or higher staff-to-resident ratios required pursuant to a current contract between the MHCRF and the Department for SRR services.

3859 INTENSIVE RESIDENCE

3859.1 An Intensive Residence (IR) shall provide on-site medical assistance, nursing, and rehabilitative services, in addition to meeting the minimum MHCRF requirements for a home-like environment, staffing, and resident care set forth in §§ 3800, 3850 and 3852.

3859.2 An IR is appropriate for a maximum of eight (8) adults with a principal diagnosis of serious and persistent mental illness who have special needs due to co-morbid medical conditions that cannot be adequately provided for in an SR or SRR.

These residents require twenty-four (24) hour staff supervision and enhanced care, and may need periodic one-to-one support for medical conditions or due to the intensity of psychiatric symptoms.

3859.3 An IR shall have a staff-to-resident ratio of two (2) to eight (8), 6 a.m. to 10 p.m. daily whenever a resident is present. Additional staff shall be available during times of peak activity. At a minimum, the following are peak hours for purposes of complying with this section and receipt of the per diem payments: 6:00 a.m. to 9:00 a.m. and 5:00 p.m. to 8:00 p.m.

3859.4 The Department may approve a written MHCRF staffing plan with different peak hours upon a showing that the MHCRF is providing adequate staffing coverage based upon the residents' individual schedules. The IR shall maintain a record of any changes in the peak activity hours and work schedules and the reason for the changes.

3859.5 An IR shall have the capacity to provide one-to-one staffing when necessary as determined by the resident's treatment plan and the immediate needs of the resident and other residents in the facility.

3859.6 Awake staff is required twenty-four (24) hours per day in an IR.

3859.7 Staffing shall be provided in accordance with the special program needs of residents including geriatric, dual diagnosis, behavioral, or nursing care, and may include medical, psychiatric, nursing, behavioral, social, and recreational services.

3859.8 The Residence Director or a staff member shall be present whenever residents are at the residence. In addition, the Residence Director or designee shall arrange for clinical back-up services. The mental health professional designated to provide back-up services shall:

(a) Be available by telephone at all times;

(b) Be able to reach the residence within thirty (30) minutes in case of an emergency; and

(c) Be identified by name with an emergency telephone number provided to residents and staff.

3859.9 Each Residence Director of an IR shall meet the requirements of § 3851 and shall also meet any additional professional license or experience qualifications, or higher Residence Director-to-resident ratios required pursuant to a current contract between the MHCRF and the Department for IR services.

3859.10 Each IR shall have a full-time Registered Nurse at the facility a minimum of eight (8) hours per day. In addition, a Licensed Practical Nurse (LPN) shall be on duty

at the facility the remaining sixteen (16) hours a day or whenever an RN is not on duty.

3859.11 "On call" RN nursing consultation, supervision, and support shall be available to the LPN and any other staff on duty whenever an RN is not on duty at the facility. The LPN shall be under the general supervision of a Registered Nurse at all times.

3859.12 The resident's clinical treatment team and the facility's Residence Director in conjunction with the Department, shall determine whether a person is appropriately placed in an IR.

3859.13 An IR shall be in compliance with applicable requirements under the Americans with Disabilities Act, including accessibility requirements for bedrooms, living spaces and bathrooms.

3860 TRANSITIONAL RESIDENTIAL BEDS

3860.1 Transitional residential beds (SR-Transitional) shall be located in a Supported Residence facility and shall meet all requirements of a SR MHCRF; except that a SR-Transitional may have up to ten (10) beds in a single facility and may maintain a staff to resident ratio of one (1) to ten (10).

3860.2 A SR-Transitional is a MHCRF designed for individuals who currently require the care and supervision provided in a SR, but who have been assessed by their treatment team and DBH as having the potential to live independently with necessary recovery and transition planning assistance. A primary purpose of the SR-Transitional is to speed the transition from a higher to a lower level of care in the community.

3860.3 Individuals appropriate for placement in a SR-Transitional facility include adults who may be at risk of becoming homeless, have been recently hospitalized, have been dually diagnosed with a substance abuse disorder, or otherwise lack essential skills necessary to move immediately to permanent supported housing or independent living in the community.

3860.4 The length of stay in a SR-Transitional is intended to range from six (6) months to a maximum of one (1) year, based upon the temporary resident's ability to accept a permanent living arrangement. The one (1) year maximum period can be extended by the Department on a monthly basis for cause, upon request by the MHCRF.

3860.5 Not more than ten (10) transitional residential beds shall be located in one (1) facility, unless a waiver is specifically authorized by the Director.

3860.6 A SR-Transitional shall assess the resident's needs upon admission and develop a transition plan for each resident in coordination with the resident and his or her

CSA. The transition plan shall include specific goals and objectives and the specific services, and behavioral and psycho-educational supports that will be provided to enable the resident to transition to supported housing or independent living.

3860.7 A SR-Transitional shall meet all requirements and provide all deliverables required by any contract between the Department and the transitional MHCRF, in addition to meeting all requirements of this chapter. In addition to the staff qualification requirements in Section 3850, each SR-Transitional Residence Director shall have at least one (1) year additional experience in working with homeless persons.

3860.8 Notwithstanding § 3860.1, the Department may require by contract that a MHCRF with transitional beds maintain a higher staff to resident ratio than a one (1) to ten (10) staff to resident ratio. Failure to comply with the ratio mandated by contract shall be a violation of this section.

3860.9 Each SR-Transitional shall work with the resident, the resident's treatment team, and the Department to ensure that the individual is appropriately placed in a SR-Transitional and is transferred to more permanent housing as soon as appropriate.

3860.10 When applying for a MHCRF license pursuant to § 3805, the Operator shall specify that it wishes to receive a license for a SR-Transitional.

3861 MHCRF TRANSFER, DISCHARGE, AND RELOCATION

3861.1 The MHCRF shall promptly notify the Director, the resident's CSA treatment team or other mental health care provider, and the resident's physician when the resident's physical or mental condition changes and the resident requires services or supports that may require discharging, or transferring the resident, or relocating the resident within the facility. Under no circumstances shall a resident be discharged, transferred, or relocated without notifying the Department.

3861.2 Every discharge, transfer, or relocation of any resident shall be in full compliance with title III of the Nursing Home and Community Residence Facility Residents' Protection Act, including the MHCRF's reasons for seeking to transfer, discharge, or relocate the resident, and all notice and hearing requirements.

3861.3 A discharge, transfer, or relocation of any resident shall be consistent with the resident's IRP.

3861.4 The discharge, transfer, or relocation of a resident of a MHCRF that receives contract funds from the Department shall be subject to prior approval by the Director in addition to the other requirements of this section. Failure to do so may result in the loss of contract funds.

3861.5 Prior to the issuance of a twenty-one (21) day notice for an involuntary transfer or discharge, the MHCRF shall schedule a case conference with the resident and a representative of the CSA and shall notify the Director and the LTCO of the date and time of the meeting.

3861.6 Residents who are hospitalized have a right to return to the facility in accordance with the terms and conditions of subsection 3861.9.

3861.7 In the event the resident's hospitalization does not meet the conditions of Subsection 3861.9 and the MHCRF seeks to transfer, discharge, or relocate the resident, the MHCRF shall comply with the Community Residence Facility Residents' Protection Act and this section.

3861.8 A MHCRF shall also comply with any additional requirements for transferring or discharging residents and for allowing residents to return to a facility after hospitalization or other absence from the facility, required by a current contract for MHCRF residential services between the Department and the MHCRF.

3861.9 A MHCRF shall coordinate with a resident's treatment team during periods of hospitalization to ensure the resident receives temporarily institutionalization benefits, if eligible. A resident who receives Supplemental Security Income and is admitted to a public institution, the primary purpose of which is the provision of medical or psychiatric care, or to a public or private Medicaid-certified medical treatment facility, shall be allowed to return to the MHCRF within ninety (90) days if:

(a) A physician has certified in writing to the Social Security Administration that he or she expects the recipient to be medically confined for ninety (90) consecutive days or less;

(b) The resident's Supplemental Security Income has been continued during the period of hospitalization so that the resident may continue to maintain a home or living arrangement;

(c) The MHCRF is receiving payment for the room occupied by or held for the resident; and

(d) The resident's needs are consistent with services provided by the MHCRF as determined by the resident's treatment team in conjunction with the resident.

3861.10 In the case of an emergency situation caused by a natural disaster, extreme heat or cold, extended power outage, or other emergency where the MHCRF cannot safely care for residents at the facility and residents need to be temporarily moved to another location, the MHCRF shall immediately notify both the LTCO and the Department and advise them of the situation and the actions the MHCRF plans to take.

3861.11 If the MHCRF is not able to make direct contact, and time or conditions do not permit it to obtain advance authorization, the MHCRF shall leave a detailed message at both numbers, including the address or addresses to which residents are being relocated, and a phone number where the Operator can be reached. The MHCRF shall comply with the notice requirements in the Community Residence Facility Residents' Protection Act for any temporary move or relocation that is expected to exceed thirty (30) days.

3861.12 Where the MHCRF temporarily moves residents under the conditions described in § 3861.10, the MHCRF shall cooperate with the Department and the Ombudsman to facilitate immediate inspections, comply with legal requirements, and address resident needs.

3861.13 Whenever an Operator needs to temporarily move residents under the conditions described in § 3861.10, the Operator shall ensure that the temporary transfers:

(a) Do not exceed forty-eight (48) hours unless requested by the Operator in writing and approved in writing by the Department; and

(b) Are to locations that are:

(1) In the District of Columbia and in compliance with federal and District legal requirements;

(2) Safe for occupancy; and

(3) Equipped with adequate bathroom facilities and adequate accommodations for eating and sleeping.

3861.14 If occupancy limits are exceeded at another MHCRF to accommodate residents who have to be moved, the Operator shall ensure that the temporary increased occupancy does not create a hazard or danger for residents, and that resident needs are met.

3861.15 Once the emergency has abated, the MHCRF shall return the residents to the facility. No resident shall be permanently discharged, transferred or relocated under the emergency provisions unless the MHCRF or the Department has complied with Community Residence Facility Residents' Protection Act.

3899 DEFINITIONS

3899.1 When used in this chapter, the following terms shall have the meanings ascribed:

"Activities of daily living" – Basic life activities that include ambulating and transferring, bathing, dressing, grooming, toileting, and eating.

"Administrative Procedure Act" – the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §§ 2-501 *et seq.*).

"Adult Protective Services Act" – the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code §§ 7-1901 *et seq.*).

"Americans with Disabilities Act" – The Americans with Disabilities Act of 1990, approved July 26, 1990 (Pub. L. 101-336, 104 Stat. 328; 42 U.S.C §§ 12101 *et seq*.).

"Applicant" – an individual, corporation, partnership, or agency that applies for a license or renewal license to operate a MHCRF, is the Operator of the MHCRF business, and has an ownership or leasehold interest in the property where the MHCRF will be located.

"Awake supervision" – supervision by a staff person who is not sleeping or resting, is alert, on duty, and is prepared to address the needs of residents and any situations which may arise including matters requiring prompt attention and emergencies.

"Behavioral Health Establishment Act" -- the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141 *et seq.*).

"Business days" – calendar days excluding Saturdays, Sundays, and legal holidays.

"Civil Infractions Act" – the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq*.).

"Clean Hands Act" – the Clean Hands Before Receiving A License or Permit Act of 1996, effective May 11, 1996 (D.C. Law 11-118; D.C. Official Code §§ 47-2861 *et seq.*).

"Community Residence Facility" – a facility that provides a sheltered living environment for individuals, eighteen (18) years of age or older, who desire or need such an environment because of their physical, mental, familial, social, or other circumstances, and who are not in the custody of the Department of Corrections. *See* § 2 of the Licensure Act (D.C. Official Code § 44-501). A community residence facility is included within the definition of a "community-based residential facility" under the District of Columbia Construction Codes Supplement, 12-A DCMR, § 202.

"Consumer" or "Consumers" – person or persons who seek or receive mental health services or supports funded or regulated by the Department of Behavioral Health.

"Consumers' Rights Act" – the Mental Health Consumers' Rights Protection Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code §§ 7-1231.01 *et seq.*).

"Core Services Agency" or "CSA" – a community-based provider of mental health services and mental health supports that is certified by the Department and that acts as a clinical home for consumers of mental health services.

"Criminal Background Check Act" – Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq*.).

"Crisis bed" – a bed provided in a residential setting that offers substantial quantities of psychological assistance to individuals in psychiatric crisis, until the immediate emotional crisis passes and an acceptable level of stability is regained, usually within 30 days.

"DCRA" – the District of Columbia Department of Consumer and Regulatory Affairs.

"Department" – the Department of Behavioral Health.

"Dietitian" – an individual who meets the qualifications and standards for membership in the American Dietetic Association and who applies the principles of nutrition and management to menu planning, food preparation, and service.

"Director" – the Director of the Department of Behavioral Health or the Director's designee.

"Discharge" – termination of the resident's stay at the MHCRF, due to action taken by the MHCRF or the Mayor, or by the choice of the resident.

"District of Columbia Construction Codes" – 2012 ICC Construction Codes as amended by the D.C. Construction Codes Supplement (2013), Title 12 DCMR, or currently adopted version of Construction Codes.

"District of Columbia Fire Prevention Code" – 2012 ICC Fire Code as amended by the D.C. Fire Code Supplement (2013), Title 12-H DCMR, or currently adopted version of the Fire Code

"District of Columbia Housing Code" – Title 14 DCMR.

"District of Columbia Property Maintenance Code" – 2012 ICC Property Maintenance Code as amended by the D.C. Property Maintenance Code Supplement (2013), Title 12-G DCMR, or currently adopted version of the Property Maintenance Code.

"Disqualifying crime" – a conviction of one of the following crimes within seven (7) seven years prior to a criminal background check: (1) murder, attempted murder, or manslaughter; (2) arson; (3) assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats-to-do bodily harm; (4) burglary; (5) robbery; (6) kidnapping; (7) theft, fraud, forgery, extortion or blackmail; (8) illegal use or possession of a firearm; (9) rape, sexual assault, sexual battery, or sexual abuse; (10) child abuse or cruelty to children; (11) unlawful distribution, or possession with intent to distribute, of a controlled substance; or (12) the equivalent of any of the foregoing in another state or territory.

"Food Code" – District of Columbia Food and Food Operations Code, Title 25-A DCMR.

"Habitable room" – an undivided, enclosed space with natural light and ventilation, including a room for living, eating, or sleeping, that complies with applicable District of Columbia Building and Housing Codes regulations.

"Home-like environment" – an integrated residential setting that meets the requirements of 42 C.F.R. § 441.301.

"HIPAA" – the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. 104-191, 110 Stat. 1936), and the HIPAA Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule), 45 C.F.R. Parts 160 and 164.

"Human Rights Act" – the District of Columbia Human Rights Act, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401 *et seq.*).

"Independence" – the quality of being self-reliant and free from the control of others.

"Independent living" – living alone or with friends or relatives in a private home, apartment, or rooming house.

"Individual Recovery Plan" or "IRP" – a written plan for a resident's continued treatment and care that includes goals, objectives, and interventions

developed by a multi-disciplinary treatment team in consultation with the resident.

"Licensee" – a person or entity to whom a license to operate a MHCRF has been issued.

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

"Limited or intermittent nursing care" – simple nursing care provided on a periodic basis in a MHCRF, including blood pressure monitoring, insulin injections, and dressing changes, provided by a licensed RN or LPN, or under the supervision of a RN or LPN by a D.C. Board of Certified Nursing Assistant, Medication Aide, or other certified nursing assistive personnel, within the scope of their certification.

"Long-Term Care Ombudsman" or "LTCO" – the person designated under the Long-Term Care Ombudsman Act and referenced in § 101(7) of the Nursing Home and Community Residence Facility Residents Protection Act to perform the functions of the Long-Term Care Ombudsman in the District of Columbia.

"Long-Term Care Ombudsman Act" – the District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code §§ 7-701.01 *et seq*.).

"Major unusual incident" ("MUI") – An adverse event that can compromise the health, safety, or welfare of persons, employee misconduct, fraud, and actions that are violations of law or policy.

"Mayor" – the Mayor of the District of Columbia or his or her authorized designee.

"Medication Aide" – an individual who has been certified by the District of Columbia Board of Nursing to perform nursing assistive tasks and to administer medication under the supervision of a licensed nurse. A Medication Aide has met education, experience, and examination requirements pursuant to rules to be adopted by the D.C. Board of Nursing.

"Mental Health Information Act" – the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law. 2-136; D.C. Official Code §§ 7-1201.01 *et seq*.).

"Mental health professional" – a person who is specifically trained and, if required, licensed to provide services to mentally ill persons.

"MHCRF" – refers to Mental Health Community Residence Facility, the Operator, Residence Director, and staff members, as applicable.

"Non-ambulatory" – unable to walk or move from one place to another without personal or mechanical assistance.

"Nursing Home and Community Residence Facility Residents' Protection Act" - the Nursing Home and Community Residence Facility Residents' Protection Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Code §§ 44-1001.01 *et seq.*).

"OAH Rules of Practice and Procedure" – District of Columbia Office of Administrative Hearings Rules of Practice and Procedure, Title 1, Chapter 28 of the District of Columbia Municipal Regulations. (1 DCMR, Chapter 28)

"Operator" – the person or entity that owns the MHCRF business and who applies for and holds an MHCRF license as provided in §§ 3802.1 and 3805.1.

"Optional State Payment" – A supplemental payment for room, board, and care paid to District of Columbia residents who receive Supplemental Security Income and who live in a community residence facility or an assisted living facility as provided for in § 549 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.49).

"Personal assistance" – help with grooming, bathing, eating, walking, toileting, budgeting, making appointments, arranging transportation, and other activities associated with daily living. Personal assistance may involve supervision, prompting, oversight, or hands-on care.

"Provider" – a person, agency, or organization that provides health or support services to a resident, including the Department, Core Services Agencies, the Comprehensive Crisis Emergency Program, agencies that contract with the District of Columbia to provide mental health, behavioral health, medical health, and other services, hospitals, private clinics, and Medicaid providers.

"Provisional license" – a license issued for not to exceed ninety (90) days to new MHCRFs to afford sufficient time and evidence to evaluate whether the new facility is capable of complying with this chapter, or issued to a regular license holder with deficiencies as provided in this chapter.

"Regular license" – a license issued for not to exceed one (1) year to a MHCRF that is in compliance with all applicable laws and regulations.

"Relocation" – the movement of a resident from one part or room of the MHCRF where he or she resides to another, whether voluntary or involuntary, pursuant to the Nursing Home and Community Residence Facility Residents' Protection Act.

"Representative Payee" – an individual or organization appointed by the Social Security Administration to receive Social Security or Supplemental Security Income (SSI) benefits for someone who cannot manage or direct someone else to manage his or her money. The main responsibilities of a representative payee are to use the benefits to pay for the current and foreseeable needs of the beneficiary, properly save any benefits not needed to meet current needs, and keep records of expenses.

"Residence Director" – the individual responsible for the overall management and operation of the MHCRF, including hiring and firing, purchase of food and supplies, arranging repairs, and supervision of employees and volunteers. As provided in § 3804.1(d), a distinct Residence Director is required if the Operator is a corporation or partnership, or if the Operator does not personally manage the facility.

"Resident" – a person who lives in a MHCRF and has or should have a Room, Board and Care Agreement with the Owner.

"Resident's representative" –

(a) Any person who is knowledgeable about a resident's circumstances and has been designated by that resident in writing to represent him or her;

(b) Any person other than a facility who has been appointed by a court either to administer a resident's financial or personal affairs or to protect or advocate for a resident's rights; or

(c) The Long-Term Care Ombudsman or his or her designee, if no person has been designated or appointed in accordance with subparagraphs (A) or (B) of this paragraph.

"Restraint" – any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that he or she cannot easily remove and that restricts his or her freedom of movement or normal access to his or her body. "Restraint" also includes a medication that is used in addition to or in place of the resident's regular, prescribed drug regimen to control extreme behavior during an emergency, but does not include medications that comprise the resident's regular, prescribed

medical regimen and that are part of the resident's service plan, even if their purpose is to control ongoing behavior.

"Restricted license" – a license issued for not to exceed 90 days which permits operation of a MHCRF but includes restrictions on the facility's operations including a prohibition against the MHCRF accepting new residents or from delivering services that it would otherwise be authorized to deliver.

"Seclusion" – the involuntary confinement of a resident alone in a room or an area from which the resident is either physically prevented from leaving, or from which the resident is led to believe he or she cannot leave at will.

"Substantial compliance" – meets most important requirements of the rules, has only a small number of outstanding deficiencies, and is without deficiencies or violations that are life threatening, pose an immediate or serious danger to the residents or facility staff, or jeopardize public health, safety, or welfare.

"Trained Medication Employee" – an individual employed to work in a program, including a MHCRF, who has successfully completed a training program approved by the District of Columbia Board of Nursing and is certified to administer medication to MHCRF residents under the general supervision of a registered nurse licensed in the District of Columbia in accordance with Title 17 DCMR Chapter 61.

"Unlicensed person" – A person not licensed by one of the health occupation boards pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), Chapter 12 of D.C. Official Code Title 3, who functions in a complementary or assistance role to licensed heath care professionals in providing direct patient care or in performing common nursing tasks. The term "unlicensed person" includes nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides. The term "unlicensed person" also includes housekeeping, maintenance, and administrative staff or contractors who will foreseeably come in direct contact with patients.

"Unusual incident" – Any significant occurrence or extraordinary event different from the regular routine or established procedure that does not rise to the level of a MUI.

Chapter 38, COMMUNITY RESIDENCE FACILITIES FOR MENTALLY ILL PERSONS, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is repealed in its entirety.

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register,* with Ms. Atiya Frame-Shamblee, Esq., Deputy Director of Accountability, Department of Behavioral Health at 64 New York Avenue, NE, 3rd Floor, Washington, D.C. 20002-4347. Interested persons may also send comments electronically to Atiya.Frame@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the Department of Behavioral Health's website at www.dbh.dc.gov.

DEPARTMENT OF FOR-HIRE VEHICLES

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of For-Hire Vehicles ("Department" or "DFHV") pursuant to the authority set forth in Sections 8(c) (2), (3), and (19), and 14 of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97), as amended by the Transportation Reorganization Act of 2016, effective June 22, 2016 (D.C. Law 21-0124); D.C. Official Code §§ 50-301.07(c) (2) (3), and (19), and 50-301.13 (2014 Repl. & 2015 Supp.)) hereby gives notice of the adoption, on an emergency basis, of amendments to Chapter 4 (Taxicab Payment Service Providers), Chapter 5 (Taxicab Companies, Associations, Fleets, and Independent Taxicabs), Chapter 6 (Taxicab Parts and Equipment), Chapter 8 (Operating Rules for Public Vehicles-For-Hire), Chapter 18 (Wheelchair Accessible Paratransit Taxicab Service), Chapter 20, (Fines and Civil Penalties), and Chapter 99 (Definitions) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking amends Chapters 4, 5, 6, 8, 15, 18, 20, and 99, the Department's regulations promulgated consistent with the "Modernization of Taxicabs" section of the Establishment Act, added by the Taxicab Service Improvement Amendment Act of 2012, D.C. Law 19-0184 (eff. October 27, 2013) (codified at D.C. OFFICIAL CODE § 50-301.26) and for related purposes. This is the first major overhaul of these regulations (the "modernization regulations") since they were promulgated. This overhaul is required for the reasons stated below; conforming amendments are also required for Chapters 20 and 99. The Department finds that rulemaking must be enacted as emergency rulemaking because there is an immediate need to preserve and promote the safety and welfare of District residents, in order to directly and indirectly alleviate the rapidly-deteriorating competitive position of taxicabs in the District's vehicle-for-hire industry, and to accomplish other lawful objectives within the jurisdiction of the Department, by: (1) incentivizing the prompt transition from legacy taxicab equipment to newer equipment that meets the challenges of today's for-hire market – including replacing modern taximeter systems ("MTSs") with new digital taxicab solutions ("DTSs"), and replacing the patented and licensed universal dome light with a lower-cost vehicle light – to attract more customers, lower regulatory barriers, and increase owner and driver revenue; (2) incentivizing the purchase of 100% electric vehicles, wheelchair accessible vehicles – including the additional accessible vehicles which were required to be purchased by taxicab companies not later than December 2016, vehicles that serve underserved communities, and other vehicles participating in the Department's programs, by amending the uniform color rules to allow for modifications that enhance vehicle identification and appearance, promoting and growing participation in these programs; (3) shifting the responsibility for providing payment and meter systems from payment service providers ("PSPs") that market the MTS systems to taxicab companies and, eventually, to the D.C. Taxicab Industry Co-op ("Co-op") – for the purpose of promoting competition and innovation among a group of businesses that also have more direct ties to the District's taxicab industry, thereby helping to improve customer service; (4) beginning a transition period ending October 31, 2017, from legacy technologies to new technologies – which will involve all 7,500 or so of the District's taxicabs – for the purpose of minimizing disruption to stakeholders and

customers during the transition; (5) ensuring consistency between Title 31 and the Establishment Act; (6) incentivizing the prompt availability of DTSs which – unlike systems that use legacy taximeters – facilitate shared taxicab rides without the need for reprogramming at a meter shop; (7) enhancing safety by incentivizing the early adoption of innovative technologies that integrate with autonomous and semi-autonomous vehicle control systems; (8) enhancing the Department's ability to verify a vehicle's location and status – at such times when the operator is on duty – thereby improving safety, consumer protections, and regulatory compliance, including compliance with the rules prohibiting discrimination through refusal to haul; and (9) providing an extended opportunity for advance business planning by vehicle owners in selecting the equipment they wish to use in their vehicles during the transition period, and by PSPs in deciding how they wish to continue participating in the industry during and/or after the transition – beyond the opportunity created by the notice and comment requirements for proposed rulemaking – in light of the termination of the PSP/MTS program in 2017. The legal authority and policy reasons for the regulatory actions taken herein are illustrative but not exclusive of those which support the actions.

There is no question that the "Modernization of Taxicabs" legislation and the original modernization regulations were a necessity. In 2012, the District's taxicab fleet had a well-deserved reputation for poor service, dirty vehicles, a lack of payment options, and a disregard for regulatory requirements. The original rules brought the fleet into line with other major jurisdictions by establishing basic requirements that vehicles display a uniform color design – to give street hail passengers an assurance that the driver is known to authorities, that vehicles be outfitted with lights displaying the vehicle's number and its availability – to make it easier to hold drivers accountable for violations including ignoring hails, and that vehicles be equipped with meter systems that allow passengers to pay by credit card, in addition to cash.

But the original regulations merely created a floor for taxicab service in the District that was already enjoyed in other major cities, one which the District's residents and visitors had – for far too long – been viewing from the basement. It is now several years later and the time has come to move past the original regulations, which got the industry over its initial hurdles. The pace of for-hire innovation in the past several years, the realities of the current market that now include lawful competition from private vehicles, and the increasing challenges of earning a living by driving a taxicab have combined to render the original modernization regulations obsolete. There has been a continuous decline in total monthly taxicab rides – month after month for the past twelve (12) months – without interruption. Driver revenue continues to fall. At the then-current rate, the Department projected that 2016 would show a thirteen percent (13%) decline in annual taxicab rides compared to 2015.

There is no question that major changes must start immediately as they will involve all stakeholders and affect all passengers. If the industry is to remain viable and continue to provide residents and visitors with the services that it alone provides, it must begin the long process of moving on from MTSs and patented dome lights to lower-priced, innovative technologies to improve revenue, increase customer choice, support the growth of accessible vehicles, and open the door to future innovations. With this in mind, the Department has carefully considered the next steps.

First, PSPs have failed to engage in meaningful competition to benefit drivers, owners, and customers, which was one of the primary purposes of the program when it was created. At that time, the Department observed in this regard that "marketplace competition can provide taxi operators with options that may result in lower costs for equipment, installation and transaction fees". Such competition did not materialize. *See* Determination and Findings, District of Columbia Taxicab Commission, Modern Taximeter System and Proposed Rulemakings (May 8, 2013) at 12-13. Though practices vary, PSP contracts have terms as long as five years, which bind operators to MTS fees ranging from $35 per month or $200-$800 as a one-time fee, plus transaction fees as high as 4.5% per transaction, in addition to other charges.

The long terms and high fees charged by PSPs limit on owner and operator revenue in ways that are not justified by the services that MTSs provide. An MTS unit is essentially a hardware-based data terminal that calculates the amount to be charged, processes a credit card, provides data to the Department, and prints a receipt. While this equipment may fulfill the basic needs of fixed-location retailers, in the current for-hire industry, it has been overtaken by inexpensive solutions running on smartphones. Through an attached card reader, a smartphone app can perform MTS functions at a fraction of the cost per swipe, while creating open-ended space for innovation. Lower cost and technological advancement are critical to the survival of taxicabs in today's highly-competitive market, which now includes private vehicles that were not a factor when the original modernization regulations were promulgated.

Second, the Department's compliance experience with the PSPs has not been a good one. Despite ongoing account reviews begun last year to ensure better oversight of these businesses, most PSPs fall short of meeting their major regulatory obligations. One example is the requirement for integration of each MTS with the DC TaxiApp, which was adopted as proposed rulemaking on December 10, 2014, and became final upon publication in the *D.C. Register* on June 5, 2015. *See* 31 DCMR § 408.16. Integration with other apps is both allowed and encouraged by the Department, as it generates more business for drivers and provides better service to customers who might otherwise have to wait for a street hail. Rides booked by ehail are particularly important in the current market as their fares are set dynamically by the digital dispatch service, rather than using the static street hail rates set by the Department. *See* 31 DCMR § 801. Even after the Department extended the deadline for integration numerous times, however, only two PSPs had fully integrated their MTSs with the DC TaxiApp as of the deadline to renew their licenses for the period ending August 31, 2017.

Another example is the requirement that PSPs provide drivers with the ability to have an electronic manifest capability, so those who wish to do so, can enter ride information into the MTS driver console, rather than continuing to use pencil and paper. An electronic manifest provides more accurate recordkeeping for the Department's compliance and enforcement purposes, and allows drivers to spend less time keeping notes and more time earning revenue. Although the information captured by the manifest overlaps with the data PSPs are already required to the Department in their trip data, most of the PSPs still fail to offer this service to drivers. Further, PSP compliance with the quick payment rule, which requires that drivers be paid their share of revenue from rides within 24 hours or one business day. *See* 31 DCMR § 408.13. Compliance with this rule varies widely. But the failure to pay drivers on time, when

it occurs, is not merely unlawful, it is unconscionable given the income bracket of most drivers. As a result of issues like these, among others, four of the six current PSPs that applied for the renewal of their operating authorities were denied renewal on August 31, 2016.

The current dome light has raised some concerns similar to those raised by the MTS because it is a patented light available only through licensed installation shops that sell lights manufactured by just two businesses. A light that is required by the Act to do nothing more than identify the vehicle and inform passengers of its availability should not cost owners hundreds of dollars. The Department believes it should be able exercise its administrative authority to approve any cruising light that meets the legislative requirements.

For the foregoing reasons, among others, the industry must move on from the original modernization regulations. As noted earlier, by amending the Establishment Act to add the Modernization of Taxicabs section, Council merely established a floor for taxicabs, not a ceiling. It was the Department itself that created the PSP/MTS program and patented the current dome light. The Department has the authority to interpret the legislative requirements as requiring more innovative, lower-cost solutions tailored to fit the needs of the current industry. *See, e.g., Carpenter v. D.C. Rental Hous. Comm'n*, 119 A.3d 683 (D.C. 2014); *Kelly v. D.C. Dep't of Empl. Serv.,* 76 A.3d 94 (D.C. 2013). The Act recognizes the statutory purpose of promoting and maintaining a healthy and viable taxicab industry, which is the primary purpose of this rulemaking. *See* D.C. OFFICIAL CODE § 50-301.02 (Purposes). The Department will achieve this purpose through this rulemaking, because it will enhance driver revenue, ensure the continued availability of wheelchair service by for-hire vehicles, promote access to taxicabs in underserved areas, and reduce regulatory barriers to vehicle ownership, among many other sensible and necessary measures critical to the survival of the taxicab industry at this time. *See id. See also* D.C. OFFICIAL CODE §§ 50-301.02, 50-301.13 (Regulation of public vehicles-for-hire) ((a) The … DFHV may issue any reasonable rule relating to the supervision of public vehicles-for-hire it considers necessary for the protection of the public). Council also recently amended the Establishment Act again in D.C. Official Code § 50-301.26 and other sections to transform the former Taxicab Commission to the Department of For-Hire Vehicles; in doing so, Council could have, but did not, curtail the Department's broad authority to make the changes reflected in this rulemaking. *See* Transportation Reorganization Amendment Act of 2015, D.C. Law 21-0124 (effective. June 22, 2016).

Accordingly, the Department has determined that the MTSs will be replaced with digital taxicab solutions, or "DTSs", by the end of the current MTS licensing period. A DTS will be an open-architecture system combining a state-of-the-art digital taximeter with the DC TaxiApp and as many other ehail apps as the DTS provider chooses to integrate. In a major departure from the PSP/MTS model, the Department will shift the responsibility for providing systems to taxicab companies, taxicab associations, and, once it is fully operational, the Co-op, as these businesses are well-positioned to create innovative solutions while also lowering costs.

The heart of each DTS will be a software-based digital meter, expected to be provided by the Department to the industry free of charge. To spur providers to keep improving, the regulations allow providers to incorporate a different digital meter as long as it meets or exceeds the

performance and features of the Department's meter. Other than that, DTSs will have few specific hardware requirements beyond those in the Establishment Act for a driver console, passenger console, and credit card processing device, to give DTS providers the choice of how best to improve DTSs, with minimal regulation. Providers may choose to include in their DTSs some of the equipment currently installed in vehicles – other than the legacy taximeter – which creates as opportunity for existing businesses to participate in the new program. The new regulations are expected to quickly address many of the shortcomings of the PSP/MTS model, including its greatest – high operating costs. Costs are expected to decrease sharply for the foregoing reasons and, more directly, because DTSs will use credit card devices mounted on smartphones; fees for these services are typically half or less what PSPs on average now charge for the use of MTSs.

The digital meter will also allow for amazing innovations to the District's taxicab industry, the most important of which is dynamic street hail pricing – a first-ever for taxicabs. For the first time, taxicabs will be able to adjust their street hail fares in response to market demand, including for special events, similar to the fare adjustments which – until now – have been available only to apps. Dynamic pricing will be controlled by providers, not by individual owners or operators, and it will occur solely through discounts – up to 100% – on the existing street hail rates and charges. This major innovation will give the District of Columbia's taxicabs a unique boost to level the competitive playing field across the for-hire ecosystem and help keep them a viable industry for years to come.

DTSs will open the door to other new features as well. Providers may choose to offer gift cards and loyalty programs for frequent rider. Passengers will be able to choose to share their locations with friends and family during rides. Customer feedback can be provided instantaneously and continuously to better address issues with vehicle cleanliness, maintenance, and driver behavior. And the new systems will allow for improved data integration with the vehicle to embrace the many improvements in safety expected with the proliferation of autonomous vehicles.

Under the new rules, a basic "cruising light" will replace the patented "legacy dome light". Unlike the current light, the Department will have flexibility to administratively approve and begin a transition to the use of any light that meets the basic requirements for identifying the vehicle and informing street hail passengers of its availability for hire. DTS providers will be responsible for ensuring that DTS units interact correctly with the light, regardless of whether it is a legacy dome light or the cruising light. Eventually, the legacy dome light will be discontinued for installation on vehicles placed in service together with a new vehicle license, but the legacy lights may continue to be used with DTSs and owners who replace vehicles already in service may pay to transfer them to their replacement vehicles. The new lights – operating in tandem with the DTSs – are expected to decrease refusal to haul issues, as the data provided by the DTSs will allow the Department to verify with greater accuracy whether an operator was on duty at the time and in the location when a passenger informs the Department that a street hail was ignored. Finally, the Department is amending the uniform color scheme rules to allow for enhancements that reflect a vehicle's participation in programs, including those which serve disabled passengers and underserved areas, or which promote fuel efficiency, such as 100% electric vehicles.

The Department finds that the continued approval of PSPs and MTSs is not in the interest of the District, its residents, its visitors, or taxicab owners or operators. PSP licensing will terminate on October 31, 2017. PSPs which were granted a license expiring August 31, 2017, shall have that license extended until October 31, 2017. This rulemaking does not create an independent basis for any person to cancel an existing contract with a PSP; it simply begins a transition period from MTSs to DTSs, ending with the optional deployment of DTSs beginning September 1, 2017, and the mandatory deployment of DTSs beginning November 1, 2017. The Department will post one or more administrative issuances as may be needed to guide affected stakeholders during the transition period.

The Department encourages all stakeholders to participate in the public debate, by submitting comments during the comment period for the proposed rulemaking once this notice is published in the *D.C. Register*, by visiting the Department's website at http://dfhv.dc.gov/, and by attending and testifying at the public hearing to be scheduled once the comment period has been determined.

A notice of emergency and proposed rulemaking was adopted by the Department on September 13, 2016, unpublished in the *D.C. Register*. The first emergency rulemaking took effect immediately upon adoption and remained in effect for one hundred twenty (120) days expiring on January 11, 2017. A second emergency and proposed rulemaking was adopted on January 11, 2017, unpublished in the *D.C. Register.* It took effect immediately upon adoption and remained in effect for 120 days expiring on May 11, 2017. A third emergency rulemaking was adopted by the Department on May 11, 2017, unpublished in the *D.C. Register*, and took effect immediately upon adoption. It was superseded by a fourth emergency rulemaking, unpublished in the *D.C. Register*, which was adopted by the Department on June 28, 2017, with changes from the third notice as follows: (1) § 503.1 was updated to maintain consistency with owner decisions to repaint; (2) §§ 510 and 602 were clarified to limit DTS providers to taxicab companies and the D.C. Taxicab Industry Co-op to ensure centralized management and control, and the adequacy of capital resources, needed to create, maintain, and operate a DTS; (3) § 602.4 was updated to allow the Department to make an arrangement with a payment card provider to process payment cards for the entire industry at less than 2.75% per swipe; (4) § 602.5 was clarified as to the substance of an applicable administrative issuance; (5) § 602.14(b)(2) was clarified to ensure that passenger surcharge payments reflect actual trips taken regardless of the amount collected by the DTS provider; (6) § 823 was updated to require each vehicle equipped with a DTS unit be operated only with the use of the DTS unit's electronic manifest; and (7) § 1806.9 was updated to clarify that Transport DC providers must have either an MTS or a DTS unit that is capable of transmitting trip information to the Department regarding eligible Transport DC trips. Subsections 602.5 and 602.13 were also amended based on the Department's current experience in reviewing the initial DTS provider applications, which took significantly more time and resources than originally anticipated, including a live demonstration program, demonstrating the need for applications deadlines to ensure each DTS is approved sufficiently in advance of the next uniform approval period to ensure that the DTS open season includes only those providers whose products are ready for informed market comparisons by owners and operators and have been scaled for availability and prompt installation. The amendments clarified that an applicable administrative issuance may establish deadlines by which DTS applications must be filed for the next uniform approval period, after which the approval, if any, may only be for the uniform

approval period beginning one (1) year thereafter.

The fourth emergency rulemaking was superseded by a fifth emergency and proposed rulemaking, which was adopted on August 11, 2017 and which took effect immediately upon adoption, unpublished in the *D.C. Register*. The fifth emergency and proposed rulemaking allowed a DTS provider to use any payment card processor provided it charges no more than a 2.75 percent processing fee. This rulemaking also corrected a minor numbering error that had two sections given the same number (602.15), and changed the DTS surcharge payment frequency requirement from weekly to monthly.

The fifth rulemaking is hereby superseded by a this emergency and proposed rulemaking, which was adopted on August 28, 2017, and which took effect immediately upon adoption, and shall expire December 26, 2017 unless superseded by another rulemaking.

The Department believes that this rulemaking must be enacted on an emergency basis rulemaking because there is an immediate need to preserve and promote the safety and welfare of District residents by extending the DTS implementation date from August 31, 2017, to October 31, 2017 to provide allow taxicab companies, associations, independent owners, and rental drivers additional time to choose from among the solutions offered by the approved DTS providers.

The Director hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than forty-five (45) days after the publication of this notice in the *D.C. Register*. A public hearing will be held on the proposed rulemaking in not fewer than twenty (20) days from the date of publication. Instructions on submitting comments on this rulemaking may be found at the end of this Notice.

Chapter 4, TAXICAB PAYMENT SERVICE PROVIDERS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 401, GENERAL REQUIREMENTS, is amended as follows:

A new Subsection 401.7 is added as follows:

401.7 Notwithstanding any other provision of this title, no PSP shall be approved by the Department to operate, or to market MTS units, after October 31, 2017.

Chapter 5, TAXICAB COMPANIES, ASSOCIATIONS, FLEETS, AND INDEPENDENT TAXICABS, is amended as follows:

Section 503, TAXICAB COLORINGS AND MARKINGS, is amended as follows:

Subsection 503.1 is amended to read as follows:

503.1 Uniform color scheme. Each vehicle used as a taxicab shall be in compliance with the uniform color scheme in § 503.3 if:

(a) It is entering service using a new taxicab vehicle license (and corresponding new "H tag" from DMV);

(b) It is entering service using an existing vehicle license, as required by the vehicle retirement rules of Chapter 6 or based on the owner's decision to replace a vehicle earlier than required by such rules; or

(c) The owner chooses to repaint in whole or in part for any reason, including changes in association or affiliation.

Subsection 503.3 is amended by adding a new subparagraph (h) to read as follows:

(h) The PVIN shall appear in one or more locations on the vehicle if the vehicle is equipped with a cruising light rather than a legacy dome light, as set forth in an administrative issuance.

Subsection 503.4 is amended to read as follows:

503.4 The Department may allow or require enhancements to or modifications of the uniform color scheme for a vehicle that participates in a pilot, grant, donation agreement, or other program, or that is equipped with a digital taxicab solution ("DTS").

Section 510, TAXICAB COMPANIES AND ASSOCIATIONS – OPERATING REQUIREMENTS, is amended as follows:

Sections 510.5 and 510.6 are amended to read as follows:

510.5 Beginning September 13, 2016, each taxicab company may operate a digital taxicab solution ("DTS"), and may equip its owned and/or associated vehicles, or any other licensed taxicab, with a DTS unit. Beginning November 1, 2017, each taxicab company shall operate a DTS and shall equip each of its owned and associated vehicles with a DTS unit. Each DTS shall be approved and operated pursuant to Chapter 6, other applicable provisions of this title, other applicable laws, and any applicable administrative issuance. Each DTS unit shall be installed and operated pursuant to a written agreement. Until a taxicab company operates an approved DTS, it shall continue to provide one or more safety devices for all of its owned and associated vehicles that conforms to the equipment requirements of § 603.8 (n) (3), as specified in an administrative issuance, including a device which provides for operator safety.

510.6 Each taxicab company shall maintain a website containing only current and accurate information about the company, including, if it operates a DTS:

(a) If it uses dynamic street hail pricing: a prominent, clear, and complete disclosure of its current discount, if any, on the street hail rates and

charges in Chapter 8, which shall be the same as the disclosure that appears on the passenger console of each DTS unit; and

(b) A general description of the DTS and its components, the most recent date on which the DTS was approved by the Department pursuant to Chapter 6, and a disclosure of the DTS contract terms including its pricing structure.

Chapter 6, TAXICAB PARTS AND EQUIPMENT, is amended as follows:

Section 602, TAXIMETERS, is amended to read as follows:

602 TAXIMETERS AND DIGITAL TAXICAB SOLUTIONS

602.1 Beginning September 13, 2016:

(a) No legacy (non-digital) taximeters shall be approved by the Department; and

(b) No person shall participate in dispatching, operating a taxicab, or otherwise providing taxicab service in the District if the vehicle is not equipped with a DTS unit provided by an approved DTS.

602.2 Beginning September 1, 2017:

(a) Taxicabs may utilize either the legacy PSP/MTS technology or DTS in their vehicles to process in-vehicle payments.

602.3 Beginning November 1, 2017:

(a) The Department shall approve only DTSs, each of which shall incorporate a digital taximeter;

(b) The approval of each legacy taximeter's operating authority shall terminate; and

(c) No person shall participate in dispatching or otherwise providing taxicab service if the service is provided without an approved DTS.

602.4 Each DTS shall be provided and maintained by a taxicab company, or by the D.C. Taxicab Industry Co-op ("Co-op") (collectively for purposes of this section, "provider"). Each DTS shall comply with the technology and service requirements of this section. The Co-op shall seek approval of its DTS not later than six months following its registration as a DDS.

602.5 Each DTS shall include any digital taximeter and use any payment card processor, as determined by the DTS provider, provided however, that:

(a) If the Department makes a digital taximeter available to the industry free of charge, then each DTS provider shall incorporate such digital taximeter into its DTS within ninety (90) days of its availability, or such longer period as set by administrative issuance, provided however, that each DTS provider may in lieu thereof incorporate any other digital taximeter that meets or exceeds the performance and features of the Department's digital meter; and

(b) A payment card processor must process DTS payments at a total cost at or below two and seventy five one hundredths percent (2.75%) per swipe.

(c) The legality or wisdom of any administrative issuances promulgated pursuant to (a) of this subsection may be challenged in an administrative proceeding.

602.6 The Department may issue an administrative issuance concerning DTSs and DTS units to:

(a) Establish requirements for when approval or renewal of approval is required, including establishing uniform approval periods of not less than twelve (12) months; establishing an annual DTS open season during which DTS providers approved for the next uniform approval period may compete for customers during such period; establishing an annual deadline by which DTSs must apply for approval or renewal in order to be approved for the next uniform approval period and to participate in the next DTS open season, or otherwise be considered only for approval during the uniform approval period starting one (1) year after the next uniform approval period; and establishing standards from when re-approval is required due to a material modification of a DTS during an approval period;

(b) Interpret and provide guidance about DTS technology and service requirements;

(c) Establish reasonable requirements related to surcharge bonds;

(d) Establish reasonable requirements for the use, operation, configuration, placement, and installation of DTS units and their components, such as requirements for accessibility and use by disabled passengers including visually-impaired and blind customers;

(e) Establish reasonable requirements concerning the use of dynamic street hail pricing, including the placement of signs in and/or on vehicles to inform passengers about such pricing;

(f) Establish reasonable requirements concerning the requirements for separate mechanisms for the operator and the passenger to discretely summon assistance;

(g) Interpret and provide guidance on the requirements for a digital taximeter that a DTS provider seeks to incorporate in its DTS in lieu of a digital taximeter regarding its ability to meet or exceed the performance and features of the Department's digital meter made available to the industry for free, if any;

(h) Interpret and provide guidance on the requirements for a payment card processor that a DTS provider seeks to use to process payments; or

(i) Establish other reasonable requirements for DTSs and DTS units related to safety, passenger privacy, consumer protection, compliance with any other applicable law, and other reasonable purposes within the jurisdiction of the Department.

602.7 The approval of a DTS may be suspended or revoked, and a renewed approval may be denied, in addition to other civil penalties under this title, if the DTS provider fails to comply with an applicable administrative issuance, provided that the DTS provider shall have the opportunity to challenge the legality or wisdom of any or all provisions of the relevant administrative issuance or issuances in an administrative hearing.

602.8 Each application for the approval of a DTS shall be executed by an individual with authority to file the application, and shall contain the following information and documentation:

(a) Contact information for the applicant, including name, telephone number, email, and website URL;

(b) Information and documentation about each component of the DTS unit, including its digital meter, driver console, passenger console, and credit card processing device, and how it interacts with the vehicle's dome light or innovation cruising light, including a narrative, photographs, and screenshots for each component;

(c) Information and documentation showing the DTS complies with all service and technology requirements of this section, other requirements of this title, the Establishment Act, and other applicable laws;

(d) A certification that the applicant owns the rights to, or holds a license to use, all the intellectual property that comprises the DTS other than intellectual property required by this section to be used in connection with a digital meter, or an arrangement with a payment card processor, made

available by the Department;

(e) Information showing the applicant is in good standing with the Department and is in compliance with all applicable laws pertaining to its business, including without limitation the Clean Hands Act;

(f) Information demonstrating that the applicant will collect from the passenger and pay to the District the taxicab passenger surcharge of twenty-five cents ($0.25);

(g) A sample of each agreement with owners and operators used by the applicant;

(h) An explanation of the provider's pricing structure, and whether the provider expects to offer dynamic street hail pricing; and

(i) A certification that the DTS is fully integrated with the DC TaxiApp, as required by this section, Chapter 16, and any applicable administrative issuance, and the names of any other apps with which the DTS is also integrated.

602.9 Each application shall be accompanied by a filing fee of two thousand five hundred dollars ($2,500), regardless of whether: it is a new or renewal application; or it seeks re-approval of a DTS due to its material modification by its provider during an approval period.

602.10 Each application for the approval of a DTS shall be accompanied by a bond, naming the District as oblige, to secure the payment of the passenger surcharges owed to the District under this title and the Establishment Act during the current approval period. Such bond(s) shall:

(a) Be in effect throughout the current approval period to which the approval applies and for one (1) year thereafter; and

(b) Be in the amount of one hundred fifty thousand dollars ($150,000).

602.11 An application may be denied if it contains or was submitted with materially false information provided orally or in writing for the purpose of inducing approval.

602.12 An applicant seeking to renew the approval of a DTS shall meet all requirements for a new approval, or such portion thereof, as the Department may require by administrative issuance.

602.13 The Department shall issue all decisions to grant or deny the approval of a DTS within the period established in an administrative issuance.

602.14 Each approval of a DTS shall be for the duration of the uniform approval period set forth in an administrative issuance, or the remainder of the current period, whichever is less.

602.15 Each DTS provider shall execute contracts with operators that are no longer than the license period for which they are granted operating authority, and DTSs must allow operators to switch to another DTS provider during an annual DTS open season as that term is defined in an administrative issuance, without penalty.

602.16 Technology requirements for DTS units. Each DTS unit shall:

(a) Operate in a manner which ensures the vehicle owner and operator, and the DTS provider, are able to comply with all requirements of this title and other applicable laws, and all applicable administrative issuances;

(b) Use open architecture, open application program interfaces, and a modular design, to ensure proper interaction among:

(1) A driver console incorporating a digital taximeter that—

(A) Is fully integrated with the DC TaxiApp and, at the option of the provider, the app of any other DDS registered and operated as required by this title and other applicable laws;

(B) Processes shared and group rides, calculates fares (including dynamic street hail prices, if offered by the provider), and provides receipts as required by Chapter 8;

(C) Provides the Department with real-time trip and location data when the operator is on duty, and such other information as reasonably required by an administrative issuance;

(D) Is linked electronically, or via a DFHV network, API, integration hub, website, mobile app, URL, or hardware, to one or more registered digital dispatch services, including at a minimum, full integration with the DC TaxiApp, for the purpose of receiving ehails and allowing ehail passengers to choose in-vehicle or digital payments; and

(E) Provides the operator and District enforcement officials with the ability to view the vehicle's electronic manifest as required by § 823 for the prior forty eight (48) hours, and maintains all manifest records for at least two (2) years.

(2) A passenger console;

(3) A credit card processing device;

(4) Any other device the provider wishes to include that does not impair the required function and performance of the DTS; and

(5) Complies with all other applicable requirements of this title and other applicable laws, and any applicable administrative issuance;

(c) Interact with the vehicle's legacy dome light or cruising light to properly control its functions in the manner required by this chapter.

602.17 Service requirements for DTSs. Each DTS provider shall:

(a) Ensure that each of its DTS units is in compliance with the technology and other requirements of this title and other applicable laws, including proper operation and connectivity with a cruising light or legacy dome light;

(b) Comply with the following requirements for the taxicab passenger surcharge. It shall:

(1) Collect the surcharge as an authorized additional charge under Chapter 8;

(2) Remit to the District, at the end of each month, a payment to the D.C. Treasurer reflecting all surcharges owed to the District for such period based on the number of trips during such period, regardless of whether or not the surcharge was actually collected from the passenger;

(3) Transmit to the Department a report certifying its payment to the District, and containing a basis for the amount of the payment and such other information reasonably related to the payment as may be required by an administrative issuance; and

(4) Cooperate with the Department to resolve any issue related to compliance with this subsection, including a discrepancy in the amount of a payment. If the issue remains unresolved to the satisfaction of the Department within thirty (30) days following notice of the issue to the payer, the Department shall have discretion to make a claim against the payer's surcharge bond, as necessary and appropriate to satisfy the amount of the discrepancy. A surcharge bond shall be returned to the payee within thirty (30) days following the expiration of the bond, or, upon written request of the payer, at an earlier date if the payer establishes to the satisfaction of the Department that the payer's obligations under

this section have been fully discharged;

(c) Pay each owner or operator with which it is associated the portion of its revenue to which such owner or operator is entitled within twenty four (24) hours or one (1) business day of when such revenue is received, provided however, that such periods may be extended to not more than one (1) calendar week or five (5) business days if such terms are clearly and transparently disclosed in the contract; and

(d) Pay all costs and fees related to the DTS, including without limitation, the costs for development, improvement, installation, maintenance, service, support, and legal compliance, provided however, that such costs may be allocated pursuant to a written agreement that clearly and transparently discloses each and every cost, and does not exceed the length of the approval period. No person other than the provider shall pay a cost or fee related to a DTS which has not been fully disclosed in the manner required by this subsection.

602.18 The approval of a DTS may be suspended or revoked if its provider integrates with or uses the app of a DDS not registered or operated as required by this title and other applicable laws.

602.19 A taxicab equipped to provide taxicab service using a DTS unit shall use the DTS unit for each and every trip.

602.20 No taxicab shall be equipped with or use more than one taximeter (analog or digital), more than one DTS unit, or both an MTS unit and a DTS unit.

602.21 An operator shall not pick up or transport a passenger unless the taxicab and its DTS unit are functioning properly and the DTS unit is able to provide receipts.

602.22 Each approved DTS and each approved taximeter shall be listed on the Department's website.

Section 603, MODERN TAXIMETER SYSTEMS, is amended as follows:

A new Subsection 603.11 is added as follows:

603.11 Notwithstanding any other provision of this title, no MTS shall be operated after October 31, 2017.

Section 605, DOME LIGHTS AND TAXI NUMBERING SYSTEM, is amended as follows:

605.1 Each taxicab in service on September 13, 2016, and each vehicle introduced as a replacement vehicle under § 609, may continue to be equipped with an existing legacy dome light or may be equipped with a cruising light, at the option of the

owner, subject to the requirements of this section. Each legacy dome light shall continue to be subject to the legacy dome light regulations to the extent such regulations do not conflict with this section, provided however, that each legacy dome light shall interact with a DTS and otherwise operate as required by this chapter and any applicable administrative issuance if a DTS is installed in the vehicle.

605.2 Beginning November 13, 2016, or such later date established by an administrative issuance, each vehicle placed into service other than as a replacement vehicle under § 609, shall be equipped only with a cruising light approved by the Department pursuant to this section, which interacts with the MTS or DTS and otherwise operates as required by this title and any applicable administrative issuance.

605.3 Each approved DTS provider shall be responsible for ensuring the interconnectivity and proper functioning of a DTS unit and the legacy dome light or cruising light.

605.4 The Department may approve as a cruising light any light which—

(a) Shall be constructed in a manner that meets or exceeds industry best practices;

(b) Shall display the vehicle's PVIN;

(c) Shall indicate whether the vehicle is available for booking by street hail;

(d) Shall interact with the vehicle's legacy taximeter or DTS as required by this chapter;

(e) May incorporate features to indicate that the taxicab is an autonomous or semi-autonomous vehicle; and

(f) May incorporate features to indicate that the operator is engaged in delivering goods or performing services.

605.5 The Department may issue an administrative issuance which:

(a) Approves one or more products meeting the requirements for a cruising light under this section;

(b) Provides guidance to DTS providers for installing cruising lights and ensuring their proper operation with DTS units;

(c) Provides guidance to affected stakeholders about the transition from the legacy dome light to the cruising light;

(d) Provides guidance to owners about the transfer of legacy dome lights from vehicles already in service to replacement vehicles, and about the decommissioning of legacy dome lights, where required by this section; and

(e) Establishes additional criteria for the appearance, functionality, connectivity, and installation of the cruising light, for safety, consumer protection, and other reasonable purposes within the jurisdiction of the Department.

605.6 A legacy dome light shall not be used on a vehicle placed into service unless the vehicle is replacing one already in service. An owner may elect to transfer a legacy dome light to a replacement vehicle at the owner's expense.

605.7 At the time a vehicle equipped with a legacy dome light is retired from service, if the light is not transferred to a replacement vehicle, it shall be decommissioned by the deadline and in the manner required by an administrative issuance; an owner that fails to comply with such administrative issuance shall be subject to the suspension of the owner's vehicle license and/or other civil penalties for the violation of such administrative issuance; provided that the DTS provider or owner shall have the opportunity to challenge the legality or wisdom of any or all provisions of the relevant administrative issuance or issuances in an administrative hearing.

605.8 No taxicab shall be operated without a properly functioning legacy dome light or cruising light. The operation of a taxicab without a properly functioning legacy dome light or cruising light, as required or permitted by this title, shall give rise to a rebuttable presumption that the operator knew the condition of the light and operated the taxicab with such knowledge.

Chapter 8, OPERATING RULES FOR PUBLIC VEHICLES-FOR-HIRE, is amended as follows:

Section 801, PASSENGER RATES AND CHARGES, is amended as follows:

Subsection 801.1 is amended to read as follows:

801.1 No person regulated by this title shall charge a rate, charge, or fare for taxicab service in the District in excess of the amounts established by this section. Notwithstanding any other provision of this title, a DTS provider may elect to offer dynamic street hail pricing based on a discount on the <u>total</u> amount of all rates and charges established by this section for rides booked by street hail or by telephone dispatch (if the provider is a taxicab company registered to provide telephone dispatch under Chapter 16), consistent with an applicable administrative issuance. A dynamic street hail discount may be in any amount up to one hundred percent (100%).

Subsection 801.12 is amended to read as follows:

801.12 Notwithstanding any other provision of this chapter, a person subject to licensing, registration, or regulation by the Department pursuant to this title or the Establishment Act, that participates in a pilot, grant, donation agreement, or other program, with the approval of the Department, or that engages in approved live field testing of an app pursuant to Chapter 16, shall use the rates and charges, if any, established or approved by the Department in connection with such pilot, grant, donation agreement, or other program, if any, in lieu of the rates and charges otherwise applicable pursuant to this subsection.

Section 802, TAXICAB OPERATOR SURCHARGE ACCOUNTS, is amended to read as follows:

802 DTS RECEIPTS

802.1 Each taxicab providing service using a DTS unit shall comply with this section.

802.2 At the end of the ride, the passenger shall be given a receipt as follows:

(a) If the ride was booked by ehail, the receipt shall be sent through the app used to book the ride; and

(b) If the ride was booked by street hail or telephone dispatch, the passenger shall be provided with a printed receipt.

802.3 Each receipt shall contain the following information:

(a) The taxicab owner's name and telephone number;

(b) The taxicab's PVIN number;

(c) The operator's DFHV operator license (Face ID) number;

(d) The trip number;

(e) The date;

(f) The starting and ending times;

(g) The distance traveled;

(h) The amount paid by the passenger, showing the total fare and the gratuity, if any, and an indication of whether dynamic street hail pricing was used by the DTS provider, and, if so, the applicable discount;

(i) A depiction of the navigational path of the vehicle during the ride;

(j) Contact information for the Department; and

(k) Such other information about the ride that the Department may reasonably require through an administrative issuance.

802.4 The Department may issue an administrative issuance to allow or require operators to provide a DFHV ride code or other information to the passenger in lieu of or in combination with any of the requirements for receipts under this section, and to establish additional criteria for DTS receipts for safety, consumer protection, and other reasonable purposes within the jurisdiction of the Department.

Section 803, RECEIPTS FOR TAXICAB SERVICE, is amended as follows:

The title of Section 803, RECEIPTS FOR TAXICAB SERVICE, is amended to read as follows:

803 MTS RECEIPTS

Section 803, MTS RECEIPTS, is amended to read as follows:

803.1 Each taxicab providing service using an MTS unit shall comply with this section.

803.2 At the end of each taxicab trip, the operator shall provide the passenger with a printed receipt (except as authorized by § 803.4). The printed receipt shall contain the following information:

(a) The taxicab owner's name and telephone number;

(b) The taxicab's PVIN number;

(c) The operator's DFHV operator's license (face ID) number;

(d) The trip number;

(e) The date;

(f) The starting and ending times;

(g) The distance traveled;

(h) The form of payment, including:

(1) If the payment was an in-vehicle payment, whether it was made in

cash, by payment card (including the type of card, the last four digits of the card number, and the transaction authorization code), by voucher, or by account; and

(2) If the payment was a digital payment, the name, customer service telephone number or URL for the DDS's customer service website;

(i) If the passenger made an in-vehicle payment:

(1) The total charges established by § 801.7(c), itemized to show the time and distance charge pursuant to § 801.7(c)(1), and any authorized additional charges pursuant to § 801.7(c)(2), the passenger surcharge, and any gratuity; and

(2) The last four digits of any payment card processed and the transaction authorization code.

(j) Where pursuant to this title a DDS determined the amount of the fare, if any:

"[NAME OF DDS] DETERMINED THE AMOUNT OF YOUR TAXICAB FARE. THE AMOUNT YOU HAVE BEEN CHARGED MAY BE HIGHER OR LOWER THAN THE AMOUNT DISPLAYED ON THE TAXIMETER, WHICH DID NOT APPLY TO YOUR TRIP."

(k) The following statement:

"DFHV COMPLAINTS LINE AND WEBSITE ADDRESS: 855-484-4966, TTY 711, www.dfhv.dc.gov".

803.3 When payment is made by a cash or cashless payment, a printed receipt shall be provided using the vehicle's MTS printer component. If the printer component malfunctions while printing a receipt, the operator shall provide the passenger with a handwritten receipt and the vehicle shall then be out of service until the printer component is operational.

803.4 When payment is made by digital payment, the passenger shall receive a printed receipt or an electronic receipt containing the information required by § 803.2, which shall be sent to the passenger via email address or SMS text message not later than when the passenger exits the vehicle.

803.5 In the case of messenger or parcel delivery service, the operator shall provide the customer with a written invoice describing the article(s) transported.

Section 816, STANDARDS OF CONDUCT; UNLAWFUL ACTIVITIES PROHIBITED, is amended as follows:

New Subsections 816.16 and 816.17 are added as follows:

816.16 No person subject to regulation by the Department shall tamper with, damage, destroy, deface, vandalize, remove, modify, or in any way attempt to defeat or bypass equipment authorized or required by this title.

816.17 No person subject to regulation by the Department shall aid, abet, or be an accessory after the fact to a violation of § 816.16.

Section 818, DISCRIMINATION PROHIBITED, is amended as follows:

Subsection 818.2 is amended to read as follows:

818.2 Discriminatory conduct prohibited by this section includes, but is not limited to, the following:

(a) Not picking up a passenger on the basis of any protected characteristic or trait, including not picking up a passenger with a service animal;

(b) Requesting that a passenger get out of a taxicab on the basis of a protected characteristic or trait;

(c) Using derogatory or harassing language on the basis of a protected characteristic or trait;

(d) Refusing a telephone or digital dispatch to a specific geographic area of the District; and

(e) Using dynamic street hail pricing in any manner that constitutes prohibited discrimination under this section or other applicable law.

Section 823, MANIFEST RECORD, is amended as follows:

The title of Section 823, MANIFEST RECORD, is amended to read as follows:

823 MANIFESTS

Section 823, MANIFESTS, is amended to read as follows:

823.1 Each operator of a taxicab equipped with an MTS unit, and each operator of a black car, shall comply with the requirements of this Section 823 in effect on January 9, 2017 (allowing the use of either a paper or electronic manifest pursuant to the requirements of that section).

823.2 The operator of a taxicab equipped with a DTS unit shall use only the electronic

manifest incorporated in the DTS unit to permanently record all for-hire activity by the vehicle during the most recent forty eight (48) hours. Paper manifests are not permitted.

823.3 Each DTS electronic manifest shall contain the information required by § 802.3 for DTS receipts, the information required by the DC TaxiApp and by any other app with which the DTS is integrated, and the following:

(a) The date, time, and vehicle mileage each time the operator logs in or out; and

(b) The vehicle's PVIN and "H" tag number.

823.4 No person shall alter or attempt to alter an electronic manifest maintained by a DTS unit or the DTS provider.

823.5 Each operator and owner of a vehicle equipped with a DTS unit shall make the electronic manifest available for inspection upon demand by a District enforcement official.

Chapter 18, WHEELCHAIR ACCESSIBLE PARATRANSIT TAXICAB SERVICE, is amended as follows:

Section 1806, TAXICAB COMPANIES AND OPERATORS — OPERATING REQUIREMENTS – is amended as follows:

Subsection 1806.9(b) is amended to read as follows:

(1) Is in compliance with all applicable provisions of this title, including: vehicle licensing requirements; uniform color scheme requirements; and equipment requirements such as a modern taximeter system (MTS) unit until October 31, 2017, or a digital taxicab solution (DTS) unit, and a legacy dome light or cruising light, as required for all taxicabs by § 602;

(2) If it is a wheelchair accessible vehicle, is operated only by an operator trained to provide wheelchair service, as required by this chapter;

(3) If it is a wheelchair accessible vehicle, other than a WMATA van or a wheelchair accessible vehicle that was associated with the company prior to its approval to participate in Transport DC: meets all applicable provisions of this chapter for use in Transport DC; and

(4) Has an MTS or DTS unit which has been configured to report Transport DC trip data in the format directed by the Department, allowing the Department to identify Transport DC trips and such

other information related to Transport DC as may reasonably be required by an administrative issuance.

Chapter 20, FINES AND CIVIL PENALTIES, is amended as follows:

The title of Chapter 20 is amended to read as follows:

CHAPTER 20 CIVIL FINES

Section 2000, FINES AND CIVIL PENALTIES, is amended as follows:

Subsection 2000.8 is amended as follows:

A civil fine is added to Schedule 2, Fines for Entities and Owners, Maximum Fines Based on Circumstances, as follows:

DTS Providers Prohibited discrimination in violation of § 818	$2,500

Chapter 99, DEFINITIONS, is amended as follows:

Section 9901, DEFINITIONS, is amended as follows:

Subsection 9901.1 is amended to add definitions as follows:

"Autonomous vehicle" – a vehicle in which operation occurs without direct operator input to control the steering, acceleration, and braking, and which is capable of monitoring road conditions and performing navigation for an entire trip without human conduction.

"Credit card processing device" – a component of a DTS unit that allows passengers to make payments using credit cards and other methods of non-cash payment in the manner required by the Act and other applicable laws.

"Digital taxicab solution" or "DTS" – a technology solution for the operation of taxicabs that consists at a minimum of a digital taximeter running on a driver console, as defined in this chapter, a passenger console, and a credit card processing device, as such terms are defined in this chapter, and any optional components that the DTS provider may choose to include.

"Driver console" – a component of a DTS unit, as defined in this chapter, which: incorporates a digital meter and other DTS functions used by operators

during taxicab rides; is safely-secured in the vehicle; and is accessible to District enforcement officials during traffic stops and compliance surveys.

"DTS unit" – an individual unit of a DTS, as defined in this chapter, that is installed in a vehicle.

"Dynamic street hail pricing" – a District-wide variable pricing structure for taxicab rides booked by street hail or telephone dispatch, which is established, maintained, and publicized by a DTS provider, as defined in this chapter.

"Ehail" – digital dispatch, as defined in this chapter. As used in this title, the terms "ehail" and "digital dispatch" are synonymous.

"Legacy dome light" – the patented and licensed dome light required for use on all taxicabs as of September 12, 2016.

"Legacy dome light regulations" – the regulations applicable to the legacy dome light, appearing in § 605.1 and in effect on September 12, 2016.

"Passenger console" – a component of a DTS unit, as defined in this chapter, which provides passengers with: the operator's license number; the vehicle's navigational path; applicable rates and charges (including if the provider uses dynamic street hail pricing: a disclosure of its current discount, if any, which shall be the same as the disclosure that appears on the DTS provider's website); advertising; any audiovisual content required by the Department; a statement about payment and receipt options.

"Semi-autonomous vehicle" – a vehicle which has automation of at least two primary control functions designed to work in unison to relieve the operator of control of these functions, such as adaptive cruise control with lane centering.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting the Department of For-Hire Vehicles, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020. All persons wishing to file comments on the proposed rulemaking action should submit written comments via e-mail to dfhv@dc.gov or by mail to the Department of For-Hire Vehicles, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020, no later than forty-five (45) days after the publication of this notice in the *D.C. Register*.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Sections 7(d)(2)(A) and 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.06(d)(2)(A) and 7-1671.13 (2012 Repl. & 2016 Supp.)); the Medical Marijuana Dispensary Temporary Amendment Act of 2016, effective April 1, 2017 (D.C. Law 21-234; D.C. Official Code § 7-1671.06(d)(2)) and § 7-731(d) (2012 Repl. & 2016 Supp.)); and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 52 (Registration Limitations) of Subtitle C (Medical Marijuana), Title 22 (Health), of the District of Columbia Municipal Regulations (DCMR).

The Council of the District of Columbia has declared the existence of an emergency need to increase the number of medical marijuana dispensaries that may be registered to operate in the District from five (5) to six (6), and to require the Mayor to open an application period for the registration of a dispensary in Ward 7 or Ward 8. The impetus of that emergency legislation is that a quarter of the qualifying patients in the District's Medical Marijuana Program live in Wards 7 and 8, but there are no dispensaries east of the Anacostia River, resulting in a geographical barrier to access to these healthcare services. To further ensure adequate access to medical marijuana for patients located in Wards 7 and 8, the Department exercised its authority under D.C. Official Code §§ 7-1671.06(d)(2)(A) to increase the number of dispensaries registered to operate in the District by rulemaking from six (6) to seven (7) so that a new dispensary can be registered in Ward 7 and in Ward 8.

This emergency action is necessary to immediately preserve and promote the health, safety and welfare of the public and is being taken to enable the Department to exercising its authority to increase the number of dispensaries that may be registered in the District to seven (7) with the requirement that one dispensary shall be located in Ward 7 and one dispensary shall be located in Ward 8.

This emergency rule was adopted on June 30, 2017, and became effective on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption (October 18, 2017), or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director of the Department of Health also gives notice of her intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

Chapter 52, REGISTRATION LIMITATIONS, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:

Section 5200, LIMITATION ON THE NUMBER OF DISPENSARIES AND CULTIVATION CENTERS, is amended as follows:

Subsection 5200.1 is amended to read as follows:

5200.1 The number of dispensaries registered to operate in the District of Columbia shall not exceed seven (7). To ensure that qualifying patients have adequate access to medical marijuana, the sixth (6th) and seventh (7th) registrations shall be issued in Ward 7 and Ward 8.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at Angli.Black@dc.gov, (202) 442-5977.

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Deputy Mayor for Planning and Economic Development (Deputy Mayor), pursuant to the authority set forth in § 107 of the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.07 (2012 Repl.)) (Inclusionary Zoning Act) and Mayor's Order 2008-59, dated April 2, 2008, hereby gives notice of the adoption, on an emergency basis, effective as of the date of publication of this notice in the *D.C. Register*, of the following amendments to Chapter 22, entitled "Inclusionary Zoning Implementation", of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR), and on a permanent basis in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

These emergency and proposed rules will amend the procedures for implementing the Inclusionary Zoning Act and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 10 of Subtitle C, Title 11 (Zoning Regulations of 2016), of the District of Columbia Municipal Regulations.

On August 2, 2013, a Notice of Proposed Rulemaking was published in the *D.C. Register* at 60 DCR 11258, and on November 14, 2014 a Notice of Second Proposed Rulemaking was published at 61 DCR 11860. In response to public comments received after the issuance of those notices, and Inclusionary Zoning Program administration and operation, changes were determined necessary or desirable to effectively implement and administer the Inclusionary Zoning Program.

The Emergency action is necessary because the Zoning Commission Order #04-33G, dated October 17, 2016 and published in the *D.C. Register* on December 16, 2016, made substantial changes to the Inclusionary Zoning Program and those changes were determined to become effective June 5, 2017. In order to effectively administer those changes, in conjunction with the approximately 500 existing Inclusionary Units, an amendment to the Inclusionary Zoning Act is needed, along with revisions to the Inclusionary Zoning Administrative Regulations. The Inclusionary Zoning Consistency Amendment Emergency Act of 2017 (effective June 13, 2017; D.C. Act 22-0076; 64 DCR 6082) effected the necessary revisions to the Inclusionary Zoning Act on an emergency basis. The Inclusionary Zoning Consistency Amendment Act of 2017, signed July 31, 2017 (D.C. Act 22-0128; 64 DCR 7467 (August 11, 2017)) (projected law date October 13, 2017), which would permanently implement the necessary amendments to the Inclusionary Zoning Act, was approved by Council on July 11, 2017 and will become effective following the Mayor's signature and expiration of the Congressional review period. The regulations will need to be adopted on an emergency basis to accommodate this effective date.

The following summarizes the major changes proposed:

1. Consistent with the Zoning Commission order and Inclusionary Zoning Consistency Amendment Act of 2017, the terms "Low-Income Household" and "Moderate-Income

Household" have been deleted and replaced with MFI (replacing Area Median Income; see below) Levels, which is a defined term in § 2299, to allow further flexibility.

2. Changing "Area Median Income" or "AMI" to "Median Family Income" or "MFI" – in order to be more consistent with the IZ Zoning Regulations, the ZC proposed changes and the Inclusionary Zoning Consistency Amendment Act of 2017, the term "AMI" or "Area Median Income" is replaced with "MFI" or "Median Family Income" throughout the regulations. The term "MFI" is also defined in the definitions section of DCMR (11-B DCMR § 100), which is identical to the definition in § 2299.

3. Income limits on lease renewals – codifying current practice in order to allow more households to remain in their Inclusionary Units, the maximum household income upon renewal may be up to 140% of the higher of the then-current maximum household income or the maximum household income at the time of initial lease execution. This concept is described in § 2217.6 - § 2217.9, including clarifying options for the household if the income exceeds the one hundred forty percent (140%) limit. This policy is based on the LIHTC program and is already used in other District affordable dwelling unit (ADU) programs.

4. Combining lists of those who live and work in the District – currently, the regulations rank 3 groups of lottery selectees based on how long they've been on the IZ registration list (those who live in the District, those who work in the District and those who neither live nor work in the District). § 2211.2 now combines those who live in the District and those who work in the District into one list, to be ranked by how long each household has been on the registration list. This will provide those who work in the District much greater opportunity to buy/rent an Inclusionary Unit.

5. Mandatory amenity fees included in the definition of "Utilities" – the definition of "Utilities" in § 2299 has been amended to include mandatory amenity fees and other mandatory fees, which limits the amount of rent to be charged, so that households are not paying more than thirty-eight percent (38%) of their annual income on housing costs. The determination was made that because the fees are mandatory, they should be included in the housing costs like utility fees.

6. Housing Cost limitations – Currently households are prohibited from spending more than thirty-eight percent (38%) (for rentals) or forty-one percent (41%) (for purchases) of their annual income on housing costs. § 2214.3 has been revised to make that a recommendation, but allowing households to spend up to fifty percent (50%), because so many households are currently paying much more of their income for housings costs and may find themselves in this situation due to temporary fluctuations in income.

7. Affirmative Fair Housing Marketing Plans (AFHMPs) – Previously, DHCD required all Inclusionary Development Owners to submit AFHMPs and require review and approval by DHCD's Inclusionary Development Program representatives and DHCD's Fair Housing Program Coordinator prior to DHCD conducting a lottery. § 2200.7 has been added to require affirmative marketing language to be included in all marketing material. Pursuant to the regulations, DHCD will require AFHMPs when the Inclusionary Development Owner elects to conduct its own lottery or wait-list.

8. Clarifying "Certifying Entities" to conduct income certifications – § 2215 clarifies that a "Certifying Entity" can include DHCD, a community based organization or a management/leasing team authorized by DHCD. DHCD plans to clarify requirements for certification and formally approve Certifying Entities going forward. Requirements will include at least 1 person being a Certified Occupancy Specialist (or having other DHCD-approved certification), all staff involved in income certifications to have attended DHCD's Inclusionary Zoning/ADU 101 course, notification of staff changes annually and renewal of certification every 2 years.

9. Certificate of Inclusionary Zoning Compliance (CIZC) application fee – § 2202.2 has been revised, proposing DHCD to publish the CIZC application fee in the *D.C. Register*, rather than specifying the amount, which is currently two hundred fifty dollars ($250) and has not been amended since the regulations were initially adopted. This will allow for easier amendment of the amount in the future.

10. Inclusionary Development Covenants required to be recorded prior to CIZC approval – § 2204.2 was added to clarify that DHCD will provide a draft Inclusionary Development Covenant to Inclusionary Development Owners upon receipt of the CIZC and requiring the Inclusionary Development Owner to complete, sign and return it prior to DCRA approving the CIZC.

11. Clarifying timing for price notification and listing on housing locator website – § 2207.1 and § 2207.6 clarify that within seven (7) days of receipt of a Notice of Availability, DHCD shall notify the Owner of the maximum sales price or rent. Within seven (7) days of receiving the maximum sales price or rent, the Inclusionary Development Owner must list the available Inclusionary Units on the housing locator website. DCHD will not conduct a lottery for a particular Inclusionary Unit until it is listed on the housing locator website.

12. Clarifying method of household selection – § 2208 was clarified to emphasize that DHCD-run lotteries are the primary method to select households, but subject to certain restrictions, other methods are allowed.

13. Clarifying household registration process – § 2209 was clarified to require households to attend an Inclusionary Zoning orientation before registering for the lottery, and households interested in purchasing an Inclusionary Unit should attend the homeownership training program shortly after registering for the lottery. It was further clarified that in addition to the registration, the certificates for attending the orientation and homeownership training each expire after two (2) years and each need to be renewed.

14. Clarifying lottery process – § 2210 was added to conform the regulations to current DHCD practice of asking households to confirm interest in the Inclusionary Units prior to a lottery, so that only interested households are included in the lottery and therefore strengthen the pool of households chosen in the lottery.

15. Shortening time frames after lotteries – § 2212 was clarified to shorten the time period from seventeen (17) days to ten (10) days for a household to confirm interest in an Inclusionary Unit after being selected in a lottery, and to shorten the time period from forty-five (45) days

to thirty (30) days for a household to provide documentation to the sales/leasing team after being selected in a lottery.

16. Clarifying marketing timeframes and requirements after lotteries – § 2213 was clarified to better explain that the #1 ranked household selected in a lottery has a thirty (30) day exclusivity period to provide documentation to the sales/leasing team and what the sales/leasing team may do during that period. The thirty (30) day period was shortened from forty-five (45) days and § 2213.3 was added to allow the #1 ranked household to waive that exclusivity period, allowing the sales/leasing team to move on to the next household sooner.

17. Eliminating maximum number of people in a household – § 2214.4 was modified (and moved from § 2210.2) to eliminate the maximum number of people in a household because DCRA already enforces the building code to prevent over-crowding. This will eliminate possible conflicts between the Inclusionary Zoning maximum and building code maximums.

18. Other changes were made to clarify and simplify and make technical changes to the regulations

Chapter 22, INCLUSIONARY ZONING IMPLEMENTATION, of Title 14 DCMR, HOUSING, is amended to read as follows:

CHAPTER 22 INCLUSIONARY ZONING IMPLEMENTATION

Secs.

2200 GENERAL PROVISIONS

2200.1 The purpose of this chapter is to implement the Zoning Commission's Inclusionary Zoning Regulations (11-C DCMR Chapter 10) and the Inclusionary Zoning Act.

2200.2 This chapter implements these aspects of the Inclusionary Zoning Regulations and the Inclusionary Zoning Act by establishing, among other things:

(a) The process and prerequisites for obtaining building permits and certificates of occupancy for Inclusionary Developments;

(b) The process for selecting Eligible Households for an Inclusionary Unit; and

(c) The responsibilities of and limitations on Inclusionary Development Owners, Inclusionary Unit Owners and Inclusionary Unit Tenants.

2200.3 All timeframes established in this chapter for an agency to take an action are guidelines only. An agency's failure to act within a timeframe established in this chapter shall not constitute a default by the agency and shall not permit any person to take or refuse to take any action governed by the Inclusionary Zoning Program.

2200.4 In computing a period of time specified in this chapter, calendar days shall be counted unless otherwise provided.

2200.5 In computing a period of time specified in this chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period of time so computed shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which case the period of time shall run until the end of the next day that is not a Saturday, Sunday, or official District of Columbia holiday.

2200.6 DHCD will provide all notices related to Household registration and lotteries to Households via email only, unless a Household has previously requested notice to be sent by first class mail.

2200.7 All marketing and advertising of Inclusionary Developments shall contain the following statement "Pursuant to the District of Columbia Inclusionary Zoning program, income restricted units are available at this development. Please contact the Department of Housing and Community Development at www.dhcd.dc.gov regarding the availability of such units and requirements for registration in the Inclusionary Zoning program."

2201 PREREQUISITE FOR OBTAINING BUILDING PERMIT FOR AN INCLUSIONARY DEVELOPMENT

2201.1 No building permit shall be issued for an Inclusionary Development unless DCRA receives and approves an application for a Certificate of Inclusionary Zoning Compliance, signed by the Owner of the Inclusionary Development, demonstrating that the Inclusionary Development will meet the requirements of the Inclusionary Zoning Program.

2202 APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

2202.1 The Inclusionary Development Owner shall file a written application for a Certificate of Inclusionary Zoning Compliance with DCRA no later than the date upon which the first application for an above-grade building permit is filed for the Inclusionary Development.

2202.2 The Inclusionary Development Owner shall include with its application for a Certificate of Inclusionary Zoning Compliance an application fee in an amount as indicated by publication in the *D.C. Register*.

2202.3 The Inclusionary Development Owner shall file its application for a Certificate of Inclusionary Zoning Compliance on a form prescribed by DCRA and shall provide such information as is requested on the form.

2202.4 The application form for a Certificate of Inclusionary Zoning Compliance shall include:

(a) The name of the Inclusionary Development, its marketing name if different, and the apartment or condominium name, if applicable;

(b) The street address of the Inclusionary Development;

(c) The zone district in which the Inclusionary Development is located;

(d) The current and proposed square, suffix, and lot numbers on which the Inclusionary Development will be located;

(e) A list of all Inclusionary Units in the Inclusionary Development. Each Inclusionary Unit shall be identified by unit number, net square footage, floor location, and the number of bedrooms. The list shall also include, and separately identify, any Inclusionary Units that will serve as the location for the offsite compliance of another Inclusionary Development, as approved by the Board of Zoning Adjustment, together with a copy of the Board of Zoning Adjustment order approving the offsite compliance;

(f) A certification from the Inclusionary Development's architect or engineer that the size of each Inclusionary Unit is at least ninety-eight percent (98%) of the average size of the same type of Market Rate Unit in the development or at least the size indicated in the following table, whichever is lesser;

Type of Dwelling	Type of Unit	Minimum Unit Size (net square feet)
Multiple Family Dwelling	Studio	400
	One bedroom	550
	Two bedrooms	850
	Three bedrooms	1,000
	Four or more bedrooms	1,050
One or Two Household Dwelling	Two bedrooms	1,000
	Three bedrooms	1,200
	Four or more bedrooms	1,400

(g) A copy of the site plan, front elevation or block face, and all residential floor plans for the Inclusionary Development. The floor plans shall show the location of each Inclusionary Unit and each Market Rate Unit and shall identify each by unit number;

(h) A copy of the building plat, if required by DCRA pursuant to 12-A DCMR § 106.1.12;

(i) A plan for the phasing of construction that demonstrates compliance with 11-C DCMR § 1005.4, which requires that all Inclusionary Units in an Inclusionary Development be constructed prior to or concurrently with the construction of Market Rate Units, except that in a phased development,

the Inclusionary Units shall be constructed at a pace that is proportional with the construction of the Market Rate Units;

(j) The total land area of all of the lots included in the Inclusionary Development;

(k) The total gross floor area of the Inclusionary Development; the gross floor area of the Inclusionary Development devoted to residential use, as calculated pursuant to 11-C DCMR § 1003; the Net Square Footage of an Inclusionary Development Devoted to Residential Use; and the gross floor area of the Inclusionary Development required to be set aside pursuant to 11-C DCMR § 1003;

(l) The total net square footage that will be set aside for Inclusionary Units as calculated by multiplying the gross floor area of the Inclusionary Development required to be set aside pursuant to 11-C DCMR § 1003 by the ratio of the Net Square Footage of the Inclusionary Development Devoted to Residential Use to the gross floor area of the Inclusionary Development devoted to residential use, as calculated pursuant to 11-C DCMR § 1003;

(m) The Net Square Footage of Inclusionary Units that will be set aside for each MFI Level;

(n) A proposed schedule of standard finishes, fixtures, equipment, and appliances for both Inclusionary Units and Market Rate Units;

(o) For each Inclusionary Unit, the approximate date by which the Inclusionary Development Owner will provide a Notice of Availability pursuant to § 2206;

(p) If construction of the Inclusionary Development will result in the temporary displacement of tenants who are entitled by law to return to comparable units, a list of the Inclusionary Units for which a right of return exists and the basis of the right to return; and

(q) Such other information as may be requested by DCRA.

2203 REVIEW AND APPROVAL OF APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

2203.1 If DCRA determines that an application for a Certificate of Inclusionary Zoning Compliance does not demonstrate compliance with the Inclusionary Zoning Program or the information provided is insufficient, DCRA shall provide to the Inclusionary Development Owner a written notice of the deficiency and shall

allow the Inclusionary Development Owner a reasonable period of time, designated in the written notice, to cure the deficiency.

2203.2 If the Inclusionary Development Owner fails to cure the deficiency within the period of time set forth in the written notice, DCRA may deny the application for the Certificate of Inclusionary Zoning Compliance.

2203.3 If the application for a Certificate of Inclusionary Zoning Compliance demonstrates compliance with the Inclusionary Zoning Program, DCRA shall review and execute the Certificate of Inclusionary Zoning Compliance prior to issuance of the building permit.

2204 INCLUSIONARY DEVELOPMENT COVENANT

2204.1 The Inclusionary Development Covenant shall be in a form found legally sufficient by the Office of the General Counsel of DHCD and shall bind all persons with a property interest in any or all of the Inclusionary Development, and all assignees, mortgagees, purchasers, and other successors in interest, to such declarations as DHCD may require, but, at a minimum, shall include:

(a) A provision requiring that the present and all future Owners of a Rental Inclusionary Development shall construct or maintain and reserve Inclusionary Units at such MFI Levels and in such number, square footage, and comparable level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall rent such Inclusionary Units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;

(b) A provision requiring that the present and all future Owners of a For Sale Inclusionary Development shall construct and maintain Inclusionary Units at such MFI Levels and in such number, and square footage as indicated on the Certificate of Inclusionary Zoning Compliance and shall sell each Inclusionary Unit in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;

(c) A provision binding all assignees, mortgagees, purchasers, and other successors in interest to the Inclusionary Development Covenant;

(d) A provision providing for the whole or partial release or extinguishment of the Inclusionary Development Covenant only upon the reasonable approval of the Director of DHCD if required by law or pursuant to the provision described in § 2204.1(g);

(e) A provision requiring that the sale or resale of a For Sale Inclusionary Unit shall be only to an Eligible Household selected by DHCD or otherwise authorized by this chapter, at a price that does not exceed the

Maximum Resale Price established in accordance with § 2219;

(f) A provision requiring that a lease rider, pursuant to § 2216.5, shall be attached as an exhibit to the lease for a Rental Inclusionary Unit and shall be executed by the Inclusionary Development Owner and each Inclusionary Unit Tenant, including any occupant of a Rental Inclusionary Unit that is eighteen (18) years old or older; and

(g) To the extent allowed by law, a provision requiring that in the event title to a For Sale Inclusionary Unit is transferred according to the provisions of § 2223.1, the proceeds from such foreclosure or transfer shall be apportioned and paid as described therein.

2204.2 DHCD shall provide a draft or template Inclusionary Development Covenant to an Inclusionary Development Owner, who shall complete it and return an executed copy to DHCD prior to approval of the Certificate of Inclusionary Zoning Compliance by DCRA. Upon receipt of the Inclusionary Development Covenant by DHCD, signed by the Inclusionary Development Owner and otherwise conforming to the requirements of this § 2204, DHCD shall have the Inclusionary Development Covenant fully executed and recorded with the District of Columbia Recorder of Deeds.

2204.3 DHCD may require, in its sole discretion, the use of a deed of trust to ensure compliance by an Inclusionary Development Owner or Inclusionary Unit Owner with the Inclusionary Development Covenant.

2205 CERTIFICATES OF OCCUPANCY FOR INCLUSIONARY UNITS

2205.1 An Inclusionary Development Owner shall apply for and obtain a Certificate of Occupancy for each property that contains Inclusionary Units that identifies and includes each Inclusionary Unit in the Inclusionary Development. For an Inclusionary Development where no Certificate of Occupancy is required, the submission requirements of this § 2205 must be satisfied prior to the DCRA inspection of the As-Built Foundation Survey ("Wall Check") required by 12-A DCMR § 109.3.1.2.

2205.2 Prior to the issuance of a Certificate of Occupancy for an Inclusionary Development, or DCRA acceptance of a Wall Check, an Inclusionary Development Owner shall provide to DCRA a copy of the recorded Inclusionary Development Covenant along with an update of all information provided in its application for a Certificate of Inclusionary Zoning Compliance, if there has been any substantive change to such information since the filing of the application. DCRA shall review the updated information pursuant to the procedures set forth in § 2203.

2205.3 After the submission of the application for a Certificate of Occupancy or request for a final building inspection for an Inclusionary Development where no Certificate of Occupancy is required, DCRA shall inspect the Inclusionary Development for compliance with the Certificate of Inclusionary Zoning Compliance.

2205.4 DCRA shall make good faith efforts to complete its Inclusionary Zoning compliance inspection within fifteen (15) business days after receipt of the Certificate of Occupancy application or request for final building inspection for an Inclusionary Development where no Certificate of Occupancy is required.

2205.5 No Certificate of Occupancy for an Inclusionary Development shall be issued, or Wall Check accepted or final building inspection approved for an Inclusionary Development where no Certificate of Occupancy is required, as necessary, unless DCRA determines that the Inclusionary Development Covenant is recorded with the District of Columbia Recorder of Deeds and the Inclusionary Development is in compliance with the Certificate of Inclusionary Zoning Compliance.

2206 NOTICE OF AVAILABILITY

2206.1 The provisions of this § 2206 govern the process by which:

(a) The Owner fulfills its obligation to notify DHCD that a For Sale Inclusionary Unit is available for purchase; and

(b) The owner of a Rental Inclusionary Development fulfills its obligation to notify DHCD that a Rental Inclusionary Unit is available for lease.

2206.2 An Owner shall provide the notification described in § 2206.1 to DHCD by filing a written Notice of Availability in accordance with the provisions of this § 2206.

2206.3 An Inclusionary Development Owner shall file the initial Notice of Availability for an Inclusionary Unit prior to the date of submission of the Certificate of Occupancy application to DCRA applicable to such Inclusionary Unit.

2206.4 An Owner shall file all subsequent Notices of Availability prior to marketing the Inclusionary Unit for sale or rent.

2206.5 A single Notice of Availability may be filed for one or more Inclusionary Units at a time.

2206.6 The Notice of Availability shall include:

(a) The street address and unit number for the Inclusionary Unit(s);

(b) The estimated date upon which the Inclusionary Unit(s) will be available for occupancy;

(c) For each Notice of Availability, a list of any optional or required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking. For each such fee or cost, the following information shall be provided:

(1) The amount of the fee or cost;

(2) A description of the fee or cost and how and when it will be charged; and

(3) For the initial sale of a For Sale Inclusionary Unit, the budget for the condominium, cooperative, or homeowner association, the condominium, cooperative, or homeowner association fee for each Market Rate Unit and each Inclusionary Unit, and the formula by which such fee is assessed;

(d) Whether the Inclusionary Unit is for sale or rent;

(e) For each subsequent Notice of Availability for a For Sale Inclusionary Unit, an itemized list of all capital improvements and upgrades made to the Inclusionary Unit that the Owner wishes DHCD to consider when establishing the Maximum Resale Price pursuant to § 2219.2. The Inclusionary Unit Owner shall document each cost or value claimed with receipts, contracts, or other supporting evidence, as reasonably requested by DHCD;

(f) A statement as to the Owner's chosen method of selection of Households for the Inclusionary Units in accordance with § 2208; and

(g) Such other information as may be required by DHCD.

2207 DESIGNATION OF MAXIMUM PURCHASE PRICE OR RENT AND HOUSING LOCATOR WEBSITE REGISTRATION

2207.1 Within seven (7) days after the receipt of a Notice of Availability, DHCD shall notify the Owner of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability.

2207.2 Except as provided in § 2207.5, the initial maximum purchase price or rent for an Inclusionary Unit shall be the greater of:

(a) The purchase price or rent set forth in the Rent and Price Schedule in place on the date the original Certificate of Inclusionary Zoning Compliance is approved by DCRA for the Inclusionary Development in which the Inclusionary Unit is located; or

(b) The purchase price or rent set forth in the Rent and Price Schedule in place on the date the Notice of Availability is received by DHCD for the Inclusionary Unit.

2207.3 The maximum purchase price for all subsequent sales of an Inclusionary Unit shall be the Maximum Resale Price determined by DHCD pursuant to § 2219.

2207.4 The maximum rent for all subsequent rentals shall be the rent set forth in the Rent and Price Schedule in place on the date of execution of the most recent lease for an Inclusionary Unit.

2207.5 If the costs provided for a For Sale Inclusionary Unit described in § 2206.6(c) exceed by ten percent (10%) or more the cost assumptions in the applicable Rent and Price Schedule, DHCD may lower the maximum purchase price to the extent needed to maintain the affordability standard set forth in § 103(a) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(a)) and this chapter.

2207.6 Within seven (7) days after receipt of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability from DHCD, the Owner shall register the Inclusionary Unit for which the Notice of Availability was filed with the Housing Locator Website and notify DHCD in writing of such registration. DHCD shall not conduct a lottery for an Inclusionary Unit prior to receipt of such notification.

2208 METHOD OF SELECTION OF HOUSEHOLDS

2208.1 Households may be selected for an Inclusionary Unit as follows:

(a) Except as provided in §§ 2208.2 through 2208.3, a Household may be selected for the initial or subsequent sale and lease of an Inclusionary Unit through a lottery conducted pursuant to § 2211;

(b) Subject to § 2211.4, the Owner may select a Household through a method established by the Owner in a marketing plan approved by DHCD; or

(c) Subject to § 2211, an Inclusionary Unit Owner may sell a For Sale Inclusionary Unit to a Household registered pursuant to § 2209, or with approval from DHCD to any Household certified by DHCD or its designee as meeting the relevant MFI Level, with or without a District licensed real estate broker or salesperson.

2208.2 No lottery shall be conducted for the initial or subsequent sale or lease of an Inclusionary Unit if the Inclusionary Unit is to be:

(a) Leased or sold to a household displaced from the Inclusionary Unit or the property before conversion to or building of the Inclusionary Development and entitled by law to return to the Inclusionary Unit;

(b) Leased or sold as a replacement unit as part of the New Communities Initiative; or

(c) Sold by an Inclusionary Unit Owner to the Inclusionary Unit Owner's spouse, domestic partner, Parent, trust for the benefit of a child, child who is subject to a guardianship, or child who is eighteen (18) years of age or older, if the spouse, domestic partner, Parent, or child submits the information and documents required by § 2212.3(b).

2208.3 If an Inclusionary Unit is subject to a requirement imposed by law or zoning that a specific group, class or type of Household occupy the Inclusionary Unit, or if the Inclusionary Unit meets the accessibility guidelines under the Fair Housing Act (42 U.S.C. § 3601), the Household shall be selected for the initial or subsequent sale or lease through a method established by the Owner in a marketing plan that is approved by DHCD.

2209 HOUSEHOLD REGISTRATION

2209.1 In order to be eligible to participate in the household selection process, a member of the Household shall:

(a) Complete an Inclusionary Zoning Program orientation class conducted by DHCD or its designee; and

(b) Complete a registration application form with such information as DHCD deems necessary including, but not limited to, the Household size, income/MFI Level, and preference, if any, to rent or purchase.

2209.2 Within sixty (60) days after registration, a Household wishing to purchase an Inclusionary Unit shall complete a homeownership pre-purchase training program conducted by DHCD or its designee.

2209.3 The Inclusionary Zoning Program orientation class and homeownership pre-purchase training program shall each be valid for two (2) years and Households shall re-take each as needed in accordance with this § 2209 in order to remain in the Household selection process.

2209.4 Registration shall become effective on the date that DHCD:

(a) Determines that the registration has been completed in compliance with this § 2209; and

(b) Sends confirmation of such registration.

2209.5 Registration shall expire two (2) years after the registration confirmation date referred to in § 2209.4, unless renewed prior to expiration, by re-taking the orientation class and notifying DHCD of the Household's intent to renew as required.

2209.6 A Full-Time Student shall not be eligible for the registration list unless they are Dependents of Parents or Guardians whose Household would otherwise meet the requirements for the Inclusionary Zoning Program.

2209.7 An application to renew a registration shall indicate any change in any information reported in the initial application and Households shall notify DHCD of changes to Household size and income as they occur.

2210 INCLUSIONARY UNIT INITIAL NOTIFICATION

2210.1 If the Notice of Availability identifies a DHCD lottery as the chosen selection method or if the Notice of Availability identifies a marketing plan as the chosen selection method, but as of the date of the Notice of Availability no such marketing plan has been approved by DHCD, then the provisions of this § 2210 shall apply.

2210.2 Within five (5) days of receipt of confirmation from the Owner of registration with the Housing Locator Website, DHCD shall notify registered Households meeting the Household size and Annual Income requirements of the availability of the Inclusionary Unit(s).

2210.3 To be considered in the household selection process for the Inclusionary Unit(s), Households with active registrations under § 2209 who receive the notification referred to in § 2210.2 shall confirm interest in the available Inclusionary Unit(s) by providing DHCD within seven (7) days of the notification, or such period as identified in the notification, a notice of the Household's interest to rent or purchase the Inclusionary Unit(s) for which the Notice of Availability was filed, in such form as may be approved by DHCD.

2210.4 DHCD will place all Households meeting the income and Household size requirements and having complied with the requirements of § 2210.3 on one (1) of two (2) lists:

(a) The District List, consisting of Households with at least one (1) household member who Lives in the District of Columbia or Works in the District of Columbia, and

(b) The Miscellaneous List, consisting of Households that do not qualify to be placed on the District List.

2211 HOUSEHOLD SELECTION THROUGH DISTRICT LOTTERY

2211.1 No later than seventeen (17) days after DHCD provides the notification referred to in § 2210.2, DHCD shall hold a lottery of those Households fulfilling Household size and Annual Income requirements that indicated interest in the available Inclusionary Unit(s) by providing the required documents pursuant to § 2210.3.

2211.2 For each available Inclusionary Unit, DHCD shall randomly select at least four (4) Households but no more than ten (10) Households through a lottery from the District List. The Households selected shall then be ranked by the length of time each has been on the District List.

(a) If fewer than four (4) Households on the District List meet the Household size and Annual Income standards applicable to the Inclusionary Unit, DHCD shall randomly select additional Households through a lottery from the Miscellaneous List in order to select at least four (4) Households but not more than ten (10) Households that meet the Household size and Annual Income standards applicable for the Inclusionary Unit. The Households selected shall then be ranked by the length of time each has been on the Miscellaneous List; and

(b) If fewer than four (4) Households that meet the Household size and Annual Income standards are available on both the District List and the Miscellaneous List, all Households that meet the Household size and Annual Income standards and are interested in the Inclusionary Unit will be given an opportunity to purchase or lease the Inclusionary Unit. The Households selected shall then be ranked by the length of time each has been on the registration list.

2211.3 If none of the Households selected through a lottery purchase or lease the Inclusionary Unit, DHCD shall continue to hold lotteries pursuant to the procedures set forth in this § 2211 until a Household purchases or leases the Inclusionary Unit or the Inclusionary Unit is leased or sold unless the Owner proceeds with a rental or sale of the Inclusionary Unit under § 2211.4.

2211.4 DHCD may permit, in its sole and absolute discretion, the rental or sale of the Inclusionary Unit to a Household that is not registered under § 2209 but has been determined eligible under § 2214, provided that the Owner's marketing plan has been approved by DHCD and:

(a) More than three (3) months have passed since the Notice of Availability was submitted for the Inclusionary Unit and at least one (1) lottery has been

conducted pursuant to this § 2211; and

(b) No Household selected through a previous lottery is still within the qualification process for an Inclusionary Unit to be included in such marketing plan.

2211.5 With respect to each Household selected pursuant to a lottery under this § 2211, DHCD shall provide a notice under § 2212.2.

2212 DISTRICT LOTTERY – NOTIFICATION TO HOUSEHOLDS AND OWNERS

2212.1 No later than seven (7) days after a lottery is held, DHCD shall provide to the Owner a written list of the Households selected pursuant to the lottery.

2212.2 No later than seven (7) days after a lottery is held, DHCD shall provide a written notice to each of the Households selected in the lottery of their selection and shall provide to each Household the address, unit type, and maximum rent or purchase price of the Inclusionary Unit for which the lottery was held and the means by which the Household may provide to the Owner the information required by § 2212.3 or § 2212.4.

2212.3 The notice provided pursuant to § 2212.2 for a For Sale Inclusionary Unit shall inform each Household that the Household shall provide the following, as applicable, to the Owner:

(a) Within ten (10) days after the date of the notice, a Household Interest Confirmation Form, as provided by DHCD;

(b) Within thirty (30) days after the date of the notice:

(1) A Declaration of Eligibility, as described in § 2214.2;

(2) A Certification of Income, Affordability, and Housing Size, as described in § 2214.3;

(3) A mortgage pre-approval letter, dated within the last six (6) months from a lender for the Inclusionary Unit for which the Household was selected;

(4) Any other documents requested by DHCD; and

(c) Within sixty (60) days after the date of the notice, an executed sales contract for the For Sale Inclusionary Unit and any other documents requested by DHCD.

2212.4 The notice provided pursuant to § 2212.2 for a Rental Inclusionary Unit shall inform each Household that the Household shall provide the following, as applicable, to the Owner:

(a) Within ten (10) days after the date of the notice, a Household Interest Confirmation Form, as provided by DHCD;

(b) Within thirty (30) days after the date of the notice:

(1) A Declaration of Eligibility, as described in § 2214.2;

(2) A Certification of Income, Affordability, and Housing Size, as described in § 2214.3;

(3) Any other documents requested by DHCD; and

(c) Within sixty (60) days after the date of the notice, an executed lease for the Rental Inclusionary Unit and

(d) Any other documents requested by DHCD.

2212.5 A Household failing to meet a deadline set forth in § 2212.3 or § 2212.4 shall be immediately ineligible to purchase or rent the Inclusionary Unit(s) for which they have been selected, unless the Owner extends the deadline in writing.

2213 DISTRICT LOTTERY — MARKETING OF INCLUSIONARY UNITS TO HOUSEHOLDS SELECTED PURSUANT TO THE LOTTERY

2213.1 The Owner shall market an Inclusionary Unit to each of the Households selected under § 2212.1, including, but not limited to, showings and providing other marketing information.

2213.2 The highest ranked Household to confirm interest pursuant to § 2212.3(a) or § 2212.4(a) shall have an exclusivity period of thirty (30) days after the date of the notice provided pursuant to § 2212.2 to lease or purchase the Inclusionary Unit. During this exclusivity period, the Owner may market the Inclusionary Unit to the other Households selected in the lottery, and those other Households may submit the documents required by § 2212, but only the highest ranked Household to confirm interest as described above may lease or purchase the Inclusionary Unit, subject to § 2213.3.

2213.3 If the highest ranked Household that has confirmed interest in the Inclusionary Unit pursuant to § 2212.3(a) or § 2212.4(a) declines to lease or purchase the Inclusionary Unit prior to expiration of the exclusivity period described in § 2213.2, the Household may provide written notice to the Owner, on a form prescribed by DHCD. Such notice shall terminate the exclusivity period,

whereupon Owner may proceed to lease or sell the Inclusionary Unit to other Households selected pursuant to § 2212.1 that has confirmed their interest pursuant to § 2212.3(a), subject to § 2213.4.

2213.4 Upon receipt of the written notice referred to in § 2213.3 or upon expiration of the exclusivity period referred to in § 2213.2, if the highest ranked Household that has confirmed interest in the Inclusionary Unit pursuant to § 2212.3(a) or § 2212.4(a) does not lease or purchase the Inclusionary Unit, the Owner may lease or sell the Inclusionary Unit to any of the Households selected pursuant to § 2212.1 that has confirmed interest in the Inclusionary Unit pursuant to § 2212.3(a) or § 2212.4(a), has submitted the documents and information required by § 2212.3(b) or § 2212.4(b) and also meets the Owner's non-income based rental or sale criteria, subject to § 2213.5.

2213.5 If the highest ranked Household that has confirmed interest in the Inclusionary Unit does not lease or purchase the Inclusionary Unit, the Households that submitted the documents and information required by §§ 2212.3(a) and (b) or §§ 2212.4(a) and (b) within the thirty (30) day exclusivity period shall be given the opportunity to lease or purchase the Inclusionary Unit, based on their ranking in the lottery selection. No such Household will be given an exclusivity period.

2213.6 If more than one (1) Household has submitted the documents and information required by § 2212.3(b) or § 2212.4(b) on the same day, but after the thirty (30) day exclusivity period, then the Household which has been on the registration list the longest will have priority to lease or purchase the Inclusionary Unit.

2214 VERIFICATION OF HOUSEHOLD ELIGIBILITY; REQUIRED CERTIFICATIONS

2214.1 Except as set forth in § 2208.2(a), an Owner shall sell or rent an Inclusionary Unit only to a Household which:

(a) Has been certified as an Eligible Household by a Certifying Entity, as evidenced by a Certification of Income, Affordability, and Housing Size, that complies with the requirements of this § 2214, and

(b) Has executed and provided a Declaration of Eligibility that complies with the requirements of this § 2214.

2214.2 A Declaration of Eligibility required by this section shall be made on a form prescribed by DHCD and shall include a notarized statement sworn under penalty of perjury by all members of the Household who are at least eighteen (18) years of age that:

(a) The Certification of Income, Affordability, and Housing Size provided to the Owner was obtained from a Certifying Entity;

(b) The Household provided accurate and complete information to the Certifying Entity;

(c) Each member of the Household will occupy the Inclusionary Unit as his or her principal residence;

(d) No member of the Household has an ownership interest in any other housing or the member will divest such interest before closing on the purchase of, or signing the lease for, the Inclusionary Unit and present evidence to DHCD confirming divestment;

(e) If a For Sale Inclusionary Unit, at least one (1) member of the Household who is at least eighteen (18) years of age satisfactorily completed an Inclusionary Zoning Program homeownership class for homebuyers approved by DHCD and evidence of such satisfactory completion is attached to the Declaration of Eligibility;

(f) At least one (1) member of the Household who is at least eighteen (18) years of age satisfactorily completed a Inclusionary Zoning Program orientation class approved by DHCD and evidence of such satisfactory completion is attached to the Declaration of Eligibility;

(g) The Household has received a copy of the Inclusionary Development Covenant and understands its rights and obligations thereunder;

(h) If a Rental Inclusionary Unit, the Household has received a copy of the lease rider and understands its rights and obligations thereunder; and

(i) Any other representations required by DHCD as part of the form.

2214.3 A Certification of Income, Affordability, and Housing Size required by this § 2214 shall be made on a form prescribed by DHCD and signed by an authorized representative of a Certifying Entity, certifying:

(a) The Household's Annual Income;

(b) The Household's Annual Income as a percentage of MFI;

(c) The Household's size;

(d) That the Household's size meets the size requirements applicable to the Inclusionary Unit under § 2214.4 upon initial occupancy only;

(e) For a For Sale Inclusionary Unit, that the Household has been advised of the recommendation from DHCD that it should not expend more than forty-one percent (41%) and confirms that it will not expend more than

fifty percent (50%) of its Annual Income on mortgage payments, Insurance, real property taxes, Utilities and condominium and homeowner association fees for the applicable Inclusionary Unit;

(f) For a Rental Inclusionary Unit, that the Household has been advised of the recommendation from DHCD that it should not expend more than thirty-eight percent (38%) and confirms that it will not expend more than fifty percent (50%) of its Annual Income on rent and Utilities; and

(g) Any other information or certifications required by DHCD.

2214.4 Unit size eligibility shall be determined based upon the following standards, regardless of the number of bathrooms or the existence of dens or other rooms that are not Bedrooms:

Unit Size (Bedroom)	Minimum Number of Persons in Unit
Studio (0)	1
1	1
2	2
3	3
4	4
5	5
6	5

2214.5 A Certifying Entity shall finalize its review of the information in § 2214.3 and notify the Household within ten (10) days of receipt.

2215 CERTIFYING ENTITY

2215.1 A Household shall obtain, and an Owner shall accept, a Certification of Income, Affordability, and Housing Size only from a Certifying Entity.

2215.2 DHCD may approve a Certifying Entity pursuant to a request for proposals process or through an application process.

2215.3 DHCD shall approve a Certifying Entity based on the entity's experience in successfully implementing activities similar to those described in § 2215.5, the capacity and experience of the entity's staff and management, and any other factors DHCD deems relevant.

2215.4 A Certifying Entity shall be responsible for:

(a) Verifying a Household's Annual Income;

(b) Verifying a Household's size;

(c) Verifying that the rent or purchase price of an Inclusionary Unit is affordable to the Household, as indicated in § 2214.3(e) or (f);

(d) Reporting data to DHCD;

(e) Compliance with relevant regulations; and

(f) Any other activities required by DHCD.

2215.5 Community based organizations under contract with DCHD shall be Certifying Entities and in addition to the responsibilities in § 2215.4, shall also counsel and train Households on the Inclusionary Zoning program.

2216 CLOSING AND LEASE SIGNING PROCEDURES

2216.1 Prior to closing, the Owner shall attach the following as an exhibit to the deed conveying a For Sale Inclusionary Unit:

(a) The Declaration of Eligibility provided to the Owner by the Eligible Household purchasing the Inclusionary Unit; or

(b) Such portions of the document designated by DHCD.

2216.2 The Owner shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN INCLUSIONARY DEVELOPMENT COVENANT, DATED AS OF _____, 20__, RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER _____, ON _____ 20__, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

2216.3 Within seventeen (17) days after closing, the new Inclusionary Unit Owner shall provide DHCD with a fully signed copy of the Closing Disclosure and a copy of the new deed (including the Declaration of Eligibility).

2216.4 Prior to the signing of each lease or sales contract, the Owner shall provide a copy of the Inclusionary Development Covenant to the Eligible Household.

2216.5 A lease rider shall be attached to the lease agreement for each Rental Inclusionary Unit. The lease rider shall contain, but shall not be limited to, the following terms:

(a) The Tenant shall provide a Certification of Income, Affordability, and Housing Size in accordance with § 2214.3;

(b) The Tenant shall provide a Declaration of Eligibility in accordance with § 2214.2;

(c) The Tenant shall annually confirm eligibility for the Inclusionary Unit based on the Annual Income requirements and § 2217.6;

(d) The Tenant shall provide the information and documents required by § 2217.1 within the time period specified;

(e) The Inclusionary Unit shall be the principal residence of all adult Household members who occupy the Inclusionary Unit;

(f) The Tenant shall confirm receipt and acknowledgment of the Inclusionary Development Covenant; and

(g) The Tenant shall not make intentional misrepresentations to DHCD or the Certifying Entity.

2216.6 Within thirty (30) days after the signing of each lease, the Inclusionary Development Owner shall provide DHCD with a fully signed copy of each lease, including a copy of the lease rider and the Declaration of Eligibility.

2217 RESPONSIBILITIES OF RENTAL INCLUSIONARY DEVELOPMENT OWNERS AND TENANTS

2217.1 No later than sixty (60) days before each anniversary of the first day of the lease, an Eligible Household leasing a Rental Inclusionary Unit shall submit to the Inclusionary Development Owner the following information and documents on or with such form as may be prescribed by DHCD:

(a) A statement as to whether the Tenant intends to renew the lease or vacate the Inclusionary Unit; and

(b) If the Tenant states that he or she intends to renew the lease:

(1) The names of each person residing in the unit;

(2) A Certification of Income, Affordability, and Housing Size that meets the requirements of § 2214.3; and

(3) A Declaration of Eligibility that meets the requirements of § 2214.2.

2217.2 The Owner may, in the Owner's discretion, extend the deadline established by § 2217.1 in writing provided that the deadline shall not be extended beyond the last day of the Tenant's lease.

2217.3 If a Tenant is in violation of a lease agreement or rider, the Inclusionary Development Owner shall provide to the Tenant a notice to vacate in accordance with D.C. Official Code § 42-3505.01(b), as may be amended.

2217.4 If a notice to vacate is provided pursuant to § 2217.3, the Inclusionary Development Owner may permit the Household to continue to occupy the unit at the current rent for no more than six (6) months after the Inclusionary Development Owner provides to the Tenant the notice to vacate. Acceptance of rent during this period will not constitute a waiver of the violation of the lease or another obligation of tenancy or void the notice to vacate.

2217.5 The Inclusionary Development Owner shall not require payment of rent that is greater than the maximum allowable rent determined in accordance with §§ 2207.2 and 2207.4.

2217.6 At annual recertification, if an Eligible Household's Annual Income is less than or equal to one hundred forty percent (140%) of the higher of

(a) The then-current maximum Annual Income; or

(b) The maximum Annual Income at the time of initial lease execution

for the Inclusionary Unit, the Eligible Household shall be considered income eligible and may remain in the Inclusionary Unit, continuing to pay the amount of rent associated with the MFI Level of that Inclusionary Unit.

2217.7 At annual recertification, if an Eligible Household's Annual Income is greater than one hundred forty percent (140%) of the higher of

(a) The then-current maximum Annual Income; or

(b) The maximum Annual Income at the time of initial lease execution

for the Inclusionary Unit, the Household is no longer income eligible for the original MFI Level of the Inclusionary Unit.

2217.8 If a Household is no longer income eligible for the original MFI Level of the Inclusionary Unit, as described in § 2217.7, and the Inclusionary Development has Inclusionary Units with higher MFI Levels, and if the Household would qualify for such higher MFI Level Inclusionary Unit, the existing Inclusionary

Unit may be re-designated as a higher MFI Level Inclusionary Unit, allowing the Household to remain in the same Inclusionary Unit. However, the original mix of MFI Levels must be restored within the Inclusionary Development as soon as practical, so the property manager should re-designate a new unit with the same number of bedrooms to replace the lower MFI Level Inclusionary Unit that was re-designated when one becomes available.

2217.9 If a Household is no longer income eligible for the original MFI Level of the Inclusionary Unit, as described in § 2217.7, and the Inclusionary Development does not have Inclusionary Units with higher MFI Levels, the Household may remain in the Inclusionary Unit if the Household agrees to pay market rate rent. In such case, the Inclusionary Unit may be re-designated as a Market Rate Unit, allowing the Household to remain in the same unit. However, the original mix of MFI Levels must be restored within the Inclusionary Development as soon as practical, so the property manager should re-designate a new unit with the same number of bedrooms to replace the Inclusionary Unit that was re-designated when one becomes available.

2217.10 Annually within fifteen (15) days after the anniversary of the first lease agreement for an Inclusionary Unit in a Rental Inclusionary Development, the Inclusionary Development Owner shall submit a report to DHCD setting forth the following information for the entire Rental Inclusionary Development:

(a) The number of Rental Inclusionary Units, by bedroom count, that are occupied;

(b) The number of Rental Inclusionary Units, by bedroom count, that were vacated during the previous twelve (12) months;

(c) For each Rental Inclusionary Unit vacated during the previous twelve (12) months, the unit number of the unit that was vacated, the number of days the unit was vacant (or a statement that the unit is still vacant), and the date on which a Notice of Availability was provided to DHCD pursuant to § 2206, if applicable;

(d) For each occupied Rental Inclusionary Unit, the names of all occupants, the Household size, and the Household's Annual Income as of the date of the most recent Certification of Income, Affordability, and Housing Size;

(e) A sworn statement that to the best of the Inclusionary Development Owner's information and knowledge, the Annual Income of each Eligible Household occupying each Rental Inclusionary Unit complies with the income limits applicable to the Rental Inclusionary Unit;

(f) A copy of each new and revised Certification of Income, Affordability, and Housing Size provided in accordance with § 2214.3 or § 2217.1;

(g) A copy of each new and revised Declaration of Eligibility provided in accordance with § 2214.2 or § 2217.1; and

(h) A certification that for each Rental Inclusionary Unit that became available over the course of the reporting year Households were selected to occupy the Rental Inclusionary Units pursuant to a lottery or the approved marketing plan.

2218 RESPONSIBILITIES OF INCLUSIONARY UNIT OWNERS

2218.1 Annually on the anniversary of the closing date for a For Sale Inclusionary Unit, the Inclusionary Unit Owner shall submit to DHCD a certification on such form as may be prescribed by DHCD of continued unit occupancy as the For Sale Inclusionary Unit Owner's principal residence.

2219 DETERMINATION OF MAXIMUM RESALE PRICE

2219.1 The Maximum Resale Price ("MRP") shall be equal to the greater of:

(a) The original purchase price during the first year of ownership, or (for all subsequent years) the Maximum Resale Price of the previous year, multiplied by the annual rate of change in the MFI over a ten year period starting with the first MFI published by HUD after the purchase of the Inclusionary Unit by the Inclusionary Unit Owner. The resulting formula for the new Maximum Resale Price in any given year "n" is therefore $MRP_n = \underline{MRP_{n-1} +} (MRP_{n-1} \times F_n)$ ("Formula"), where:

(1) n = is the current MFI year starting from the most recent publication of the MFI by HUD; and

(2) Fn = the rate of appreciation of the current MFI of any given year "n." Fn is calculated by determining the ten year compounded annual growth rate of the MFI; or

(b) The maximum purchase price for the same unit type from the current published Maximum Price and Purchase Schedule as of the date of the Notice of Availability.

2219.2 Upon the submission of a Notice of Availability by an Inclusionary Unit Owner to DHCD, the Maximum Resale Price may be adjusted for the value of all the Eligible Capital Improvements and Eligible Replacement and Repair Costs made to the property during that Inclusionary Unit Owner's ownership of the Inclusionary Unit to the extent they are permanent in nature and add to the market value of the property at the percentage of cost indicted:

(a) Eligible Capital Improvements, which will be valued at one hundred percent (100%) of reasonable cost, as determined by DHCD, and

(b) Eligible Replacement and Repair Costs, which shall be valued at fifty percent (50%) of reasonable cost, as determined by DHCD.

2219.3 The Owner of a For Sale Inclusionary Unit subject to an Inclusionary Development Covenant recorded prior to the effective date of these regulations may choose to be subject to the terms of § 2219.1 effective as of

(a) The recordation date of the Inclusionary Development Covenant; or

(b) The date of submission of the Notice of Availability,

depending on which time will result in a higher Maximum Resale Price.

2219.4 Ineligible Costs shall not be considered in determining the value of Eligible Capital Improvements and Eligible Replacement and Repair Costs.

2219.5 The value of improvements may be determined by DHCD based upon documentation provided by the Inclusionary Unit Owner or**,** if not provided, upon a standard value established by DHCD.

2219.6 DHCD may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if DHCD finds that the improvement diminished or did not increase the fair market value of the Inclusionary Unit.

2219.7 DHCD may reduce the value of an improvement claimed by the Inclusionary Unit Owner if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the improvement.

2219.8 The Owner shall permit a representative of DHCD to inspect the Inclusionary Unit upon request to verify the existence and value of any improvements that are claimed by the Inclusionary Unit Owner.

2219.9 An allowance may be made in the Maximum Resale Price for the payment of legal fees, closing costs (including, but not limited to, title insurance and filing fees) and real estate broker or salesperson fees associated with the sale of the Inclusionary Unit if written approval is obtained from DHCD.

2219.10 The value of personal property transferred to a purchaser in connection with the resale of a For Sale Inclusionary Unit shall not be considered part of the sales price of the For Sale Inclusionary Unit for the purposes of determining whether the sales price of the For Sale Inclusionary Unit exceeds the Maximum Resale Price.

2220 RENTAL OF A FOR SALE INCLUSIONARY UNIT

2220.1 An Inclusionary Unit Owner may temporarily lease a For Sale Inclusionary Unit in accordance with the provisions of this § 2220 if such lease is not otherwise prohibited by applicable cooperative, condominium, or homeowner association rules.

2220.2 Upon written submission of a request for a waiver of the principal occupancy requirement for a temporary absence from an Inclusionary Unit and supporting documentation, DHCD may permit an Inclusionary Unit Owner to temporarily lease a For Sale Inclusionary Unit for a period not to exceed twelve (12) months per request. DHCD shall approve or disapprove the request in its sole discretion considering the evidence before it. Requests to lease a For Sale Inclusionary Unit shall be based on a temporary need of the Owner to vacate the Inclusionary Unit, with intent to return. For example, such needs may include military service or another reason causing the Owner to temporarily leave the District metropolitan area.

2220.3 If the request or any subsequent renewal is denied by DCHD the Inclusionary Unit Owner must reoccupy the unit as their principal residence within ninety (90) days of the denial or sell the unit in accordance with § 2206 within one hundred eighty (180) days of the denial.

2220.4 An Inclusionary Unit Owner who is leasing a For Sale Inclusionary Unit in accordance with this § 2220 shall select tenant Households pursuant to § 2208.

2220.5 Inclusionary Unit Owners that are approved by DHCD to temporarily lease their For Sale Inclusionary Units, and tenants of these For Sale Inclusionary Units, shall comply with the requirements in § 2217.

2220.6 An Inclusionary Unit Owner permitted to temporarily lease a For Sale Inclusionary Unit shall provide DHCD with written notification within five (5) days when a tenant takes possession and shall provide DHCD with written notification within five (5) days when a tenant vacates the For Sale Inclusionary Unit.

2220.7 The maximum rent charged during a temporary lease of a For Sale Inclusionary Unit shall be the rent set forth in the Rent and Price Schedule in place on the beginning date of the lease.

2220.8 A condominium fee or assessment that a tenant of a For Sale Inclusionary Unit leased under this § 2220 is required to pay pursuant to the terms of his or her lease shall be considered part of the rent of the tenant when determining whether the rent charged is consistent with the Maximum Rent and Purchase Price Schedule.

2221 CONVERSION OF A RENTAL INCLUSIONARY DEVELOPMENT TO A

FOR SALE INCLUSIONARY DEVELOPMENT

2221.1 No condominium or cooperative documents may be filed to convert a Rental Inclusionary Development to a condominium or cooperative until a new application for a Certificate of Inclusionary Zoning Compliance is filed by the Inclusionary Development Owner and approved by DCRA and a Certificate of Inclusionary Zoning Compliance is issued by DCRA pursuant to the provisions set forth in § 2203.

2221.2 Following the issuance of a new Certificate of Inclusionary Zoning Compliance under this § 2221, the Inclusionary Development Owner shall, if requested by DHCD, record a new or amendatory Inclusionary Development Covenant, applicable to a For Sale Inclusionary Development that complies with § 2204 prior to the conveyance of any For Sale Inclusionary Unit.

2221.3 The application for a Certificate of Inclusionary Zoning Compliance filed under this § 2221 shall comply with § 2202.4.

2221.4 All conversions of use of a Rental Inclusionary Development to a condominium or cooperative must comply with the conversion procedures established in the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3401.01 *et seq*.) ("Conversion Act").

2221.5 Tenants occupying Rental Inclusionary Units converted to For Sale Inclusionary Units shall have the same rights as are provided in the Conversion Act.

2221.6 The offered sales price for a Rental Inclusionary Unit converted to a For Sale Inclusionary Unit shall not exceed the applicable maximum purchase price stated on the Price and Rent Schedule that is in effect on the date that the Tenant receives the first notice of conversion pursuant to the Conversion Act.

2221.7 If the Tenant does not purchase the Inclusionary Unit within the time provided in the Conversion Act, and the Tenant is not entitled to remain in the Inclusionary Unit pursuant to § 208 of the Conversion Act, the Inclusionary Development Owner shall furnish DHCD with a Notice of Availability pursuant to § 2206 and register the Inclusionary Unit with the Housing Locator Website.

2222 SALE BY HEIRS

2222.1 If an Inclusionary Unit Owner dies, at least one (1) heir, legatee, or other person taking title to the Inclusionary Unit by will or by operation of law shall occupy the Inclusionary Unit if the Household of such person meets the requirements of these regulations. If the Household of such person does not meet the requirements of these regulations, such person shall provide DHCD with a Notice of Availability in accordance with § 2206.

2223 FORECLOSURE

2223.1 If title to a For Sale Inclusionary Unit is transferred following foreclosure by, or deed-in-lieu of foreclosure to, a mortgagee in first position, or a mortgage in first position is assigned to the Secretary of HUD, the Inclusionary Development Covenant shall be released against the Inclusionary Unit in accordance with the provisions of the Zoning Commission's Inclusionary Zoning Regulations (11-C DCMR Chapter 10).

2224 VIOLATIONS AND OPPORTUNITY TO CURE

2224.1 Prior to exercising the authority to revoke a building permit or Certificate of Occupancy pursuant to § 1041.04 of the Inclusionary Zoning Act, DCRA shall provide to the person who is alleged to have violated the Inclusionary Zoning Act or this chapter a written notice setting forth with particularity the alleged violation and shall provide to that person at least thirty (30) days to cure the alleged violation. If the person cures the violation within the designated cure period, DCRA shall not exercise its authority to revoke a building permit or Certificate of Occupancy pursuant to § 1041.04 of the Inclusionary Zoning Act. DCRA may extend the designated cure period for good cause shown.

2224.2 DCRA shall not revoke a building permit or Certificate of Occupancy pursuant to § 1041.04 of the Inclusionary Zoning Act except for a willful, substantial violation of the Inclusionary Zoning Act or this chapter.

2225 WAIVER

2225.1 The Director of DHCD may, at his or her discretion, upon the request of an agency of the District (including DHCD) or the written request of an Owner of an Inclusionary Development or Unit, a lessee of an Inclusionary Unit, or a Household seeking to own or rent an Inclusionary Unit (the "Requester"), waive one or more of the provisions of this chapter in DHCD's sole and absolute discretion if waiver of the provision:

(a) Supports the general purposes of the Inclusionary Zoning Program as described in 11-C DCMR § 1000.1, and

(b) Would not directly or indirectly grant relief from any requirement of or permit any act prohibited by the Zoning Commission's Inclusionary Zoning Regulations or Inclusionary Zoning Act.

2299 DEFINITIONS

2299.1 When used in this chapter, the following words and phrases shall have the meanings ascribed below:

Annual Income – annual income as defined in 24 C.F.R. § 5.609 as of the effective date of these amended regulations.

Bedroom – a room with immediate access to an exterior window and a closet that is designated as a "bedroom" or "sleeping room" on construction plans submitted with an application for a building permit for an Inclusionary Development.

Certificate of Inclusionary Zoning Compliance - a document issued by the DCRA's Office of the Zoning Administrator certifying that an Inclusionary Development meets the Inclusionary Zoning Program requirements.

Certificate of Occupancy - a document issued by the DCRA's Office of the Zoning Administrator certifying a building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

Certifying Entity – DHCD or a third party entity approved by DHCD pursuant to § 2215.

DCRA – the District Department of Consumer and Regulatory Affairs.

Dependent – an individual as defined in § 152 of the United States Internal Revenue Code (26 U.S.C. § 152).

District – the District of Columbia.

DHCD – the District Department of Housing and Community Development.

Eligible Capital Improvement – major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Inclusionary Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems;; (vi) removal of toxic substances, such as asbestos, lead, mold, or mildew; (vii) insulation or upgrades to double-paned windows or glass fireplace screens; and (viii) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods.

Eligible Household – a Household with a total Annual Income adjusted for Household size equal to or less than fifty percent (50%) of the MFI, sixty percent (60%) of the MFI, eighty percent (80%) of the MFI, or other percentage of the MFI established by an order approving a Planned Unit Development pursuant to Chapter 3 of Title 11-X DCMR.

Eligible Replacement and Repair Cost – in-kind replacement of existing amenities and repairs and general maintenance that keep an Inclusionary Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (iv) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (v) replacement of window sashes; (vi) fireplace maintenance or in-kind replacement; (vii) heating system maintenance and repairs; and (viii) lighting system.

For Sale Inclusionary Development – the portion of an Inclusionary Development that includes or will include Inclusionary Units that will be sold to Households.

For Sale Inclusionary Unit – an Inclusionary Unit that will be or has been sold to a Household.

Full Time Student - a person who is enrolled in a class load that is considered full-time for day students under the standards and practices of the college or university attended by that person.

Guardian - a person who is appointed by court order and who is charged with the care, custody, and responsibility of a person under the age of eighteen (18) years.

Household – all persons who will occupy the Inclusionary Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

Housing Locator Website – a website established or designated by the District or DHCD pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; D.C. Official Code §§ 42-2131 *et seq.*).

HUD – the United States Department of Housing and Urban Development.

Inclusionary Development – a development subject to the provisions of the Inclusionary Zoning Program.

Inclusionary Development Covenant – the Inclusionary Development Covenant described in § 2204.

Inclusionary Development Owner – a person, firm, partnership, association,

joint venture, corporation, other entity, or government with a property interest in land or improvements that is or will be occupied by an Inclusionary Development, but excluding Inclusionary Unit Owners.

Inclusionary Unit – a dwelling unit set aside for sale or rental as required by the Inclusionary Zoning Program.

Inclusionary Unit Owner – a Household member or members that own(s) a For Sale Inclusionary Unit.

Inclusionary Zoning Act – the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code §§ 6-1041.01 *et seq.*).

Inclusionary Zoning Program – all of the provisions of the Zoning Commission's Inclusionary Zoning Regulations, the Inclusionary Zoning Act, and this Chapter, including policies adopted by DHCD pursuant thereto.

Ineligible Costs – normal maintenance, general repair work, personal or decorative items or work, cosmetic enhancements, installations with limited useful life spans, and non-permanent fixtures not eligible for capital improvement credit as determined by DHCD. Such costs generally include: (i) cosmetic enhancements such as fireplace tiles and mantels, decorative wall coverings or hangings, window treatments (for example, blinds, shutters, and curtains), installed mirrors, shelving, and refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, and portable appliances; and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, and light bulbs.

Insurance – hazard insurance for single family For Sale Inclusionary Units and mortgage insurance for any For Sale Inclusionary Unit.

Lives in the District of Columbia - the situation where a person maintains a place of abode in the District as his or her actual, regular, and principal place of residence, as reasonably determined by DHCD or its designee.

Market Rate Unit – a unit in an Inclusionary Development that is not an Inclusionary Unit.

Maximum Resale Price – the Maximum Resale Price described in § 2219.

Median Family Income, or MFI – the median family income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and

Urban Development, adjusted for household size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers. Adjustments of Median Family Income for household size shall be made as prescribed in § 2(1) of the Housing Production Trust Fund Act, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(1)).

MFI Level – the percentage of MFI referred to in the Inclusionary Zoning Act and/or Zoning Regulations (11-C DCMR §§ 1000 *et seq*.), for example, 50% MFI, 60% MFI or 80% MFI.

Net Square Footage of an Inclusionary Development Devoted to Residential Use – the total Net Square Footage of Inclusionary Units in an Inclusionary Development.

Net Square Footage of Inclusionary Units – the area of a unit(s) that is bounded by the inside finished surface of the perimeter wall of each unit. Unit area includes all interior walls and columns.

New Communities Initiative – a District program designed to revitalize severely distressed subsidized housing and redevelop neighborhoods into vibrant mixed-income communities.

Notice of Availability – the notice required to be provided to DHCD by an Owner in accordance with § 2206.

Owner – both an Inclusionary Development Owner and an Inclusionary Unit Owner.

Parent - the natural or adoptive mother or father of a person.

Rent and Price Schedule – the rent and price schedule published in the *D.C. Register* pursuant to § 103(b) of the Inclusionary Zoning Act.

Rental Inclusionary Development – the portion of an Inclusionary Development that includes, or will include, Inclusionary Units that will be leased to Households.

Rental Inclusionary Unit – an Inclusionary Unit that will be or has been leased to a Household.

Tenant – a Household member or members that occupy a Rental Inclusionary Unit.

Utilities – water, sewer, electricity, natural gas, trash, and any other fees required

by the Inclusionary Development Owner, property manager, or condominium or homeowners' association in order to occupy the Inclusionary Unit, including but not limited to mandatory amenity or administrative fees.

Works in District of Columbia - the situation where a person reports to work in the District, irrespective of any travel for work or telecommuting, as reasonably determined by DHCD or its designee.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments in writing to Danilo Pelletiere, Housing Development/Policy Advisor, Department of Housing and Community Development, 1800 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020 and at IZ.input@dc.gov, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the Department at the address listed above. A copying fee of one dollar ($1) will be charged for each requested copy of the proposed rulemaking requested.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-189
August 25, 2017

SUBJECT: Appointment and Reappointment – Apprenticeship Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and section 2 of An Act To provide voluntary apprenticeship in the District of Columbia, approved May 21, 1946, 60 Stat. 204; D.C. Official Code § 32-1402 (2012 Repl. and 2017 Suppl.), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1-523.01 (2016 Repl.), it is hereby **ORDERED** that:

1. **QUENTON HORTON**, pursuant to the Apprenticeship Council Quenton Horton Confirmation Resolution of 2017, effective June 17, 2017, PR22-0237 is appointed as a public representative who is not a member of either employee or employer organizations member of the Apprenticeship Council, replacing Pamela Gibbs, for a term to end November 19, 2018.

2. **IOANNIS XANTHOS,** pursuant to the Apprenticeship Council Ioannis Xanthos Confirmation Resolution of 2017, effective June 17, 2017, PR22-0238 is reappointed as an employer organization member to the Apprenticeship Council, for a term to end November 19, 2019.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to June 17, 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 2017-190
August 25, 2017

SUBJECT: Reappointment – District of Columbia Developmental Disabilities Fatality Review Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with Mayor's Order 2009-225, dated December 22, 2009, as amended by Mayor's Order 2013-154, dated August 26, 2013, it is hereby **ORDERED** that:

1. **MARIANNE VAIL** is reappointed as a clinician with experience in the evaluation and treatment of persons with intellectual and developmental disabilities member of the District of Columbia Developmental Disabilities Fatality Review Committee for a term to end March 7, 2020.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

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

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to the effective dates of confirmation.

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 2017-191
August 25, 2017

SUBJECT: Appointment and Reappointment – Board of Accountancy

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 1002(b)(1) of the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-261; D.C. Official Code § 47-2853.06(b)(1) (2012 Repl. & 2014 Supp.), which established the Board of Accountancy, and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142; D.C. Official Code § 1- 523.01 (2016 Repl.) it is hereby **ORDERED** that:

1. **ANGELA AVANT,** pursuant to the Board of Accountancy Angela Avant Confirmation Resolution of 2017, effective June 17, 2017, PR22-0266, is appointed as a licensed certified public accountant member of the Board of Accountancy, replacing Mohamad Kazim Yusuff, for a term to end January 14, 2018.

2. **JOSEPH SETH DREW,** pursuant to the Board of Accountancy Mr. Joseph Seth Drew Confirmation Resolution of 2017, effective April 8, 2017, PR22-0102, is reappointed as a consumer member of the Board of Accountancy, for a term to end January 14, 2020.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-192
August 25, 2017

SUBJECT: Delegation of Rulemaking Authority to the Director of the Department of Human Services pursuant to section 205(e) of the District of Columbia Public Assistance Act of 1982, as added by the TANF Child Benefit Protection Amendment Act of 2017

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2016 Repl.), and section 205(e) of the District of Columbia Public Assistance Act of 1982 ("**Act**"), effective April 6, 1982, D.C. Law 4-101, to be codified at D.C. Official Code § 4-202.05(e), added by section 5002 of the TANF Child Benefit Protection Emergency Amendment Act of 2017 effective July 20, 2017, D.C. Act 22-104; 64 DCR 7032 (July 28, 2017), section 5002 of the TANF Child Benefit Protection Amendment Act of 2017, signed by the Mayor on July 31, 2017, D.C. Act 22-130; 64 DCR 7652 (August 11, 2017), and as may be added by any substantially similar emergency legislation, it is hereby **ORDERED** that:

1. The Director of the Department of Human Services is delegated the authority of the Mayor to issue rules pursuant to section 205(e) of the Act.

2. This Order supersedes all prior Mayor's Orders to the extent of any inconsistency.

3. **EFFECTIVE DATE:** This Ordershall become effective immediately.

MURIEL BOWSER
MAYOR

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

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FUNDING AVAILABILITY (NOFA)
RFA# RM0 PFS091117

Strategic Prevention Framework Partnership for Success High Need Communities Grant

Purpose/Description of Project

The Department of Behavioral Health (DBH), Substance Use Disorder (SUD) Prevention Branch, is soliciting applications for Community Prevention Networks (CPNs) to implement evidence based prevention strategies in designated high need communities within the District of Columbia. By utilizing funding from the Strategic Prevention Framework (SPF) Partnership for Success (PFS) High Need Communities Grant, CPNs will implement evidence based prevention strategies including, but not limited to: awareness programs, underage drinking campaigns, environmental strategies, advocating for policy changes, etc., in one or more high need communities to prevent underage drinking and marijuana use among youth and young adults.

Each of the eight (8) Wards is identified as a "high need community" for prevention. The PFS funding emphasizes the youth and young adult population as ages 12 to 25. The premise of PFS is that changes at the community level, will, over time, lead to measureable changes at the District level. By working together to foster change, the District and funded communities of high need can more effectively begin to overcome the challenges of underlying substance use prevention priorities and avoid underage drinking and marijuana use among youth and young adults.

Eligibility

- Community Prevention Networks (CPNs) affiliated with DC Prevention Centers addressing substance use prevention, mental health, or public health.
- Ability to enter into an agreement with DBH requiring compliance with all District of Columbia laws and regulations governing Substance Use Disorders and Mental Health Grants (22A DCMR Chapter 44).
- A 501(c)(3), or ability to enlist the services of a fiscal agent to apply for the funding on behalf, if CPN is not 501(c)(3).

Length of Award

Grant awards will be made for a period of one (1) year from the date of award. The grant may be continued for up to one (1) additional year based on documented project success and availability of funding. Grant recipients will be expected to begin project implementation on or after January 1, 2018.

Available Funding

Approximately $800,000 is available to fund eight (8) CPNs, up to $100,000 each under the SPF PFS High Need Communities Grants. Grants will be awarded by DBH using funds provided by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) DC Strategic SPF-PFS State and Tribal Initiative.

Anticipated Number of Awards
DBH anticipates eight (8) awards in the amount of $100,000 to represent each of the eight (8) Wards of the District of Columbia.

Request for Application (RFA) Release
The RFA will be released Monday, September 11, 2017. The RFA will be posted on the DBH website, www.dbh.dc.gov under Opportunities, and on the website of the Office of Partnerships and Grants, www.opgs.dc.gov under the District Grants Clearinghouse. A copy of the RFA may be obtained from the DBH Office of Fiscal Services, located at 64 New York Avenue, NE, Washington, DC 20002, 2nd Floor, from Program Monitor Katherine Cooke Mundle during the hours of 8:15 a.m. – 4:45 p.m. beginning September 11, 2017.

Pre-Application Conference
A pre-application conference will be held at DBH, 64 New York Avenue, NE, Washington, DC, 20002, 2nd Floor, Rm. 242 on Thursday, September 21, 2017 from 10:00 a.m. – 12:00 p.m. ET.
For more information, please contact Katherine Cooke Mundle at katherine.mundle@dc.gov or (202) 727-7639.

Deadline for Applications
The deadline for submission is Wednesday, October 11, 2017, at 4:45 p.m. ET.

CARLOS ROSARIO PUBLIC CHARTER SCHOOL

REQUEST FOR QUOTES

Konica Minolta Copiers Maintenance Contract

Carlos Rosario Public Charter School is seeking submissions for a Request for Quote (RFQ) for a maintenance contract on Konica Minolta copiers B/W & Color. The content of the RFQ submission will minimally include a 3-year term, and a description of what will be provided to service and maintain 15 copiers across 2 campuses to include parts, labor and all supplies (toner & developer). Response is due by 5:00pm 9/6/17 to Gwen Ellis at gellis@carlosrosario.org.

D.C. CRIMINAL CODE REFORM COMMISSION

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

III. Training by the DC Board of Ethics and Government Accountability. It is expected that this portion of the meeting shall be held in closed session pursuant to D.C. Code § 2-575(b)(12).

IV. Adjournment.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

BEGA - Advisory Opinion – 1009-014 – OCTO Statehood Portal

August 17, 2017

Beverly Perry
Senior Advisor to the Mayor, Office of Federal and Regional Affairs
1350 Pennsylvania Avenue, N.W., Suite 324
Washington, D.C. 20004

Dear Ms. Perry:

This responds to your August 4, 2017 memorandum in which you request a formal advisory opinion from the Board of Ethics and Government Accountability ("Ethics Board") as to whether certain activities by the District government to encourage District residents to contact United States Senators regarding District statehood would violate the Code of Conduct. Your proposed activities are as follows:

1. The Executive Office of the Mayor ("EOM") and the New Columbia Statehood Commission would have the Office of the Chief Technology Officer ("OCTO") develop or create a portal that would include the contact information, email and mailing addresses for all U.S. Senators. District residents would be able to access the portal and would be "matched" to a suggested Senator, with the goal that each resident will "adopt" the suggested Senator.

2. The EOM and the Statehood Commission would send a letter to District residents encouraging them to contact their adopted Senators regarding issues and policies that affect them.

3. The EOM and the Statehood Commission would provide District residents with a suggested introductory letter to send to their adopted Senator. The letter would explain, among other things, that the District resident does not have voting representation in Congress and that the resident has chosen the Senator as his or her surrogate representative.

4. District residents would be expected to email their letters directly to their adopted Senators.

On August 9, 2017, you provided supplementary materials as background to your request for guidance. Those materials reveal that the above-referenced activities are part of a larger effort to "mobilize [the District's] quest for congressional representation," with the overall goal of having a "statehood bill voted on in the Senate and House in 2018."[1]

While your request is addressed to the Ethics Board, I view it as invoking my authority as the Director of Government Ethics.[2] Based on the information you provided as well as this Office's previous advisory opinions regarding whether District employees may engage in statehood-related activities,[3] I conclude that your proposals would not violate section 1801 of the Merit Personnel Act ("MPA"), 6B DCMR §1808, or the Local Hatch Act, all of which are elements of the Code of Conduct.

This Office previously noted that there are "very similar"[4] considerations to take into account when determining whether proposed statehood activities comply with section 1801 of the MPA, which provides that District employees shall "maintain a high level of ethical conduct," and 6B DCMR §1808, which notes that District employees shall not misuse government property." Those considerations led to this Office's conclusion that District employees may participate in statehood related activities without violating section 1801 of the MPA and 6B DCMR §1808 as long as those employees are authorized to participate in such activities and as long as they do so by using funds and other District resources that are authorized for that purpose.[5]

Consequently, we noted that employees of the Office of the Statehood Delegation, the Statehood Delegation itself, as well as any Executive Branch employees whose official duties include or otherwise support the Mayor's statehood policy agenda could engage in all of the statehood related activities outlined in the EOM's June 3, 2016 request for guidance.[6] Notably, some of the

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[1] *See* Statehood Package at p.1, provided to the Office of Government Ethics on August 9, 2017.

[2] D.C. Official Code §1-1162.19(a)("Upon application made by an employee or public official subject to the Code of Conduct, the Director of Government Ethics shall, within a reasonable period of time, provide an advisory opinion as to whether a specific transaction or activity inquired of would constitute a violation of a provision of the Code of Conduct over which the Ethics Board has primary jurisdiction.")

[3] For an in depth discussion of section 1801 of the Merit Personnel Act ("MPA"), 6B DCMR §1808, and the Local Hatch Act as those regulations relate to statehood related activities, *see* Response to Request for Advisory Opinion Regarding Statehood Activities by OCTFME Employees, 1566-001 (November 30, 2016); *see also* Response to Request for Opinion Regarding Statehood Activities, 1009-010 (June 14, 2016).

[4] *See* OGE Opinion, 1009-010 at 4; OGE Opinion 1566-001 at 5.

[5] OGE Opinion, 1009-010 at 3-4; OGE Opinion 1566-001 at 4-5.

[6] OGE Opinion, 1009-010 at 1-2("Based on the information in your memorandum, I conclude that the activities outlined in it would not violate section 1801 of the Merit Personnel Act, 6B DCMR § 1808, or the Local Hatch

proposed activities in that request, such as the request to compile lists of persons and communicate with them from government servers on community engagement events relating to statehood and building public support from around the country for statehood,[7] are similar to the activities contemplated by your current request.

We also advised that other agencies not explicitly linked to or tasked with carrying out District statehood initiatives could, nevertheless, provide support or assistance in those endeavors "if done so on behalf of the [Statehood Commission], EOM, the Council, Congresswoman Norton, or another District agency whose activities directly support the Mayor's Statehood agenda."[8] Specifically, we noted that the Office of Cable Television, Film, Music and Entertainment ("OCTFME") could develop "Create the State" slogans and other media aimed at educating District residents on statehood because the request was initiated by the Statehood Commission and EOM and because OCTFME is statutorily required to produce content for the government and educational channels.[9]

With regard to the activities proposed in your memorandum, I conclude that based on this Office's previous statehood guidance, OCTO employees may create an online portal to match District residents to Senators so that residents can discuss with their surrogate representatives their lack of voting representation and other issues that impact them. I reach this conclusion based on the fact that the request is initiated by the Statehood Commission and EOM and given that OCTO's statutory purpose is to "centralize responsibility" for the District government's information technology and telecommunications systems and "to help District departments and agencies provide services more efficiently and effectively."[10]

In addition, the proposal for EOM and the Statehood Commission to have OCTO create a portal to facilitate District resident's ability to communicate with Congress regarding statehood appears consistent with OCTO's statutory purposes as well as the District Statehood Commission's purposes, which are to "[e]ducate regarding, advocate for, promote, and advance the proposition of statehood and voting rights for the District of Columbia to District residents and citizens of the 50 states."[11] As such, your proposal complies with section 1801 of the Merit Personnel Act, 6B

Act."); *see also* June 3, 2016 Request for Expedited Formal Advisory Opinion from BEGA on Activities Relating to Advisory Ballot Referendum at 2-3.

[7] *See* June 3, 2016 Request for Expedited Formal Advisory Opinion from BEGA on Activities Relating to Advisory Ballot Referendum at 2-3.

[8] OGE Opinion 1566-001 at 4.

[9] *See id.*

[10] D.C. Official Code §1-1402.

[11] D.C. Official Code §1-129.31(b)(1).

DCMR §1808 and our previous statehood guidance, so long as all of the agencies involved in executing this project use funds that are specifically authorized to do so.[12]

Moreover, I note that your proposal complies with the Local Hatch Act. The Local Hatch Act regulates political activity, which is defined as "any activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum."[13] Your proposal contemplates a grassroots effort to engage members of Congress on the issue of District statehood and to build support for the introduction and passage of statehood legislation. This endeavor does not fall under the statutory definition of "political activity," as it is not aimed at the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum. Therefore, I conclude that the activities you propose do not violate the Local Hatch Act.[14]

In addition, however, please note that the District Personnel Manual requires that District employees comply with *all* federal, state, and local laws and regulations.[15] There may be other laws and regulations that are implicated by your proposal which our office does not have the jurisdiction to interpret or enforce.[16]

Please be advised that this advisory opinion must be published in the *D.C. Register* within thirty days of its issuance because it is provided to you pursuant to D.C. Official Code §1-1162.19(a). Your identity will not be disclosed, unless you consent to such disclosure in writing. We

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[12]The Office of Campaign Finance ("OCF") may take a different view with respect to permissible expenditures in this area. It is OCF, and not this Office, that has authority to opine on the prohibition concerning expenditures of government resources for "campaign related activities" and to define what constitutes such activities.

[13] D.C. Official Code §1-1171.01(8)(A).

[14] It is my understanding that the District government will provide "suggested letters" to residents to be sent to members of Congress regarding issues related to the District's lack of voting representation and District statehood. District residents will be expected to send their letters to members of Congress directly. My conclusion that this proposed activity does not implicate the Local Hatch Act would differ if District residents transmitted letters to Congress through the District's portal or in clear conjunction with the District government, as there is a possibility that residents will modify the letters in such a manner that the letters could contain language that meets the definition of "political activity," as defined by the Local Hatch Act. If District resources were used to facilitate the transmittal of such materials, that *could* amount to a violation of the Local Hatch Act. In the alternative, the District could ensure that the suggested letter is *unalterable,* so that "political activity" cannot be added to it. In that case, residents could then transmit the letter to their adopted representative through the portal without violating the Local Hatch Act.

[15] 6B DCMR 1800.3(m).

[16] *See e.g.*, 18 U.S.C. § 1913 (prohibiting the use of monies appropriated by Congress for lobbying), *see also* section 806 (a) of the Consolidated Appropriations Act, 2017, approved May 5, 2017(Pub. L. No. 115-31; 131 Stat. 244) (prohibiting the District of Columbia from using federal funds for any petition, drive, or civil action which seeks to require Congress to provide voting representation in the District of Columbia.)

encourage individuals to so consent in the interest of greater government transparency. Please let me know your wishes about disclosures.

Please let me know if you have any questions or wish to discuss this matter. I may be reached at 202-481-341, or by email at brian.flowers@dc.gov.

Sincerely,

_____/s/_____
BRIAN K. FLOWERS
Interim Director of Government Ethics
Board of Ethics and Government Accountability

#1009-014

ATTACHMENTS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser

Executive Office of the Mayor

TO: Office of Campaign Finance
Board of Elections and Government Accountability

FROM: Beverly Perry, Senior Advisor

DATE: August 4, 2017

SUBJECT: Request for Formal Advisory Opinion from BEGA and for Interpretive Opinion from OCF on Statehood Activities

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The Executive Office of the Mayor requests your guidance as we undertake new strategies on statehood and Congressional representation for residents of Washington, DC.

Background:

The Executive Office of the Mayor and the New Columbia Statehood Commission would like to have the Office of the Chief Technology Officer (OCTO) develop a computer program that would allow DC residents to contact all members of the United States Senate. This would require that OCTO develop or create a portal that would include the contact information, email and mailing addresses, for all Senators. This information is all public. DC residents will be able to access the portal and would be "matched" to a suggested Senator, with the goal that each resident will "adopt" the suggested Senator to send input on policies and issues that impact them.

The Executive Office of the Mayor and the Statehood Commission would contact DC residents with a letter letting them know about the goal and suggesting the Senators with whom they are "matched." We would also provide a suggested letter to send to the Senators establishing the relationship, which will be included in the portal.

The Office of the Senior Advisor asked OCTO whether it would be able to build the portal described above. OCTO acknowledges that it has the technological capability to build such a system. However, OCTO recommended that we seek input from your agencies to ensure that our request complies with the DPM Code of Conduct, the Ethics Manual, and the Local Hatch Act.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser

Executive Office of the Mayor

Thank you for your advice. If you have further questions, please feel free to call me at 202-724-5326.

Congressional Representation and National Education Campaign

Mission: To mobilize our quest for congressional representation and initiate national citizen engagement, to advance the Statehood movement.

Goals:

1. Activate voters across country to engage in the statehood process
2. Increase engagement with members of Congress
3. Build national coalitions of advocates by making appeal to 100-1000 national organizations
4. Educate all Americans on the District of Columbia, its lack of representation, correct false narratives regarding the District relationship/benefits with the federal government
5. Engage/lobby target states in effort to get support legislation passed in their State Assemblies.
6. Get a statehood bill voted on in the Senate and House 2018

I. **Surrogate Letter Writing Campaign Launch – 9/5/17**
   a. Letter Writing Campaign
      i. Introductory Letter – DC residents request members to represent them
      ii. Concerns and Issues – alert members that residents will contact them
      iii. Monthly Issue Letters – forward newsletter to members
      iv. Meeting Requests – when issue arises, request meeting

II. **10 State Strategy – 10/1/17**
   a. Family and Friends
      i. Federal: My _____ lives in DC and does not have a voting member in the House of Representatives. I'd like you to support them in their quest for state hood. Until then, I'd like you to serve as their voting member in Congress.
      ii. State: My ____ lives in Washington, DC and does not have voting representation in the House or Senate. The constitution affords all tax paying citizens voting representation. I'm asking you as my representative to the State Legislature to support a state resolution in support of DC's path to statehood and admission to the union as the 51st State.

III. **Connecting and Pairing with Puerto Rico**
   a. Capital city alliance meeting
   b. Identify sponsor of legislation to create same federal tax structure for DC

IV. **Process**
   a. Outreach Tactics – 11/1/17
      i. Letters
      ii. Website: A full revamp of the statehood website by an outside contractor. The website has to be developed in way for information to be easily found, while engaging to make residents want to check back for information. It should also include a "sign up for updates" option allowing residents to enter email addresses as well as social media information so that updates and "action requests" can be disseminated on short notice.
      iii. Social media – hire manager by 12/1/17
         1. Twitter
         2. Facebook

3. Snapchat
4. Site Visits

iv. Legislative Meetings (should have specific language we'd like to have introduced in each state legislature for continuity of support.

v. Outreach map (to show specific targets as well as monitor the progress being made in each state and by who

vi. State/Member profiles: that identify key information about the state as it relates and is unrelated to DC but affects issues of similar sorts, A specific federal appropriation that is unique to that state but not appropriated for the majority of states in the country,

vii. Statehood Design contests to engage youth/millennials:

1. 1. Logo Design – The statehood campaign has used a graphic generated by the NCSC but has no specific graphic that residents feel they own or represents them and DC Values.
2. 2. Mural Design – Identify a location in the city with high traffic and visibility for a mural design. This will allow residents and tourists alike to take pictures in front of it, as well as post the pictures to generate conversation, engagement, and support via social media

viii. One Pagers: used to provide residents and nationwide supporters with information to share with other, in addition to serving as talking points with local and national political leaders

ix. Outside media engagement: People tend to trust their local media affiliates more than they do the national media. We have to maximize coverage and conversation with small, local outlets via news, radio, and television.

x. Public Service Flyers:

Do you know American History?
We are Washington DC!
Please do not confuse us with your Federal Policy makers.
Like you, we pay taxes to support their work.
But unlike you, we have no voice or vote to urge sensible positions.
Please support our quest for full citizenship.

Congress: _____

Senator: _____

_____

Dear Resident/Voter,

As an American taxpaying citizen, you are entitled to full democratic representation within the halls of government in America. Unfortunately, because you have opted to call Washington DC home, you are being denied voting representation before both houses of Congress. To ameliorate this wrong, your fellow citizens are pursuing Statehood for Washington DC. Until full democracy is bestowed upon Washington, the New Columbia Statehood Commission is suggesting that you adopt a surrogate Congressional representative.

The Commission is suggesting the delegation listed above as your member of the US House of Representatives and two United States Senators from the corresponding state. You may, of course, choose a different delegation. Please use your surrogate representatives as you would direct representation. As important issues are debated, you can have your voice heard by writing and calling your surrogate representatives.

Surrogate representation does not affect or impact your relationship with Congresswoman Eleanor Holmes Norton in any way. Surrogate representation allows you, for the first time, to express your wishes to voting members of both houses of Congress. The ultimate goal is to urge the House and to vote for DC Statehood in 2018.

To register your surrogate relationship, please send the enclosed letter to your representatives during the first week of September of 2017. This effort is sponsored by the New Columbia Statehood Commission to provide an avenue for the people of Washington DC to express their wishes on votes in the Congress of the United States.

Dear Resident/Voter,

Our renewed quest for DC Statehood is off to a good start, but there is still more work to be done. The fight for DC Statehood has to be a collective effort. We must maximize our power in numbers, which includes inviting our family and friends to follow in our footsteps and send letters to Congress in support of voting representation for the residents of Washington DC. Enlisting their help will bring more attention to this voting injustice, providing the additional ammunition needed to make our voices heard in Congress. Our friends and family across the country can work as allies by informing their own congressional delegation of the injustices facing Washington DC residents.

Please pass along the enclosed letter to your family and friends for them to send to their surrogate/congressional delegation. This effort is sponsored by the New Columbia Statehood Commission to provide an avenue for the people of Washington DC to express their wishes on votes in the Congress of the United States.

EXCEL ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS 2017-18

IT Services/Network Administrator/Help Desk Support

Excel Academy Public Charter School will receive bids until September 29, 2017 at 4:00 PM for network administrator/help desk support services for the 2017-2018 school year. Excel seeks a firm familiar with the IT services/network administration/help desk support demands of a charter school. Vendor will provide Network and Laptop/Desktop Support for MS Operating Systems, IOS (Apple) systems, Chromebooks and MS Office applications or Laptop/Desktop Support, Network Performance Tuning, LAN Knowledge, Network Design and Implementation, Problem Solving, Strategic Planning, Multi-tasking, Quality Focus, Coordination, Excellent communication and customer service skills. Must be able to work independently. Please include clause(s) to protect against year-after-year increases in fees. Request for full service requirements and questions should be emailed to: bids@excelpcs.org. No phone calls or late responses please. Interviews, etc. may be scheduled at our request after the review of the proposals only. Interested parties and vendors will state their credentials and qualifications and provide appropriate licenses, references, insurances, certifications, proposed costs, and work plan.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF FOR-HIRE VEHICLES

NOTICE OF FUNDING AVAILABILITY (NOFA)

FY 18 TRANSPORT DC- TRANSPORTATION SERVICE

The Government of the District of Columbia, Department of For-Hire Vehicles, is soliciting applications from licensed taxicab companies to provide taxicab transportation services. The approved taxicab companies will provide transportation services for MetroAccess clients for trips to and from locations within the District of Columbia. Transportation service will be provided by wheelchair accessible and non-accessible taxicabs, depending on the client's needs. The Request For Application (RFA) release date is **Tuesday, September 05, 2017,** and a copy may be obtained as follows:

The RFA will be available on **Tuesday, September 05, 2017** on our website. To access the RFA click on https://dfhv.dc.gov/page/grant-funding.

APPLICATION PROCESS: Interested applicants must complete an online application on or before **September 18, 2017,** at **4:00 p.m**. DFHV will **not** accept applications submitted via hand delivery, mail or courier service. Late submissions and incomplete applications will not be forwarded to the review panel.

ELIGIBILITY: Only DFHV-licensed taxicab companies are eligible.

PERIOD OF AWARDS: The performance period will begin in **October 2017 and end on 9/30/2018.** DFHV may elect to continue the funded program for an additional period of three years. Continuations would be determined based upon satisfactory program performance, grant compliance, and the availability of funding.

AVAILABLE FUNDING: Approximately **$4,095,397** will be available for one or more awards**.** For additional information regarding this NOFA, please contact Gladys Kamau at Gladys.Kamau@dc.gov or (202) 671-0567.

SELECTION PROCESS: DFHV will select grant recipient(s) through a competitive application process. All applications will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria listed in the RFA.

RESERVATIONS: DFHV reserves the right to issue addenda and/or amendments after the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

INFORMATION SESSION: An information session will be held at **4:30 p.m. September 6, 2017**, at DFHV's **Resource Room** at 2235 Shannon Place SE, Washington, DC 20020. ID's are required for access to the building.

HEALTH BENEFIT EXCHANGE AUTHORITY

NOTICE OF PUBLIC MEETING

Executive Board of the Health Benefit Exchange Authority

The Executive Board of the Health Benefit Exchange Authority, pursuant to the requirements of Section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-0094), hereby announces a public meeting of the Executive Board. The meeting will be held at 1225 I Street, NW, 4th Floor, Washington, DC 20005 on **Wednesday, September 13, 2017 at 5:30 pm**. The call in number is 1-650-479-3208 and access code is 734 381 411. The Executive Board meeting is open to the public.

If you have any questions, please contact Debra Curtis at (202) 741-0899.

DEPARTMENT OF HEALTH CARE FINANCE

PUBLIC NOTICE

MEDICAID FEE SCHEDULE UPDATES FOR DURABLE MEDICAL EQUIPMENT SERVICES

The Department of Health Care Finance (DHCF), in accordance with the requirements set forth in Section 988 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations, published January 1, 2016 (63 DCR 000040), announces changes to the rates for reimbursement of Durable Medical Equipment (DME) services that will go into effect on October 1, 2017.

The 21st Century Cures Act, approved on December 13, 2016 (Pub. Law 114-255, 42 USC § 1396b(i)(27)), limits Medicaid payment for DME to the amount that would be paid under Medicare. The payment amount is established through the competitive bidding program in designated areas, and the District of Columbia is a designated competitive bidding area. Additionally, DME services billed by providers are currently reimbursed at eighty percent (80%) of the Medicare rate. In response to reduced Medicare rates under the new competitive bidding program, DHCF is increasing the prices for three hundred eighteen (318) DME fee schedule codes to reflect reimbursement at one hundred percent (100%) of the Medicare rates.

A list of the three hundred eighteen (318) fee schedule codes that are being changed can be found online at: https://www.dc-medicaid.com/dcwebportal/providerSpecificInformation/providerInformation. For further information or questions regarding this fee schedule update, please contact Amy Xing, Reimbursement Analyst, Department of Health Care Finance, at amy.xing2@dc.gov, or via telephone at (202) 481-3375.

DEPARTMENT OF HEALTH

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

NOTICE OF INFORMATION HEARING

Pursuant to D.C. Official Code § 44-406(b)(4), the District of Columbia State Health Planning and Development Agency ("SHPDA") will hold an information hearing on the following two certificate of need applications:

1) Proposal by 2130 O Street RE, LLC and Inspire Rehabilitation and Health Center, L.L.C. for the Acquisition of Brinton Woods of Dupont Circle - Certificate of Need Registration No. 17-2-8; and

2) Proposal by 1380 Southern Avenue RE, LLC and Serenity Rehabilitation and Health Center, L.L.C. for the Acquisition of Brinton Woods of Washington, D.C. - Certificate of Need Registration No. 17-8-5.

The hearing will be held on Friday, September 8, 2017, at 10:00 a.m., at 899 North Capitol Street, N.E., 6th Floor, Room 6002, Washington, D.C. 20002.

The hearing shall include presentations by the Applicants, describing their plans and addressing the certifications provided pursuant to D.C. Official Code § 44-406(b)(1), and an opportunity for affected persons to testify. Persons who wish to testify should contact the SHPDA on (202) 442-5875 before 4:45 p.m., by Thursday, September 7, 2017. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes. Written statements may be submitted to:

The State Health Planning and Development Agency
899 North Capitol Street, N.E.
Sixth Floor
Washington, D.C. 20002

Written statements must be received before the record closes at 4:45 p.m. on Friday, September 15, 2017. Persons who would like to review the Certificate of Need applications or who have questions relative to the hearing may contact the SHPDA on (202) 442-5875.

THE DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
FAMILY SERVICES ADMINISTRATION

NOTICE OF FISCAL YEAR (FY) 2018 FUNDING AVAILABILITY (NOFA)

FOR

THE DISTRICT OF COLUMBIA STRENGTHENING FOUNDATIONS YOUTH STABILIZATION PROGRAM

Background

The District of Columbia (District), Department of Human Services (DHS) is soliciting detailed proposals to establish stabilization programs to assist youth ages 24 or younger in the District pursuant to the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35, D.C. Official Code § 4-755.01(d)), as amended (HSRA).

In accordance with the HSRA, DHS is authorized to provide funding to establish The Strengthening Foundations Youth Stabilization Program in the District. DHS seeks to provide stabilization services to runaway, homeless, and youth at-risk of homelessness. This front door prevention is aimed at preventing homelessness by assisting youth and families resolve crisis with immediate access to crisis intervention and mediation, emergency evaluations/assessments, mental health support, homeless services and other specialty services for youth facing housing crises. Applicants must demonstrate a culturally competent,, youth centric case management plan to support housing stability. DHS anticipates executing up to three awards for the services discussed herein.

Target Population

The District Strengthening Foundations Youth Stabilization Program target population is:

- Youth up to age 24 who are residing with their parent/guardian/family and are at risk of homelessness due to family conflict, harassment, verbal threats of being kicked out of the home, among other reasons;
- Youth who were previously homeless, placed in temporary housing and can safely return home; and
- Youth who are economically or emotionally detached from their families and lack an adequate or fixed residence, including youth who are unstably housed, living in doubled up circumstances, in transitional housing, in shelter, or on the street.
- Note that youth in the custody of the District are excluded from the target population

Eligibility

Organizations that meet the following eligibility requirements at the time of application may apply:

- Be a community-based organization with a Federal 501(c)(3) tax-exempt status; or evidence of a fiscal agent relationship with a 501 (c)(3) organization;
- The organization's principal place of business is located in the District;
- The organization is currently registered in good standing with the District Department of Consumer & Regulatory Affairs, the District Office of Tax and Revenue, and the United Stated Department of Treasury's Internal Revenue Service (IRS); and/or
- Current grantees must be up-to-date on all reporting obligations for the FY18 grant cycle.

Program Scope:

Grantees will be required, at minimum, for the following requirements:

1. Provide stabilization services in homes and community based settings.
2. Provide timely, flexible and accessible crisis intervention services to youth twenty (24) hours a day, seven (7) days a week; including maintaining sufficient resources and supports for communication and mobile capabilities.
3. Ensure case workers maintain a defined caseload of youth, not to exceed a ratio of 1:8.
4. Work in partnership with DHS and the youth Coordination Entry and Housing Placement system to determine how referrals shall be prioritized.
5. Provide comprehensive assessments that result in an Individualized Service Plan (ISP) that is strength-based, person centered, family-driven, and goal-oriented.
6. Develop Individualized Service Plans (ISP) to include a reunification and stabilization plan for each youth.
7. Conduct Family Team Meetings (FTM).
8. Partner with District network providers and other community-based providers such as, DOES, DHS/ESA, CFSA, DCPS and MPD.
9. Participate in the CAHP system.
10. Report client data via the Homeless Management and Information System.

Release Date of RFA:	Friday, September 1, 2017
Availability of RFA:	The RFA will be posted on the District's Grant Clearinghouse Website
Total Estimated Available Funding:	Up to five hundred thousand dollars and zero cents ($500,000.00)
Total Estimated Number of Awards:	Up to three (3) awards
Total Estimated Amount per Award:	Eligible organizations can be awarded up to two hundred fifty thousand dollars and zero cents ($250,000.00)
Period of Performance:	October 1, 2017 – September 30, 2018

Length of Award:	Twelve (12) months with up to five (5) additional option years
Pre-Bidder's Conference:	Friday, September 15, 2017 12:00PM - 2:00PM The Department of Human Services Headquarters 64 New York Ave, NE (room number TBD after RSVP deadline) Washington, DC 20002
Deadline for Submission:	4:00 PM on Monday, September 29, 2017 The District of Columbia Department of Human Services 64 New York Avenue, NE, 5th Floor Washington, DC 20002 tamara.mooney@dc.gov
Contact Person:	Tamara Mooney, Program Analyst Phone: 202-299-2158

LATIN AMERICAN MONTESSORI BILINGUAL PUBLIC CHARTER SCHOOL ("LAMB")

REQUEST FOR PROPOSALS

Janitorial Services

LAMB PCS is seeking proposals from qualified firms to provide Janitorial Services for one or more of its campuses in the Washington DC area. Please send an email to ertz@lambpcs.org to receive the full RFP. Proposals are due no later than 5pm on Friday, September 8, 2017.

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF PUBLIC MEETING FOR
THE WALTER REED LOCAL REDVELOPMENT AUTHORITY
COMMUNITY ADVISORY COMMITTEE
PURSUANT TO D.C. OFFICIAL CODE § 10-1906

The District will hold a public meeting for the Walter Reed Local Redevelopment Authority (LRA) Community Advisory Committee (CAC) at the following time and location:

Date: Monday, September 11, 2017

Time: 6:30 p.m. - 8:00 p.m.

NEW LOCATION:
Fort Stevens Recreation Center
1327 Van Buren Street NW
Washington, DC 20012

PROPOSED AGENDA

I.	6:30 pm	LRA Project Overview and Update a. DCI/LAMB School Opening
II.	6:40 pm	Master Development Team Overview and Update a. Construction Update b. Site Operations Update c. Buildings V/U and I/J- Update d. Interim Use Activities
III.	7:00 pm	DC International School
IV.	7:30 pm	Building 14 Development Update a. Building 14 M- TPWR/Housing Up b. Building 14 S- HELP USA
V.	8:00 pm	Adjourn

For questions, please contact Randall Clarke, Walter Reed Local Redevelopment Authority Director at 202-727-6365 or randall.clarke@dc.gov or Malaika Abernathy Scriven at 202-545-3123 or Malaika.abernathy2@dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

GT2017-01, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND RATE SCHEDULE NO. 6

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to § 34-802 the District of Columbia Code ("D.C. Code"), and in accordance with § 2-505 of the D.C. Code[1] and Title 15 of the District of Columbia Municipal Regulations ("DCMR") 3500,[2] of its intent to act upon the Application of the Washington Gas Light Company ("Washington Gas" or "Company") in not less than 30 days from the date of publication of this Notice of Proposed Tariff in the *D.C. Register*.

2. Pursuant to Commission directives in *Formal Case No.* 1137, on August 21, 2017, Washington Gas filed a Tariff Application requesting authority to revise Rate Schedule No. 6. Washington Gas' revised tariff language allows the Company to continue offering Interruptible Delivery Service ("IDS"), on an interim basis, to IDS customers that have been dropped by their Competitive Service Providers providing these customers a reasonable period of time to select another supplier.[3] The Company seeks expedited review of its Tariff Application.

3. WGL proposes to revise the following tariff page of P.S.C. of D.C. No. 6:

NATURAL GAS TARIFF, P.S.C. of D.C. No. 3
Third Revised Page No. 271
Superseding Second Page No. 271

4. Washington Gas' Application may be reviewed at the Office of the Commission Secretary, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday or may be viewed on the Commission's website by visiting www.dcpsc.org. and, under the "eDocket System" tab, selecting "Search Current Dockets" and typing "GT2017" in the field labeled "Select Case Number" and "01" as the item number. A copy of the proposed tariff revisions is available upon request at a per-page reproduction fee by contacting the Commission Secretary at (202) 626-5150 or PSC-CommissionSecretary@dc.gov.

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[1] D.C. Code § 34-802 (2001); *and* D.C. Code § 2-505 (2001).

[2] 15 DCMR § 3500 et seq. (October 13, 2000) creates an expedited review process for amending tariffs.

[3] *Formal Case No. 1137, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service ("Formal Case No. 1137"),* Order No. 18712, issued March 3, 2017, at ¶¶385, 460, and 462; and *Formal Case No. 1137,* Order No. 18742, issued April 6, 2017, at ¶¶3, 5, and 6.

5. Any person desiring to comment on the Tariff Application shall file written comments no later than 30 days from the date of publication of this Notice in the *D.C. Register*. Comments should be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, at the address listed in the preceding paragraph. Any person objecting to the expedited handling of the Tariff Application shall file an objection, in writing, with the Commission within thirty (30) days of the publication date. The objection shall clearly state the reasons for which the Tariff Application should not be handled through the expedited procedure and be served on WGL and the Office of the People's Counsel. Responses to objections shall be filed with the Commission within thirty-five (35) days of the publication date and be served on the person objecting and the Office of the People's Counsel. Once the comment/objection period expires, the Commission will take final action on the Tariff Application.

RICHARD WRIGHT PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

RICHARD WRIGHT PUBLIC CHARTER SCHOOL is requesting bids for various services for the 2017-18 School Year. Services required include the following:

- Textbooks
- IT Services
- Accounting Services
- Human Resources Back Office Support
- Special Education Services
- Student Meal Services
- Field Trip/Athletics Transportation
- Event Catering/Rental Space for Gala and Graduation
- Contracted Legal Advice and Representation

If you are a vendor and interested in offering any of these services to our school, please e-mail:

Alisha Roberts
Chief of Operations
Richard Wright PCS
770 M Street SE
Washington, DC 20003
aroberts@richardwrightpcs.org

Further information on what will be required to fulfill the contract will be emailed. Please also note that all bids must include evidence of experience in the field, the qualifications of principles, estimated fees, and sent via ***email.*** All proposals must be emailed **by 5 pm on Friday, September 1, 2017**.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, September 7, 2017 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	**Call to Order**	Board Chairman
2.	**Roll Call**	Board Secretary
3.	**Approval of July 6, 2017 Meeting Minutes**	Board Chairman
4.	**Committee Reports**	Committee Chairperson
5.	**General Manager's Report**	General Manager
6.	**Action Items** Joint-Use Non Joint-Use	Board Chairman
7.	**Other Business**	Board Chairman
8.	**Adjournment**	Board Chairman

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 02-38H
Z.C. Case No. 02-38H
PN Hoffman, Inc.
(First-Stage PUD Time Extension - Northeast Building @ Square 542)
April 24, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on April 24, 2017. At that meeting, the Commission approved the request of PN Hoffman, Inc. ("Applicant") for a time extension of the approval of the first-stage planned unit development ("PUD"), approved by Z.C. Order Nos. 02-38A, 02-38C, and 02-38F, until April 15, 2019. The property that is the subject of this application is located at 1000 4th Street, S.W. ("Property"). The time extension request was made pursuant to 11-Z DCMR § 705.2 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. In 2007, pursuant to Z.C. Order No. 02-38A ("First-Stage PUD"), the Commission approved a modified first-stage PUD to permit the redevelopment of the Waterside Mall "superblock" into eight buildings with a mixture of residential, retail, and office uses totaling 2.5 million square feet of development, with approximately half consisting of residential development. At the same time, the Commission also approved a second-stage PUD for the development of the first four buildings in the PUD. The remaining four buildings received first-stage PUD approval only.

2. Construction of the first two buildings ("East and West 4th Street Office Buildings") commenced immediately after approval, in 2008. Construction of the second two buildings ("East and West Residential Buildings") commenced in 2012. Construction of all four buildings has been completed and they are in operation.

3. The Commission approved the second-stage PUD for the fifth building ("Northwest Building") in 2013. Construction of this building is nearly complete.

4. The Commission approved extensions for the sixth and seventh buildings ("East and West M Street Office Buildings") in 2013 and again in 2015. The owner for these buildings recently filed a request for a third extension in Z.C. Case No. 02-38G. The Applicant also filed a modification of the First-Stage PUD as well as second-stage PUD approval for the buildings in Z.C. Case No. 02-38I. The Commission deferred ruling on the time extension request until final action on Case No. 02-38I.

5. The Property that is the subject of this application is the eighth and final phase of the PUD, a residential building, located on the northeastern portion of the PUD site and known as the "Northeast Building." Condition 29 of the First-Stage PUD required that the second-stage PUD for the Northeast Building (as well as other buildings subject to

first-stage PUD approval only) be filed within five years of the effective date of Z.C. Order No. 02-38A.

6. In Z.C. Order No. 02-38C ("First Extension"), the Commission approved a two-year extension for the First-Stage PUD for the Northeast Building. At that time, the District presented evidence that the dissolution of the RLA Revitalization Corporation and subsequent transfer of the Property and project to the District, combined with significant changes to the economic and financial markets, resulted in delays to the delivery of the Northeast Building.

7. In Z.C. Order No. 02-38F ("Second Extension"), the Commission approved a second two-year extension for the First-Stage PUD for the Northeast Building. The District presented evidence that it had spent much of the previous two years working with other District agencies and the community to study the integration of the Southwest Neighborhood Library into the proposed Northeast Building, although such option was ultimately not pursued. The District also explained that the constraints applicable to government selection of, negotiation with, and disposition to a development partner significantly lengthen the development process when compared to private development. The Second Extension expired on April 15, 2017.

8. Shortly after the approval of the Second Extension, the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") issued a Request for Proposals ("RFP") for the development of the Northeast Building on April 17, 2015. Submissions were due May 22, 2015. After neighborhood presentations, submissions of "best and final offers" from a short list of respondents on August 13, 2015 and again on November 20, 2015, and consideration of the submitted proposals, DMPED awarded the exclusive right to negotiate for the Northeast Building to a team lead by PN Hoffman and AHC, Inc. on March 25, 2016, roughly one year ago. Since that time, DMPED and PN Hoffman have been negotiating a term sheet which was finalized earlier this year, on January 13, 2017. PN Hoffman and DMPED are currently in the process of drafting and negotiating the Land Disposition Agreement ("LDA").

9. The parties expect to complete negotiations and execute the LDA by September 2017. The LDA will then be submitted to the Council for the District of Columbia ("Council") for approval. After the LDA is executed (and while Council approval is pending), PN Hoffman will refine concept plans for the Northeast Building, meet with District agencies, ANC 6D, and other community stakeholders to review and refine the proposal, and commence preparation of the second-stage PUD package. PN Hoffman expects to be able to file the second-stage PUD approximately five months after the execution of the LDA, or by February 2018.

10. On March 20, 2017, the Applicant filed the present application requesting a two-year extension of the time period for approval of the First-Stage PUD. The Applicant also requested a waiver of § 705.5 of Subtitle Z of Title 11 DCMR, which limits the total number of PUD extension to two, with the second extension limited to one year. The

Applicant requests that the Commission waive the requirements of § 705.5 and approve this third time extension request for a period of two years. The Applicant believes that in reviewing this request for waiver, it is important for the Commission to consider that this is the first-time extension request in which PN Hoffman—as the recently selected developer of the Project—has been involved, and a timeline for proceeding is in place. Moreover, the Northeast Building was approved under the 1958 Zoning Regulations, which did not limit the number of extensions available for a PUD.

11. In its April 6, 2017 report to the Commission, the Office of Planning ("OP") supported the PUD time extension request. (Exhibit ["Ex."] 6.)

12. DMPED submitted a letter in support of the time extension request. (Ex. 4.)

13. Advisory Neighborhood Commission ("ANC") 6D submitted a letter, in which it expressed no issues or concerns with respect to the request. (Ex. 5.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11-Z DCMR § 705.2 are satisfied. Section 705.2(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond; ANC 6D, Tiber Island Cooperative Homes, Inc., and Carrollsburg Square Condominium Association were served with this time extension request.

11-Z DCMR § 705.2(b) requires that the Commission find that there is no substantial change in any of the 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. There are no changes to the Zoning Regulations or the Comprehensive Plan that would impact the material facts upon which the Commission based its original approval. The Northeast Building continues to present a prime opportunity to develop vacant, transit-oriented land located adjacent to a Metrorail Station and a dozen blocks from the U.S. Capitol. The new development that has occurred in the area near the Property, particularly the residential development within the PUD as well as other surrounding residential development on adjacent and nearby property, demonstrates the continued existence for demand for the proposed Northeast Building. The anticipated mix of residential and ground-floor retail uses within the Northeast Building will also further goals and policies set forth in the recently-adopted Southwest Small Area Plan, which anticipates 4th Street, S.W. as a thriving "town center."

Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the First-Stage PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original first-stage PUD application.

11-Z DCMR § 705.2(c) requires that the applicant demonstrate with substantial evidence one or more of the following criteria:

(a) 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;

(b) An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(c) 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.

PN Hoffman, in conjunction with DMPED, has proceeded diligently to pursue the development rights afforded by the PUD approval since its selection as the development partner approximately one year ago. The public processes that preceded PN Hoffman's involvement in the Property and continue to govern the development of the Property are beyond its reasonable control.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a second-stage PUD application for the remainder of the Property. The Commission also notes that this time extension request is supported by DMPED. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11-Z DCMR § 705.2(c) regarding the first-stage PUD application.

In regards to the Applicant's request for a waiver from 11-Z DCMR § 705.5, the Commission may, for good cause shown, waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law (see 11-Z DCMR § 101.9). The Commission finds good cause exists given that this is the first extension request by the current developer and the complexities in bringing this project to fruition.

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. As noted above, ANC 6D raised no issues or concerns.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. OP supported this time extension request.

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 a time extension of the First-Stage PUD application approved in Z.C. Order Nos. 02-38A, 02-38C, and 02-38F with respect to the Property. The First-Stage PUD approved by the Commission shall be

valid until April 15, 2019, within which time the Applicant will be required to file a second-stage PUD application for the Property with the Commission.

On April 24, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **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 September 1, 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. 05-28P
Z.C. Case No. 05-28P
Parkside Residential, LLC
(Second-Stage Approval for a PUD and
Modification of an Approved First-Stage PUD @ Square 5056, Lot 811)
April 24, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on March 6, 2017 to consider an application ("Application") from Parkside Residential LLC ("Applicant") for second-stage approval of a planned unit development and modification of an approved first-stage planned unit development and Zoning Map amendment (collectively, a "PUD"). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations ("Zoning Regulations"), Subtitles X and Z. The public hearing was conducted in accordance with the provisions of Chapter 4 of Title 11, Subtitle Z of the District of Columbia Municipal Regulations. For the reasons stated below, the Commission hereby approves the Application.

FINDINGS OF FACT

PUD History and Application

1. The property that is the subject of this PUD is Lot 811 in Square 5056 ("Property" or "Block J") in the Parkside neighborhood of Ward 7. The Property is bounded by Kenilworth Terrace, N.E. to the southeast, Hayes Street, N.E. to the northeast, Cassell Place, N.E. to the southwest, and Parkside Place, N.E. on the northwest. The Property is approximately 35,562 square feet in area. (Exhibit ["Ex."] 27C1, p. A-0.1.) The Applicant proposes to construct an approximately 191-unit multi-family residential building with below-grade parking ("Project") on the Property. (Ex. 2, p. 8.)

2. In an order effective as of April 13, 2007, the Commission approved the first-stage PUD application of the Applicant in Z.C. Order No. 05-28 ("Parkside PUD"), the first-stage order to which this Application for a second-stage PUD succeeds. (Ex. 2C.)

3. The Parkside PUD approves a plan of development for ten "building blocks" across the approximately 15.5-acre site that is the subject of such PUD (collectively, "Parkside"). (Ex. 2A.) The Parkside PUD authorizes a mix of residential, mixed-use, commercial and retail buildings to contain approximately 3,003,000 square feet of gross floor area ("GFA"), including 1,500-2,000 dwelling units, 500,000-750,000 square feet of office space and 30,000-50,000 square feet of retail; an overall density of 4.4 floor area ratio ("FAR"); and a maximum height of 110 feet for the office buildings and 90 feet otherwise. (Ex. 2, p. 1.)

4. In 2008 in Z.C. Case No. 05-28A, the Commission approved a second-stage application for three of the ten blocks in the Parkside PUD—Blocks A, B, and C. The Commission approved a senior living facility consisting of 98 units to be reserved for individuals with an income no greater than 60% of the area median income ("AMI"). It also approved 100

townhouses, 42 of which would be reserved for buyers with incomes between 80% and 120% AMI. This proposal was later modified in Z.C. Case No. 05-28G. The senior housing has been constructed on Block A and the townhouses are now complete on both Blocks B and C. (*Id*.)

5. In 2010 in Z.C. Case Nos. 05-28B and 05-28C, the District of Columbia Primary Care Association ("DCPCA") and Lano Parcel 12, LLC, working with the Community College of the District of Columbia ("CCDC"), submitted second-stage PUD applications for Block I and portions of Blocks H. The applicants submitted a simultaneous request (Z.C. Case No. 05-28E[1]) to modify the Parkside PUD in order to accommodate the projects proposed in the second-stage applications. The Commission approved both second-stage applications, as well as certain modifications to the first-stage PUD. The DCPCA building has been constructed (subject to modifications approved in Z.C. Case No. 05-28I); however, the second-stage approval for CCDC has lapsed. (*Id*., pp. 1-2.)

6. In 2011 in Z.C. Case No. 05-28F, the Commission approved a second-stage application for a one-acre park ("Community Green") located on Block D. The park was included as a benefit and amenity of the Parkside PUD as a whole, provides passive recreation for neighbors, and provides a central gathering place for the community. The Community Green has been constructed. (*Id*., p. 2.)

7. In 2013 in Z.C. Case No. 05-28J/05-28K, the Commission approved a modification to the Parkside PUD and second-stage application for Block E. Block E contains a multi-family building consisting of 186 affordable residential units reserved for individuals with an income no greater than 60% of AMI. Construction on Block E is complete and is currently being leased for occupancy. (Ex. 2, p. 2, Ex. 13, p. 4.)

8. In sum, once the modifications to the original approval are accounted for, the final Parkside PUD approval allows approximately three million square feet of GFA: 43,000 square feet of health care uses, 260,000 square feet of educational uses, 750,000 square feet of commercial uses, and approximately two million square feet of residential uses. (Ex. 2, p. 2.). The Commission has already approved 488,418 square feet of residential development in Blocks A-C, and E leaving approximately 1.55 million square feet of residential development rights to be approved through second-stage PUD applications, including the Application that is the subject of this Order. (*Id*.)

9. On August 5, 2016, the Applicant delivered a notice of its intent to file a zoning application to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commission ("ANC") 7D. (Ex. 2E.) The Applicant filed the Application for this PUD on September 30, 2016, and the Application was accepted as complete by the Office of Zoning on October 5, 2016. (Ex. 1, 3.) The Applicant certified that the Application satisfied the PUD filing requirements. (Ex. 2G.) The Office of Zoning referred the Application to the ANC, the Councilmember for Ward

[1] Z.C. Cases 05-28D, 05-28G, 05-28H, 05-28I, 05-28L, 05-28M, and 05-28N consisted of either minor modifications to various of the second-stage PUDs or extensions to the first-stage PUD. (*See* Ex. 2, Appendix.)

7, and the District Office of Planning ("OP"), and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 4-8.)

10. On December 1, 2016, the Applicant filed modified architectural plans, drawings, and renderings for the Application in response to comments from OP. (Ex. 10, 11A1-11A2.)

11. On December 2, 2016, OP delivered a report ("OP Setdown Report") on the Application recommending that the Commission set it down for public hearing and requesting the following from the Applicant: (i) refinements to the colors of the façade materials to create a more interesting appearance to the building; (ii) submission of additional drawings including perspectives and/or elevations in context with surrounding existing and proposed development, roof plans, site plans and a refinement of the material colors proposed for the façade; (iii) submission of a traffic study a minimum of 45 days in advance of the public hearing; (iv) additional foundation plantings where appropriate to soften the base of the building; (v) clarification of any zoning regulation relief required; and (vi) Provision of a LEED-ND checklist. (Ex. 12, p. 1.)

12. At a public meeting on December 12, 2016 ("Setdown"), OP presented the OP Setdown Report. (December 12, 2016 Transcript ["Tr. 1"], pp. 67-70.)

13. On December 23, 2016, the Applicant filed its pre-hearing statement ("PHS"), which included updated plans and information in response to the requests from OP and the Commission. (Ex. 13C4.) On January 24, 2017, the Applicant filed a comprehensive transportation review ("CTR") for the Project. (Ex. 16, 17A1-17A2.)

14. Notice of the public hearing for Z.C. Case No. 05-28P was published in the *D.C. Register* on January 11, 2017 (64 *D.C. Reg.* 65653) and was mailed to the ANC and to owners of property within 200 feet of the Property. (Ex. 21-23.) On January 24, 2017, the Applicant posted notice of the public hearing at the Property. (Ex. 18.) On March 1, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 33.)

15. On January 26, 2017, OP held an interagency meeting, inviting representatives from numerous agencies, with attendees from OP, the District Department of Energy and the Environment ("DOEE"), the District Department of Transportation ("DDOT"), DC Water, and the Department of Housing and Community Development ("DHCD"). (Ex. 28, p. 10.)

16. On February 14, 2017, the Applicant filed a supplemental statement providing additional information requested from OP and providing an updated set of architectural plans, drawings, and renderings. (Ex. 27-27C12.)

17. Prior to the public hearing, OP, DOEE, and DDOT each submitted a final report dated February 24, 2017 (respectively, the "OP Final Report," "DOEE Report," and "DDOT Report"). (Ex. 28-30.)

18. The ANC is automatically a party to this proceeding. The ANC filed a report dated February 28, 2017 ("ANC Report"). (Ex. 32.) No requests for party status were filed.

19. On March 6, 2017, the Applicant filed a motion for a waiver of the 20-day period otherwise required pursuant to Subtitle Z, Section 401.5 to submit information into the record in response (the "March 6th Filing") to reports from OP, DOEE, DDOT, and the ANC. (Ex. 60-61.)

20. On March 6, 2017, the Commission conducted a public hearing in accordance with Subtitle Z of the Zoning Regulations on Z.C. Case No. 05-28P. (March 6, 2017 ["Tr. 2"]) The Commission accepted Mel Thompson as an expert in architecture, Rob Schiesel as an expert in traffic engineering, and Craig Atkins as an expert in landscape architecture. (Tr. 2, pp. 6-7.) The Commission granted the Applicant's requested waiver of Subtitle Z § 401.5. (Tr. 2, p. 11.) The Applicant provided testimony from Alan Novak and Jonathan Novak on behalf of the Applicant as well as from Messrs. Thompson and Schiesel. (Tr. 2, pp. 12-40.) The ANC cross-examined the Applicant's testimony. (Tr. 2, pp. 88-98.)

21. At the hearing, no persons or organizations spoke in support of the Application. (Tr. 2, pp. 123-24.) Several persons spoke in opposition to the Application. (*Id.*, pp. 124-51.) Neither the Applicant nor the ANC cross-examined those speaking in opposition to the Application.

22. At the conclusion of the public hearing, the Commission closed the record with the exception of items requested from the Applicant and the ANC. (Tr. 2, p. 158.)

23. On April 3, 2017, the Applicant filed a written post-hearing submission ("Post-Hearing Submission") in response to items requested by the Commission. (Ex. 70-70D.) On April 3, 2017, the Applicant provided its list of final proffers and draft conditions pursuant to Subtitle X § 308.8. (Ex. 70C.) On April 10, 2017, the Applicant filed a draft order. (Ex. 73.)

24. On April 6, 2017, the National Capital Planning Commission filed a report finding that the Application neither was inconsistent with the Comprehensive Plan for the National Capital nor would adversely affect any other identified federal interests. (Ex. 71.)

25. On April 10, 2017, ANC 7D filed a supplemental report. The ANC report cited issues and concerns it had previously submitted into the record, including timing, data usage, site design, analysis, mitigation, parking, traffic concerns, and transportation. In addition, the ANC 7D report articulated concern with the Community Benefits Agreement. The recorded vote was 5-1-0 in favor of the Application. (Ex. 74.)

26. On April 14, 2017, ANC 7D submitted a second supplemental report rescinding its previous opposition, and changed its position to support. (Ex. 75.)

27. On April 24, 2017, the Commission took final action to approve the Application.

Overview of the Property and Surrounding Area

28. The Parkside PUD is partially constructed, with streets and infrastructure in place, and approximately 100 townhomes, over 186 apartments, nearly 100 senior housing units,

and a healthcare clinic previously built. Four schools have also been constructed in the immediate vicinity of the Parkside PUD area. Approximately nine acres of the Parkside PUD site remains vacant land. Parkside is the northern anchor of the Anacostia Waterfront, adjacent to Kenilworth Avenue and the Minnesota Avenue Orange Line Metrorail Station, and sits at a vital crossroads in the District of Columbia. (Ex. 2, pp. 8-10.)

29. Land uses in the vicinity of the Property include a former Pepco plant, Educare, Neval Thomas Elementary School, Metrotown apartments and townhomes, vacant land, and the Parkside townhomes, which were constructed in the 1990s. Two blocks north of the Property is the Mayfair/Paradise multifamily rental communities. Eastland Gardens is located approximately one-half mile to the north of the Property. To the west of the Property are the Kenilworth Aquatic Gardens, Anacostia Park, the Anacostia River and the National Arboretum, which together form a large green space and recreational complex. Parkside is adjacent to thousands of acres of parkland along the Anacostia Waterfront, including Kenilworth Park and the Aquatic Gardens. (*Id*., p. 9.)

30. The Property has easy access to the Downtown and the Baltimore/Washington corridor via Highway 295, a six-lane highway that provides convenient access to downtown Washington, to Route 50 and points east, to the Baltimore-Washington Parkway to Howard County and Baltimore, and to the Capital Beltway. The Minnesota Avenue Metrorail Station (Orange Line) is located immediately across Highway 295 from the site, within walking distance over a pedestrian bridge that connects to the Metrorail Station. The Orange Line is seven stops (10-15 minutes) from Metro Center. In the opposite direction, the Orange Line runs to New Carrollton, a major employment center for Prince George's County, Maryland. (*Id*., p. 9.)

31. Several other developments are currently planned or have recently been incorporated into the neighborhood. These include the construction of the first phase of the District Department of Employment Services Government Center (at the Metrorail Station); the 700-student Cesar Chavez Public Charter High School; 172 rental units in a building known as Lotus Square; 125 affordable townhomes along with public housing units in a development known as MetroTowns at Parkside; the Educare Early Childhood facility; 98 affordable units in the Parkside senior living facility on Block A of Parkside; 100 Parkside townhomes on Blocks B and C of Parkside; the DCPCA on Block I1 of Parkside, and 186 affordable residential units in a building known as The Grove on Block E of Parkside. (*Id*., pp. 9-10.)

32. Parkside has been adopted by America's Promise Alliance, a coalition of over 400 national organizations working collaboratively to bring comprehensive education and social services to underserved communities based upon the Harlem Children's Zone model. The Parkside community was accepted into the federal Promise Neighborhood Program with a $25 million grant from the US Department of Education in December 2012, which is the centerpiece of President Barack Obama's urban initiatives. (*Id*., p. 10.)

33. The Promise Neighborhoods Program seeks to engage all resident children and their parents into an achievement program based on tangible goals, including matriculation to college for each and every participating student, positive physical and mental health outcomes for children, and parenting classes. The program also seeks to provide employment training and counseling to provide meaningful employment opportunities for the parents. (*Id*., p. 10.)

34. The DC Promise Neighborhood Initiative ("DCPNI") has formed a 501(c)(3) with a working group representing stakeholders, including Cesar Chavez Charter School, America's Promise Alliance, DC Appleseed, City Interests, LLC, Georgetown University, Children's Hospital, and Local Initiatives Support Coalition. The District government endorsed the Kenilworth-Parkside application for the federal Promise Neighborhood Program. (*Id*., p. 10.)

Parkside PUD

35. In the Parkside PUD, the Commission approved the overall massing and program for the Parkside PUD site and set forth parameters for each of the site's building blocks, including Block J, which is the subject of the instant order. The Parkside PUD approved the following parameters with respect to Block J: Number of Units – 140-160; Lot Occupancy – 63%;[2] GFA – 183,000 square feet ("sf"); FAR – 4.58; Height – 54-90 feet; and Parking – 96 spaces. (*Id.*, p. 7.)

36. In the Parkside PUD, the Commission simultaneously approved a Zoning Map amendment to change the zoning for the Parkside PUD site from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts, provided the Applicant was required to formally request such amendment in each second-stage application. Accordingly, the Application included a request for a Zoning Map amendment to rezone the Property from the R-5-A Zone District to the C-3-A Zone District. (*Id*., Ex. 28, p. 5.)

37. In the Parkside PUD (which was approved three days after the adoption of the Inclusionary Zoning ("IZ") regulations), the Applicant agreed to set aside 20% of the residential component of the overall Parkside PUD to be affordable for households at 80% AMI and an additional 20% of the overall residential component to be affordable for households at 80-120% of AMI. To date, the Applicant and its affiliates have constructed 384 total units, of which 284 (74%) are affordable at 60% AMI (i.e., at a deeper level of affordability than is required under the Parkside PUD), 42 (11%) are affordable at 80-120% AMI, and 58 (15%) are market-rate. Prior to this Application, 25% of the total number of units allowed under the Parkside PUD have been constructed. Upon completion of the Project and including the new units added by the Project, 44% of the units in the Parkside PUD will be market-rate units. The Commission finds that the Project's mixed-income housing approach is essential for attracting a mix of commercial uses to the Parkside neighborhood. (Ex. 13, pp. 4-5.)

[2] Under the Parkside PUD, Lot Occupancy was calculated using area of the individual building blocks. Using the lot area (rather than the block area), the approved Lot Occupancy for Block J under the Parkside PUD is 70.8%.

38. The Parkside PUD was approved prior to September 6, 2016, and accordingly, pursuant to Subtitle A of the Zoning Regulations, the substantive requirements of the 1958 Zoning Regulations apply to the Project, except as the first-stage PUD is modified.

The Project

39. The Project consists of a multifamily residential building with a maximum height of 81 feet, four inches, stepping down to lesser heights of 74 feet and 64 feet, eight inches as the building steps toward Parkside Place. (Ex. 2, p. 11.) The Project will include approximately 172,150 square feet of GFA, which is less than the 183,000 square feet that was approved in the Parkside PUD. (Ex. 27C1, sheet A-0.1.) The Parkside PUD also approved 96 parking spaces; however, the Project includes 85 vehicular spaces in a below-grade parking garage. (*Id.*) The Property is a single, contiguous lot with an area of 35,562 square feet. (*Id.*)

40. The Project's massing responds to the building's context. The maximum height of 90 feet is along Kenilworth Terrace and the building steps down to lower heights along Parkside Place. (Ex. 2, p. 11.) Across Parkside Place, N.E. from the Property is Neval Thomas Elementary School, the height of which is consistent with the stepped-down heights of the Project. In addition to the stepped down heights, the Project is also designed in a "U" shape, with a central courtyard facing Parkside Place, providing light and air along the streetscape and into the interior of the Project. The courtyard provides a passive recreation area for residents and also incorporates a number of green features, allowing for increased soil depths, greater stormwater infiltration, and absorption. The Project's permeable paving also allows for additional stormwater infiltration and detention. All water that passes through the green roof courtyard, beyond what can be absorbed, will be collected in a stormwater holding tank, and the Project has the capacity to reuse this water on site to allow minimal if any site runoff from the Property. (*Id.*) The Project's site plan includes two curb cuts: one from Hayes Street, N.E. for resident entry into the garage and a second from Parkside Place, N.E. for all loading and trash. (*Id.*) Street side loading will occur from Cassell Place, N.E. (*Id.*, pp. 11-12.) The Applicant has provided a loading management for the Project. (*Id.*, p. 12.) However, the Project requires relief from the Zoning Regulations with respect to loading. (*Id.*, pp. 12-13.)

41. At the public hearing the Applicant testified that it was seeking financing from the U.S. Department of Housing and Urban Development ("HUD") to construct the Project as a fully market-rate building and that such financing was a novel application in Ward 7. (Tr. 2, p. 62.)

Modifications to the Parkside PUD

42. The Project differs from the parameters for Block J under the Parkside PUD as follows: Number of Units – 191; Lot Occupancy – 78.5%;[3] GFA – 172,150 sf; FAR – 4.84;[4]

[3] The Lot Occupancy of 78% for Block J is calculated using the surveyed lot area of 35,562 square feet; whereas, the Lot Occupancy for Block J under the Parkside PUD was calculated using the entire block area of 40,000 square feet. Using block area, the proposed Lot Occupancy is 69.8%.

Height – 64-81 feet, four inches; and Parking – 85 spaces. (Ex. 2, p. 12; 27C1, sheet A-0.1.) In addition, the Project requires relief from the following requirements of the Zoning Regulations: loading, parking location, side yard, lot occupancy, penthouse structure, and IZ. (Ex. 2, pp. 12-13.)

43. The Applicant seeks to modify the Parkside PUD as follows in order to accommodate the Project:

(a) Number of Units: The Parkside PUD approved 140-160 units for Block J, recognizing that the final number of units would depend upon market conditions for bedroom counts and unit sizes. The Project includes 191 units. The Commission finds that the Project's unit count is consistent with prevailing market conditions for smaller unit sizes with lower bedroom counts and because its overall GFA has not increased, the modification of the Parkside PUD's unit count is appropriate;

(b) Lot Occupancy: The Parkside PUD approved a nominal lot occupancy of 63%; however, this metric was based on the overall area of Block J (including the surrounding public space) rather than the area of the lot that comprises the private property on Block J. The Project contemplates a lot occupancy of 78.5%, which is equivalent to 69.8% of the block area. That is, the Parkside PUD approved a 63% block occupancy, and the instant Project proposes a 69.8% block occupancy. The C-3-A Zone District allows a lot occupancy of 75%. (Ex. 2, p. 13; 27C1, sheet A-0.1.) At the scale of the entire block, which is how the Parkside PUD was analyzed and approved in the Parkside PUD, the Project is consistent with the underlying zoning requirements and only slightly greater than the approval in the first-stage order. The Commission finds that the slightly increased lot occupancy of the Project is appropriate in the context of the overall design for the Project;

(c) GFA: The Parkside PUD approved a GFA of 183,000 sf for Block J, whereas the Project proposes a GFA of just 172,150 sf. (Ex. 27C1, sheet A-0.1.) The Applicant has reduced the overall size of the Project relative to what was approved in the first-stage PUD. The Commission finds that the reduced overall GFA for the Project offsets the greater number of units;

(d) FAR: The Parkside PUD approved an overall FAR of 4.58, whereas the Project has an FAR of 4.84. (Ex. 27C1, sheet A-0.1.) The discrepancy owes to the first-stage FAR being calculated on the basis of the entire block area, whereas the Project's FAR is calculated on the basis of the lot, which is approximately 5,500 square feet smaller. Accordingly, the Project's FAR is nominally higher (despite the Project's GFA being smaller) because the lot area is smaller. The Commission

[4] The FAR for Block J is 4.84 as calculated using the surveyed lot area of 35,562 square feet; whereas, the Parkside PUD calculated an FAR of 4.5 for Block J using the block area of 40,000 square feet. Using block area, the Project's FAR is 4.30.

finds that the variation in the Project's FAR is largely an artifact of the denominator in the FAR equation changing;

(e) Height: The Parkside PUD approved a range of heights on Block J, with heights ranging from 54-90 feet across the block. The Project proposes a range of heights from 64-81 feet, four inches. (*Id*.) The Commission finds that in the context of the overall design of the Project, the proposed range of heights are appropriate; and

(f) Parking: The Parkside PUD approved 96 parking spaces for Block J, whereas the Project proposes to include only 85. The Commission finds that given the Applicant's transportation demand management ("TDM") measures outlined in Section C of the Decision, the reduction in parking spaces is appropriate.

The Applicant provided detailed information describing the Project's consistency with the Conditions of the Parkside PUD. (Ex. 2, pp. 15-18.) The Commission finds that the Project is consistent with the "U"-shaped multi-family residential building that the Commission approved in the Parkside PUD and, specifically, with the Conditions of that Order as well as with the Findings and Conclusions of that Order more generally. The Applicant has submitted revised plans ("Revised Plans") that replace those approved in the Parkside PUD for Block J. (Ex. 27C-27C12, 59A1-59A2, 70D.)

Relief and Flexibility Requested

44. The Applicant seeks relief from the Zoning Regulations as follows in order to accommodate the Project:

(a) Loading: The Applicant seeks relief from the loading requirements of the Zoning Regulations in order not to provide the required internal loading facilities in the Project. Instead, the Applicant proposes that the Project's loading will occur from the street. (Ex. 2, p. 12-13.) The Applicant has prepared a loading management plan. (Ex. 17A1, pp. 12-13, Ex. 61, p. 2.) Accordingly, the Commission finds that any impacts associated with the loading relief are capable of being mitigated;

(b) Parking Location: The Applicant seeks relief from 11 DCMR § 2116.12 of the Zoning Regulations in order to provide above-grade parking spaces within 20 feet of the lot line. Portions of the Project's parking structure, which is generally below-grade, are out of grade. The parking structure is not set back from the lot line. The Commission finds that the Project's design of the parking facilities, its reduction in parking spaces relative to the Parkside PUD approval, the Project's landscaping and streetscape improvements, and the Project's TDM mitigate any impacts associated with this relief;

(c) Side Yard: The Applicant seeks relief with respect to the side yard requirements of the Zoning Regulations. The Zoning Regulations do not require a side yard in the C-3-A Zone District; however, where one is provided, the minimum width must be maintained across the entirety of the yard. Because of an irregular lot line on

the Property, the Project is not built to the lot line resulting in a minor, nonconforming side yard. Because the Project is surrounding on all sides by public streets, the Commission finds that this side yard relief is mitigated;

(d) Lot Occupancy: The Project requires relief from the lot occupancy requirements of the C-3-A Zone District. As described above, the Project requires such lot occupancy relief only on account of the now-laid-out configuration of the lot, which is smaller than the block on the basis of which the lot occupancy was determined in the Parkside PUD. The Commission finds that this request is mitigated by the Property being surrounded by public streets on all sides, the Project's satisfaction of stormwater management standards, and the ample publicly accessible open space in the vicinity of the Project; and

(e) Inclusionary Zoning: By virtue of the Project's modification of the Parkside PUD, it is subject to the IZ requirements of the Zoning Regulations. The Commission takes notice of the affordable housing requirements imposed by the Parkside PUD. In its pre-hearing statement, the Applicant provided an update on the amount of affordable housing provided under the Parkside PUD to date. The Commission finds that the amount of affordable housing provided thus far as part of other phases of the Parkside development warrants relief from the IZ requirements.

45. The Commission finds that, overall, the Project conforms to the Zoning Regulations, except for the few items of articulated relief set forth in the immediately foregoing paragraph. Where the Project requires zoning relief, the Commission finds that such relief is either minimal in nature or otherwise does not derogate or impair, but rather is in accordance with, the purposes or intent of the Zoning Regulations or Zoning Map.

46. The Applicant also requested flexibility with respect to final design of the Project as follows:

(a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

(b) To provide a range in the number of residential units plus or minus 10% from the number depicted on the Revised Plans;

(c) To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Revised Plans;

(d) To vary the final streetscape design and materials, including the curb cut on Cassell Place, N.E., as required by District public space permitting authorities; and

(e) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems.

The Commission finds that these areas of flexibility are appropriate given the public benefits included as part of the Project and finds that any impacts associated with this flexibility is capable of being mitigated.

PUD Evaluation Standards

47. As set forth in Subtitle Z § 304 of the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of such section. The Applicant has the burden of proof to justify the granting of the Application according to such standards. In deciding this PUD Application, the Commission has judged, balanced, and reconciled the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case. As set forth in the immediately succeeding paragraphs, the Commission hereby issues findings that, subject to the Conditions of this Order, the Project:

(a) Is not inconsistent with the Comprehensive Plan for the District of Columbia, 10-A DCMR § 100, *et seq*., and with other adopted public policies and active programs related to the Property and the Parkside PUD site as a whole;

(b) Does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and

(c) Includes specific public benefits and amenities, which are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the Property and the Parkside PUD site as a whole.

Consistency with the Comprehensive Plan

48. For the following reasons, the Commission finds that, subject to the Conditions of this Order, the Project is not inconsistent with the Comprehensive Plan:

(a) Future Land Use Map. The Future Land Use Map of the Comprehensive Plan designates the Property as appropriate for Medium-Density Residential use. The Medium-Density Residential designation defines neighborhoods where mid-rise (i.e., four-seven stories) apartment buildings are to be the predominant use. (10-A DCMR § 224.) The Project is an apartment building with six floors. The

Commission therefore finds that the Project is not inconsistent with the Future Land Use Map of the Comprehensive Plan;

(b) Generalized Policy Map. The Generalized Policy Map of the Comprehensive Plan categorizes how different parts of the District may change between 2005 and 2025. The Project is located in the "Neighborhood Enhancement Area." The Commission takes notice that the Comprehensive Plan defines such Areas as generally having large amounts of vacant land and to encourage infill development, avoid displacement, "improve the real estate market, reduce crime and blight, and attract complementary new uses and services that better serve the needs of existing and future residents." (*Id.* § 223.8.) The Project is developed on a vacant lot, so it is an infill project that avoids any displacement. The Project will also improve the neighborhood real estate market and attract complementary new uses, such as retail and other commercial uses that better serve existing and future residents. The Comprehensive Plan includes language that development in such Areas present opportunities for small-scale infill, but development is not limited to such scales. (*Id.* § 223.6.) Rather a mixture is encouraged, and the "guiding philosophy" is to "ensure that new development "fits-in" and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map." (*Id.* § 223.7.) The Commission finds that the Project fits-in with and responds to the character, features, and capacity of the neighborhood. The Project improves the neighborhood by infilling on a vacant lot, and, as noted above, is consistent with the Future Land Use Map;

(c) Land Use Element. The Comprehensive Plan's over-arching land use goal is to "Ensure the efficient use of land resources to meet long-term neighborhood, citywide, and regional needs; to help foster other District goals; to protect the health, safety, and welfare of District residents, institutions, and businesses; to sustain, restore, or improve the character and stability of neighborhoods in all parts of the city; and to effectively balance the competing demands for land to support the many activities that take place within District boundaries." (*Id.* § 302.1.) This Element prioritizes transit-oriented development and the importance of mixed-use developments on large sites. The Project is located a short walk to the Minnesota Avenue Metrorail station, which is less than one-half mile from the Property, and it is located even closer to the commercial center proposed along Kenilworth Terrace, N.E. As such, it directly advances the Comprehensive Plan's objective for infill development near the transportation infrastructure and contributes to the critical mass of residents needed to support the future development of the commercial uses approved in the PUD and desired by many neighborhood residents. The Comprehensive Plan also seeks to achieve "land use compatibility" and more specifically, the enhancement and stabilization of the District's neighborhoods through the protection of residential neighborhoods from non-residential and disruptive uses. The Property serves as an important transition between the commercial nature of Kenilworth Terrace and

the transportation corridor on the one hand and the lower-density residential along Parkside Place, N.E. on the other. The Commission therefore finds that the Project is not inconsistent with the Land Use Element of the Comprehensive Plan;

(d) Transportation Element. The goal of the Transportation Element of the Comprehensive Plan is to "create a safe, sustainable, efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents." (*Id.* § 401.1.) To this objective, the Transportation Element encourages strengthening the linkage between land use and transportation as new development occurs. (*Id.* §§ 402.1, 403.) The Commission finds that this Project is consistent with that overarching goal. The Property is strategically located between the commercial center of Kenilworth Terrace, N.E. and the existing, lower-density residential and educational uses in the Parkside community to the west. The Project not only transitions uses and density, but also provides a connection between the uses. The Project transforms a vacant lot into a contributing part of the Parkside community in a manner that is seamlessly integrated into the existing street and transit network. Further, the District and the Applicant are collectively funding construction of a pedestrian bridge, the construction of which is expected to begin within approximately a year, to facilitate access between Parkside and the Metro station. In all, the Project will facilitate and encourage the use of the Metro Station. Accordingly, the Commission finds that the Project is not inconsistent with the Transportation Element of the Comprehensive Plan;

(e) Housing Element. The Comprehensive Plan's overarching goal for the Housing Element is to "develop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District." (*Id.* § 501.1.) The Project is not inconsistent with this goal or the Housing Element more generally because it contributes significantly to the supply of housing in Ward 7, and equally significantly, is well-served by transit. The Commission finds that the Project is not inconsistent with the Housing Element. It finds that the Parkside PUD introduces a true mix of incomes to the community by reserving 20% of the overall residential component as affordable housing and an additional 20% as workforce housing. The instant application introduces the first market-rate multifamily building in Parkside and is currently the only newly built market-rate multi-family rental building proposed in the immediate area;

(f) Environmental Protection Element. The Comprehensive Plan's overarching environmental protection goal is to protect, restore, and enhance both the natural and man-made environment of the District. (*Id.* § 601.1.) The Project advances this goal with a landscape plan that helps beautify and enhance streets and public spaces, reduces stormwater runoff, and creates a stronger sense of character and identity. The Project proposes features improve water quality through the use of a rain garden in the courtyard to treat runoff from impervious surfaces, including roofs and paved areas; and through the use of a vegetative swale (bio-filtration) to

treat runoff from the Property. Finally, the Project is a model of environmentally-responsible development, being part of a pre-certified as LEED-ND Gold master development and being designed to the LEED-BD&C Gold level. The Commission finds that the Project is not inconsistent with the Environmental Protection Element of the Comprehensive Plan;

(g) Parks, Recreation, and Open Space Element. The Parks, Recreation and Open Space Element of the Comprehensive Plan has an overarching goal of, in part, meeting the active and passive recreational needs of District residents. (*Id*. § 801.1.) To that end, this Element encourages the construction of parks on large redevelopment sites such as the Parkside PUD site. (*Id* § 807.6.) The Applicant has constructed the Community Green at the center of Parkside, and this Project will continue to help make that amenity successful. As a result, the Commission finds that the Project, as part of the Parkside PUD, is not inconsistent with the Parks, Recreation, and Open Space Element of the Comprehensive Plan;

(h) Urban Design Element. The overarching goal of the Urban Design Element of the Comprehensive Plan is, in part, to . . . "harmoniously integrat[e] new construction with existing buildings and the natural environment." (*Id*. § 901.1.) More specifically, the Urban Design Element seeks to, among other objectives, strengthen civic identity through a renewed focus on public spaces and boulevards, encourage design for successful neighborhoods and large site reintegration; improve the public realm, particularly street and sidewalk space; and promote design excellence throughout the District. The Project reflects the emerging architectural qualities of the surrounding residential neighborhoods and includes an appropriate use, density, and height for sufficient private and public open space for the residents. The Project provides an important connection between approved second-stage applications, providing the unity and cohesion of plan that the PUD needs. The Commission finds that the Project is not inconsistent with the Urban Design Element of the Comprehensive Plan;

(i) Educational Facilities Element. The Comprehensive Plan's overarching goal in the Educational Facilities Element is to "transform the educational environment in the District of Columbia, providing facilities that inspire excellence in learning, create a safe and healthy environment for students." (*Id*. § 1201.1.) The Project facilitates the ongoing transformation of the Parkside neighborhood into an educational "incubator" community. The Parkside PUD as a whole, and the Applicant more generally, have supported and advanced this Element of the Comprehensive Plan for more than a decade by assisting with the development of high quality education facilities to inspire excellence in learning. This Project helps continue to ensure that Parkside is a neighborhood creates a safe and healthy neighborhood for students. The Commission finds that the Project is not inconsistent with the Educational Facilities Element of the Comprehensive Plan; and

(j) Area Element. The Project is located within the Far Northeast and Southeast Area Element. The Project advanced numerous policy objectives of this Area Element including:

- ***Policy FNS-1.1.3: Directing Growth***: Concentrate employment growth in Far Northeast and Southeast, including office and retail development, around the Deanwood, Minnesota Avenue and Benning Road Metrorail station areas, at the Skyland Shopping Center, and along the Nannie Helen Burroughs Avenue, Minnesota Avenue, Benning Road, and Pennsylvania Avenue S.E. "Great Streets" corridors. Provide improved pedestrian, bus, and automobile access to these areas, and improve their visual and urban design qualities. These areas should be safe, inviting, pedestrian-oriented places. (*Id*. § 1708.4.)

- ***Policy FNS-2.1.1: Minnesota/Benning Revitalization***: Support revitalization and further development of the area around the Minnesota Avenue Metro station, including the adjacent business district to the south along Minnesota Avenue. Upgrade and expand existing businesses in this area, and encourage new small business development, educational facilities, and community-based human services such as job training, health care, and child care facilities. Any new public facility in this area should contribute to its image as an attractive and vibrant community hub and should be responsive to the needs of surrounding neighborhoods. (*Id*. § 1711.4.)

- ***Policy FNS-2.1.3: Minnesota Avenue Station Area Mixed Use Development***: Encourage mixed use development including medium density multifamily housing around the Minnesota Avenue Metro station, recognizing the opportunity for "transit-oriented" development that boosts neighborhood businesses, reduces the need for auto commuting, and enhances the quality of the pedestrian environment along Minnesota Avenue. (*Id*. § 1711.6.)

- ***Policy FNS-2.8.2: Kenilworth-Parkside Transit Oriented Development***: Support mixed-use residential, retail, and office development on the remaining vacant properties in the Kenilworth-Parkside neighborhood. Take advantage of this area's proximity to the Minnesota Avenue Metrorail station and its relative isolation from the low-density single family neighborhoods to the east to accommodate medium- to high-density housing that is well connected to transit and the adjacent waterfront open space. (*Id*. § 1718.6.)

- ***Policy FNS-2.8.3: Density Transitions at Parkside***: Provide appropriate height and scale transitions between new higher density development in the Kenilworth-Parkside neighborhood and the established moderate density townhomes and apartments in the vicinity. Buildings with greater

heights should generally be sited along Kenilworth Avenue and Foote Street, and should step down in intensity moving west toward the river. (*Id*. § 1718.7.)

The Project furthers the objectives of this Area Element by concentrating growth around the Minnesota Avenue Metro station and by providing appropriate height and scale transitions in the Parkside neighborhood. Therefore, the Commission finds that the Project is not inconsistent with the applicable Area Element of the Comprehensive Plan.

49. The Project does not materially address or affect the goals and objectives set forth in the Historic Preservation, Community Services, Infrastructure, and Arts and Culture Elements of the Comprehensive Plan. Accordingly, the Commission finds that the Project is not inconsistent with such Elements. Similarly, the Project is not within the boundary of any small area plan.

50. Finally, the Project is not inconsistent with, and indeed directly advances the objectives of DC Promise Neighborhood Initiative and the federal Promise Neighborhood Program.

51. Neither the Applicant nor any person who provided testimony with respect to this Application presented any evidence of other adopted public policies or active programs related to the Property nor any claims of inconsistency therewith, and the Commission takes no notice thereof. Therefore, the Commission finds that the Project is not inconsistent with other adopted public policies for the Property.

Project Impacts

52. For the following reasons, the Commission finds that, subject to the Conditions of this Order, the Project does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project:

(a) Land Use Impact. The Commission finds that the Project continues to extend the urban fabric of the District east of the Anacostia River and helps establish a new urban community at Parkside, with a plan that is appropriate given the Property's location as an infill development in close proximity to a Metrorail station. The Project's proposed use, design, and TDM plan have a net positive impact on the Minnesota Avenue, N.E./Anacostia Freeway/Orange Line transportation corridor and the secondary streets feeding into such corridor. From an urban design perspective, the Project serves as a transitional element between the transportation corridor to the southeast, the industrial uses to the southwest, the adjacent residential neighborhoods, and the open space adjacent to the Anacostia River. The Commission finds that the Project's impact on surrounding land uses is either favorable insofar as the Project infills a vacant lot and serves as a buffer or is capable of being mitigated given the Project's overall design, use, and TDM;

(b) Housing Impact. The Commission finds that the Project provides a critical amount of housing, which supports the success of the other uses in the PUD and helps further stabilize the Parkside community, thereby having a favorable impact on the surrounding area. The Commission further finds that the introduction of purely market-rate housing east of the Anacostia is a favorable impact of the Project as it signifies the maturation and stabilization of the neighborhood. To the extent the all-market-rate nature of the Project imposes adverse housing impacts, those impacts are capable of being mitigated or acceptable given the amount of affordable and workforce housing already constructed in the Parkside neighborhood pursuant to previous second-stage PUDs under the Parkside PUD;

(c) Zoning Impact. The proposed Zoning Map amendment has an acceptable impact on the surrounding area given the quality of public benefits. The proposed C-3-A Zone District is consistent with the Transit-Oriented Development ("TOD") categories on the Generalized Land Use Map of the Comprehensive Plan and the TOD-nature of the Parkside neighborhood. Specifically, the proposed height is appropriate for its location as a transition between commercial uses and residential uses. The Zoning Map amendment supports construction of the Project as a transition from the greater heights along Kenilworth Avenue, N.E. to the lower heights along Parkside Place, N.E. The height and density afforded by the amendment are also appropriate considering the greater context of the Project's proximity to the Metrorail station. The Commission finds that the overall package of public benefits, and more particularly, the transportation-related benefits from the Parkside PUD, render the zoning impacts acceptable;

(d) Environmental Impact. The Commission finds the Project's environmental impacts either acceptable or capable of being mitigated. The Project is designed so as to minimize any adverse environmental impacts that would otherwise result from the construction of this Project. In addition, the Project's increase demand on water and sanitary services will have an inconsequential effect on the District's delivery systems. The Project's proposed stormwater management and erosion control plans minimize impact on the adjacent property and existing stormwater systems. The overall PUD uses a rain garden to treat runoff from impervious surfaces as well as a vegetative swale (bio-filtration) to treat runoff from the entire Parkside PUD site. The use of bio-swales throughout the overall PUD will help manage the storm water in an environmentally superior method. The requisite erosion control procedures stipulated by the District will be implemented during construction of the Project. The PUD has already been pre-certified as a LEED-ND (Leadership in Energy and Environmental Design for Neighborhood Developments) Pilot project at the Gold level for the overall master development and the Applicant seeks to have the Project be certifiable at the LEED-BD&C Gold level;

(e) Services and Facilities Impact. The Commission finds that the Project will have an acceptable impact on the District's services and facilities given the quality of the Project's and the Parkside PUD's overall public benefits; and

(f) Transportation Impact. The Commission finds that this Project's transportation impacts are capable of being mitigated subject to the Conditions of this Order. The Applicant has prepared a robust TDM in concert with review and analysis by DDOT and with input from the ANC and interested community members. Transportation impacts are addressed in further detail in the "Contested Issues" section.

53. The Commission finds that the Project's impacts will improve upon, and not injure, the public health, safety, welfare and convenience, especially in light of the Project's public benefits address herein.

Public Benefits

54. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. The Project achieves the goals of the PUD process by creating a high quality residential development with significant housing opportunities and furthering the objectives of the Parkside PUD, with its many benefits and amenities. The Commission finds that, subject to the Conditions of this Order, the Project includes the following specific public benefits and amenities, which are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the Property and the Parkside PUD site as a whole.

(a) Urban Design, Architecture, and Landscaping. The Commission finds that the Project's greater heights and density near the Minnesota Avenue transit node and its orientation and massing along multiple public streets constitute superior urban design and that the Project's architecture, design, detail, quality of materials, and landscaping are collectively superior;

(b) Site Planning. The Project leverages its location adjacent to parklands, the Anacostia River and most importantly, the major transportation corridor to the southeast, including the Minnesota Avenue Metrorail Station. The site plan fills in a gap of an urban neighborhood, better connects the existing Parkside Townhomes with the fabric of the District, and helps establish a true mixed-use development in the heart of Ward 7. The Project also improves, with a multifamily building, land that has sat vacant for decades and makes a significant contribution to establishing a community within the Parkside PUD. The Commission finds that the Project's proposed site plan is efficient and economical;

(c) Housing and Affordable Housing. The Commission finds that the Project provides housing in excess of the amount possible under a matter-of-right development. The Commission also finds, pursuant to Subtitle X § 305.5(r), that the Project's emphasis on market-rate housing and creative application of HUD financing is a public benefit in Ward 7 given that portion of the District's long underinvestment. Finally, the Project's role in creating a mixed-income and successful Parkside neighborhood overall support the Commission hereby finding that the Project

provides public benefits with respect to affordable housing beyond the amount that would be required pursuant to the IZ requirements;

(d) Transportation and Mass-Transit Benefits. The Commission finds that the transportation and mass-transit benefits associated with the Parkside PUD more generally apply to this Project insofar as this Project is a vital component in the overall development of the Parkside PUD site and the realization of the Parkside vision. Accordingly, the Commission credits the Applicant's existing $3,000,000 contribution towards a pedestrian bridge from the Metrorail as a public benefit of this Project;

(e) Employment Benefits. The Applicant has entered into a Community Benefits Agreement with the ANC, which Agreement prioritizes hiring of Ward 7 residents and obligates the Applicant to make regular reports on the same to the ANC. (Ex. 70B, p. 2.) This commitment is a public benefit;

(f) Special Value for the Neighborhood or the District. The Commission finds that the Project provides multi-family housing options to bring full time residents to the Parkside neighborhood and Ward 7 more generally. The Project will help contribute to the critical mass of residents necessary to attract retail and other commercial uses to the neighborhood, serves as an important transition between those future commercial uses and lower density residential uses elsewhere on the PUD site, and serves as a prominent signal of private investment in an historically-underinvested neighborhood. The Commission also finds and commends the Applicant's assumption of a leadership role in championing creation of athletic field and outdoor recreation uses in the neighborhood on National Park Service ("NPS")-owned land. (Tr. 2, pp. 78-85; Ex. 70B ¶ 9.) Finally, the Commission finds the Applicant's overall vision of creating a mixed-use, mixed-income, education-focused neighborhood is a superior benefit to neighborhood specifically and the District as a whole; and

(g) Revenue for the District. Finally, the Commission finds that the District will benefit significantly from the additional tax revenues generated by the Project.

55. The Commission also finds that the foregoing benefits and amenities: (i) are, taken together, commendable in number and quality; (ii) are not inconsistent with the Comprehensive Plan; (iii) are tangible, quantifiable, measurable, and capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project; and (iv) benefit the Parkside and Ward 7 neighborhoods, and primarily benefit the areas within the geographic boundaries of the ANC. Moreover, the Commission finds that the foregoing benefits and amenities are possible only through the PUD process and would not be achievable as part of a project developed as a matter of right.

56. At Setdown, the Commission requested additional information from the Applicant regarding: (i) the number and affordability level of affordable units previously approved under the Parkside PUD; (ii) whether the modification of the Parkside PUD would trigger the IZ requirements of the Zoning Regulations; and (iii) the materials proposed for the exterior of the Project. (Tr. 1, pp. 70-74.)

57. At the public hearing, the Commission requested: (i) information on the number of applications that the Applicant currently had pending before the Commission and the timing of those applications and the construction resulting therefrom; (ii) information regarding the proposed pedestrian bridge from the Minnesota Avenue Metrorail stop; (iii) responses to comments and concerns expressed by OP, DOEE, DDOT, and the ANC in their respective reports; (iv) information regarding whether the Project included balconies; (v) information regarding the level of affordability and application of the IZ requirements of the Zoning Regulations as well as separating various buildings under the Parkside PUD by affordability; (vi) information regarding the Project's inclusion of solar panels; (vii) that the Applicant further study the possibility of opening the rooftop decks up for views; (viii) information on the performance of the various materials included in the Project; (ix) further explanation regarding the Applicant's proposal to advocate for NPS-owned land to be turned into recreation fields; (x) information regarding the Applicant's proposal to relocate a tree from the Property; and (xi) information on whether the Applicant has a CBE requirement under the Parkside PUD. (Tr. 2, pp. 40-88, 118.) The Commission also encouraged the Applicant to present information to and engage in dialogue with the ANC. (*Id*. at 157.)

58. In its PHS, the Applicant provided detailed information regarding the affordability program constructed under the Parkside PUD and confirmed that the Application triggered the IZ regulations. (Ex. 13.) The Applicant also provided additional information regarding the Project's materials. (*Id*.)

59. At the hearing, the Applicant addressed the Commission's questions regarding the number of pending applications and the timing for such pending applications; the proposed balconies; the Project's level of affordability and allocation of units; the Project's inclusion of solar panels; the proposed materials; the Applicant's efforts to advocate before NPS on behalf of the neighborhood; the potential relocation of a tree; and the Project's job and employment-related benefits. (Tr. 2, pp. 40-88.) DDOT provided information regarding the pedestrian bridge. (*Id*. at pp. 101-02.) The Applicant provided some responses to questions from the Commission regarding the OP Final Report, DDOT Report, DOEE Report, and ANC Report at the hearing (as addressed below), and provided further refined information in the Post-Hearing Submission. (Ex. 70.) The Post-Hearing Submission also included information from the Applicant regarding the Project's jobs-related benefits and confirmed that the Applicant had presented further to the ANC and agreed to a dialogue process going forward. (*Id*.) Finally, the Commission confirmed that it did not require further information regarding rooftop views. (Tr. 2, p. 155.)

Agency and ANC Reports and Testimony

60. In its pre-hearing submission, the Applicant addressed the comments of OP in the OP Setdown Report. The Applicant refined the colors and façade materials of the Project, submitted additional drawings, perspective renderings, and elevations, along with roof and site plans, a refined color palette, and provided additional foundation plantings to improve the streetscape. (Ex. 13C1-13C4.) The PHS also clarified the requested zoning relief. (Ex. 13.) The Applicant subsequently submitted the CTR, and thereafter information regarding LEED-ND. (Ex. 16-17A2, 27A.)

61. The OP Final Report recommended that the Commission approve the Application and the requested zoning relief, subject to: (Ex. 28, pp. 11-12; Tr. 2, pp. 98-100.)

(a) Flexibility. Changing the scope of requested flexibility; and

(b) Transportation Conditions. Certain transportation-related conditions, including: designating a TDM coordinator, setting the price of all parking at market prices, unbundling parking from the cost of each lease, providing bicycle parking in excess of the minimum required in the Zoning Regulations, providing TDM materials to new residents, installing an electronic transportation information screen, preparing a loading management plan, and working with the Urban Forestry Administration ("UFA") on the relocation of a tree on the Property.

The OP Final Report also noted comments received from DDOT, DC Water, DOEE, and DHCD. In particular: (Ex. 28, p. 10)

(c) UFA: UFA noted that a tree on the Property would need to be relocated, and a plan detailing the relocation plan and after-care must be delivered to UFA. Similarly, a plan for street trees is also required and silt fences must be installed;

(d) DOEE: DOEE noted that the Project should be constructed to LEED-Silver, v4; solar panels should be added to the roof; street (storm) water should be diverted to the extent possible; and all bio-retention areas should be privately maintained; and

(e) OP Public Space Committee ("PSC"): PSC noted that the proposed loading access from Cassell Place, N.E. required PSC approval.

62. In response to the comments raised in the OP Report, the Applicant in its March 6 Filing, at the public hearing, and in the Post-Hearing Submission agreed:

(a) Flexibility. To reduce the amount of flexibility requested; (Ex. 61, pp. 1-2; Tr. 2, p. 46.)

(b) Transportation Conditions. To the TDM package set forth in the CTR; (Ex. 17A1-17A2, Ex. 61.)

(c) UFA. To work with UFA to study the trees on the Property; (Tr. 2, p. 85.)

(d) DOEE. To design the Project to a level of LEED BD&C Gold, to study integrating solar panels into the Project and future phases of development at Parkside, and to comply with the stormwater regulations; and (Ex. 70, p. 5, Ex. 70D, Ex. 29.)

(e) PSC. To work with PSC on the design of public space improvements. (Tr. 2, p. 47.)

63. At the public hearing, OP recommended approval of the Project and confirmed that the revised flexibility language proposed by the Applicant in its March 6th Filing was satisfactory. (Tr. 2, pp. 100, 102-103, 155.)

64. DOEE supported the Project and recommended approval subject to considerations that would improve design and increase environmental performance. These considerations included: (Ex. 29.)

(a) Stormwater. Suggesting the Applicant provide additional detail demonstrating that the Project is designed to meet minimum stormwater retention requirements and to seek to capture stormwater from a 1.7-inch storm event;

(b) Building Technologies. Recommending that the Applicant consider using: (i) lower-emitting technologies to the extent possible to provide power, heating, and cooling; (ii) renewable energy such as solar power to reduce power demand from the electric grid; (iii) fuel cells or other innovative technologies in lieu of a traditional emergency generator set; (iv) cleaner-burning natural gas would be a preferable fuel to diesel fuel in the event the Applicant employs a traditional emergency generator; and/or (v) efficient technologies such as cogeneration or tri-generation in the event traditional generator technologies are employed;

(c) Air Quality. Redesigning the parking configuration in the event an air quality study indicates an exceedance condition when the CO contribution of the Project is added to the background conditions;

(d) LEED-Gold. Certifying the Project at a LEED-BD&C Gold level, revisiting the Project's energy model and commitment to increased energy efficiency, and incorporating next generation technology;

(e) Solar. Maximizing opportunities to incorporate solar panels into the design; and

(f) Financing. Investigating opportunities to take advantage of financial tools that would allow increased commitment to sustainability.

65. In response to the comments raised in the DOEE Report, in its March 6th Filing, in its Post-Hearing Submission, and at the public hearing, the Applicant agreed: (Tr. 2, pp. 51-53.)

(a) Stormwater. That the Project will meet all stormwater retention requirements; (Ex. 61, p. 3.)

(b) Building Technologies. To study advanced sustainability technologies; (*Id.*)

(c) Air Quality. To consider modifying the parking configuration in the event an air quality study model indicates the CO contribution from the Project creates an exceedance condition when combined with background conditions; (*Id.*)

(d) LEED-Gold. To design the Project to be certifiable at a LEED BC&C Gold level; (Ex. 70. p. 5; 70D.)

(e) Solar. To study the feasibility of incorporating solar panels into the Project, and to study the feasibility of solar on future phases at Parkside; and (Ex. 61, p. 3; Tr. 2, pp. 66-68.)

(f) Financing. To investigate opportunities to take advantage of financial tools to increase sustainability in the Project. (Ex. 61, p. 4.)

DOEE did not attend the public hearing, but OP reiterated comments from the DOEE on behalf of DOEE. (Tr. 2, p. 99.)

66. The DDOT Report expressed the following concerns and recommendations:

(a) Loading. DDOT did not support the Applicant's initial curbside loading proposal and requested relocation of the Project's trash room to use the Hayes Street, N.E. curb cut and a commitment that the Project's residents obtain emergency no-parking signage for move-in and move-out; (Ex. 30, pp. 2, 14.)

(b) TDM. DDOT requested additional items in the TDM package. DDOT also requested the transportation conditions requested by OP; (*Id.* pp. 3, 15.)

(c) Mitigation. DDOT agreed with the Applicant's analysis regarding converting Hayes Street, N.E. to two-way travel and to modify the signal timing at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Boroughs Avenue, N.E.; and (*Id.*, pp. 2-3, 14.)

(d) Sustainability. DDOT requested that the Applicant provide one electric vehicle charging station in the Project. (*Id.*, p. 15.)

In its report, DDOT determined that the Applicant used sound methodology and assumptions to perform its analysis. (*Id.*, p. 2.) At the public hearing, DDOT confirmed it had resolved to its satisfaction all open items raised in the DDOT Report. (Tr. 2, pp. 100-101.)

67. In response to the comments raised in the DDOT Report, in its March 6th Filing, at the public hearing, and in the Post-Hearing Submission, the Applicant agreed to the following: (Ex. 61, pp. 2-3, Ex. 70; Tr. 2, 46-51, 53.)

(a) Loading. Narrow the Cassell Place, NE curb cut width to six feet (and retain the trash room in its present configuration); post signs or use other deterrents to ensure no parking occurs in front of such curb cut; and require residents to obtain emergency no parking signs during move in and move out;

(b) TDM. Hold a mobility fair for residents with prizes for resident attendance and other measures; and reserve up to two parking spaces for car-sharing services on a first-refusal basis;

(c) Mitigation. Pay for and install signage to change Hayes Street, N.E. from one-way to two-way between Kenilworth Terrace, N.E. and Parkside Place, N.E., subject to DDOT and PSC approval; pay for the signal modification plans and equipment needed to make a signal change at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Boroughs Avenue, N.E.; and

(d) Sustainability. Install the necessary electrical infrastructure to be able to deploy an electric vehicle charging station in the event demand arises upon occupancy of the Project.

68. The ANC Report noted that the Applicant presented the Project to a special meeting of the ANC on February 22, 2017. (Ex. 32, p. 1.) The ANC reported that it voted 4-0-0 to deny a letter of support for the Project and noted several categories of concerns. (Ex. 32, pp. 2-3.)

(a) Timing and Justification of the Second-Stage Applications. The ANC identified concerns that the Applicant had not adequately explained the rationale for filing multiple second-stage PUD applications.[5]

(b) Transportation Analysis. The ANC expressed concern about the conclusions in the CTR. In addition, the ANC alleged that the Applicant has not adequately mitigated vehicular impact to the neighborhood transportation network and felt that transit and bicycle trip projections were not accurate;

(c) Parking. The ANC expressed concerns about the Applicant's proposed unbundling of parking from rent for the Project, noting that the effect may be to encourage street parking. The ANC suggested that the streets around the Project are not subject to the residential parking program ("RPP"). The ANC requested logistical assistance to seek approvals from the District to restrict streets in the neighborhood to RPP;

[5] Three second-stage PUD applications arising out of the Parkside PUD—Z.C. Case Nos. 05-28Q, 05-28R/S, and 05-28T—were currently pending before the Commission at the time of the public hearing. (Tr. 2, pp. 40-41.)

(d) Traffic Congestion. The ANC encouraged the Applicant to study traffic congestion in and around the neighborhood and to coordinate with DDOT; and

(e) Traffic Mitigation Plans. The ANC encouraged the Applicant to study extending the two-way configuration of Hayes Street, N.E. and to study bus shelters at WMATA bus stops.

69. In response to the comments raised in the ANC Report, in its March 6th Filing, the Post-Hearing Submission, and at the public hearing, the Applicant noted and agreed to the following:

(a) Timing and Justification of the Second-Stage Applications. The Applicant noted that five of the 10 Parkside building blocks have already been constructed and that it anticipated that Block J along with Blocks F and H would be constructed simultaneously or nearly so. The Applicant's primary justification for moving forward with multiple applications at this time are market demand for additional housing in the District and the expiration of the Parkside PUD; (Ex. 61, p. 4; Tr. 2, pp. 68-69.)

(b) Transportation Analysis. The Applicant advanced its analysis in the CTR that the Project, taken alone, has only a modest impact on existing traffic conditions. The Applicant noted that it agreed to undertake signal upgrades at the intersection of Kenilworth Avenue, N.E. and Nannie Helen Boroughs Avenue, N.E., which upgrades more than mitigate the impacts of the Project. The Applicant and DDOT determined that no mitigation to Hayes Street, N.E. and Kenilworth Avenue, N.E. is warranted at this time. The Applicant agreed to conduct further study in relation to its pending applications; (Ex. 61.)

(c) Parking. The Applicant noted that it cannot seek RPP status for streets surrounding the Project until the Project is occupied. The Applicant agreed to seek RPP status on surrounding streets as soon as it was able to do so; (*Id*., pp. 4-5; Tr. 2, pp. 54-55.)

(d) Traffic Congestion. The Applicant set forth an agreement to meet with community representatives to develop a construction phasing and mitigation plan; and (Ex. 61, p. 5.)

(e) Traffic Mitigation Plans. The Applicant noted that its studies indicated that converting Hayes Street, N.E. to two-way travel would relieve congestion. The Applicant also agreed to accommodate a bus shelter on the sidewalk in connection with the Project. (*Id*.) The Applicant also included a draft community benefits agreement. (*Id*., pp. 7-8.)

70. ANC 7D submitted a supplemental report dated April 7, 2017. (Ex. 74.) The report stated that ANC 7D was continuing its dialogue with the Applicant as a result of the Applicant's amendments to its community benefits package.

ANC 7D submitted a second supplemental report dated April 14, 2017. (Ex. 75.) The report stated ANC 7D voted to adopt a community benefits agreement offered by the Applicant, rescind its previous opposition, and support the project.

Parties and Persons in Support

71. Prior to the public hearing, two letters were submitted into the record expressing support for the Project. These residents expressed support because of interest in seeing economic development in Ward 7 and believed that the traffic impacts from the new development could be mitigated and that additional parking associated with the Project was not required. (Ex. 63, 66.)

72. At the public hearing, no persons or organizations spoke in support of the Project. (Tr. 2, pp. 123-24.)

Parties and Persons in Opposition

73. Prior to the public hearing, thirty-two letters, emails, or other documents were filed in opposition to the Project. ("Letters")[6] (Ex. 31, 34-58, 62, 64-67.) These documents raised the following categories of concerns:

(a) Multiple Projects Simultaneously. The Letters raised concerns about the Applicant seeking approval for multiple second-stage PUD applications at one time. Particularly, the Letters raised concern about construction impacts and possible reduction in access, the cumulative effects of the applications, the increase of new residents, and the changing nature of the community character;

(b) Parking and Traffic. The Letters also expressed concern regarding the unbundling of parking and the lack of an RPP program on neighborhood streets and about regional and neighborhood circulation difficulties and congestion. The Letters solicited ideas from the Applicant about how to address neighborhood parking and traffic concerns. The Letters requested that the Applicant study extending the proposed two-way configuration of Hayes Street, N.E. all the way to Jay Street, N.E.;

(c) Green Space. Two letters expressed concern about the loss of green space in the neighborhood and about environmental impacts associated with the Project; (Ex. 31, 62.)

(d) Commercial/Retail Needs. The Letters expressed an interest in bringing grocery and other retail options to the neighborhood. One writer, despite nominal opposition to and concerns about the Project, expressed a clear preference for growth and development in the neighborhood;

[6] Ex. 34-58, 65, and 67 are essentially form letters, raising identical or nearly identical issues. Therefore, citations to individual letters are generally not necessary.

(e) Jobs. The Letters expressed a generalized desire for jobs in the neighborhood. One letter identified concerns about a high unemployment rate in Ward 7 and the lack of enforcement mechanisms for hiring local residents as part of the Project;

(f) Homeownership Opportunities. One writer recommended the Project be marketed as a homeownership project rather than as a rental building; and (Ex. 31.)

(g) Leverage Applicant's Expertise, Data, Capital, and District Government Relationships. The Letters generally requested the Applicant partner with the neighborhood to solve problems together and provide expertise, data, capital, and governmental agency relationships to improve the neighborhood.

74. At the public hearing, a total of five individuals and organizations spoke in opposition to the Project. (Tr. 2, pp. 124-53.) These witnesses raised the following concerns:

(a) Job Opportunities/Ward 7 Economic Development. Mr. Rhett and Mr. Hasan raised concerns that not enough of the value created by projects such as the Parkside PUD remain in the neighborhood because so few of the projects employ Ward 7 businesses and residents; (Tr. 2, pp. 134-36, 144, 146-50.)

(b) Traffic. Ms. Grey, Mr. Rhett, Mr. Fuller, and Mr. Hasan each raised concerns about traffic and construction traffic in the neighborhood resulting from the instant Project and the Parkside PUD generally as well as from unrelated PUDs in the area and regional traffic growth; (*Id*., pp. 125-26, 135, 137, 138-40, 142, 144.)

(c) Commercial/Retail Needs. Ms. Grey mentioned a desire for retail options in the neighborhood; (*Id*., pp. 126-27.)

(d) Community Character. Ms. Grey and Mr. Fuller raised concerns about integrating large numbers of new residents into the community without it losing its character; and (*Id*, pp. 125-126, 137-38.)

(e) Parking. Mr. Fuller raised concerns about the lack of zoned parking in Parkside and non-residents using the area for overnight or daily parking. (*Id*. at pp. 140-141.)

Findings regarding Contested Issues

75. The Commission has reviewed the entire record for the Application and finds seven items raised by the ANC, the community generally, the agencies, or the Commission itself rise to the level of a material contested issue of fact. In sum, the Commission finds that the Applicant has responded fully and satisfactorily to each material contested issue.

76. Multiple Parkside PUD Projects under Development Simultaneously. The ANC and community members raised concerns about the Applicant seeking simultaneous approval for and then concurrent construction of multiple second-stage PUD applications. Particular concerns include construction impacts, possible reduction in vehicular access,

the cumulative effects of the multiple second-stage applications, the increase in new resident population, the changing nature of the community character, and integration of new residents into the neighborhood:

(a) Applicant's Response regarding Development Schedule. The Applicant included in its Post-Hearing Submission an update on its outreach with the ANC and interested community members. (Ex. 70, p. 1.) The Post-Hearing Submission includes an agreement with the ANC to provide regular updates on development and construction as well as a form of construction management plan. (*Id*., pp. 3-4.) The Applicant noted that following the public hearing, the ANC voted 5-1 to support the Project on Block J based on the agreement and management plan. (*Id*., p. 4.) The Applicant previously noted that it controls ample vacant space around the sites of proposed construction to mitigate traffic impacts and avoid or minimize street closures and disruptions to neighbors; and

(b) Findings on Development Schedule. The Commission appreciates the Applicant's re-engagement in good faith outreach and cooperation with the ANC in the spirit of resolving the community's concerns and credits the ANC's support of the post-hearing agreement included in the record. (Ex. 70B.) The Commission shares the community's concerns. In light of the Applicant's Post-Hearing Submission commitments and recognizing that the Applicant will appear before the Commission before any future projects may proceed, the Commission finds that the cumulative effects of such development, and the integration of new residents resulting from this Project alone are impacts that are not unacceptable and are capable of being mitigated through construction management and conditions imposed on future Parkside PUD approvals.

77. Parking and Traffic. The ANC and community members expressed concern regarding parking (particularly the lack of an RPP program on neighborhood streets) and about regional and neighborhood circulation difficulties and congestion. The community is looking to the Applicant for guidance and leadership on working with DDOT to resolve neighborhood transportation concerns:

(a) Applicant's Response regarding Parking and Traffic. The Applicant included in its Post-Hearing Submission an update on its outreach with the ANC regarding traffic and parking. (Ex. 70.) The Post-Hearing Submission includes an agreement from the Applicant to fund a neighborhood traffic study, work with DDOT on identifying improvements to congestion, and to fund a plan to convert street parking to RPP and/or metered parking as appropriate; and (*Id*., pp. 2-3.)

(b) Findings on Parking and Traffic. The Commission notes that the community's concerns regarding regional congestion are serious and appreciates the Applicant's willingness to take a leadership role in developing a response. The Commission expects that parking and traffic concerns arising out of future phases of development under the Parkside PUD will be addressed when those phases are before the Commission. Based on testimony from the Applicant and DDOT, the

Commission recognizes that the regional congestion challenges and neighborhood parking concerns exceed the scope of impacts generated by the Project. On balance, the Commission finds: (i) the methodology in the CTR appropriate and the conclusions therein are reasonable, and more specifically, the conclusion that the Project will have a modest impact, if any, on the transportation and parking network is well supported by evidence in the CTR and agreed upon by DDOT; (ii) the Project's unbundled parking and other transportation measures are not inconsistent with the Comprehensive Plan, and in particular the Transportation Element thereof; (iii) the package of TDM and loading measures proposed by the Applicant will ensure that the Project's impacts that are not unacceptable and are capable of being mitigated through such measures; and (iv) the Applicant's proposed neighborhood parking and traffic studies and proposed traffic mitigation measures at Hayes Street, N.E. and Nannie Helen Boroughs Avenue, N.E. constitute public benefits because both changes will improve existing conditions in excess of any impacts Block J may have on the transportation network.

78. Jobs/Economic Development. The ANC, community members, and the Commission all expressed a desire for (i) the introduction of jobs for neighborhood residents and (ii) ensuring that the economic benefits of the new development reach the entire community, including hiring incentives and preferences for Ward 7 contractors and subcontracts:

(a) Applicant's Response regarding Jobs. The Applicant included in its Post-Hearing Submission an update on its outreach with the ANC regarding jobs and hiring. (Ex. 70, pp. 3-4.) The Post-Hearing Submission includes an agreement from the Applicant to prioritize Ward 7 residents in its hiring practices and imposes strict reporting requirements upon the Applicant; and (*Id.*)

(b) Findings on Jobs. The community's concerns regarding jobs and economic development for Ward 7 residents and businesses, a concern shared by the Commission, extends beyond just this Project, which will have comparatively few permanent jobs and primarily only short-term construction jobs. However, the Commission appreciates the Applicant's innovative spirit in seeking to ensure local residents and businesses benefit from the Parkside PUD and to ensure job training opportunities are available to interested residents to be prepared for future development in Ward 7, a spirit and a commitment that the Commission finds are public benefits.

79. Retail in Parkside. The community expressed an interest in bringing grocery and other retail options to the neighborhood. The concern for some members of the community was not with opposition to growth and development in the neighborhood, but rather for growth and development that benefits the existing neighborhood's residents with jobs and retail opportunities:

(a) Applicant's Response regarding Retail. At the public hearing, the Applicant noted that it understands the community's desire for retail and that retail would be forthcoming in future phases of the Parkside PUD. (Tr. 2, pp. 18-19, 27-28, 70-

71.) The Post-Hearing Submission also notes the Applicant's anticipation of retail at Parkside in future applications under the Parkside PUD; and

(b) Findings on Retail. The Commission finds the Applicant's commitment to providing retail uses in future phases credible and further finds that the provision of such use is not relevant to the instant Application.

80. Community Green Space. Three community members expressed concern about the loss of green space in the neighborhood and about environmental impacts associated with the Project: (Ex. 31, 62.)

(a) Applicant's Response regarding Green Space. At the public hearing, the Applicant noted that it has already constructed the Community Green at the center of the Parkside neighborhood and that it intended to explore working with NPS on a plan for making certain NPS-owned land available for recreation; and (Tr. 2, pp. 78-85; Ex. 70B ¶ 9.)

(b) Findings on Green Space. The Commission notes that the Parkside PUD approves development on the vacant Parkside lots and that such development is encouraged in the Comprehensive Plan and finds that the Applicant's construction of the Community Green and leadership efforts on outreach to NPS are public benefits.

81. Affordability. At the public hearing, the Commission questioned whether the Project should include some level of affordable units given the District's practice not to segregate affordability by building. (Tr. 2, pp. 56-61.) One person in opposition to the Project recommended that the Project be marketed as a homeownership project rather than as a rental building: (Ex. 31.)

(a) Applicant's Response regarding Affordability. The Applicant testified that two previous second-stage projects under the Parkside PUD were entirely affordable, a feature largely of the financing used to construct those projects. (Tr. 2, pp. 61-62.) The Applicant further testified that the Project, if constructed, would be the first fully market-rate multi-family residential rental project in Ward 7 and that delivery of such a market-rate rental building in Ward 7 would be a statement about the maturation of the Ward 7 market and in general a positive indication for the District and the neighborhood. Moreover, the Applicant felt that it advanced significantly the overall objective of creating a mixed-income community at Parkside. Finally, the Applicant noted that the financing for this Project required 100% market rate and that the financing agency was attracted to the Project because it was market-rate in a community with a high concentration of affordable projects. (*Id.*, pp. 61-65.) The Applicant also provided evidence regarding the concentration of affordable housing in Ward 7 and in particular in the area around the Project; and (Ex. 70, p. 5.)

(b) Findings on Affordability. Because the existing projects developed under the Parkside PUD as a whole contain a high percentage of affordable units, at deeper

levels of affordability than is required under the Parkside PUD, because the development of a market-rate rental building in Ward 7 advances adopted policy objectives of making housing available to a mix of incomes within Ward 7, and because the Applicant has constructed homeownership opportunities elsewhere at Parkside, the Commission finds that the Project's construction as a market-rate rental building: (i) is not inconsistent with the Comprehensive Plan and other adopted public policies; (ii) does not result in unacceptable project impacts given the quality of public benefits of the Parkside PUD as a whole; and (iii) advances other specific public benefits, including the laudable benefit of creating a mixed-income, TOD community in Ward 7.

82. Environmentally Sustainable Design. At the public hearing, the Commission noted the DOEE report and asked the Applicant to find ways to improve the Project's overall environmentally sustainable design: (Tr. 2, pp. 51-53, 66-68.)

(a) Applicant's Response regarding Sustainable Design. The Applicant has agreed to design the Project to the level of LEED-BD&C Gold and to commit to study further integrating solar panels and other environmentally-sustainable features into the Project and future phases of the Parkside PUD development. (Ex. 70, p. 5.) The Applicant previously incorporated solar panels into the Community Green; and

(b) Findings on Sustainable Design. The Commission notes and appreciates that the Parkside PUD has already been pre-certified as LEED-ND Gold, that the Applicant has made commitments regarding this Project, and has a history of solar panel integration and innovative environmental design. The Project's environmentally sustainable attributes are public benefits that are not inconsistent with the Comprehensive Plan and other adopted public policies.

83. In sum, the Commission finds that the Applicant has thoroughly addressed its comments and provided, in response to the Commission's questions, answers that are supported by substantial evidence. Moreover, the Commission finds that the Applicant's changes to the Project resulting from the Commission's comments improve the Project.

CONCLUSIONS OF LAW

Consistency with the PUD Process, Zoning Regulations, and Comprehensive Plan

1. Pursuant to the Zoning Regulations, the purposes of the PUD process are "to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan." (11-X DCMR § 300.1) ("PUD Process"). The Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality

development that is superior to what could be constructed on the Property as a matter of right via the underlying zoning. The Commission has found that the Project provides public benefits that are commendable both in number and quality. (*Id*.) Finally, the Commission has found that the Project will not injure the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan. Therefore, this Application is consistent with and satisfies the PUD Process.

2. The PUD process is intended to "provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan." (11-X DCMR § 300.2.) The Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. The Project is not inconsistent with the Comprehensive Plan. Therefore, the Commission concludes that this Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

Procedural and Jurisdictional Conclusions

3. Any PUD application must meet the requirements of Subtitle Z, Chapter 3,11-X DCMR § 307.1, and the Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4. (*Id*. § 300.3). The Commission previously found and hereby concludes that the Application satisfies the PUD application requirements, and that the Commission has satisfied the procedural requirements of the Zoning Regulations, including the applicable notice requirements thereof, necessary to issue this Order. The Commission concludes that this Application complies with the Zoning Regulation's procedural requirements and notice provisions.

4. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. (11-X DCMR § 301.) The Application satisfies these minimum area and contiguity requirements.

Evaluation Standards

5. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations) referenced in the zone reference table. (11-X DCMR §§ 303.1, 303.11.) The Applicant seeks relief from the following requirements of the Zoning Regulations: loading, parking location, side yard, lot occupancy, penthouse structure, and IZ. The Commission has found that these items of relief do not impair the purposes or intent of the Zoning Regulations and are not inconsistent with the Comprehensive Plan. (*Id*.) Therefore, the Commission concludes it may exercise its discretion to grant such items of relief subject to the Conditions hereof.

6. The Zoning Regulations define public benefits as "superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title." (11-X DCMR § 305.2.) Such public benefits must satisfy the following criteria: (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4 ("Public Benefit Criteria").) Based on the Commission's findings regarding the Applicant's proposed public benefits, and the Conditions of this Order the Commission concludes that the public benefits proposed by the Applicant will benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and will satisfy the Public Benefit Criteria.

7. The Commission must undertake a "comprehensive public review" of any PUD application "in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits," and in deciding on the Application, the Commission must "judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case." 11-X DCMR §§ 300.5, 304.3. A PUD-related zoning map amendment is flexibility against which the Commission must weigh the benefits of the PUD. (*Id.* § 303.12.) The Commission heard the Application in a public hearing and followed the contested case procedures of the Zoning Regulations. The Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and incentives requested against the proposed public benefits.

8. The Project warrants the requested relief, modifications to the approved Parkside PUD, flexibility afforded by the Zoning Map amendment in light of the extensive public benefits offered by the Project. The relief, flexibility and modifications are comparatively minor and largely offset by mitigation plans and superior design. Moreover, the benefits of the Project and the Parkside PUD more generally are extensive. The Applicant is in the midst of constructing a new mixed-use, mixed-income, transit-oriented neighborhood, replete with amenities such as the Community Green, improvements to transit access, new schools, a health center, neighborhood-serving retail, and potentially an historic office tenant. The individual elements of the Applicant's undertaking are benefits to the neighborhood locally; the Applicant's creation of a new urban neighborhood east of the Anacostia River is a benefit to the District as a whole. The Applicant has more recently offered its experts and agency relationships to improve quality of life issues in the Parkside neighborhood.

9. The Project and its incentives and benefits must be evaluated also against the transportation, employment, retail, open space, affordability, and environmental concerns

of the neighborhood and the District more generally. The Commission has found that the Project does not, by itself, unacceptably exacerbate traffic congestion or parking shortages in the neighborhood. The neighborhood's traffic concerns are real, and the Commission shares in these concerns, which impact the day-to-day lives of neighborhood residents. To that end, the Applicant's offer to undertake traffic and parking studies in the neighborhood and to coordinate its knowledge and data with DDOT is an opportunity to improve conditions beyond merely mitigating the effects of the Project—this is a true public benefit. The Parkside PUD itself is a major economic undertaking that goes to the community's employment and retail concerns. The community's economic development concerns stem largely from an unfortunate multi-decade trend of underinvestment in Ward 7. This Project and the Parkside PUD in no small part begin to reverse that trend. With this Project and future phases of development, job and commercial opportunities will continue to grow in the neighborhood. In anticipation of growth, the Applicant years ago invested in the neighborhood's schools and has more recently agreed to participate in job training programs and local hiring targets. These investments are in keeping with the Applicant's "cradle-to-career" education and skills opportunity incubator vision for Parkside. The Commission has found that the Applicant has made significant contributions to open space and affordability concerns and is building on its history of innovative sustainable development.

10. Accordingly, the Project's benefits and amenities outweigh the relief, flexibility and modifications requested even in light of the background concerns in the community, which concerns the Commission will reevaluate in future phases of the Parkside PUD development.

11. The PUD provisions require the Commission to evaluate whether the Application: "(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site." (*Id*. § 304.4.) The standards for evaluating an application for a Zoning Map amendment are coincident in part: the Commission must find that the amendment is not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site. (*Id*. § 500.3.) The Commission has reviewed the entire record and issued findings to support its conclusion that the Application has satisfied the relevant evaluation criteria.

12. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Zoning Map amendment standards enumerated above. (11-X §§ 304.2, 500.2.) The Applicant's filings, testimony, and expert witness presentations are credible and thorough. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards. (23 does not seem right)

13. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to issues and concerns raised in the affected ANC's written 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. ANC 7D submitted a report which listed several issues and concerns, then rescinded that report in a subsequent report, which supported the application and expressed no issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Zoning Commission to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

14. The Commission is also required to give great weight to the recommendations of OP. (D.C. Code § 6-623.04.) The Commission has reviewed the OP Report and heard testimony from OP. The Commission gives OP's recommendation to approve the application great weight, and concurs with OP's conclusions.

15. The Commission must grant approval to the Application, subject to any guidelines, conditions, and standards that are necessary to carry out this decision if the Commission finds the Application to be "in accordance with the intent and purpose of the Zoning Regulations, the PUD [P]rocess, and the first-stage approval." (11-X § 309.2.) The Commission has found the Application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the Parkside PUD. Accordingly, the Commission concludes it must grant approval of the Application subject to the Conditions set forth herein.

16. The Application seeks a modification of the First-Stage Order pursuant to Subtitle Z, §§ 703 and 704 of the Zoning Regulations. Based on the findings associated with the modification request, the Commission concludes the Applicant has satisfied the requirements of the Zoning Regulations with respect to the modification request.

17. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for second-stage review of a planned unit development, related modification of an approved first-stage PUD and Zoning Map amendment to the C-3-A Zone District for the Subject Property (Square 5056, Lot 811). The approval of this PUD is subject to the following guidelines, conditions and standards ("Conditions").

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with the plans submitted as Ex. 27C1-27C12, 59A1-59A2, 70D ("Revised Plans"), as modified by the guidelines, conditions, and standards of this Order.

2. The Project shall consist of a multifamily residential building with a maximum height of 81 feet, four inches, stepping down to lesser heights of 74 feet and 64 feet, eight inches as the building steps toward Parkside Place. The Project shall include approximately 172,150 square feet of GFA, and a maximum density of 4.84 FAR. The Project shall include 85 vehicular spaces in a below-grade parking garage.

3. The Applicant shall have flexibility with the design of the second-stage PUD in the following areas:

   (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

   (b) To provide a range in the number of residential units plus or minus 10% from the number depicted on the Revised Plans;

   (c) To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Revised Plans;

   (d) To vary the final streetscape design and materials, including the curb cut on Cassell Place, N.E., as required by District public space permitting authorities; and

   (e) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems.

B. PUBLIC BENEFITS

1. **Prior to issuance of a building permit for the Project, the Applicant shall**:

   (a) Execute a Development and Construction Management Plan, with terms substantially similar to the draft plan submitted in the record at Exhibit 70B (Exhibit A);

   (b) Request a meeting with WMATA to coordinate with WMATA and the ANC regarding temporary relocation during construction of the bus stop located on Kenilworth Terrace, N.E. across from Unity Health Clinic, and advocate on behalf of the ANC for the ANC's preferred location of such bus stop to WMATA;

(c) Direct the contractors and subcontractors working on the Project to use reasonable good faith efforts to select new hires from among qualified persons with a goal of at least 51% of all new hires being residents of Ward 7. This commitment shall be included in each contract with project contractors and subcontractors. The Applicant shall provide to the ANC on a quarterly basis for the duration of construction, an employment report documenting the number of Ward 7 residents hired for the Project. The employment reports to the ANC will provide a summary of: (i) the approximate number of employees working on the Project in total; (ii) the number of new hires working on the Project; and (iii) the number of the new hires that are Ward 7 residents, provided the specific contents of such report may be modified by mutual agreement of the Applicant and the ANC;

(d) Work with the ANC to identify a local representative, group, organization and/or coordinator to facilitate job training for future jobs related to the Project, and to help administer solicitations from Parkside to the Ward 7 community for available jobs. All solicitations will include details regarding the specifications, requirements and/or skillset desired for the available jobs; and

(e) Host a job fair in coordination and in partnership with the ANC, Ward 7 Business Partnership, DC DOES and DC DSLBD, to identify (i) qualified candidates for construction job openings and (ii) Ward 7-based subcontractors.

2. **Prior to issuance of a certificate of occupancy for the Project, the Applicant shall**:

(a) Provide evidence to the ANC that it has advertised jobs and contracting opportunities with the following: (i) the Project's contractor's website; (ii) the ANC's website; (iii) community message boards; (iv) project signage; and (v) referral partners, as applicable, and in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;

(b) Submit an application for a public space permit to improve sidewalks abutting the Property so that a WMATA bus stop and/or shelter can be accommodated (its final location to be determined by DDOT and WMATA);

(c) Adopt a "Loading Management Plan" to coordinate resident moving operations and trash removal operations. The Loading Management Plan shall include the following measures to mitigate traffic disturbances during curbside loading activities: (i) Appoint a loading dock manager designated by the building management team; (ii) The loading dock

manager will coordinate with tenants to schedule deliveries, trash removal, and resident move-in and move-out activities; (iii) Residents will be required to schedule move-in and move-outs with the loading dock manager; (iv) The loading dock manager will coordinate with trash pick-up to help move dumpsters expeditiously from the building to the curb beside the loading area to minimize the allotted time for trash trucks to use the loading area; (v) The loading dock manager will be responsible for disseminating DDOT's Freight Management & Commercial Vehicle Operations documents to drivers as needed to encourage compliance with District laws and DDOT's truck routes; and (vi) Furthermore, the Block J owner will require residents to obtain "emergency no-parking" signs to reserve on-street vehicle parking adjacent to the loading area for move-ins and move-outs. This requirement will be included in all lease agreements and communicated to residents by the loading dock manager. Lastly, the Block J owner will post "No Parking" signs and/or similar deterrents to ensure vehicles do not use or park in the curb cut;

(d) Adopt a TDM plan. The TDM Plan shall include a requirement to hold a transit fair with DDOT in the building lobby once the building is approximately 75% occupied;

(e) Construct the infrastructure for an electric vehicle charging station in the below grade garage;

(f) Reserve for car-sharing services up to two parking spaces within the below-grade garage. If car-sharing services do not express interest in the garage, the spaces will revert back to general building use;

(g) Work with DDOT and fund, at a cost to the Applicant of up to $25,000, the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to help alleviate traffic congestion; and

(h) Provide evidence to the Zoning Administrator that the $7,500 Landscape Fund, the $15,000 Transportation Study Fund, and the $5,000 Parking Plan funds described below were used or are being used for the purposes described below.

3. **Prior to the issuance of a building permit, the Applicant shall**:

(a) Show evidence of a payment up to $7,500 ("Landscape Fund") to an escrow account for use by the ANC to hire a landscape architect to develop a conceptual design for a play and/or athletic field in the National Park Service ("NPS")-owned open space ("NPS Land") behind Neval Thomas Elementary School. Preference for the landscape architect will be given to qualified Ward 7-based CBE firms. The Landscape Fund will be

used for the following scope and for no other purpose: (i) one community charrette led by the landscape architect and include all involved stakeholders (including but not limited to the ANC, Parkside Civic Association, Neval Thomas Elementary School representatives, Cesar Chavez Middle and High School representatives, Mayfair Tenants Association, Parkside, and any additional community members interested) to identify play space needs, goals, and objectives for the NPS Land; (ii) development by the landscape architect of a concept design and layout for the NPS Land utilizing the input and feedback generated from the community charrette to guide the design; (iii) one presentation of the conceptual design to community stakeholders by the landscape architect; and (iv) one meeting with the landscape architect, community stakeholders, and the appropriate NPS and/or DC representatives to review the proposed conceptual design and advocate for use of NPS Land, but only to the extent NPS and/or DC representatives agree to attend such a meeting. As NPS owns the NPS Land, the ANC acknowledges and agrees that NPS is solely responsible for the design and use of the NPS Land. The landscape design will be developed to a concept level only and with the intent to be used as a community tool to show NPS what is possible in the space and promote the conversion of the NPS Land by NPS to a play and/or athletic field for use by the community, and the design will not include detailed plans that could be used for permitting and/or construction;

(b) Show evidence of a payment up to $15,000 in an escrow account ("Transportation Study Fund") for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required to mitigate the overall first-stage Parkside PUD ("Parkside Study"). The goal of the Parkside Study is to provide analysis and feasibility regarding potential solutions to larger, regional traffic issues to facilitate discussions with DDOT. The Parkside Study will include the following scope and the Transportation Study Fund shall be used for no other purpose: (i) schedule a meeting with the traffic consultant and community, including but not limited to the ANC, Parkside Civic Association, Mayfair Tenant's Association, and any additional community associations, parties. or members interested, to identify the community's top traffic issues and/or congested locations; (ii) have the traffic consultant study the top issues and/or locations and develop a few potential solutions that might alleviate some of the issues; (iii) present the findings and potential traffic solutions to the community; and (iv) schedule a meeting between the traffic consultant, the ANC and/or appropriate community representatives, and DDOT to present the potential traffic solutions to DDOT. It is understood that locations and traffic issues reviewed as part of the Parkside Study are ultimately controlled by and subject to the discretion of DDOT, and outside of the scope of any of the Projects, and that Parkside cannot guarantee DDOT's approval of the scope of the

Parkside Study or any of the proposed traffic solutions or other recommendations developed by the traffic consultant. The intention of the Parkside Study is to identify potential traffic solutions for the locations of most concern to the community in a similar way to other DDOT studies that the traffic consultant has advised on to help facilitate DDOT's review; and

(c) Show evidence of a payment up to $5,000 in an escrow account for use by the ANC for a traffic consultant to develop a parking and curbside management plan ("Parking Plan") with and for use by the ANC and community, with the understanding that DDOT is responsible for making and implementing any recommendations in the Parking Plan. The purpose of the Parking Plan is to identify the parking regulations, such as RPP and on-street parking meters, desired for each block to provide DDOT and the community a context to develop a parking solution for the whole neighborhood instead of on a block-by-block basis. The boundaries for Parking Plan will be the blocks within the area bordered by Foote Street, N.E., Anacostia Street, N.E., Hayes Street, N.E., and Kenilworth Terrace, N.E., plus the portion of Kenilworth Terrace, N.E. between Hayes Street, N.E. and Jay Street, N.E.

C. TRANSPORTATION

1. **Prior to issuance of a certificate of occupancy for the Project, the Applicant shall**:

(a) Designate a TDM coordinator, who shall be responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;

(b) Exceed the requirements of the Zoning Regulations applicable to this Project by providing bicycle parking facilities at the proposed development, including providing secure parking located on-site and short-term bicycle parking around the perimeter of the site;

(c) Install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;

(d) Reserve up to two spaces within the Project's parking garage for car-sharing services, provided if following the initial offer to car-sharing services, such services do not lease such spaces at then-prevailing market rates the Applicant may return such spaces to general building use;

(e) Obtain any necessary approval(s) from the District's Public Space Committee for a curb cut, not to exceed six feet in width, leading to the

loading area to help facilitate loading and trash bin movements between the street and loading dock;

(f) Pay for and install signs and markings necessary, subject to DDOT approval, to change Hayes Street between Kenilworth Terrace and Parkside Place from one-way to two-way traffic; and

(g) Pay for signal modification plans and equipment necessary to make the signal changes at the intersection of Kenilworth Terrace and Nannie Helen Boroughs Avenue set forth in Exhibit 70A, provided DDOT has not sooner performed such changes and provided further that the Applicant's costs shall be limited to one set of signal modification plans and the equipment necessary for the change identified in the CTR (i.e., no additional signal modifications beyond the mitigation).

2. **Following issuance of a certificate of occupancy for the Project, and once the Project has achieved 75% occupancy**, the Applicant shall hold a mobility fair in the Project's common area and shall coordinate with goDCgo and other local alternative mode providers and advocates to ensure proper materials and information is present at the fair, provided the Applicant shall commit no less than $500 of transportation-related prizes (e.g., SmarTrip cards, Bikeshare memberships, etc.) to be given away to residents at the fair.

3. **For the life of the Project, the Applicant shall**:

(a) Price all parking at the Project at a price not below the market rate, defined as the average cost for parking in a 0.25-mile radius from the Property;

(b) Unbundle the cost of residential parking from the cost of lease or purchase of each unit;

(c) Provide TDM materials to new residents in the resident welcome package materials;

(d) Designate a loading dock manager for the Project, which manager shall coordinate with tenants to schedule deliveries, and shall be on duty during delivery hours (including trach pick-up);

(e) Require, either through leases or condo regulations, residents to schedule move-in and move-outs with the dock manager;

(f) Prohibit and enforce vehicular backing maneuvers at the curb cut;

(g) Through the loading dock manager, coordinate with trash pick-up services to move dumpsters expeditiously between storage areas inside the building

and the curb beside the loading area to minimize the time trash trucks need to use the loading area;

(h) Prohibit trucks using the loading area to idle and require such trucks to follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;

(i) Disseminate, through the loading dock manager, DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with District laws and DDOT's truck routes;

(j) Post DDOT's Freight Management and Commercial Vehicle Operations document in a prominent location within the service area;

(k) Require, either through leases or condo regulations, residents to obtain "emergency no-parking" signs to reserve on-street vehicle parking adjacent to the loading facilities for move-ins and move-outs; and

(l) Post 'No Parking' signs and/or similar deterrents on the building or private property to ensure vehicles do not use or park in the curb cut.

D. MISCELLANEOUS

1. The Zoning Regulations Division of the Department of Consumer and Regulatory Affairs ("DCRA") shall not issue any building permits for the PUD until the Applicant has recorded a Covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The change of zoning from the R-5-A to the C-3-A Zone District shall be effective upon the recordation of the covenant discussed in Condition No. D.1.

3. This second-stage PUD shall remain valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified under the Zoning Regulations. Construction of the project shall start within three years from the effective date of this Order.

4. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*, ("Act") the District of Columbia does not

> discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is 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 April 24, 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 **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to approve; Michael G. Turnbull, not having participated, not voting.

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 September 1, 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. 08-06L
Z.C. Case No. 08-06L
(Text Amendment – 11 DCMR)
Technical Corrections to Z.C. Order 08-06A
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. 15-34A
Z.C. Case No. 15-34A
Sherman Avenue, LLC
(PUD Modification of Consequence @ Square 2873)
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 that meeting, the Commission approved the application of Sherman Avenue, LLC ("Applicant") for a modification of consequence to an approved consolidated planned unit development ("PUD") for the parcel located at 965 Florida Avenue, N.W. (Square 2873, Lot 1102) ("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. 15-34, dated July 28, 2016, and effective on October 21, 2016 ("Order"), the Commission approved a mixed-use PUD for the Property that consists of grocery store on the ground and mezzanine levels of the building and an apartment house on floors two through 10 above. The grocery store was approved to have approximately 51,540 square feet of floor area and the residential component was approved to have approximately 351,245 square feet of floor area, generating approximately 428 dwelling units. Of the 428 units, 30% were required to be set aside as affordable units. Of the affordable units, 25% (approximately 32 units) were required to be reserved for households with incomes not exceeding 30% of the Area Median Income ("AMI") and 75% (approximately 97 units) were required to be reserved for households with incomes not exceeding 50% of AMI. The maximum building height was approved at 110 feet, as measured from Sherman Avenue, N.W., and the maximum site density was approved at 7.42 floor area ratio ("FAR"), not including the area of the private street proposed along the northern boundary of the Property.

2. The Commission's approval in the Order was subject to conditions that, among other things, the Applicant implementing a loading management plan, a loading operations plan, and a loading operations monitoring program for the project as follows:

   Condition No. C.3.

   3. Loading Management. **For the life of the Project (except where noted)**, the Applicant shall implement a loading management plan for the PUD as follows:

      a. Loading dock managers will be designated for grocery and residential uses. The dock managers will coordinate with one another as well as with vendors and tenants to schedule deliveries and will be on duty during business hours;

b. All tenants will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 30 feet in length or larger;

c. The dock manager(s) will schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;

d. The loading dock operation will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading dock and at both entrances to the garage. The loading dock will be open seven days a week from 7:00 a.m. to 10:00 p.m.;

e. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;

f. The dock manager(s) will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the loading dock. The dock manager(s) will also distribute flyers materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager(s) will also post these documents in a prominent location within the service area. In order to effectively access the loading docks for the building, it is recommended that trucks approach the site via 9th Street and turn left onto Bryant Street before accessing the loading dock;

g. When a 55-foot truck or larger arrives to the dock, the receiver will assist in directing traffic while the truck backs into the dock, as stated below in the "Loading Operations Plan";

h. Signage with flashing beacons will be placed at the intersection of Sherman Avenue/Florida Avenue and Bryant Street as well as at the Bryant Street/9th Street intersection to alert drivers to the presence of backing trucks and to not enter Bryant Street when the lights are flashing. The flashing lights will be controlled by the receiver at the loading dock and will be turned on for any truck that is 55 feet or larger; and

i. Closed Circuit TV (CCTV) cameras will be installed on the northwest corner of the building directed at the intersection of Florida Avenue,

Sherman Avenue and Bryant Street to record the truck backing operations. These operations will be reviewed with DDOT on a fixed periodic basis to determine if any additional mitigation measures are required to address any issues arising from the truck loading operations. The monitoring of these operations are discussed in the "Loading Operations Monitoring Program" stated below.

Condition No. C.4.

4. Loading Operations Plan. **For the life of the project, (except as noted)**, the Applicant shall implement the following large truck loading operations plan for the proposed 965 Florida Avenue grocery store for all trucks 55 feet or larger. The components of the Loading Operations Plan are as follows and is graphically presented in Exhibit 49A, Figure 1:

   a. As the large truck approaches the site, the truck driver will contact the loading dock manager (LDM) of their impending arrival at the site;

   b. With this advance notice, the receiver walks to his position in the loading berth;

   c. As the receiver walks to the designated position to assist with maneuvering, the receiver will manually activate the two flashing signs via switches installed within the loading dock. The signs shall be installed on Bryant Street, with one sign located on the western end of Bryant Street and the other sign located on the eastern end of the loading dock area on Bryant Street;

   d. As traffic is alerted not to enter by the flashing signage, the receiver will ensure that no conflicting vehicles are present in Bryant Street and guide the driver maneuvering the large truck into the appropriate berth; and

   e. When the truck is positioned fully within the building, the receiver will turn off the flashing signs to indicate that the truck loading maneuvering is complete. This procedure is similar to fire trucks backing into District firehouses throughout the District.

Condition No. C.5.

5. Loading Operations Monitoring Program. **Upon completion of the building**, the Applicant shall implement the following loading operations monitoring program. As shown on Exhibit 49A, Figure 2, the Applicant shall install a CCTV camera on the northwest corner of the building to record the large truck loading operations and any resulting impacts at the intersection of Bryant Street, Florida Avenue and Sherman Avenue. The components of this loading operations monitoring program are as follows:

a. Upon completion of the building and within the first six months of operation of the grocery store, the Applicant shall compile and review the CCTV recorded instances (approximately four trucks per day for 180 days (or approximately 720 possible loading maneuvers) of large trucks backing into the loading dock as part of the operation of the grocery store. The six-month period should include the Friday before Howard University's Homecoming and a weekday leading up to the Thanksgiving holiday. In the event that the initial six-month period does not include these two days, additional monitoring will be performed on those two days. As part of this monitoring review of the CCTV recorded data, the Applicant will quantify any instances where vehicles are stuck waiting within the intersection of Florida Avenue, Bryant Street and Sherman Avenue. This will include (but is not limited to) a review and quantifying of the following:

i. Vehicles queued at the Bryant Street/Florida Avenue/Sherman Avenue intersection due to truck maneuvering and whether through traffic on Florida Avenue or Sherman Avenue is impeded and specific times in which these occurred;

ii. Vehicles that cause queuing in the Bryant Street/Florida Avenue/Sherman Avenue intersection by entering Bryant Street while a truck is maneuvering into the loading berth and ignoring the flashing signage (and potentially stopping in the middle of the intersection) and specific times in which these occurred; and

iii. Additionally, any significant pedestrian and bicycle conflicts with the loading operations will also be quantified to determine if the loading operations plan has resulted in any issues. This will include (but is not limited to) a review and quantifying of pedestrian or bicycles that may be impeded by trucks blocking crosswalks for more than one minute and any potential conflicts that may result from loading maneuvers and specific times in which these occurred;

b. After the review of the CCTV video and the compilation of the data, the CCTV video clips and observations compilation will be reviewed with DDOT staff to determine if additional mitigation measures are necessary to address any issues identified in the video compilations. Additional mitigation measures will be deemed necessary if any of the following instances occur during the review phase:

i. Over six instances of vehicular queuing on any approach to the Bryant Street/Florida Avenue/Sherman Avenue intersection due to truck turning maneuvers of more than eight vehicles (or to the adjacent intersection) through one signal cycle length on any

approach is noted and thereby blocking through traffic and when they occurred; and

ii. Over 36 instances of vehicles (or approximately five percent of the 720 potential loading maneuvers noted above) that cause queuing in the Bryant Street/Florida Avenue/Sherman Avenue intersection by ignoring the flashing signage and entering Bryant Street (and potentially stopping in the middle of the intersection) and when they occurred. Based on the review above, should none of the thresholds be met in the initial review, no further mitigation or monitoring will be necessary;

a. If DDOT requires additional mitigation due to peak hour conflicts noted in the review period, the additional mitigation outlined further below for peak period conflicts will be implemented and monitored for three additional months after the improvements have been installed to determine the level of effectiveness addressing any issues. Similar criteria as noted above will be used to evaluate this effectiveness as follows:

i. Over three instances of vehicular queuing on any approach to the Bryant Street/Florida Avenue/Sherman Avenue intersection due to truck turning maneuvers of more than eight vehicles (or to the adjacent intersection) through one signal cycle length on any approach is noted and thereby blocking through traffic and when they occurred; and

ii. Over 18 instances of vehicles (or approximately five percent of the 360 potential loading maneuvers in the three-month period) that cause queuing in the Bryant Street/Florida Avenue/Sherman Avenue intersection by ignoring the flashing signage and entering Bryant Street (and potentially stopping in the middle of the intersection) and when they occurred;

c. If DDOT requires additional mitigation due to conflicts occurring throughout the day as noted in either the first or second review period, the additional mitigation outlined further below to convert Bryant Street to one-way westbound will be implemented; and

d. This section presents the additional mitigation that DDOT may require to address any issues that may arise from the loading operations plan. DDOT may request the following additional mitigation measures:

i. Peak period mitigation: signage will be placed on the southbound approach of Sherman Avenue to the Bryant Street/Florida Avenue restricting southbound left turns into Bryant Street during the a.m. and p.m. peak grocery hours (similar to turn restrictions throughout

the District: 7:00-9:30 a.m. and 5:00-7:30 p.m.). Turn restrictions during these hours will limit the number of vehicles that may queue onto Sherman Avenue or block the intersection waiting for trucks to complete their backing maneuvers during peak periods. This additional phase of mitigation is graphically illustrated in Exhibit 49A, Figure 2. These improvements will be monitored for three additional months after the improvements have been installed to determine the level of effectiveness addressing any issues based on the criteria described above; and

ii. One-Way Bryant Street mitigation: consistent with DDOT's review letter dated July 1, 2016, the last phase consists of converting Bryant Street to one-way westbound. This one-way westbound conversion would be complemented by the currently proposed measures of flashing signs and the designated flogger. This additional phase of mitigation is graphically illustrated in Exhibit 49A, Figure 3. The Applicant will review and implement any other mitigations that may be necessary as a result of the conversion of Bryant Street from two-way operations to one-way westbound operation beyond those improvements currently planned by DDOT (such as the installation of the planned signal at the Florida Avenue/9th Street/V Street intersection).

PROPOSED MODIFICATION

3. By letter dated May 8, 2017 (Exhibit ["Ex."] 1), and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a modification of consequence to revise portions of the approved loading management plan. The revisions were based on continued review of the loading management plan with the District Department of Transportation ("DDOT") and the grocery store tenant in order to ensure that the loading management plan addressed DDOT's safety concerns and the grocery store's operational needs. Based on this continued review, the Applicant proposed to install electronic equipment to detect delivery trucks entering and leaving the loading area, and alerting drivers of the same, necessitating the loading management plan to be revised to read as follows:

C.3. Loading Management. **For the life of the Project (except where noted)**, the Applicant shall implement a loading management plan for the PUD as follows:

a. Loading dock managers will be designated for grocery and residential uses. The dock managers will coordinate with one another as well as with vendors and tenants to schedule deliveries. These loading dock managers will be on duty during business hours;

b. All tenants will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 30 feet in length or larger;

c. The dock manager(s) will schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;

d. The loading dock operation will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading dock and at both entrances to the garage. The loading dock will be open seven days a week from 7:00 a.m. to 10:00 p.m.;

e. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;

f. The dock manager(s) will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the loading dock. The dock manager(s) will also distribute flyers materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager(s) will also post these documents in a prominent location within the service area. In order to effectively access the loading docks for the building, it is recommended that trucks approach the site via 9th Street and turn left onto Bryant Street before accessing the loading dock; and

g. Truck detection equipment will be incorporated in order to automate signage with flashing beacons which will be placed just east of the loading docks on Bryant Street, near the Bryant Street/9th Street intersection to alert drivers to the presence of backing trucks and to yield to trucks while the lights are flashing. A corresponding stop bar on westbound Bryant Street and a hatched maneuvering area will be painted on the street to delineate out areas where through vehicles should stop and trucks should maneuver, respectively.

4. The Applicant also requested that Condition Nos. C.4. and C.5. of the Order be deleted on the basis that the loading operations plan and loading operations management program referenced in these conditions are no longer necessary or applicable given the revised Loading Management Plan. (Ex. 1.)

5. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service which noted that Advisory Neighborhood Commission ("ANC") 1B, the only party in the original proceeding, was served with the application. (Ex. 1).

6. On May 18, 2017, DDOT submitted a report finding that the revised loading management plan would satisfactorily mitigate impacts from the project if accompanied by a new loading operations plan showing the supportive physical improvements to Bryant Street, including truck movements, signage, and roadway markings needed to mitigate truck-related impacts on the project. (Ex. 6.)

7. On May 19, 2017, the Office of Planning ("OP") submitted a report recommending that the Commission approve the application. (Ex. 7.) In its report, OP found that the proposed modifications would not be inconsistent with Z.C. Order No. 15-34, the Comprehensive Plan, or any other facts on which the approval was based. OP also requested that the Applicant submit a new loading operations plan showing the truck movements, signage, and roadway markings that would mitigate truck-related impacts.

8. 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 1B to file a response in opposition to, or in support of, the request, and for the Applicant to respond thereto, and schedule the request for deliberations. During its meeting, the Commission also requested that the Applicant submit a new loading operations plan, as requested by DDOT and OP.

9. On May 31, 2017, the Applicant submitted a loading operations plan requested by the Commission. (Ex. 8-8A.) Compliance with that plan will be required through a revision to Condition No. C.4 of the Order

10. ANC 1B did not submit a report on the application

11. At its public meeting on June 12, 2017, the Commission reviewed the Applicant's supplemental submission and confirmed that it adequately addressed the outstanding concerns raised by OP and DDOT.

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 Exhibits 1 and 8 of the case record are modifications of consequence and therefore can be granted without a public hearing.

The Commission concludes that the proposed modifications of consequence are entirely consistent with the Commission's previous approval of the project. The use of this building has not changed and the Applicant is only proposing modifications that do not diminish or detract from the Commission's original approval.

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 1B did not submit a report comments.

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 the approved PUD as follows:

1. Condition C.3. of Z.C. Order No. 15-34, pertaining to the Loading Management Plan, is hereby revised to read as follows:

    3. Loading Management. **For the life of the Project (except where noted)**, the Applicant shall implement a loading management plan for the PUD as follows:

        a. Loading dock managers will be designated for grocery and residential uses. The dock managers will coordinate with one another as well as with vendors and tenants to schedule deliveries. These loading dock managers will be on duty during business hours;

        b. All tenants will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 30 feet in length or larger;

        c. The dock manager(s) will schedule deliveries such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;

        d. The loading dock operation will be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading dock and at both entrances to the garage. The loading dock will be open seven days a week from 7:00 a.m. to 10:00 p.m.;

e. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;

f. The dock manager(s) will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the loading dock. The dock manager(s) will also distribute flyers materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager(s) will also post these documents in a prominent location within the service area. In order to effectively access the loading docks for the building, it is recommended that trucks approach the site via 9th Street and turn left onto Bryant Street before accessing the loading dock; and

g. Truck detection equipment will be incorporated in order to automate signage with flashing beacons which will placed just east of the loading docks on Bryant Street, near the Bryant Street/9th Street intersection to alert drivers to the presence of backing trucks and to yield to trucks while the lights are flashing. A corresponding stop bar on westbound Bryant Street and a hatched maneuvering area will be painted on the street to delineate out areas where through vehicles should stop and trucks should maneuver, respectively.

2. Condition C.4. of Z.C. Order No. 15-34, pertaining to the Loading Operations Plan is hereby revised to read as follows:

4. Loading Operations Plan. **For the life of the project, (except as noted)**, the Applicant shall implement the loading operations plan marked as Exhibit 8A of the record to Z.C. Case No. 15-34A.

3. Condition C.5. is deleted.

At its public meeting on June 12, 2017, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application 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 September 1, 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. 16-03A
Z.C. CASE NO. 16-03A
(DB Residential Hill East, LLC – Modification of Consequence of a Design Review Approval @ Square 1112E, Lots 802, 803, and 804)
May 8, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on May 8, 2017. At that meeting, the Commission approved the application of DB Residential Hill East, LLC ("Applicant") for a modification of consequence of the design review application approved by Z.C. Order No. 16-03 for Square 1112E, Lots 802, 803, and 804 (collectively the "Property"). The modification request was made 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

BACKGROUND

1. Pursuant to Z.C. Order No. 16-03, dated May 12, 2016, the Commission approved a design review application and related special exception approval from the requirements of 11 DCMR § 2815.6 for the location of garage entrances, and variance relief from the requirements of §§ 2101.1, 2115.2, 2115.4, 2201.1, 2807.1, 2808.1, and 2815.1-2815.4, with regard to maximum building height, parking, loading, percentage and grouping of compact spaces, and Inclusionary Zoning.

2. The Property consists of two parcels in the Hill East District – Parcel F-1 and Parcel G-1. These two parcels total approximately 2.6 acres and are the first parcels in the 67-acre area formerly known as Reservation 13, to be developed implementing the vision and objectives of the Hill East Waterfront Master Plan. The Property is currently used as a surface parking lot for the Department of General Services, the Department of Corrections, and the Department of Health.

3. Parcel F-1 is located in the HE-1 zone, and consists of 60,862 square feet. It is bounded on the west by 19th Street, on the north by Burke Street, and on the south by C Street, all of which are considered secondary streets under the Hill East design guidelines.

4. Parcel G-1 is located in the HE-1 and HE-2 zones, and consists of 87,614 square feet. It is bounded on the west by 19th Street, on the north by C Street, on the south by Massachusetts Avenue, and on the east by 20th Street. C Street, 20th Street, and 19th Street are secondary streets and Massachusetts Avenue is a primary street under the Hill East design guidelines.

5. The Property is located within the Anacostia Waterfront Development Zone. Therefore, the project must comply with the affordable housing requirements contained in the

Anacostia Watershed Initiative Act ("AWI"). The AWI Act requires that at least 30% of the total housing units developed must be affordable – 15% reserved for households earning up to or at 30% of the area median income ("AMI") and 15% reserved for households earning up to or at 60% of the AMI.

6. Building F-1 was approved as a four-story building containing approximately 13,400 square feet of retail space and 91 residential units. Of those units, 14 will be affordable units reserved for households not exceeding 30% AMI and 14 will be affordable units reserved for households not exceeding 60% AMI. It will have a maximum height of 52 feet, approximately 106,460 square feet of gross floor area, and a density of 1.86 floor area ratio ("FAR"). The western portion of Parcel F-1, fronting on 19th Street, will be maintained as an open plaza area that will be maintained by the Applicant.

7. Building G-1 was approved as a four-story building containing approximately 13,800 square feet of retail and 258 residential units. Of those units, 39 will be affordable units reserved for households not exceeding 30% AMI and 39 will be affordable units reserved for households not exceeding 60% AMI. It will have a maximum height of 53 feet on the portion of the parcel in the HE-1 zone and 69 feet on the portion of the parcel in the HE-2 zone, approximately 286,808 square feet of gross floor area, and a density of 3.27 FAR. The western portion of Parcel G-1, fronting on 19th Street, will be maintained as an open plaza area that will be maintained by the Applicant.

8. The Commission, at its April 24, 2017, public meeting, determined that the application was properly 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.

9. The Commission was therefore required by 11-Z DCMR § 703.17(c)(2) to establish a timeframe for the parties in the original proceeding, Advisory Neighborhood Commission ("ANC") 7F, to file a response in opposition to or in support of the request and for the Applicant to respond thereto; and schedule the request for deliberations.

MODIFICATION REQUEST

10. As shown on the architectural plans and elevations ("Plans") (Exhibits ["Ex."] 2B1-2B3), the Applicant requested approval to modify the Plans as follows:

a. Sheets 9A, 14, 31, and 32: Revisions to Approved Civil Plans (04/21/16)
- Civil sheets were updated so that the building footprint corresponds to the elevations on Sheets 50-51 of the approved plans, and to show the updated labeling of the street right of way widths.

b. Sheet 10: Revisions to Approved Architectural Site Plan (04/21/16)
- Street right of way widths on the architectural sheet were revised to be consistent with civil sheets dated 04/11/17.

- Building floor plans were updated to match the elevations on Sheets 50-51 of the approved plans.

c. Sheet 23: Revisions to Approved F-1 Roof Plan (04/21/16)

- The penthouse communal space was reorganized around the elevator core, which is unchanged.

- The outdoor communal space was relocated from the southeast corner of the roof to the southwest corner in order to maximize views of the city; resulting in a reduction of the outdoor communal space by five square feet.

- The Applicant added a 1,089 square-foot dog run; 10'-0" trellis; and four-foot fence surround on the southeast corner of roof.

- The mechanical screen wall area shifted from the southwest corner northward to the center of the roof.

- The core element locations generally remained the same as the approved plan.

d. Sheet 29B: Revisions to Approved F-1 Courtyard Elevations (04/21/16)

- The exterior cladding at the base of the courtyard was revised from fiber cement to brick, except at the enclosed terrace. This revision effectively reinforced the same "base middle top" design principle that was successfully executed on the primary façades of the building. The proposed material change is consistent with the brick color and material previously approved for the project.
- The color of the cornice was revised to match the color of the panels below. No material change was proposed. This color revision allowed the top three levels of the courtyard façade to read as a more cohesive design element.

- The Applicant has included a small enclosed terrace on the southeast corner of the courtyard for Building F-1, as depicted on Sheet 29B.

e. Sheet 47: Revisions to "Approved" G1 Roof Plan (04/21/16)

- The penthouse communal space was shifted west in closer proximity to the elevator core.

- The outdoor communal space was relocated from the northeast corner of the roof to the northwest corner of the roof in order to maximize views of the city.

- The Applicant added a 920-square-foot dog run; 10'-0" trellis; and four-foot fence surround on the west side of the roof.

- The mechanical screen wall and equipment areas shifted south toward the new dog run.

- The core element locations generally remained the same as the approved plan.

11. As noted above, the only party in Z.C. Case No. 16-03 was ANC 7F, but the boundaries of ANC 6B are located across the street from a portion of the Property. Therefore, ANC 6B meets the new definition of "affected ANC" as stated at 11-B DCMR § 100.1.

12. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service which noted that ANC 7F and ANC 6B were served with the application. (Ex. 2).

13. Neither ANC 7F nor ANC 6B submitted a written report to the record.

14. The Office of Planning ("OP") submitted a report on April 14, 2017. The OP report stated that OP had no objection to the proposed modifications. The OP report concluded that "[t]he proposed modifications would not be inconsistent with the design guidelines set forth at Subtitle K § 419 and § 420, with the general provisions of the HE District as stated in Subtitle K § 400, or with the conditions of ZC Order 16-03. The Office of Planning (OP) is supportive of the revised layout of the roof amenities and mechanical enclosures as it would be more user friendly to the residents without requiring any additional penthouse relief, and the courtyard elevations would be an improvement over the approved plans." (Ex. 4).

CONCLUSIONS OF LAW

1. 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.)

2. The Commission concludes that the modifications depicted in the Plans included in the record in this case, and as described in the above Findings of Fact, are modifications of consequence, and therefore can be granted without a public hearing.

3. The Commission finds that the proposed modifications are entirely consistent with the Commission's previous design review approval for development of the Property. The Applicant is only proposing the redesign and relocation of architectural elements of the buildings that do not diminish or detract from the Commission's original approval.

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)) to give great weight to the issues and concerns identified in affected an ANC's written report. Neither ANC 7F nor 6B submitted a written report.

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's recommendations. The Commission has carefully considered the OP's recommendation in support of the application and agrees that approval of the requested modification of consequence should be granted.

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 a modification of consequence to the design review application approved in Z.C. Case No. 16-03. The conditions in Z.C. Order No. 16-03 remain unchanged except as follows. The following condition replaces Condition No. 2 of Z.C. Order No. 16-03:

2. The Project shall be built in accordance with the consolidated set of architectural drawings submitted to the Commission on May 13, 2016, and dated May 12, 2016, as modified by the plans included in Exhibit 2B1 through 2B3 of the record in Z.C. Case No. 16-03A, and as further modified by the guidelines, conditions, and standards below.

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.

At its public meeting of May 8, 2017, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application by a vote of **4-0-1** (Anthony J. Hood, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve; Robert E. Miller not present, not voting).

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 September 1, 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. 16-13
Z.C Case No. 16-13
JS Congress Holdings, LLC
(Consolidated PUD & Related Map Amendment @ Square 748)
June 12, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on November 21, 2016, and January 4, 2017, to consider applications for a consolidated planned unit development ("PUD") and related Zoning Map amendment filed by JS Congress Holdings, LLC ("Applicant"). The Commission considered the applications pursuant to Chapters 24 and 30 of the 1958 edition of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11-Z DCMR §§ 400 *et seq.* (2016). For the reasons stated below, the Commission hereby **APPROVES** the applications.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Submissions

1. On June 7, 2016, the Applicant filed applications with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the C-M-1 to the C-2-B Zone District for property located at Lots 78 and 819 in Square 748, premise addresses 220 L Street, N.E., and 1109-1115 Congress Street, N.E., Washington, D.C. ("PUD Site"). The applications were processed in accordance with the 1958 Zoning Regulations.

2. The PUD Site has a land area of approximately 10,040.7 square feet, which includes approximately 507.6 square feet of land area on a portion of the abutting public alley to be closed. A vacant two-story warehouse historically used for industrial purposes and a smaller three-story building constructed in 2011 are located on the PUD Site. The two non-historic buildings on the PUD Site will be demolished in order to construct a mixed-use building composed of housing and production, distribution, and repair ("PDR") related uses ("Project").

3. The Project will have approximately 60,244 square feet of gross floor area ("GFA"), of which 56,419 square feet will be devoted to residential uses and 3,825 square feet will be set aside for PDR uses. The penthouse will include an additional 2,035 square feet of GFA devoted to residential uses, 350 square feet of GFA for community space, and 675 square feet of GFA for mechanical purposes. The building will have a density of 6.0 floor area ratio ("FAR"); the penthouse will have a density of 0.34 FAR. The overall height of the building will be 90 feet. The habitable portion of the penthouse will be 12 feet in height and the mechanical penthouse will be 18.5 feet in height.

4. The Applicant will devote approximately 12% of the residential square footage as for-sale Inclusionary Zoning ("IZ") units, consistent with Chapter 26 of the 1958 Zoning

Regulations. Approximately four percent of the Project's residential GFA (1,815 square feet or three one-bedroom units) will be located on site and set aside for households earning up to 80% of the area median income ("AMI"). Another eight percent of the Project's residential GFA (approximately 4,500 square feet, equaling a minimum of five units that average two-bedrooms each) will be set aside for households earning up to 50% of AMI. The 1,815 square feet on site and 1,893 square feet off site will satisfy the minimum IZ set aside requirement of eight percent of the PUD building and the habitable penthouse. The remaining affordable housing proffer of approximately 2,607 square feet will be governed by restrictive covenants with D.C. Habitat for Humanity, a not-for-profit affordable housing provider.

5. By report dated July 15, 2016, the District of Columbia Office of Planning ("OP") recommended that the application be set down for a public hearing, but requested further study of the architectural design and greater detail on building materials, landscaping, and the treatment of public space. OP also recommended eliminating the need for any penthouse setback relief. (Exhibit ["Ex."] 11.) At its public meeting on July 25, 2016, the Commission voted to schedule a public hearing on the application and adopted as its own the concerns raised by OP.

6. The Applicant submitted a prehearing statement on August 12, 2016, and a public hearing was timely scheduled for the matter. (Ex. 13.) On August 26, 2016, the Office of Zoning mailed the notice of public hearing to all owners of property located within 200 feet of the PUD Site, to Advisory Neighborhood Commission ("ANC") 6C, which is the ANC in which the PUD site is located, and to Commissioner Tony Goodman, the commissioner for single-member district ("SMD") 6C06. (Ex. 36.) A description of the proposed development and notice of the public hearing in this matter was published in the *D.C. Register* on September 2, 2016.

7. On October 21, 2016, the application submitted its comprehensive transportation review ("CTR") report prepared by Gorove/Slade Associates to the Commission and the District of Columbia Department of Transportation ("DDOT"). On November 1, 2016, the Applicant submitted a supplemental prehearing statement in response to comments raised by the Commission and OP at the setdown meeting. (Ex. 23.) The supplemental submission included revised architectural plans and elevations, and a letter committing to make a $10,000 contribution to the Friends of NoMA Dogs, Inc. for maintenance and supplies for dog parks in the NoMA neighborhood.

8. On November 14, 2016, OP and DDOT each submitted a report on the applications. While OP was supportive of the redevelopment, it was unable to make a recommendation in its report until additional information and clarification were submitted. (Ex. 25). OP was supportive of the hearing being held on November 21, 2016, as scheduled, to address the issues cited in its report. DDOT reported no objection to the application, with the following conditions: (a) provision of funding for a 19-dock Capital Bikeshare station and one-year operational expenses; and (b) implementation of transportation demand mitigation ("TDM") measures. (Ex. 26.)

9. At its regularly scheduled public meeting on October 13, 2016, for which notice was properly given and a quorum was present, ANC 6C voted (4-0) to support the application, with conditions. (Ex. 19). The ANC requested: (a) material changes to the design to include the removal of the L Street curb cut and garage/parking enetrance; (b) relocation of the new alley entrance to the northern-most portion of the site; (c) elimination of below-grade parking and replacement with six at-grade parking spaces adjacent to the north-south alley; and (d) addition of windows to the blank east wall. The ANC also requested enhancement of the Applicant's public benefits package to include funding of a bikeshare station at 3rd and L Streets, N.E. and donating $10,000 to the 501(c)(3) overseeing the operation of the public dog park across L Street, N.E.

10. By submission dated November 7, 2016, Mr. Fred Irby on behalf the Third Street Neighbors filed a request for party status in opposition to the application.

11. The Commission convened a public hearing on November 21, 2016, at which time the Third Street Neighbors were granted party status in opposition. Mr. Irby, the representative of the party opponent, clarified that the group was comprised of Mr. Irby at 1114 3rd Street, N.E., 1112 3rd Street, LLC., Ms. Helen Darden at 1116 3rd Street, N.E., Ms. Arita Brown at 1108 3rd Street, N.E., and Ms. Roxanne Scott at 1110 3rd Street, N.E.

12. The Commission did not take further evidence at the hearing. Instead, it continued the hearing until January 4, 2017, to allow the Applicant time to respond to the issues raised in the OP report regarding the architectural treatment of the building and the public benefits and amenities. The Applicant filed a second supplemental submission on December 16, 2016, and OP filed a second hearing report recommending approval of the application in light of the Applicant's additional information.

13. The Commission re-convened the hearing on January 4, 2017, which was concluded the same evening. At the hearing, the Applicant presented three witnesses in support of the applications: Mr. Bruce Baschuk of the J Street Companies, on behalf of JS Congress Holdings, LLC; Ms. Jane Nelson of Nelson Architects, who was qualified as an expert in archicture; and Mr. Erwin Andres of Gorove/Slade Associates, who was qualified as an expert in traffic and tranportation engineering.

14. Mr. Joel Lawson testisfied on behalf of OP at the public hearing; Ms. Evelyn Israel testified on behalf of DDOT.

15. The record was closed at the conclusion of the hearing to receive additional submission from the Applicant, responses from the party opponent, and proposed findings of facts and conclusions of law.

16. On January 12, 2017, the Applicant submitted a post-hearing submission, which included the following information as requested by the Commission: (a) an increased affordable housing proffer of 12% on site; (b) further rationale for the proposed 90-foot building height; (c) the effect of the PUD on Mr. Irby's solar panels and the Applicant's efforts to mitigate any adverse impacts; (d) signage details; (e) lighting for the alley; (f) further study of the retaining wall area; and (g) clarification of the public alley closing process

for Mr. Irby. At OP's suggestion made during the hearing, the Applicant also provided information on the potential range of PDR-retail uses it envisioned for the site and the typical depth of residential units, which affects rear yard compliance. On January 19, 2017, the Applicant submitted its proposed findings of fact and conclusions of law.

17. The Applicant requested three postponements of the Commission's proposed action on the application in order to re-study the financial viability of its 12% affordable housing proffer. On April 10, 2017, the Applicant submitted a revised proffer whereby at least eight percent of the project's residential square footage (including the habitable penthouse space) would be set aside for households earning no more than 50% of AMI at an off-site location. An additional four percent of the project's resisdential square footage would be set aside for households earning no more than 80% of AMI, which would be located on site. (Ex. 47). On April 14, 2017, OP submitted a report supporting the revised proffer. (Ex. 49.)

18. At its public meeting on April 24, 2017, the Commission took proposed action to approve the applications. The proposed action was referred to the National Capital Planning Commission ("NCPC") on May 4, 2017, pursuant to § 492 of the Home Rule Act. (Ex. 58). The Executive Director of NCPC, by delegated action dated May 25, 2017, found that the PUD and related map amendment would not be inconsistent with the federal elements of the Comprehensive Plan for the National Capital or any other federal interest. (Ex. 58A.) Before taking proposed action, the Commission inquired whether the Applicant's proposal to link the issuance of a building permit for this project to the Applicant gaining site control to the off-site affordable housing was consistent with the requirements for off-site linkage in other similar projects. The Commission suggested that instead of site control, the triggering event should be a building permit. The Commission also asked whether the Applicant should provide a draft IZ covenant contemplated by 11 DCMR § 2607.5. The resolution of those issues is discussed below in the contested issues section of this Order.

19. On April 20, 2017, the Commission re-opened the record to receive a letter from Mr. Irby regarding his ongoing negotiations with the Applicant. (Ex. 51.) The Applicant responded by letter dated April 24, 2017. (Ex. 52.) On April 26, 2017, Mr. Irby submitted an additional letter stating that the parties had reached an agreement and that he was withdrawing his objections and his status as party opponent. (Ex. 53.)

20. On May 1, 2016, the Applicant submitted is revised proffers and draft conditions pursuant to 11-X DCMR §§ 308.8-308.12. (Ex. 54, 55.) On May 15, 2017, the Applicant final list of proffers and draft conditions. (Ex. 56, 57.)

21. At its public meeting on June 12, 2017, the Commission took final action to approve the applications.

The PUD Site and Surrounding Area

22. Known as 220 L Street and 1109-1115 Congress Street, N.E., the PUD Site is in the neighborhood north of Massachusetts Avenue ("NoMA") in Ward 6, just east of the

railroad tracks leading out of Union Station. Lot 78 at the northeast corner of Congress and L Streets, N.E., is rectangular in shape and has 44.71 linear feet on L Street and 68.0 linear feet along Congress Street. Lot 819 fronts on Congress Street and measures 95.19 feet in length along its street frontage and is 68 feet deep. Lots 819 and 78 are separated by a nine-foot-wide public alley running east-west the full depth of Lot 819. The alley then turns north along the eastern boundary of Lot 819, and narrows to 8.71 feet in width. The Applicant intends to close the east-west alley for the full depth of Lot 78 (44.71 feet); an additional 23.29 feet of the east-west alley (adjacent to Lot 819) will also be closed but only for a width of 4.5 feet.

23. The PUD Site slopes upward significantly from L Street to the north, with a grade differential of approximately 10 feet. The sidewalk along Congress Street is unusually narrow at just seven feet, 11 inches, with utility poles and other public space fixtures that further limit the pedestrian pathway. In contrast, the public space along L Street is approximately 18 feet, two inches, from the street curb to building line. It is interrupted by a large curb cut allowing vehicular access to the parking garage for the building at 220 L Street, N.E.

24. The PUD Site is located immediately south of the former Uline Arena, which was recently renovated to accommodate office and retail uses. Accessory parking to the Uline Arena is accessed from the end of Congress Street just north of the PUD Site. Across Congress Street to the west is a variety of automotive and industrial uses across Congress Street to the west, as well as Union Kitchen, a kitchen, distribution center, catering service, and grocery store. Immediately east of the PUD Site across the narrow nine-foot alley are seven single-family rowhouses fronting on Third Street, N.E., approximately 20-23 feet in height.

25. The area immediately surrounding the PUD Site has changed significantly in the last five to seven years with the construction of several new multi-family residential buildings. Immediately across L Street to the south is the Toll Brothers City Living project, a two-phase development that will ultimately comprise over 500 units and more than 13,000 square feet of retail space. It is approximately 14 stories and 130 feet in height. (See Z.C. Order No. 05-36I.) The Pullman Building at 911 2nd Street, N.E., is a six-story residential building with 42 units presently under construction. The Aria at 300 L Street, N.E., is a recently completed six-story apartment building with 60 units. NoMA Parks Foundation is located at the southwest corner of 3rd and L Streets, N.E. The Commission recently took proposed action to approve a mixed-use hotel and residential building at the former Central Armature site that will be approximately 120 feet in height and have density of 6.99 FAR. (See Z.C. Case No. 16-09.)

Existing and Proposed Zoning

26. The PUD Site is currently zoned C-M-1. The C-M Zone Districts are "intended to provide for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on the nearby, more restrictive districts." (11 DMCR § 800.1.) The C-M-

1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) Property within the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted height is 40 feet and three stories. (11 DCMR § 840.1.)

27. The Applicant proposes to rezone the PUD Site to the C-2-B Zone District in connection with the PUD application. The C-2-B Zone District is designated to "serve commercial and residential function, is similar to the C-2-A District but with high-density residential and mixed uses." (11 DCMR § 270.6.) The C-2-B Zone District permits as a matter of right medium-density development, including office, retail, housing, and mixed uses. The maximum permitted height in the C-2-B Zone District is 65 feet; the maximum permitted density is 3.5 FAR, of which no more than 1.5 FAR can be devoted to non-residential uses. The maximum density may be increased by 20% to 4.2 FAR for residential uses under the IZ provisions of Chapter 26. The maximum lot occupancy is 80% for residential uses and 100% for non-residential uses. (11 DMCR §§ 770.1, 771.2, and 772.1.)

28. In addition to the matter-of-right development parameters of the C-2-B Zone District, the PUD is also governed by the PUD guidelines in Chapter 24 of the Zoning Regulations. The maximum permitted density for a PUD in the C-2-B Zone District is 6.0 FAR, all of which may be devoted to residential uses, and only 2.0 of which may be devoted to non-residential uses. The maximum permitted height is 90 feet. Consistent with the PUD guidelines for the C-2-B Zone District, the Applicant will develop the PUD Site with a mix of residential and PDR uses. A tabulation of the PUD's development data is included in Sheet A1.06 of the Architectural Plans and Elevations dated January 12, 2017 ("Plans"). (Ex. 37A.)

Description of the PUD Project

29. As shown on the Plans, the Applicant is seeking approval of a consolidated PUD and related Zoning Map amendment to redevelop the PUD Site with a mixed-use residential and PDR building. The Project will contain approximately 60,244 square feet of gross floor area, which equates to a 6.0 FAR. The maximum building height is 90 feet. Approximately 56,419 square feet of GFA will be devoted to residential uses and 3,825 square feet of GFA will be devoted to PDR uses. The penthouse will include an additional 2,035 square feet of GFA devoted to residential uses, approximately 350 square feet of GFA for community space, and 675 square feet of GFA for mechanical purposes. The two-story penthouse will be 18.5 feet in height for the mechanical portion; the habitable portion will be 12 feet in height.

30. The PUD is a high-quality contextual design that fits comfortably within the industrial-residential character of the NoMA neighborhood. The existing buildings will be demolished to accommodate the new residential building with PDR uses. The main entrance to the residential portion of the building will be on Congress Street. The east-west alley off of Congress Street, which bisects the site, will be closed and a new public access easement will be created at the north end of the PUD Site. The design of the

building features a curved façade at L Street, which visually draws the eye into narrow Congress Street and the main entrance of the building. The ground-floor level of the building is designed as a rectangular block that anchors the residential floors above. The primary materials of the building are brick and metal panels. The significant grade change from L Street to the northern end of Congress Street allows for a gracious double-height lobby. The PDR uses are located on either side of the lobby. The Project is designed to meet a LEED-Gold equivalent standard.

31. As originally designed, the PUD proposed a below-grade parking garage accessed through the existing L Street curb cut. Sixteen parking spaces were located on either side of a central aisle; whereas, 21 parking spaces were required for the number of units provided. This garage layout dictated the location of the structural columns and elevator core, and a design that required additional zoning relief. In addition to parking relief, the Applicant sought relief from the penthouse setback requirements, lot occupancy, and court requirements. The Applicant also sought relief from the loading provisions.

32. At the request of DDOT, the Applicant redesigned the building to eliminate the curb cut at L Street. Because of the 10-foot grade change and shallow depth of the PUD Site, the Applicant could no longer provide a below-grade garage. The number of parking spaces was reduced to six at the rear of the building and loading facilities were shifted to the street. The new building configuration, however, eliminated the need for relief from the penthouse setback and lot occupancy provisions.

33. The Applicant made further changes to the building design at the request of ANC 6C. The east wall at the southern portion of the PUD Site originally abutted the property line, resulting in a blank wall without windows. The ANC requested the Applicant to enhance the articulation of that elevation, given its visibility in the community. In order to accommodate this request, the Applicant negotiated a reciprocal easement with the adjacent property owner whereby each owner agreed to set back its building five feet, creating a total building separation of ten feet. This separation would meet the necessary fire-rated distance between buildings to allow openings along the lot line. The Applicant then redesigned this elevation to incorporate windows to ensure an attractive view from the street and adjacent properties.

34. The Project will exceed the IZ requirements for the C-2-B Zone District. Chapter 26 of the Zoning Regulations provides that any new development in the C-2-B Zone District with 10 or more units must set aside eight percent of the residential GFA for households earning no more than 80% of the AMI for the Washington Metropolitan area. As shown in the revised plans submitted April 10, 2017, the Applicant proposes to set aside at least 12% of the residential GFA as IZ units. Four percent of the residential GFA (approximately 1,815 square feet or approximately three one-bedroom units) will be set aside for households earning no more than 80% of AMI, which will be located within the PUD. Another eight percent of the residential GFA (approximately 4,500 square feet or approximately five two-bedroom units) will be set aside for households earning no more than 50% of AMI at an off-site location.

35. The Applicant entered into a Memorandum of Understanding ("MOU") with D.C. Habitat for Humanity ("D.C. Habitat") to assist in the construction of five residential units, each with an average size of 900 net square feet and an average of two bedrooms. Both D.C. Habitat and the Applicant intend to build larger, three-bedroom units, if possible, and are investigating sites that can maximize the number of bedrooms and the square footage of the units. The off-site units would be either single-family dwellings or flats. The Applicant will make a contribution of at least $125,000 for each of those five units, or a total of at least $625,000. The proposed off-site units will be located within Ward 6 or Ward 5, and will be made available to households earning no more than 50% of AMI. This is a substantial increase over the Applicant's initial submission and the minimum IZ set-aside requirement, which would only produce approximately 3,708 square feet (including habitable penthouse space), devoted to households earning no more than 80% AMI. The off-site units would be located in ANC 6C, 6A, 6E, 5D, or 5E to ensure that affordable units would be interspersed with market-rate housing to avoid an over concentration of IZ units in any one location, consistent with spirit and intent of 11 DCMR § 2605.6. The 1,815 square feet on site and 1,893 square feet off site will satisfy the minimum IZ set aside requirement of eight percent of the PUD building and the habitable penthouse. The remaining affordable housing proffer of approximately 2,607 square feet will be governed by restrictive covenants with D.C. Habitat.

36. Because the Applicant's project is not financially viable if the entire IZ requirement reverts back to the PUD site, the Applicant and D.C. Habitat have agreed to the following benchmarks to ensure that the off-site affordable units will be constructed prior to the issuance of the certificate of occupancy for the PUD: (a) the Applicant will pay $625,000 to D.C. Habitat no later than October 31, 2017; (b) DC Habitat will have the off-site housing location(s) under its control prior to the issuance of the PUD building permit, which the Applicant anticipates can be issued by the end of March 2018; and (c) the off-site housing units will be completed and available for occupancy prior to the issuance of the PUD certificate of occupancy. In the event this last benchmark is not achievable, the Applicant will return to the Commission for a modification of the PUD Order.

37. The increased amount and deeper affordability levels for the affordable housing proffer were a direct result of the Commission's comments. The following chart summarizes the increase in affordable housing produced as a result of this PUD and at the encouragement of the Commission:

	Min. IZ Requirement	**Jan. 12, 2017 Proffer**	**Current Revised Proffer**
Total PUD Residential (incl. PH)	46,344 sf	46,344 sf	46,344 sf
Required IZ @ 8% GFA	3,708 sf	3,708 sf	3,708 sf
Provided @ 80% AMI	3,501 sf	2,813 sf	1,815 sf on-site (1/2 of req. IZ)
Provided @ 50% AMI (PH req.)			
On-Site	207 sf	2,845 sf	--
Off-Site IZ	--	--	1,893 sf (incl. PH)
Off-Site Add'l Proffer	--	--	2,607 sf
Total Affordable sf	3,708 sf	5,658 sf	6,315 sf
Percentage of GFA	8%	12% of GFA	13.6% GFA

Increase in 50% AMI sf	---	13 times	21.7 times
Average Unit Size On-Site		680 sf	605 sf
One bedroom		5	3
One bedroom plus den	N/A	1	0
Two bedrooms		1	0
Average Unit Size Off-Site			900 sf (min)
One bedroom	---	---	0
One bedroom plus den	---	---	0
Two bedrooms	---	---	5

Zoning Flexibility

38. The Applicant requested the following areas of flexibility from the Zoning Regulations:

a. Land Area Requirement for a PUD. The minimum land area requirement for a PUD in the C-2-B Zone District requires 15,000 square feet. (11 DCMR § 2301.1(c).) At 10,124 square feet of land area, including 612 square feet from the alley to be closed, the PUD site is less than the required amount. However, the Commission may waive up to 50% of the area requirement provided that the Commission finds after public hearing that the development is of exceptional merit and in the best interest of the city or country. (11 DCMR § 2401.2.) Here, the proposed redevelopment of the Property is of exceptional merit and in the best interest of the city because it will result in the transformation of an underutilized and partially vacant site in an emerging section of the District into an exemplary infill development just two blocks from the NoMA-Gallaudet Metrorail Station. In addition, although the proposed PUD is not located within the Central Employment Area, over 90% of the gross floor area of the development will be used exclusively for dwelling units and uses accessory thereto; (11 DCMR § 2401.2(b).)

b. Off-Street Parking Requirements. Apartment buildings in the C-2-B Zone District require one parking space for every three residential units. With 64 units, the PUD generates a residential parking requirement of 21 spaces. For the PDR uses proposed for the site, which are most closely defined as retail and service uses, one parking space is required for every 750 square feet of space after the first 3,000 square feet. Because the PDR space will have only 3,825 square feet of space, no parking spaces are required for the PDR uses. The Applicant initially proposed to provide 16 residential parking spaces in a below-grade garage. That number was subsequently reduced to six at-grade spaces, where 21 are required for the residential uses. This further reduction in the number of parking spaces was the result of guidance from DDOT and the ANC, both of which directed the Applicant to eliminate the curb cut on L Street. Because of the 10-foot grade difference and the irregular configuration of the PUD site, the Applicant cannot create a below-grade garage off of Congress Street, while also maintaining the ground-floor PDR uses. Given the close proximity of the NoMA-Gallaudet Metrorail Stations, the flexibility can be granted without generating any adverse

effects. The Commission takes note that under the 2016 Zoning Regulations, the parking requirement would be reduced to 13 spaces due to the proximity to Metro;

c. Off-Street Loading Requirements. The Applicant also seeks relief from the loading requirements for the residential uses in the Project. Buildings with 50 units or more must provide one loading berth at 55 feet deep, and a 20-foot service platform. Here, in coordination with DDOT, the Applicant will provide an on-street loading zone on Congress Street for the residential uses and an on-street loading zone at L Street for the PDR uses. DDOT recommended these off-site locations to eliminate any back-out maneuvers across the sidewalks, creating conflicts with pedestrians and vehicles. Residential turnover after initial occupancy is anticipated to be six units annually, generating a very limited need for Congress Street loading area. Trash receptacles for the building will be wheeled out to the street on collection days to avoid pedestrian conflicts. These factors all support the granting of the relief;

d. Minimum Width Requirements for an Open Court. Section 776 of the Zoning Regulations provides that when an open court is provided for a building, it must be four inches wide for every foot of height, as measured from the lowest level of the court. Here, the PUD provides one open court at L Street, generating a width requirement of approximately 30 feet. The Applicant requests flexibility to provide a width of five feet. The Applicant previously had presented a design that complied with the court requirement at this location. At the request of the ANC, however, the Applicant set the building five feet back from the property line in order to eliminate the blank wall and articulated the elevation with windows. The benefits of five-foot court width far outweigh the purpose of the minimum dimension requirement, and the relief can be granted without any adverse effects;

e. Rear Yard Requirement. The Applicant also seeks relief from the minimum rear yard depth. In the C-2-B Zone District, the minimum required rear yard is 15 feet. When a building abuts an alley, the rear yard below a horizontal plane of 20 feet may be measured from the center line of the alley. Here, the property abuts an 8.71-foot-wide alley at the rear, and the building is set back from the rear property line approximately five feet, three inches. Below a 20-foot horizontal plane, the rear yard is only nine feet, seven inches deep; above the 20-foot plane, the rear yard is only five feet, three inches. The Applicant seeks flexibility to provide a rear yard with less than the minimum depth of 15 feet. The flexibility is necessary given the shallow depth of the site and the need to provide a double-loaded corridor in the building. The only portion of the site that is wide enough for an efficient double-loaded corridor is the north half. Even that portion, however, is not wide enough to provide a reasonable dwelling unit depth on both the east and west sides of the building and provide a compliant rear yard. An ideal dwelling unit depth is between 28 to 32 feet from exterior wall to corridor wall. This depth allows a living room at the exterior window wall at approximately 18 to 21 feet deep. The kitchen with a typical depth of nine to 11 feet would be "inboard" to the living room. Here, the proposed PUD only

provides a depth of 23 feet with rear yard relief. If the Applicant were to provide a compliant 15-foot rear yard, the dwelling unit depth would only be 17 feet, 10 inches. While it is possible to have a dwelling unit work in that depth as a unique layout, it would be a burden to have all of the dwelling units that shallow. A unit depth of less than 18 feet would not compete with market-rate units in the area and would not financially support the PUD Project amenities and public benefits. Thus, rear yard relief is necessary; and

f. Off-site IZ Requirements. In order to achieve the superior affordable housing proffer described above, the Applicant seeks flexibility from the off-site IZ requirements without meeting certain pre-requisites of 11 DCMR § 2607, as follows:

- Section 2607.1 – the Applicant will not be required to demonstrate that compliance on-site would impose an economic hardship;

- Section 2607.2(a) – the off-site development will not need to be located in the same census tract;

- Section 2607.2(b) – the off-site units may not consist entirely of new construction as required by § 2607.2(b), but may also include the renovation of an existing structure;

- Section 2607.5 – the Applicant will not be required to submit a draft covenant executed by the off-site development owner as part of the PUD application. The Applicant will however be required to record a covenant in the land records of the District of Columbia between the owner of the off-site development and the Mayor, found legally sufficient by the Office of the Attorney General, and provide evidence to the Zoning Administrator that it has done so prior to the issuance of a certificate of occupancy for this project;

- Section 2607.9 – the Applicant will provide the IZ unit generated by the penthouse square footage in the off-site development instead of on the PUD site. The penthouse generates only 207.2 square feet of IZ space, which is to be devoted to a household earning no more than 50% of AMI. Because this small amount of space is less than what is required for a housing unit, the Applicant proposes to consolidate this square footage in the off-site development; and

- The off-site units will not be included in the off-site development's calculations for IZ compliance. That is, the five off-site IZ units will be subtracted from the overall unit count of the off-site development. For example, if the proposed off-site development will have 10 units, the development would be considered to have just five units and would not trigger IZ.

Other Minor Flexibility

39. The Applicant also requested flexibility in the following additional areas:

a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and electrical transformers, provided that the variations do not change the exterior configuration of the building;

b. To vary the number, location and arrangement of parking spaces for the Project, provided that the total parking is not reduced below the minimum level required under the PUD Order; and

c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, 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.

Project Benefits and Amenities

40. Urban Design, Architecture, and Open Space (11 DCMR § 2403.9(a)). The single largest benefit to the area and the city as a whole is the creation of new residential development just blocks from the NoMA-Gallaudet Metrorail Station with a design that reflects the industrial history of the area and its emergence as a community within the Central Employment Area. Nelson Architects has designed a project that skillfully blends a contemporary residential vocabulary with an Art Deco idiom reflective of the Woodward & Lothrop Warehouse just east of the railroad tracks. The Congress Street façade is punctuated with a regular pattern of windows, with the verticality of the building emphasized by vertical brick piers, not unlike the Woodies Warehouse. The curved vertical façade of the L Street elevation pays subtle homage to the barrel-vaulted roof of the landmark Uline Arena immediately to the north. Like the surrounding light industrial buildings in the immediate vicinity, including Uline, the new residential Project is clad in brick but injects modern references through its use of metal panels and glass. The first floor and partially exposed lower level serve as a podium for the residential floors above, and differentiate the ground-floor PDR uses accessed at street level. The design of the building responds well to its location on this half-block portion of Congress Street. The Applicant proposes to improve the streetscape of this small, narrow roadway to enhance the overall pedestrian experience and public safety, particularly for residents of the new residential building. The proposed Project exceeds what can otherwise be achieved on the site under the matter-of-right zoning. The design employs high-quality finishes and amenities that significantly increase the cost of the building over what would normally be achieved under a matter-of-right project in the C-M-1 or C-2-B Zone Districts. The PUD

also successfully blends housing with low-impact PDR uses on the ground floor in order to maintain the sense of the area's industrial heritage, as encouraged by the Comprehensive Plan. The Central Washington Policy governing the area east of the railroad tracks indicates that the striping on the Future Land Use Map in NoMA for mixed PDR/residential uses suggests sequential uses, when market conditions can support the transition from PDR uses to residential or other commercial uses. Here, the Applicant has successfully blended the uses in one location, ensuring the continuation of area's industrial quality.

41. Housing and Affordable Housing (11 DCMR § 2403.9(f)). The PUD will add to the District's market-rate and affordable housing stock as contemplated under the PUD regulations and the Comprehensive Plan. The Project will set aside at least 12% of the residential square footage to for-sale affordable housing, with at least eight percent of that square footage devoted to households earning no more than 50% of AMI. The remaining four percent would be set aside for households earning no more than 80% of AMI. The 50% AMI units would be located off site, would have an average size of 900 square feet each and an average of two bedrooms, and would be constructed as single-family houses or flats. Approximately 1,815 square feet of the on-site units and 1,893 square feet of the off-site housing (3,708 square feet GFA total) will satisfy the minimum IZ set aside requirement of eight percent of the PUD residential space and the habitable penthouse. The remaining affordable housing proffer of approximately 2,607 square feet will be governed by restrictive covenants with D.C. Habitat. This provision of affordable housing significantly exceeds the eight percent requirement in the IZ regulations, and offers deeper affordability than what would otherwise be achievable in a matter-of-right project.

42. Environmental Benefits (11 DCMR § 2403.9(h)). The Project will be designed to a LEED-Gold standard. Among some of the qualifying features are: high performance envelope; glazing and mechanical system designed to reduce energy use; bike storage; a green roof with native and adapted vegetation, with low water using irrigation; stormwater capture and reuse; recycled and/or salvaged construction waste; and recycled building materials.

43. Transportation Benefits (11 DCMR § 2403.9(c)).

a. *Alley Circulation and Improvements*. The proposed PUD will greatly enhance alley circulation within the square through a new access easement at the north end of the site. Currently, the PUD site is bisected at the south by a substandard alley only nine feet in width. It leads to a narrower north-south alley only 8.71 feet wide, which separates the Project from the seven rowhouses fronting on Third Street, N.W. In order to provide efficient trash storage and loading facilities for the new building, the Applicant proposes to close the east-west alley to the south and dedicate an access easement at the north end of the site to connect with the 8.71-foot-wide alley to the east. As part of the alley dedication process, the Applicant will clean and improve the 8.71-foot-wide alley to the east and proposes to repave it with impervious pavers, if approved by DDOT;

b. *Capital Bikeshare Station*. At the request of the ANC, and in coordination with DDOT, the Applicant will fund the installation of and one year of maintenance for a 19-dock Capital Bikeshare Station at the northeast corner of 3rd and L Streets, N.E., with the consent of the owner of the adjacent rental apartment building at that corner. Based on discussions between the Applicant and the ANC, this site was determined to be the most advantageous location because it would be more accessible to the area residents than if located at the PUD site, thereby providing the greatest benefit to the community at large; and

c. *Transportation Demand Management ("TDM") Measures.* The PUD will also provide transportation demand management measures to encourage the use of public transit by building occupants. The site is advantageously situated just two blocks south of the NoMA-Gallaudet Metrorail Station and is well-served by Metrobus lines. The Applicant will implement the following transportation demand management measures at the PUD:

i. *Resident Transportation Coordinator*: The Applicant's site management will designate one employee as the Resident Transportation Coordinator ("RTC"). This person's duties would principally be to provide information to residents (particularly those incoming) regarding transit opportunities and schedules, and the location of bike share stations within the area, and bicycle parking provisions within the building. The RTC will encourage non-private auto usage and will have related information prominently displayed in the lobby, community rooms, and other appropriate common space;

ii. *Digital Multimodal Display*: The Applicant will install a digital multimodal display in the lobby of the residential building that provides schedule information of Metrobus and Metrorail, and locations of bike share and carshare stations, among other transportation related information;

iii. *Bicycle Usage Program*: The Applicant will provide 22 bicycle spaces inside the building with a bike repair station. Additionally, the Applicant will install five racks for 10 bicycles in the public space on L Street. Additionally, the Applicant will provide a one-time annual membership fee for a bikeshare program for each initial tenant of the residential units; and

iv. *Transit Subsidies*. The Applicant will offer a one-time $50.00 transit fare card to each initial residential tenant and employee in the building to encourage non-auto mode usage.

44. Uses of Special Value to the Neighborhood and the District (11 DCMR § 2403.9(i)). The Applicant will provide a $10,000 contribution to the Friends of NoMA Dogs, Inc. ("FOND") for operating expenses to maintain and improve the dog park at 3rd and L

Streets, N.E., and potential future proposed dog parks in the NoMA area such as at the future NoMA Green bounded by Harry Thomas Way, N.E., and the Metro Branch Trail. The covered expenses would include, among other things, supplying waste disposal bags, sanitary spray supplies, and other services to improve and maintain the dog park. The contribution would be contingent upon FOND executing and having in place at the time of the donation a Dog Park Partner Cooperative Agreement (or equivalent) with the D.C. Department of Parks and Recreation for every dog park where the funds would be used.

45. PDR Uses. The Applicant will promote "maker" uses to support the PDR designation on the Future Land Use Map of the Comprehensive Plan. The PDR uses required on the site may include the following:

a. Production, distribution or repair of goods including accessory sale of related products;

b. Uses encompassed within the Arts, Design, and Creation use category in 11 DCMR § 100.2, but not including a museum, theater, or gallery as a principal use;

c. Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage, including Union Kitchen;

d. Design-related uses, including media/communications; computer system and software design; fashion design; graphic design; or product and industrial design;

e. An urgent care center;

f. A neighborhood hardware and/or paint store; or

g. A package distribution center.

Comprehensive Plan

46. The Future Land Use Map of the Comprehensive Plan designates the Property for Medium-Density Residential and PDR land uses. The proposed development is consistent with that designation. The Property is designated as a Land Use Change Area on the District of Columbia Comprehensive Plan Generalized Policy Map. The proposed development furthers numerous policies and objectives of the Comprehensive Plan, as discussed below.

Land Use Element

47. ***Policy LU-3.1.1: Conservation of Industrial Land.*** The proposed PUD promotes this land use policy through a commitment to provide PDR uses in the building. Approximately 3,700 square feet of space will be devoted to PDR uses, which might include an urgent care center, a small neighborhood hardware and/or paint store, a

package distribution center (i.e., FedEx), and possible relocation of certain function of Union Kitchen, which is located on the west side of Congress Street, N.E.

48. ***Policy LU-3.1.3: Location of PDR Areas.*** The proposed PUD uses have been carefully selected to focus on the less intensive PDR uses and their retail components so that they will blend well with residential uses.

49. ***Policy LU-3.1.4: Rezoning of Industrial Areas.*** The proposed PUD is located in a land use change area on the Generalized Policy Map and is designated for both residential and PDR uses. As such, the Applicant is proposing the least intrusive type of PDR uses on the site in order to ensure compatibility with the residential uses contemplated for the upper floors. The PUD site is a small one located adjacent to a stable residential neighborhood across Third Street to the east, and thus its rezoning from C-M-1 to C-2-B through the PUD process is an appropriate mechanism to protect both PDR uses and nearby stable residential uses, in furtherance of this policy.

50. ***Policy LU-3.1.5: Mitigating Industrial Land Use Impacts.*** The proposed PUD will fulfill this policy goal by selecting low-impact PDR uses that will blend well with the surrounding neighborhood and meet the needs of residents all while preserving some PDR uses in the area.

51. ***Action LU-3.1.A: Industrial Zoning Use Changes.*** The proposed PUD will meet this action plan by selecting low-impact PDR uses that will blend well with the proposed residential uses in the building.

Transportation Element

52. ***Action T-2.3.A: Bicycle Facilities.*** Although this PUD is not a large residential Project, it will nevertheless provide five racks for ten bicycles in public space on L Street and fund a 19-dock Capital Bikeshare Station at 3rd and L Streets, N.E.

53. ***Policy T-2.4.1 and T-2.4.2: Pedestrian Network and Sidewalks.*** In fulfillment of this goal and action item, the Applicant will undertake streetscape improvements to Congress Street to make it more inviting to pedestrians. New lighting, paving, and greenery will help create a unique character to this narrow roadway that has historically functioned more as an alley than a street. It is envisioned to have an urbane, industrial and yet residential quality to it.

Housing Element

54. ***Policy H-1.1.1: Private Sector Support.*** As a private developer, the Applicant will help meet this housing goal by providing new housing at a location specifically designated for residential and PDR uses.

55. ***Policy H-1.1.6: Housing in the Central City.*** The PUD site is located in the Central Washington area and will provide new medium-density housing on an underutilized

site, in fulfillment of this housing goal. It will mix residential uses with PDR retail/service uses, thereby contributing to the vibrancy of this segment the area.

56. ***Policy H-1.2.7: Density Bonuses for Affordable Housing.*** Affordable housing is specifically encouraged by providing zoning incentives to developers to build low- and moderate-income housing. The Applicant will provide 12% affordable housing, which exceeds the required eight percent, in return for an increased density of 6.0 FAR and a height of 90 feet.

Central Washington Element

57. ***Policy CW-2.8.1: NoMA Land Use Mix.*** The proposed PUD will help achieve this goal by providing a mixed-use building that includes residential and PDR uses. The Project will include affordable housing, ensuring that a range of households is served in this segment of the NoMA neighborhood.

58. ***Policy CW-2.8.2: East of the Tracks and Eckington Place Transition Areas.*** As described in this policy, the PUD site is shown as "mixed use production distribution repair/residential uses" on the Future Land Use Map. In order to accommodate these seemingly conflicting uses, the Applicant proposes to provide low-impact PDR retail/service uses in the base podium of the building with residential units above. In so doing, the Project accomplishes the balance of industrial and residential uses described in this policy, without resorting to large- scale commercial development on the site.

59. ***Policy CW-2.8.5: NoMA Architectural Design.*** The design of the building skillfully blends a contemporary residential vocabulary with an Art Deco idiom that is reflective of the unique character of NoMA's industrial heritage. The Congress Street façade is punctuated with a regular pattern of windows, with the verticality of the building emphasized with vertical brick piers not unlike the Woodies Warehouse just west of the railroad tracks. The curved vertical façade of the L Street elevation pays subtle homage to the barrel-vaulted roof of the landmark Uline Arena immediately to the north. Like the surrounding light industrial buildings in the immediate vicinity, including Uline, the new Project is clad in brick but injects modern references through its use of metal panels and glass.

NoMa Small Area Plan

60. The NoMA Vision Plan and Development Strategy is a Council-adopted small area plan that applies to the PUD site. Small area plans are not part of the Comprehensive Plan but are intended to supplement it by providing detailed direction for certain areas of the city. Because small area plans are adopted by legislation, they become part of the D.C. Municipal regulations. (*See* 10-A DCMR § 104.8.) The NoMA Plan envisions the creation of a new high-density mixed-use, highly walkable, and environmentally

advanced neighborhood. Inclusion of significant levels of new housing and retail, and the creation of pedestrian friendly streets are all components of the NoMA Plan, in addition to encouraging creative industries. The Project fulfills many elements of the NoMA Plan.

61. ***Mixed-Use District with Creative Industries: Uline Arena & Plaza as Neighborhood Anchor.*** The proposed PUD is located in a designated change area that will provide a unique mix of residential and low-impact PDR uses in a new infill building that will provide a graceful transition between the Florida Avenue Market and existing residential areas. Residents of this new Project could help support the vision for a live-work district that takes advantage of proximity to the Metrorail Station. Located adjacent to the railroad tracks, the Project will achieve higher density as envisioned in the NoMA Plan development guidelines, while transitioning down to the smaller-scale rowhouses to the east.

62. ***East of the Tracks:*** The proposed Project is located east of the tracks and will reinforce the residential character of the nearby neighborhood by providing approximately 56,000 square feet of new market-rate and affordable housing in the NoMA community. Only a small portion of the Project – approximately 3,800 square feet – will be devoted to low-impact PDR uses, thereby respecting the residential quality of the NoMA neighborhood east of the tracks.

63. ***A Diverse Mix of Housing:*** The proposed PUD will provide multi-family units to a neighborhood east of the tracks predominated by single-family rowhouses, thereby added to a diverse mix of housing in support of the NoMA Vision Plan. Both market-rate and affordable units will be incorporated into the Project, ensuring that a range of households is served by the new development.

64. ***Increasing Walking, Biking, and Transit Usage.*** The proposed PUD takes advantage of its proximity to Metrorail and promotes walking, biking and transit usage through several mechanisms. First, it provides ample bike storage for residents and visitors. Second, it will provide transit subsidies to first-time residents/tenants of the building to ensure transit over private vehicle usage. The public realm along Congress Street will be enhanced to create a safe, attractive, and inviting pedestrian experience to encourage walking and biking.

65. ***Identity and Building Design; Create Identity & Market Strength through Innovative, Contemporary Architecture.*** The design of the new PUD is an infill development inspired by the area's industrial heritage through a use of historic brick materials and mixed modern metal and glass panels, to create a contemporary architectural statement. As noted above, the curved wall of the L Street façade evokes the barrel-vaulted roof of the Uline Arena, creating a comfortable sense of place along Congress Street and reinforcing the dominant feature of the nearby landmark.

66. ***Ground-Floor Design Excellence.*** The street elevations of the PUD Project have been attractively designed for low-impact PDR retail/service uses. The 10-foot grade

differential on the site allows for ample exposure of these ground-floor uses, creating a pedestrian-friendly retail environment.

67. ***Environment & Sustainability*.** The PUD Project has been designed to achieve a LEED-Gold rating and includes many environmentally sustainable features, including water-efficient landscaping, measures to reduce heat-island effect, stormwater management elements, a green roof to lower energy costs and reduce impervious surface runoff, and other sustainable construction practices.

Office of Planning Reports

68. On July 15, 2016, OP submitted a report recommending setdown of the application. (Ex. 15.) OP stated that the Project is not inconsistent with the Comprehensive Plan's objectives for the area, is consistent with the Future Land Use and Generalized Policy maps, and would contribute to the redevelopment of the neighborhood. OP noted that it would work with the Applicant to ensure that the additional information listed on page one of its report would be submitted prior to the public hearing.

69. OP submitted a hearing report on November 14, 2016, finding that the proposed PUD is not generally inconsistent with the Comprehensive Plan. While OP stated its support of the redevelopment, it indicated that it was unable to make a recommendation pending receipt of additional information, including renderings and clarification of the PDR uses, a First Source Employment Agreement as a proffered benefit, further explanation of the zoning relief requested, and information on parking access, loading, trash removal, and the location of Pepco vaults for the Project.

70. OP submitted a supplemental hearing report recommending approval of the applications. (Ex. 31.) OP stated that the additional submissions by the Applicant adequately addressed many of the Commission's and OP's concerns raised to date. (Ex. 27-29.) OP requested further clarification on the Project's consistency with the Comprehensive Plan, augmentation of the affordable housing proffer, and additional justification of the relief requested. The Applicant satisfied that request through evidence and testimony at the hearing, and through post-hearing submissions. Overall, OP determined that the proposal would also further many goals and objectives of the written elements of the Comprehensive Plan, which further support the proposed building design, massing, and use mix.

71. On April 13, 2017, OP submitted a final supplemental report regarding the Applicant's updated housing proffer. (Ex. 49.) OP supported the Applicant's revised proffer, with the following additional conditions:

    a. The off-site affordable housing units, whether IZ, penthouse-related or proffered additional units, will be single-family residences or flats; and

    b. The off-site affordable units shall be located in Ward 5 or Ward 6, with a preference given to a location within one mile of the PUD site. If the units are

located within ANC 6C, 6A, 6E, 5D, or 5E, there would be no need to return to the Commission for further approval. However, if the units are located in ANCs other than those listed herein, the Applicant must return to the Commission as a consent calendar item for consideration of the location to ensure there is no over-concentration of affordable units in the proposed vicinity.

DDOT Report

72. DDOT submitted a report to the record dated November 14, 2017, stating it had no objection to the requested PUD approval, provided the Applicant implemented several traffic and transportation measures: (a) funding installation of and one-year operation/maintenance costs for a Capital Bikeshare Station; (b) installation of 10 short-term bicycle spaces in the public space; (c) inclusion of a bicycle repair station in the building; (d) providing each unit's incoming residents a one-year membership to Capital Bikeshare or a carshare membership for the first year following the issuance of the Certificate of Occupancy for the building; (e) providing a one-time $50 SmarTrip card to each initial residential tenant and employee in the building; (f) installation of a digital multimodal display in the residential lobby; (g) identifying a Resident TDM Coordinator for the building; (h) providing TDM materials to new residents in the residential welcome package materials; and (i) implementing a DDOT-approved loading management plan for residential move-ins, move-outs, and trash collection. (Ex. 26.) The Applicant agreed to these conditions.

ANC Report

73. On October 13, 2016, at a duly noticed, regularly scheduled monthly meeting, ANC 6C voted unanimously (4-0) to support the application with conditions. The ANC requested that the Applicant remove the existing L Street curb cut and garage/parking entrance; relocate of the new alley entrance to the northern-most portion of the site; eliminate the below-grade parking and replace it with six at-grade spaces adjacent to the alley; and add windows to the formerly blank east wall. The Applicant adopted these recommended changes. The ANC also requested enhanced amenities to include funding a bike share station at 3rd and L Streets, N.E., and donating $10,000 to the 501(c)(3) overseeing the operation of the public dog park across L Street. The Applicant added these community benefits to its application.

Contested Issues

74. The Third Street Neighbors ("Neighbors"), represented by Mr. Fred Irby, submitted evidence to the record and testified in opposition to the application at the hearing. The Third Street Neighbors were comprised of five of the seven rowhouse owners directly east of the proposed PUD. In addition to Mr. Irby (who owns 1114 3rd Street, N.E. and controls 1112 3rd Street, N.E., through the 1112 3rd Street, LLC), the Neighbors included three other homeowners: Ms. Arita Brown Johnson at 1108 3rd Street, N.E., Ms. Roxanne Scott at 1110 3rd Street, N.E. (a property under contract for sale; see 1/4/2017 Transcript ["Tr."] at 14-15), and Ms. Helen Darden at 1116 3rd Street, N.E. Subsequently, two of

those four homeowners – Ms. Darden and Ms. Arita Brown Johnson– submitted letters in support of the PUD Project. (Ex. 33, 40). The remaining neighbor raised concerns about the allowable building height, relief on minimum size of the PUD, and the use change and alley relocation. Individually, Mr. Irby also raised concerns about the effect of the PUD on the solar panels installed on his house. At the hearing, Mr. Irby argued that the Project's proposed height of 90 feet is more than twice the permitted height under the current zoning, and almost four times the height of the adjacent rowhouses. He noted that other buildings on Congress Street to the west all complied with the C-M-1 Zone District height and use categories, and also cited the redevelopment of the adjacent Uline Arena in a manner generally consistent with its C-M-3 zoning. Mr. Irby stated that the overall size and scale of the PUD Project would significantly and adversely affect his home with respect to light and air.

75. The Applicant responded with information addressing support for the 90-foot height under the Comprehensive Plan and the PUD regulations. The Applicant noted that although the proposed C-2-B Zone District is not specifically listed among the corresponding land use categories for the PUD site's listed designations, the C-2-B Zone District is not inconsistent with the Future Land Use Map ("FLUM"). It stated that, through the PUD process, the C-2-B zoning will allow the same height and density permitted as a matter-of-right under the M Zone District, one of the specifically listed categories for the PDR striping on the Comprehensive Plan. The M Zone District, however, would not allow any housing and would potentially create significant adverse impacts to adjacent residential properties. Here, the Applicant noted that rezoning the property to the C-2-B Zone District through the PUD process will allow compatible residential uses while also allowing greater height and density in exchange for a commendable number or quality of public benefits. (11 DCMR § 2400.2.) The Applicant further cited the Comprehensive Plan, which specifically notes that the granting of density bonuses (for example, through PUDs) may result in heights that exceed the typical ranges under matter-of-right zoning. (10-A DCMR § 226.1(c).) The zoning of any given area should be guided by the FLUM, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans. (*Id.* at § 266.1(d).) Thus, applying this analysis to the Applicant's Project, the proposed map amendment to the C-2-B Zone District is not inconsistent with the FLUM.

76. The issue of increased height is perhaps the most challenging for the Commission. On one hand, the Comprehensive Plan and PUD regulations encourages the construction of high-quality developments through height and density incentives. On the other hand, the Commission is also charged with protecting existing residential uses. (10A DCMR § 1618.12.) Here, the Commission has carefully considered these competing interests and finds that, based on the particular circumstances of this case, the proposed height of 90 feet is appropriate.

77. First, the PUD regulations specifically state that additional height and density may be appropriate when, on balance, the proposed public benefits and amenities achieved are commendable in nature and commensurate with the flexibility sought. (11 DCMR

§ 2400.2.) The proposed PUD provides an extensive and commendable number of public benefits and amenities, including: housing and affordable housing; attractive, high-quality architecture; a LEED-Gold design; a reconfigured and enhanced alley system; as well as other benefits of special value to the neighborhood. The increased affordable housing proffer for household earning no more than 50% of AMI is particularly compelling.

78. Second, the Comprehensive Plan also directly encourages the use of zoning incentives for additional height and density to encourage increased affordable housing. (10A DCMR § 504.14.) The Applicant specifically increased the amount and depth of its affordable housing proffer to 12%, with half the space set aside for low-income families, in exchange for the proposed height of 90 feet.

79. Third, the FLUM designates the rowhouses on the west side of 3rd Street for the same increased density and use changes as the PUD Site, while the Generalized Policy Map identifies them as part of a land use change area. In contrast, the rowhouses on the east side of 3rd Street are designated for moderate-density residential uses and are identified on the Generalized Policy Map as a neighborhood conservation area. Further, because the FLUM is not site-specific zoning, the proposed PUD and related map amendment should be viewed in the context of the surrounding neighborhood, which is part of a rapidly changing area that is expanding and growing taller with new development. To the south and north are new residential buildings 90 to 120 feet in height. Across the railroad tracks to the west are new commercial and residential buildings up to 130 feet in height. The proposed 6.0 FAR and 90-foot height is consistent with the amount of density permitted in medium density commercial zones. For example, the C-2-C Zone District is a medium-density district that permits 6.0 FAR for residential uses, and up to 7.2 FAR with IZ. Significantly, residential uses are not permitted in the CM and M Zone Districts, rendering the houses in the adjacent C-M-1 Zone District lawfully existing, non-conforming uses

80. Fourth, the NoMA Plan directs that the greatest height and density be located near the NoMA metro station, and along the rail tracks, Florida Avenue and N Street, N.E. Here, recent projects in the area have been approved with heights of 110-120 feet along the railroad tracks, this Project would step the height down to 90 feet, a further transition is permitted on the west side of 3rd Street, finally leading to moderate-density residential uses on the east side of 3rd Street, N.E.

81. With respect to the alley reconfiguration and enhancements, the Applicant provided information on how the improvements would allow vehicular access to the rear of the Third Street rowhouses, which is currently not possible given the narrowness of the alley off of Congress Street. Mr. Irby nevertheless expressed reservations about the ability of the Neighbors to use the public access easement to be dedicated through alley closing legislation. In response, the Applicant provided Mr. Irby a copy of a recorded alley closing covenant for another project, which demonstrated that a public access easement is permanently dedicated for the convenience of owners within the square and the public, in general. (Ex. 38.)

82. The Commission finds that the reconfiguration of and improvements to the alley system will only benefit the Third Street Neighbors. Based on testimony and evidence at the hearing, the neighbors will have for the first time vehicular access to the rear of the properties. As Mr. Irby testified, currently he can only get a small truck to the end of the east-west alley; a telephone pole at the corner of the alley prevents a vehicle from turning north. The new, wider public access easement at the north will now allow vehicles to make that turn. Additionally, the weeds and overgrowth that now obstruct the north-south alley will be removed and new impervious pavers will allow the Third Street Neighbors easy vehicular access to the rear of their properties for the first time.

83. With respect to waiver of the minimum PUD land area for the C-2-B Zone District, the Commission finds that the development is of exceptional merit and in the best interest of the city. (11 DCMR § 2401.2.) The Project exhibits a high quality architectural design, site improvements, and other commendable benefits of the Project described herein that meet the test of exceptional merit. The Commission further finds that because the Project site falls within the Central Employment Area, the provisions of 11 DCMR § 2401.2(b) do not apply.

84. Finally, the Commission addresses the impact to the efficiency of Mr. Irby's solar panels. Mr. Irby provided information to the record summarizing the monthly kilowatt-hour (kWh) usage at his home from October 2014 through September 2016. Mr. Irby's information showed the 12-month period from October 2014 to September 2015 as representing the monthly usage and Pepco bill at his home prior to the installation of the solar panels and net meter. The 12-month period from October 2015 to September 2016 is shown as representing the monthly usage and Pepco bill totals at his home after installation. Based on Mr. Irby's calculations, he receives an annual benefit of $765 due to the consumption of renewable power.

85. Mr. Irby also stated that he receives an additional financial benefit from the Solar Renewable Energy Credits (SRECs) generated by the solar panels at his house. Mr. Irby explained that SREC value is tied to the District's Solar Alternative Compliance Payment of $500—the penalty price that electricity suppliers must pay per SREC if they fail to file the required number of SRECs by the end of each compliance period. He further stated that during the system's first year of the operation (October 2015 through September 2016), the panels generated five SRECs, each of which currently trades on the SREC marketplace at $480. According to Mr. Irby, he receives a $2400 annual benefit due to the SREC's generated at his house, with the total annual benefit of $3,165. The Applicant concurred that the SREC annual benefit is $2400 if five SRECs are produced.

86. In contrast, the Applicant claimed that the proper metric for evaluating the impacts to Mr. Irby's solar panel efficiency is comparing current solar utility billings (October 2015 through September 2016) against utility billings with solar panels after the proposed PUD is constructed. According to the Applicant, this future utilization is undeterminable at this point, but that shadow studies submitted to the record as Sheet A6.01 in the Plans help assess the potential impact. Those studies generally show that the Mr. Irby's solar panels are not shaded at all between 9:00 a.m. and 1:00 p.m., but they are in full shadow

by 4:00 p.m. for part of the year. The Applicant stated that, based on its research, solar energy systems such as those installed at 1114 3rd Street, N.E., generally do not begin producing energy until after 10:00 a.m. when the sun's azimuth angle is high enough for the panels to start absorbing energy. In the evening, production drops after 4:00 p.m. for similar reasons. The Applicant also stated that solar panels in this area are installed facing south where solar energy collection is the greatest. Thus, according to the Applicant, any potential impact would occur in the late afternoon in winter and early spring months, but solar panels would be exposed to full sun during most of the maximum energy production period of 10:00 a.m. to 4:00 p.m.

87. The Commission finds that the appropriate comparison of impacts to the efficiency of Mr. Irby's solar energy system is pre- and post-construction of the PUD, not pre- and post-installation of the solar panels. It likewise finds that the solar energy capture time is between 10:00 a.m. and 4:00 p.m. Based on the shadow studies, there will be impacts to Mr. Irby's solar panels sometime beginning after 1:00 p.m., but the degree of that effect can only accurately be determined after the PUD is constructed. Significantly, however, the proposed PUD is located to the west and will not block the prime solar energy collection point. The Commission finds that while there will be impacts to Mr. Irby's solar panels, those impacts would occur during only a small portion of the peak collection time and then only to a limited degree because the panels would still be able to collect solar energy from the prime southern direction. The Commission similarly finds that the annual loss of the SREC value due to construction of the PUD will only be a percentage of that value because the same limited effects to Mr. Irby's solar energy collection. While the Commission is sensitive to the diminution of solar efficiency, when viewed in comparison to the benefits of the PUD to the city, including the production of housing in excess of what is required, the Commission finds this impact to be acceptable. (*See* 11 DCMR § 2403.3.)

88. Finally, when the Commission considered proposed action, it asked whether the Applicant's proposal to link the issuance of a building permit for this project to the Applicant gaining site control to the off-site affordable housing was consistent the requirements for off-site linkage in other similar cases, and suggested that instead of site control, the appropriate benchmark should be issuance of a building permit for the off-site affordable housing. The Commission also asked whether the Applicant should provide a draft IZ covenant contemplated by 11 DCMR § 2607.5.

89. With respect to the issue of whether site control was an appropriate benchmark, the Commission finds that has used issuance of a building permit for the off-site affordable housing as the benchmark in a previous case, not site control. The Commission also believes that it would appropriate to do so in this case as well, and has accordingly modified the conditions of this Order to require the Applicant to provide evidence that it has applied for building permit(s) for the off-site affordable housing in order to receive its Certificate of Occupancy for this Project.

90. With respect to the issue of the IZ covenant contemplated by 11 DCMR § 2607.5, the Applicant clarified at the meeting that it was only seeking relief from the part of that rule

that required it to submit a draft covenant with its application for relief from the regulation. However, this begs the question of when the Applicant will provide evidence that it has recorded its covenant requiring it to provide the required off-site IZ and affordable housing. The Commission believes it should be provided prior to the issuance of a Certificate of Occupancy for this Project, and has included a condition in this Order requiring the Applicant to provide evidence to the Zoning Administrator that it has done so prior to the issuance of a Certificate of Occupancy for this Project.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD Project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, and yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)

3. The development of the PUD Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

4. The PUD does not meet the minimum area requirements of 11 DCMR § 2401.1. However, the Commission finds that the Project is of exceptional merit and in the best interests of the city or country, and pursuant to 11 DCMR § 2401.2 hereby waives approximately 33% of the minimum area requirement.

5. The application meets the contiguity requirements of § 2401.3.

6. The proposed height and density of the buildings in the Project will not cause a significant adverse effect on any nearby properties and, the impact to the neighbor's solar panels are acceptable, on balance, in light of the commendable number of public benefits and amenities of the Project. (11 DCMR § 2403.3.) As demonstrated in the transportation analysis submitted by the Applicant and the DDOT report, the Project will not cause adverse transportation impacts.

7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be properly mitigated. The Commission finds that the conditions of approval proposed by the Applicant are sufficient given the potential impacts of the Project on the surrounding and adjacent properties and the development incentives and flexibility requested in this application.

8. The benefits and amenities provided by the Project are significant, and the Project will offer superior features that will benefit the neighborhood to a greater extent than a matter-of-right development would. Thus, granting the development incentives proposed in this application is appropriate.

9. The application seeks a PUD-related zoning map amendment to the C-2-B Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding the parking, loading, rear yard and open court requirements. The requested rezoning to the C-2-B Zone District is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. Approval of the PUD and change in zoning is not inconsistent with the NoMA Vision Plan or the Comprehensive Plan, including the FLUM. The Commission finds that the PUD-related rezoning of the Property to a commercial zone is not inconsistent with the FLUM or the NoMA Vision Plan when considered in the context of the PUD and the interpretation guidance in the Comprehensive Plan.

10. The FLUM is not to be treated as a zoning map. "Whereas zoning maps are parcel-specific, and establish detailed requirements for setbacks, height, use, parking, and other attributes, the Future Land Use Map does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. By definition, the Map is to be interpreted broadly." (10A DCMR § 226.)

11. The granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited on the FLUM. "The zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans." (*Id.*)

12. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan and the NoMA Vision Plan. The Project is consistent with the major themes and citywide elements of the Comprehensive Plan, including the Land Use, Housing, and the Central Washington Area Elements.

13. The proposed PUD-related map amendment to the C-2-B Zone District supports a PUD that is not inconsistent with the Comprehensive Plan and NoMA Vision Plan, that is appropriate in height and scale for the surrounding area, and that will offer superior public benefits and amenities. The Project and the rezoning of the property will promote orderly development of the property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia

14. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations and the conditions of this Order, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not being until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the proposed PUD-related Map Amendment of the property to the C-2-B Zone District is appropriate given the superior features of the PUD and is subject to the limitations stated herein.

15. 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 carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

16. 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- 09.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 6C's recommendation for approval and concurs in its recommendation. The Commission notes the ANC report contained three conditions, which the Commission finds the Applicant has satisfactorily addressed.

17. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.* (2012 Repl.).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for consolidated review and approval of a planned unit development and related Zoning Map amendment from the C-M-1 Zone District to the C-2-B Zone District for property located at 220 L Street, N.E., and 1109-1115 Congress Street, N.E. (Lots 78 and 819 in Square 748), and a portion of the public alley to be closed. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the Architectural Plans and Elevations dated January 12, 2017, at Exhibit 37 (the "Plans"), the updated sheets submitted April 10, 2017, and as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the Plans, the PUD shall be a mixed-use project consisting of approximately 66,244 square feet of gross floor area (6.0 FAR), with approximately 56,419 square feet of gross floor area devoted to residential use and approximately 3,825 square feet of gross floor area devoted to production, distribution, and repair ("PDR") uses, as further described in Paragraph A.3. The Project shall have 64 residential units, plus or minus 10%, and shall have a maximum height of 90 feet.

3. The PDR or PDR-related uses that shall be provided in the PUD may include:

   a. Production, distribution, or repair of goods including accessory sale of related products;

   b. Uses encompassed within the Arts, Design, and Creation use category in 11 DCMR § 100.2, but not including a museum, theater, or gallery as a principal use;

   c. Production and/or distribution of food or beverages and the accessory sale or on-site consumption of the related food and beverage, including Union Kitchen;

   d. Design-related uses, including media/communications; computer system and software design; fashion design; graphic design; or product and industrial design;

   e. An urgent care center;

   f. A neighborhood hardware and/or paint store; or

   g. A package distribution center.

4. The Applicant is granted flexibility from the off-street parking requirements of 11 DCMR § 2101.1; the loading requirements of § 2201.1; the PUD minimum land area requirements of § 2401.1(c); the rear yard requirements of §§ 774.1 and 774.7, the court requirements of § 776, and the off-site IZ unit requirements of § 2607, consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.

5. The Applicant shall also have flexibility with the design of the PUD in the following areas:

   a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, electrical transformers, elevators, and toilet rooms,

provided that the variations do not change the exterior configuration of the structure;

b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, including window frames, doorways, railings, and trim;

c. To vary the number, location and arrangement of parking spaces for the Project, provided the total number of spaces is not reduced below the minimum level required under the PUD Order; and

d. To vary the final selection of exterior signage on the building consistent with the Building Code.

B. Public Benefits

1. **Prior to the issuance of a Certificate of Occupancy for the building, and for the life of the Project**, the Applicant shall dedicate: (a) a minimum of four percent of the Project's residential gross floor area to households earning up to 80% of the AMI, and (b) a minimum of eight percent of the Project's residential gross floor area to households earning up to 50% of the AMI at an off-site location consistent with this Order. The on-site 80% AMI affordable units (1,815 sf GFA) and 1,893 square feet the off-site location at 50% AMI (3,708 sf GFA total) shall satisfy the minimum IZ set-aside requirement, and shall be maintained in accordance with all applicable requirements of Chapter 26 of the Zoning Regulations. The remaining off-site affordable units offered at 50% AMI (approximately 2,607 square feet of GFA) shall also be governed by restrictive covenants with D.C. Habitat. The Applicant shall have the flexibility to vary the location and unit layout of the on-site IZ units provided the percentage of square footage devoted to IZ units is consistent with this condition B.1. The off-site IZ units and affordable units shall be a minimum of 900 square feet each, shall be single-family residences or flats; and shall be located within the boundaries of ANC 6C, 6A, 6E, 5D, or 5E. The Applicant may locate the off-site IZ units and affordable units in other areas of Ward 5 or Ward 6 upon approval from the Commission as a consent calendar item.

2. **Prior to the issuance of a building permit,** the Applicant shall provide proof to the Zoning Administrator that it has paid $625,000 to D.C. Habitat for Humanity no later than October 31, 2017, that D.C. Habitat for Humanity has the off-site housing location under its control, that each of the off-site units will consist of a minimum of 900 square feet and two bedrooms, and that the units will be constructed as single-family residences or flats.

3. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall provide proof to the Zoning Administrator that it has:

   a. Applied for building permit(s) for all the off-site IZ Units and affordable units; and

   b. Recorded the covenant for the off-site IZ Units, found legally sufficient by the Office of the Attorney General, required by 11 DCMR § 2607.5.

4. **Prior to the issuance of a building permit, and for the life of the Project**, the Applicant shall provide proof to the Zoning Administrator that the building has been designed to include no fewer than the minimum number of points necessary to be the equivalent of a LEED-NC 2009 at the Gold level. The Applicant shall put forth its best efforts to design the PUD so that it may satisfy such LEED standards, but the Applicant shall not be required to register or to obtain the certification from the United States Green Building Council.

5. **Prior to the issuance of a building permit for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has paid $10,000 to the Friends of NoMa Dog, Inc., to maintain and improve the dog park at 3rd and I Streets, N.E., and other potential future dog parks in the NoMa area, such as the future NoMa Green bounded by Harry Thomas Way, N.E., R Street, N.E., and the Metropolitan Branch Trail. The maintenance and improvement funds would cover waste disposal bags, sanitary spray supplies, and other services to improve and maintain the dog park. At the time of the payment of funds, the Friends of NoMa Dogs, Inc., shall have in place a dog park cooperative agreement (or an equivalent agreement) with the D.C. Department of Parks and Recreation for every dog park where the funds will be used. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall provide proof to the Zoning Administrator that the funds have been or are being used for the purposes listed above.

6. **Prior to the issuance of a certificate of occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has expended, or is otherwise in the process of expending, funds necessary for completion of the design, permitting, and construction of all of the improvements on the north side of L Street, N.E., and the east side of Congress Street, N.E., consistent with Sheets L6.01, L6.02, and L6.03of the Plans, subject to DDOT approval.

7. **Prior to the issuance of a certificate of occupancy for the PDR/retail component of the building**, the Applicant shall provide evidence to the Zoning Administrator confirming that it has and/or is in the process of marketing the retail space in the building to a variety of potential tenants and has retained a retail broker with experience marketing to and securing a variety of tenant types, including "maker uses."

8. **Prior to the issuance of a building permit for the Project,** the Applicant will enter into a First Source Employment Agreement with the D.C. Department of Employment Services.

C. Transportation Incentives and Benefits

1. **Prior to issuance of a Certificate of Occupancy for the building and for the life of the Project**, the Applicant shall provide the following transportation incentives and transportation demand management ("TDM") strategies:

   a. Designate a resident transportation coordinator ("RTC") for planning, construction, and operations. The RTC will work with residents and employees in the building to distribute and market various transportation alternatives and options;

   b. The Applicant will provide TDM materials to new residents in the New Buyer Welcome Package materials;

   c. The Applicant will install a digital multimodal display in the lobby of the residential building that provides schedule information of Metrobus and Metrorail, and locations of bikeshare stations and carshare vehicles, among other transportation related information;

   d. The Applicant will provide bicycle parking/storage facilities at the proposed development. This includes secure parking located on-site, short-term bicycle parking around the perimeter of the site;

   e. The Applicant will provide a bicycle repair station;

   f. The Applicant will offer the first resident of each residential unit a one-time annual car sharing membership or a one-time annual Capital Bikeshare membership to help alleviate the reliance on personal vehicles. These incentives will be included in a move-in transportation package that includes brochures for transit facilities as well as bicycle and carsharing services for the initial buyer of each residential unit; and

   g. The Applicant will offer a one-time $50 SmarTrip card to each initial residential tenant and employee in the building to encourage non-auto mode usage.

2. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall close the east-west alley to the south, dedicate an access easement at the north end of the site to connect with the 8.71-foot-wide alley to the east, shall clean and improve the 8.71-foot-wide alley to the east, and repave it with impervious pavers, if approved by DDOT.

3. **Prior to the issuance of a Certificate of Occupancy**, the Applicant shall fund the installation of a Capitol Bikeshare station near the intersection of 3rd and L Streets, N.E. and pay for one year of operation and maintenance costs.

D. Miscellaneous

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 16-13. Within such time, an application must be filed for a building permit, with construction to commence within three years of the effective date of this Order.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On April 24, 2017, upon a motion by Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the applications 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 June 12, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the applications 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 adopt).

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 September 1, 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
Z.C. ORDER NO. 17-07
Z.C. Case No. 17-07
JW Capital Partners, LLC and Geolo Capital II, LLC on behalf of
Forest City SEFC, LLC and the United States General Services Administration
(Southeast Federal Center Zone Design Review @ Square 771, Lot 800)
June 1, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 1, 2017 to consider an application by JW Capital Partners, LLC and Geolo Capital II, LLC (collectively, the "Applicant") regarding property owned by the United States General Services Administration ("GSA") subject to a master development agreement with affiliates of Forest City Washington for design review approval to construct a new mixed-use hotel building with ground-floor and penthouse retail/eating and drinking establishment uses (the "Project") in the SEFC-2 zone on the northern third of the property known as Parcel L in The Yards (Square 771, Lot 800, or the "Property"). Because Parcel L abuts the SEFC-4 open space area, design review for the Project and approval of the proposed hotel use is required pursuant to Subtitle K §§ 238.3(a)-(b), 241, and 242 of the SEFC zone provisions of the District of Columbia Zoning Regulations ("Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). In addition, as permitted under Subtitle X § 603.1, the Applicant also requested a variance from the side yard requirements of Subtitle K § 218 and special exception relief for penthouse setback and penthouse use pursuant to Subtitle C §§ 1500 and 1501 (collectively, the "Zoning Relief").

The Commission considered the application for the Project pursuant to Subtitles X and Z of Title 11 DCMR. The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4. For the reasons below, the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The Property consists of approximately 69,385 square feet of land and is located in the SEFC-2 zone. The Property is located in the neighborhood commonly known as "The Yards" and on land that is currently owned by the federal government but authorized for private development by an act of the U.S. Congress in 2000. (*See* Southeast Federal Center Public-Private Development Act of 2000, Pub. Law. 106-407 (2000) (the "Development Act"). Forest City Washington prepared a master plan (the "Master Plan") for The Yards, and, under the authority of the Development Act, GSA selected the Applicant as the master developer to implement the Master Plan. The Master Plan was presented by GSA and the Applicant to the Commission for review and approval, and the Commission approved special zoning (now known as the SEFC zones) in order to ensure that future development of The Yards would proceed according to the Master Plan.

2. The instant application follows the coordinated development of The Yards pursuant to the Master Plan. On February 3, 2017, the Applicant delivered a Notice of Intent to file a

design review application to all property owners within 200 feet of the Property and to Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. (Exhibit ["Ex."] 2C.) The Applicant presented the Project at a duly noticed public meeting of ANC 6D in April 2017. (Ex. 4.) The ANC was a party to this proceeding. There were no other parties.

3. On March 29, 2017, the Applicant filed the Application for design review and approval of the Project pursuant to Subtitle K, §§ 238.3(a)-(b), 241, and 242 of the Zoning Regulations. In addition, the Applicant also requested the Zoning Relief. (Ex. 2-2I5.)

4. At its regularly scheduled and duly noticed public meeting on April 3, 2017, ANC 6D voted 7-0-0 to provide comments on the design. (Ex. 4.) Among those comments was that building's massing and strictly repeating façade, may give it a Lego-like quality. Accordingly, the ANC asked that the designers consider creating some small differences across the façades to break up the repetition. The ANC also thought that the building may feel monolithic because of what the ANC considered to be its subdued base and limited set back on the northern side. The ANC, therefore, asked that the designers consider adding more detail or creating a vertical break on the western side to denote the main entrance and to consider greater accentuation of the top and base.

5. On April 13, 2017, the Applicant filed a Comprehensive Transportation Review for the Project. (Ex. 10.)

6. On May 12, 2017, the Applicant filed a pre-hearing statement with revised plans reflecting feedback from and discussions with numerous District and Federal agencies. (Ex. 12.)

7. On May 22, 2017, the District Office of Planning ("OP") and District Department of Transportation ("DDOT") submitted reports on the Application. (Ex. 13, 14.) Both agencies recommended approval of the application, with DDOT recommending mitigation measures, which were agreed to by the Applicant and which are made conditions of the approval of this Order.

8. Written comments on the Project were also submitted from the Executive Director of the National Capital Planning Commission ("NCPC") and from GSA. (Ex. 11, 12B.) The NCPC Director indicated that through delegated action he found that the Project was not inconsistent with the Comprehensive Plan for the National Capital and will not adversely affect other federal interests. GSA indicated that it had determined that the design with the Southeast Federal Center 2016 Amendment #1 to the revised Master Plan and the Historic Preservation Guidelines.

9. On June 1, 2017, the Commission held the Public Hearing on the application in accordance with Subtitle Z of the Zoning Regulations. (Transcript of the June 1, 2017 Public Hearing ["Tr."] at 3-4.) At the Public Hearing representatives of the Applicant provided testimony and evidence in support of the Application and answered questions from the Commission. (*Id*. at 5-30.)

10. At the Public Hearing, OP, and DDOT rested on the record. (*Id*. at 30.) The ANC did not provide any testimony at the Public Hearing. (*Id*.)

11. One individual spoke in opposition to the application at the Public Hearing. (*Id*. at 32-39.)

12. At the close of the hearing, the Commission voted to approve the Application. (*Id*. at 41.)

Description of Surrounding Area and the Project

13. The Property is sometimes known as Parcel L and is located within the 42-acre site known as The Yards. The Yards is a former annex of the U.S. Navy Yard and is being redeveloped into a mixed-use waterfront neighborhood that will include office space, residential and commercial uses, a waterfront park, and open space. (Ex. 2-2I5.)

14. The Property is bounded by Tingey Street, S.E. to the north, 3rd Street, S.E. to the east, Water Street, S.E. to the south, and 2nd Street, S.E. to the south. (*Id*.) Neither Water Street, S.E. nor 2nd Street, S.E. adjacent to the Property have been constructed as streets open to vehicular travel. Tingey Square borders the Property to the northwest. (*Id*.)

15. The Property is located within the boundaries of the Washington Navy Yard Annex Historic District. (*Id*.)

16. The Property is currently used as a surface parking lot serving other uses in the vicinity. (*Id*.)

17. Consistent with the purposes and objectives of the SEFC-2 zone, the Applicant proposed a mixed-used building containing upper-level hotel use, ground-floor retail and/or restaurant space, and penthouse eating and drinking establishment use for the northern third of Parcel L ("Parcel L1"). (*Id*.) A separate phase of development anticipates a mixed-use retail and residential building on the southern two-thirds of Parcel L ("Parcel L2"). (*Id*.) Only Parcel L1 is the subject of this case; a design review application for Parcel L2 was approved in December 2016. (*Id*.) The Project shares a below-grade garage with the building on Parcel L2. The buildings on Parcel L1 and Parcel L2 are a single building under the Zoning Regulations.

18. The Project consists of approximately 6,723 square feet of gross floor area ("GFA") for retail and/or eating and drinking establishment uses on the ground floor, 4,127 square feet for such uses on the penthouse level, and approximately 109,650 square feet of gross floor area for hotel uses (including hotel use on the penthouse level). The Project's floor area ratio ("FAR") is 6.25, of which 0.3 is devoted to "preferred uses" as defined in the Zoning Regulations for the SEFC-2 zone. The Project will have a maximum height of 110 feet excluding the penthouse. (*Id*.)

19. The Project satisfies the requirements of the Zoning Regulations for design review and use as a hotel in the SEFC-2 zone. (Ex. 2 at 17-34.)

20. The Zoning Relief satisfies the applicable criteria. (Ex. 2 at 34-44.)

CONCLUSIONS OF LAW

1. The application was submitted, pursuant to Subtitle K §§ 238.3(a)-(b), 241, and 242, for design review and approval by the Commission. Pursuant to Subtitle X § 603.1, the application also sought a variance for the Project from the side yard requirements of Subtitle K § 218.1.

2. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and to owners of property within 200 feet of the Property. The Commission properly and timely referred the matter to NCPC.

3. Pursuant to Subtitle K §§ 238.3(a)-(b), 241, and 242 and Subtitle X § 604, the Applicant has satisfied the required burden of proof necessary for the Commission to approve the overall design of the Project and grant the requested Zoning Relief. The Project's uses and preferred uses are in accordance with the standards specified in Subtitle K§ 238.

4. The Commission is required under D.C. Official Code § 1-309.10(d) to give "great weight" to the issues and concerns of the affected ANC expressed in its written report. As noted, ANC 6D expressed two concerns with respect to the design. The Applicant provided testimony and enhanced renderings in its presentation at the Public Hearing that the design of the building addresses the ANC's comments by providing: (i) a heightened level of detailing and texture at the ground level (e.g., eight-inch window setbacks relative to the vertical pilasters, an integral brick reveal at the lower levels, and other pedestrian-scale finishing features at the lower level); (ii) operable windows that break up the mass and regularity of the façade on all three sides of the building; (iii) an extruded six-foot volume on the lower three levels to create differentiation between the base of the building and the top of the building along the northern façade (which is the façade with the longest horizontal dimension of the three façades facing a public right-of-way); and (iv) enhanced ornamentation on the canopy above the main entrance to the hotel along the Project's western façade in order to more strongly denote the importance of such access point. Finally, the Applicant testified that because the design team had recently been in conversations with the ANC for the design review application on the adjacent Parcel L2, the Applicant's design team was able to incorporate previous comments from the ANC into the design of the instant Project (e.g., providing for design elements to address the Audubon Society's Bird Safe Glass Guidelines). The Commission believes that the ANC's issues and concerns have been addressed.

5. The Commission is also required to give great weight to the recommendations of OP. D.C. Official Code § 6-623.04. The Commission gives OP's recommendation to approve the application great weight, concurs with OP's, and concludes that the Applicant's responses appropriately addressed OP's questions and concerns.

6. Accordingly, the Commission, having given great weight to the ANC's concerns and the OP recommendations and having considered all relevant facts and materials in the record, concludes that the design of the Project satisfies the requirements of the Zoning Regulations applicable to the design review of the Project and the Zoning Relief.

7. The Project will promote the continued development of SEFC into a vibrant mixed-use neighborhood, is sensitive to the site's historic resources, and is in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and the Zoning Map of the District of Columbia.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for design review, including **APPROVAL** of variance relief and flexibility requested. This approval is subject to the following conditions, standards, and flexibility:

1. **Project Development.** The Project shall be built in accordance with the plans and drawings dated May 11, 2017, Exhibit 12A1-12A3, as modified by those plans and drawings dated June 1, 2017, Exhibit 16A1-16A7, subject to the following areas of flexibility:

    a. To make minor refinements to the design of the Project, if required by GSA in response to input from other stakeholders (including CFA, NCPC, and SHPO);

    b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

    c. To vary final selection of the exterior materials within the color ranges of the materials types as proposed based on availability at the time of construction;

    d. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;

    e. To make minor refinements to exterior details and dimensions, including enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the Construction Codes;

    f. To vary the final design of the retail storefront and signage, including the number, size, design, and location of windows, doors, awnings, canopies, and similar features, to accommodate the needs of tenants and code requirements, in accordance with the Signage Plan. (Ex. 12A3.).

2. **Transportation Demand Management ("TDM") Measures**. Prior to the issuance of a Certificate of Occupancy for the Project, the Applicant shall demonstrate that it has or will adhere to the following measures as set forth in the DDOT Report:

   a. Identify "TDM Leaders" (for planning, construction, and operations), who shall work with hotel employees and guests to distribute and market various transportation alternatives and options;

   b. Provide hotel employees who wish to carpool with detailed carpooling information and refer such employees to carpool matching services sponsored by the Metropolitan Washington Council of Governments;

   c. Establish a TDM marketing program that provides detailed transportation information to hotel guests at every step of the pre-reservation and reservation process through check-in and communicates what guests should expect with regards to parking and transportation, which information provided to guests shall emphasize and encourage alternative transportation modes;

   d. Coordinate free daily Capital Bikeshare passes to hotel guests as a part of Capital Bikeshare's Bulk Membership program for hotels, which passes shall be available upon request for hotel guests for the life of the hotel project or the life of the Capital Bikeshare Bulk Membership program (whichever ends first); and

   e. Install a Transportation Information Center Display (electronic screens) within the lobby, containing real-time information related to local transportation alternatives.

3. The application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application for building permit must be filed as specified in 11-Z DCMR § 702.2. Construction must begin within three years after the effective date of this Order. (11-Z DCMR § 702.3.)

4. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On June 1, 2017 upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL 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).

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 September 1, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.