

District of Columbia

REGISTER

HIGHLIGHTS

- Department of Health establishes procedures for dispensing medication safely to terminally ill residents
- Department of Employment Services announces funding availability for the Pathways for Young Adults Program
- Department of For-Hire Vehicles announces funding availability for the DFHV Innovations Programs Grants
- Department of Housing and Community Development announces funding availability for the Affordable Housing Capital Subsidy, Operating Subsidy, and Supportive Services
- District Department of Transportation, Office of Public-Private Partnerships, and Office of the Chief Technology Officer schedule a meeting to release the permitting process for Small Cell Facilities on Streetlight Poles in the District of Columbia

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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

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DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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AN ACT

D.C. ACT 22-171

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 14, 2017

To amend, on an emergency basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to increase the number of consecutive terms a member may serve on the Public Employee Relations Board from 2 terms to 3 terms.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Public Employee Relations Board Term Limit Emergency Amendment Act of 2017".

Sec. 2. Section 501(h) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-605.01(h)), is amended by striking the phrase "No person shall serve for more than 2 consecutive terms" and inserting the phrase "No person shall serve for more than 3 consecutive terms" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

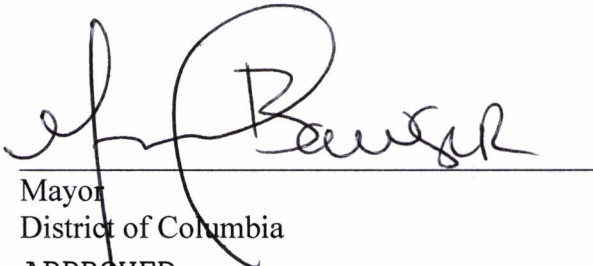
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

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90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
November 14, 2017

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A RESOLUTION

22-288

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To declare the existence of an emergency with respect to the need to approve the borrowing of funds by the District through the issuance and sale of income tax secured revenue bonds and notes and general obligation bonds and notes in an aggregate principal amount not to exceed \$1,300,000,000.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Fiscal Year 2018 Income Tax Secured Revenue Bond, General Obligation Bond and General Obligation and Income Tax Secured Bond Anticipation Note Issuance Approval Emergency Declaration Resolution of 2017”.

Sec. 2. Emergency legislation is necessary to ensure that the District can issue bonds in a timely manner and take advantage of favorable market conditions to provide funding for or to reimburse the District for funds already expended on Fiscal Year 2018 capital projects approved and undertaken pursuant to the District’s Fiscal Year 2018 Budget and Financial Plan.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Fiscal Year 2018 Income Tax Secured Revenue Bond, General Obligation Bond and General Obligation and Income Tax Secured Bond Anticipation Note Issuance Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

22-289

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 7, 2017

To approve, on an emergency basis, the borrowing of funds by the District through the issuance and sale of income tax secured revenue bonds and notes and general obligation bonds and notes in an aggregate principal amount not to exceed \$1,300,000,000, and to approve the execution and delivery of documents connected to the issuance, sale, and delivery of the bonds or notes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Fiscal Year 2018 Income Tax Secured Revenue Bond, General Obligation Bond and General Obligation and Income Tax Secured Bond Anticipation Note Issuance Emergency Approval Resolution of 2017".

Sec. 2.(a) Pursuant to and in accordance D.C. Official Code § 47-335.01, the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 1999-2004 Authorization Act of 1999, effective July 29, 1999 (D.C. Law 13-22; D.C. Official Code § 1-204.61, note); the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2002 -2007 Authorization Act of 2002, effective March 25, 2003 (D.C. Law 14-214; D.C. Official Code § 1-204.61, note); the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2007-2012 Authorization Act of 2006, effective March 6, 2007 (D.C. Law 16-212; D.C. Official Code § 1-204.61, note), the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2013-2018 Authorization Act of 2012, effective March 19, 2013 (D.C. Law 19-231; 59 DCR 13617), the General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2018-2023 Authorization Emergency Act of 2017, effective October 4, 2017 (D.C. Act 22-144; 64 DCR 10172), and any successor General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2018-2023 Authorization Temporary Act of 2017 or General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2018-2023 Authorization Act of 2017, thereto, (the "Bond Acts"), and Subchapter II-D of the District of Columbia Official Code (§ 47-340.26 *et seq.*) ("Income Tax Bond Act"), the Council approves the issuance and sale of:

(1) Income tax secured revenue bonds and general obligation bonds in an aggregate principal amount not to exceed \$1,300,000,000, when aggregated with the principal amount of any bond anticipation notes pursuant to paragraph (2) of this subsection, to fund the following capital projects, as that term is defined in the Income Tax Bond Act or the Bond Acts,

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plus all costs and expenses authorized by the Income Tax Bond Act or the Bond Acts, including, but not limited to, reimbursing amounts temporarily advanced from the General Fund of the District of Columbia, any enterprise fund, or other fund or account of the District, and all costs and expenses of issuing and delivering the bonds, including, but not limited to, underwriting, rating agency fees, legal fees, accounting fees, financial advisory fees, bond insurance and other credit enhancements, liquidity enhancements, printing costs and expenses, capitalized interest, establishment of debt service or other reserve funds related to the bonds, the payment of costs of contracts described in the Income Tax Bond Act or the Bond Acts, and the payments of other debt program related costs as provided in the related agreements:

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Project Category	Total Borrowing Plan \$
Administrative Facilities	1,856,885
Building Systems Assessments and Improvements	13,102,926
Correctional Facilities	2,558,216
Equipment	1,117,781
Fire/EMS Stations	9,034,999
Fleet	24,356,911
General Support Facilities	6,469,261
Health Care Facilities	9,654,306
Homeless Shelters	3,117,187
Information Systems	47,773,061
Local and Regional Transportation	69,161,885
Major Sports Facilities	20,399,712
Parks, Playgrounds, Athletic Fields	5,996,466
Police Stations	281,263
Public Art and Theatre	30,321
Public Libraries	16,760,942
Recreational Centers and Pools	19,489,262
Redevelopment	24,511,009
Regulatory Compliance and Restoration	9,413,987
Schools Facilities	347,636,952
Senior Centers	18,766
University Facilities	6,122,783
WMATA CIP Contribution	59,963,792
Youth Rehabilitation Facilities	1,171,327
Total	700,000,000

(2) Income tax secured federally tax-exempt and taxable bond anticipation notes or general obligation secured federally tax-exempt and taxable bond anticipation notes in an

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aggregate principal amount not to exceed \$600,000,000, or \$1,300,000,000 when combined with amounts issued pursuant to paragraph (1) of this subsection, to fund the initial costs of capital projects, as those projects are, from time to time, included in the District's annual Budget and Financial Plan and defined in the Income Tax Bond Act or the Bond Acts, plus all costs and expenses authorized by the Income Tax Bond Act or the Bond Acts, including, but not limited to, reimbursing amounts temporarily advanced from the General Fund of the District of Columbia, any enterprise fund, or other fund or account of the District, and all costs and expenses of issuing and delivering the commercial paper, including, but not limited to, underwriting, rating agency fees, legal fees, accounting fees, financial advisory fees, bond insurance and other credit enhancements, liquidity enhancements, printing costs and expenses, capitalized interest, establishment of debt service or other reserve funds related to the commercial paper, the payment of costs of contracts described in the Income Tax Bond Act or the Bond Acts, and the payments of other debt program related costs as provided in the related agreements.

(b) The capital projects referenced in subsection (a)(1) and (2) of this section have been authorized pursuant to section 446 of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198; 87 Stat. 801; D.C. Official Code § 1-204.46), the District of Columbia Appropriations Act, 2000, approved November 29, 1999 (Pub. L. No. 106-113; 113 Stat. 1501), the District of Columbia Appropriations Act, 2001, approved November 22, 2000 (Pub. L. No. 106-522; 114 Stat. 2457), the District of Columbia Appropriations Act, 2002, approved December 21, 2001 (Pub. L. No. 107-96; 115 Stat. 923), the District of Columbia Appropriations Act, 2003, approved February 20, 2003 (Pub. L. No. 108-7; 117 Stat. 11), the District of Columbia Appropriations Act, 2004, approved January 23, 2004 (Pub. L. No. 108-199; 118 Stat. 3), the District of Columbia Appropriations Act, 2005, approved October 18, 2004 (Pub. L. No. 108-335; 118 Stat. 1322), the District of Columbia Appropriations Act, 2006, approved November 30, 2005 (Pub. L. No. 109-115; 119 Stat. 2508), the Revised Continuing Appropriations Resolution, 2007, approved February 15, 2007 (Pub. L. No. 110-5; 121 Stat. 8), the Continuing Appropriations Resolution, 2008, approved September 29, 2007 (Pub. L. No. 110-92; 121 Stat. 989), the District of Columbia Appropriations Act, 2008, approved December 26, 2007 (Pub. L. No. 110-161; 121 Stat. 1990), the Continuing Appropriations Resolution, 2009, approved September 30, 2008 (Pub. L. No. 110-329; 122 Stat. 3574), the District of Columbia Appropriations Act, 2009, approved March 11, 2009 (Pub. L. No. 111-8; 123 Stat. 524), the Continuing Appropriations Resolution, 2010, approved October 1, 2009 (Pub. L. No. 111-68; 123 Stat. 2023), the Further Continuing Appropriations Resolution, 2010, approved October 30, 2009 (Pub. L. No. 111-88; 123 Stat. 2904), the District of Columbia Appropriations Act, 2010, approved December 16, 2009 (Pub. L. No. 111-117; 123 Stat. 3034), as extended by the Department of Defense and Full-Year Continuing Appropriations Act, 2011, approved April 15, 2011 (Pub. L. No. 112-10; 125 Stat. 38), the District of Columbia Appropriations Act, 2012, approved December 23, 2011 (Pub. L. No. 112-74, 125 Stat. 903); the Continuing Appropriations Resolution, 2013, approved September 28, 2012 (Pub. L. No. 112-175; 126 Stat. 1313); the Consolidated and Further Continuing Appropriations Act, 2013, approved March 26, 2013 (Pub. L. No. 113-6; 127 Stat. 198); the Continuing Appropriations Act, 2014, approved October 17,

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2013 (Pub. L. No. 113-46; 127 Stat 558); the Consolidated Appropriations Act, 2014, approved January 17, 2014 (Pub. L. No. 113-76; 128 Stat 5); the Continuing Appropriations Resolution, 2015, approved September 19, 2014 (Pub. L. No. 113-164; 128 Stat 1867); Joint Resolution Making further continuing appropriations for fiscal year 2015, and for other purposes, approved December 12, 2014 (Pub. L. No. 113-202; 128 Stat. 2069); Joint Resolution Making further continuing appropriations for fiscal year 2015, and for other purposes, approved December 13, 2014 (Pub. L. No. 113-203, 128 Stat. 2070); the Consolidated and Further Continuing Appropriations Act, 2015, approved December 16, 2014 (Pub. L. No. 113-235; 128 Stat. 2130); the Continuing Appropriations Act, 2016, approved September 30, 2015 (Pub. L. No. 114-53; 129 Stat. 502); the Further Continuing Appropriations Act, 2016, approved December 11, 2015 (Pub. L. No. 114-96; 129 Stat. 2193); the Joint Resolution Making further continuing appropriations for fiscal year 2016, and for other purposes, approved December 16, 2015 (Pub. L. No. 114-100; 129 Stat. 2202); the Consolidated Appropriations Act, 2016, approved December 18, 2015 (Pub. L. No. 114-113; 129 Stat. 2242); the Fiscal Year 2017 Local Budget Act of 2016, effective July 29, 2016 (D.C. Law 21-142; 63 DCR 8786); the Continuing Appropriations Act, 2017, as amended, approved September 29, 2016 (Pub. L. No. 114-223; 130 Stat. 857); the Consolidated Appropriations Act, 2017, approved May 5, 2017 (Pub. L. No. 115-31; 131 Stat. 135) ; the Fiscal Year 2018 Local Budget Act of 2017, effective August 29, 2017 (D.C. Law 22-16; 64 DCR 6581); the Continuing Appropriations Act, 2018, approved September 8, 2017 (Pub. L. No. 115-56; 131 Stat. 1129); and are capital projects for which the District of Columbia is authorized to incur indebtedness under the Bond Acts and the Income Tax Bond Act.

(c) The Chief Financial Officer is further authorized to determine whether income tax secured revenue bonds, general obligation bonds, or bond anticipation notes or other short-term notes authorized by the Income Tax Bond Act or the Bond Acts, will be issued to finance or refinance the capital projects described in subsection (a) of this section. If short-term notes are issued to finance the capital projects described in subsection (a) of this section, the Chief Financial Officer shall determine when and whether income tax secured revenue bonds or general obligation bonds will be issued to refund or refinance the outstanding short-term notes in accordance with the Income Tax Bond Act, the Bond Acts, and other applicable laws.

Sec. 3. If the funds allocated to any agency pursuant to this resolution exceed the amount required by that agency to complete any authorized capital project listed in section 2 for that agency, the excess funds shall be made available to finance other capital projects approved by a prior or subsequent Council bond issuance resolution or act.

Sec. 4. Pursuant to sections 7 and 8 of the Bond Acts, section 2 of the Income Tax Bond Act, and other applicable law, the Council approves the execution and delivery by the Mayor, or the Chief Financial Officer, on behalf of the District, of any agreement, document, contract, and instrument (including any amendment of or supplement to any such agreement, document,

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contract, or instrument) in connection with the issuance, sale, and delivery of District of Columbia general obligation bonds or notes or income tax secured revenue bonds or notes pursuant to the Bond Acts or the Income Tax Bond Act.

Sec. 5. Transmittal.

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

Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

This resolution shall take effect immediately.

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

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA
PROPOSED LEGISLATION
BILLS

- | | |
|---------|--|
| B22-589 | Strengthening Community Development Amendment Act of 2017

Intro. 11-7-17 by Councilmembers Grosso, T. White, R. White, and Bonds and referred sequentially to the Committee on Business and Economic Development and the Committee on Finance and Revenue |
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| B22-591 | Anna Cooper House TOPA Exemption Amendment Act of 2017

Intro. 11-17-17 by Councilmember Evans and referred to the Committee on Housing and Neighborhood Revitalization |
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| B22-592 | Penelope Hotel Lots 827 and 7000 and Square 0137 Real Property Tax Abatement Act of 2017

Intro. 11-20-17 by Councilmember Evans and referred to the Committee on Finance and Revenue |
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| B22-593 | Educator Expense Tax Credit Amendment Act of 2017

Intro. 11-21-17 by Councilmembers Cheh, Grosso, R. White, Allen, Gray, T. White, Evans, Nadeau, Bonds, Todd, and McDuffie and referred to the Committee on Finance and Revenue |
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B22-594 Student Fair Access to School Act of 2017

Intro. 11-21-17 by Councilmembers Grosso, Cheh, Bonds, and Nadeau and referred to the Committee on Education

B22-595 Identity Protection Amendment Act of 2017

Intro. 11-21-17 by Councilmembers Todd, R. White, Nadeau, and Cheh and referred to the Committee on Business and Economic Development with comments from the Committee on Judiciary and Public Safety

B22-596 Housing Rehabilitation Incentives Regulation Amendment Act of 2017

Intro. 11-21-17 by Councilmembers R. White, Nadeau, T. White, Bonds, Grosso, and Allen and referred to the Committee of the Whole

B22-597 Behavioral Health Parity Act of 2017

Intro. 11-21-17 by Councilmembers Gray, Grosso, and R. White and referred to the Committee on Health

PROPOSED RESOLUTIONS

PR22-625 Local Rent Supplement Program Contract No. 2016-LRSP-04A Approval Resolution of 2017

Intro. 11-15-17 by Chairman Mendelson at the request of the District of Columbia Housing Authority and Retained by the Council with comments from the Committee on Housing and Neighborhood Revitalization

PR22-626 Child Development Facilities: Licensing Approval Resolution of 2017

Intro. 11-16-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

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

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

ANNOUNCES A PUBLIC HEARING ON

B22-0262 – THE “405 53RD STREET N.E. DISPOSITION ACT OF 2017”;

B22-0431– THE “GREAT STREETS TECHNICAL AMENDMENT ACT OF 2017; AND

**B22-0528 – THE “KEENE SCHOOL DISPOSITION AND LEASE APPROVAL ACT OF
2017”**

Monday December 11, 2017, 1:30 p.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Monday, December 11, 2017 Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public hearing on Bill 22-0262, the “405 53rd Street N.E. Disposition Act of 2017”; Bill 22-0431, the “Great Streets Technical Amendment Act of 2017”; and Bill 22-0528, the Keene School Disposition and Lease Approval Act of 2017”. The stated purpose of Bill 22-0262 is to approve the surplus and disposition of District-owned real property located at 405 53rd Street N.E., in Washington D.C., known for tax and assessment purposes as Lot 0800 in Square 5232.

The stated purpose of Bill 22-0431 is to amend the “Retail Incentive Act of 2004” to make technical changes in order to centralize and consolidate the various resolutions and acts that relate to the Great Streets Program. The stated purpose of Bill 22-0528 is to approve the disposition of District-owned real property located at 33-35 Riggs Road, N.E. in Washington, D.C., known for tax and assessment purposes as Lots 802 and 806 in Square 3702.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee on Business and Economic Development via

email at cautrey@dccouncil.us or at (202) 724-8053, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Thursday, December 7th**. 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 cautrey@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 on Business and Economic Development at cautrey@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 December 27.**

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT**

ANNOUNCES A PUBLIC HEARING ON

B22-0419, the “Subrogation Fund Establishment Act of 2017”

And

B22-0420, the “Captive Insurance Agency Amendment Act of 2017”

**Monday, December 11, 2017, 1 pm
Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember Elissa Silverman, Chairperson of the Committee on Labor and Workforce Development, announces a public hearing before the Committee B22-0419, the “Subrogation Fund Establishment Act of 2017,” and on B22-0420, the “Captive Insurance Agency Amendment Act of 2017.” The hearing will be held at 1 p.m. on Monday, December 11, 2017, in Room 123 of the John A. Wilson Building.

The purpose of B22-0419, the “Subrogation Fund Establishment Act of 2017,” is to create a non-lapsing fund to hold funds received by the District as compensation for damage to its property. These funds will then be used to replace or repair that equipment, to pay related legal fees, and to administer the fund.

The purpose of B22-0420, the “Captive Insurance Agency Amendment Act of 2017,” is to authorize the Captive Insurance Agency to procure certain insurance policies and to clarify that it does not waive or limit the District’s sovereign immunity or common-law defenses to litigation or claims that may be covered by insurance.

Those who wish to testify before the Committee are asked to contact Mr. Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by close of business Thursday, December 7, 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 will be allowed if there are a large number of witnesses.

If a witness is unable to testify at the hearing, written statements will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at labor@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 Wednesday, January 3, 2018.

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

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

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

ANNOUNCES A PUBLIC HEARING ON:

B22-559, the “Dupont Circle Business Improvement District Amendment Act of 2017”

Wednesday, December 13, 2017

10:00 a.m.

**Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Wednesday, December 13, 2017 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 22-559, the “District Circle Business Improvement District Amendment of 2017” would amend the Business Improvement Act of 1996 to authorize the establishment and administration of the Dupont Circle Business Improvement District.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, December 12, 2017. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

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

NOTICE OF PUBLIC HEARING ON

**The District's Solar for All Program;
B22-229, Solar Cooperative Association Expansion Amendment Act of 2017; and
B22-437, the Solar Ready Roofs and Sustainable Development Amendment Act of
2017**

Wednesday, December 13, 2017 at 10:00 a.m.
in Room 500 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Wednesday, December 13, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on the District's Solar for All Program; B22-229, the Solar Cooperative Association Expansion Amendment Act of 2017; and B22-437, the Solar Ready Roofs and Sustainable Development Amendment Act of 2017. The hearing will begin at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The District's Solar for All Program is implemented by the Department of Energy and Environment, and has a goal of providing the benefits of solar energy to 100,000 low-income District households by 2032. B22-229, the Solar Cooperative Association Expansion Amendment Act of 2017, would clarify that homeowners associations and cooperative housing associations may not disallow owners from installing or using a solar energy systems unless the prohibition is included in the association's articles of incorporation. The bill would except instances in which the proposed installation would occur on common areas or elements and reasonable restrictions concerning size, location, and manner of installation of the solar energy collection device. B22-437, the Solar Ready Roofs and Sustainable Development Amendment Act of 2017, would require that, as of January 1, 2020, all new or substantially renovated residential buildings with 4 or fewer dwelling units include solar-ready zones. The bill would also require that, as of January 1, 2023, all new or substantially renovated commercial properties with 5 or more dwelling units include an on-site renewable energy system capable of generating at least 10% of the building's energy needs.

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 December 28, 2017.

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

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

ANNOUNCES A PUBLIC ROUNDTABLE OF THE COMMITTEE ON

PR22-0481, the “Rental Housing Commission Lisa M. Gregory Confirmation Resolution of 2017”

PR22-0495, the “Real Estate Commission Edward K. Downs Confirmation Resolution of 2017”

PR22-0599, the “Real Estate Commission David W. Forster Confirmation Resolution of 2017”

PR22-0561, the “District of Columbia Housing Authority Board of Commissioners Joshua Lopez Confirmation Resolution of 2017”

and

PR22-0585, the “Housing Production Trust Fund Board LaKeeshia A. Fox Confirmation Resolution of 2017”

on

Friday, December 8, 2017, at 10:00 AM
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Anita Bonds, Chairperson of the Committee on Housing and Neighborhood Revitalization, will hold a public roundtable on PR22-0481, the “Rental Housing Commission Lisa M. Gregory Confirmation Resolution of 2017”, PR22-0495, the “Real Estate Commission Edward K. Downs Confirmation Resolution of 2017”, PR22-0599, the “Real Estate Commission David W. Forster Confirmation Resolution of 2017”, PR22-0561, the “District of Columbia Housing Authority Board of Commissioners Joshua Lopez Confirmation Resolution of 2017”, and PR22-0585, the “Housing Production Trust Fund Board LaKeeshia A. Fox Confirmation Resolution of 2017”. The public roundtable will be held on Friday, December 8, 2017, at 10:00 AM in Room 412 of the John A. Wilson Building.

The stated purpose of PR22-0481 is to confirm the appointment of Lisa M. Gregory as a member of the Rental Housing Commission, replacing Peter Szegedy-Maszak, for a term to end July 18, 2020.

The stated purpose of PR22-0495 is to confirm the appointment of Edward K. Downs as a real estate broker licensed in the District member of the Real Estate Commission, replacing Darrin D. Davis, for a term ending December 13, 2018.

The stated purpose of PR22-0599 is to confirm the appointment of David W. Forster as a real estate broker licensed in the District member of the Real Estate Commission, replacing Monique Owens, for a term to end December 13, 2020.

The stated purpose of PR22-0561 is to confirm the appointment of Joshua Lopez as a public commissioner of the District of Columbia Housing Authority Board of Commissioners, replacing Terri Thompson Mallett, for a term ending July 12, 2020.

The stated purpose of PR22-0585 is to confirm the appointment of LaKeeshia A. Fox as a member of the Housing Production Trust Fund Board, replacing Jacqueline Prior, for a term ending January 14, 2021.

Those who wish to testify are requested to telephone the Committee on Housing and Neighborhood Revitalization, at (202) 724-8900, or email omontiel@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any), by close of business on December 7, 2017. Persons wishing to testify are encouraged to submit 15 copies of written testimony. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Community Development, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004. The record will close at 5:00 p.m. on Friday, December 22, 2017.

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 22-543, the “Historic Preservation Review Board Dr. Sandra Jowers-Barber Confirmation Resolution of 2017”

on

Thursday, December 14, 2017
10:30 a.m. (or immediately following the preceding hearing)
Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public roundtable before the Committee of Whole on PR 22-543, the “Historic Preservation Review Board Dr. Sandra Jowers-Barber Confirmation Resolution of 2017.” The roundtable will be held at **10:30 a.m. (or immediately following the preceding hearing)** on **Thursday, December 14, 2017** in Hearing Room 123 of the John A. Wilson Building.

The stated purpose of **PR 22-543** is to confirm the appointment of Dr. Jowers-Barber as a historian member to the Historic Preservation Review Board. The Historic Preservation Review Board (“Board”) is the official body of advisors appointed by the Mayor to guide the government and public on preservation matters in the District of Columbia. The Board also assists with the implementation of federal preservation programs and the review of federal projects in the District. The purpose of this roundtable is to receive testimony from government and public witnesses as to the fitness of this nominee for the Board.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Sydney Hawthorne at (202) 724-7130, and to provide your name, address, telephone number, organizational affiliation, and title (if any) by close of business **Tuesday, December 12, 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 December 12, 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, December 28, 2017.

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

NOTICE OF PUBLIC ROUNDTABLE ON

PR22-564, the Director of the District Department of Transportation Jeff Marootian Confirmation Resolution of 2017

Friday, December 8, 2017, at 2:00 PM
in Room 120 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Friday, December 8, 2017, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public roundtable on PR22-564, the Director of the District Department of Transportation Jeff Marootian Confirmation Resolution of 2017. This legislation would confirm Jeff Marootian as the Director of the District Department of Transportation. The public roundtable will begin at 2:00 PM in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

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 December 22, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B22-550, Department of Health Care Finance Independent Procurement Authority Temporary Amendment Act of 2017, was adopted on first reading November 21, 2017. This temporary measure was considered in accordance with Council Rule 413. A final reading on this measure will occur on December 5, 2017.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
1350 Pennsylvania Avenue, NW, Suite 410
Washington, DC 20004

ABBREVIATED NOTICE OF INTENT TO CONSIDER LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to take action in less than fifteen days on PR 22-627 the "Fiscal Year 2019 Budget Submission Requirements Resolution of 2017," to allow for the proposed resolution to be considered at the December 5, 2017 legislative meeting of the Council. The abbreviated notice is necessary to allow the Council to approve the form and timing the Fiscal Year 2019 proposed budget by the Executive to be transmitted to the Council for its consideration.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of reprogrammings are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 22-94

Request to reprogram \$3,357,726 of Fiscal Year 2018 Special Purpose Revenue funds budget authority within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on November 15, 2017. This reprogramming ensures that DCPS will be able to separate prior-year settlement funds from current food services revenue collections.

RECEIVED: 14 day review begins November 16, 2017

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 24, 2017
Protest Petition Deadline: January 8, 2018
Roll Call Hearing Date: January 22, 2018
Protest Hearing Date: March 21, 2018

License No.: ABRA-108250
Licensee: Noma Hospitality, LLC
Trade Name: Homewood Suites by Hilton Washington, D.C./New York Avenue and Hampton Inn & Suites Washington D.C./New York Avenue at 4th St. NE
License Class: Retailer's Class "B" 25 Percent
Address: 501 New York Avenue, N.E.
Contact: Stephen J. O'Brien: 202-625-7700

WARD 5

ANC 5D

SMD 5D01

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 January 22, 2018 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 March 21, 2018 at 1:30pm.

NATURE OF OPERATION

New 25% Class B for premises located within a hotel without direct access to the street.

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

Sunday through Saturday 7 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date: November 10, 2017
Protest Petition Deadline: December 26, 2017
Roll Call Hearing Date: January 8, 2018
Protest Hearing Date: March 7, 2018

License No.: ABRA-107853
Licensee: Regal Gallery Place, LLC
Trade Name: Regal Gallery Place Stadium 14
License Class: Retailer’s Class ****“C”** Restaurant
Address: 701 7th Street, N.W.
Contact: Evadne Maxwell: (305) 789-2761

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on January 8, 2018 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 **March 7, 2018 at 1:30 p.m.**

NATURE OF OPERATION

New Class ****“C”** Restaurant for a movie theatre serving pizza, chicken wings, pre-packaged candy, popcorn and alcoholic beverages. Total Occupancy Load of 3119.

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

Sunday through Saturday 11:00 am – 11:30 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: November 10, 2017
Protest Petition Deadline: December 26, 2017
Roll Call Hearing Date: January 8, 2018
Protest Hearing Date: March 7, 2018

License No.: ABRA-107853
Licensee: Regal Gallery Place, LLC
Trade Name: Regal Gallery Place Stadium 14
License Class: Retailer’s Class ****“DX”** Multipurpose Facility
Address: 701 7th Street, N.W.
Contact: Evadne Maxwell: (305) 789-2761

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on January 8, 2018 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 **March 7, 2018 at 1:30 p.m.**

NATURE OF OPERATION

New Class ****“DX”** Multipurpose facility for a movie theatre serving pizza, chicken wings, pre-packaged candy, popcorn and alcoholic beverages. Total Occupancy Load of 3119.

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

Sunday through Saturday 11:00 am – 11:30 pm

DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PUBLIC HEARING

Notice is hereby given that, pursuant to the requirements of D.C. Official Code Section 42-3171.03 (a)(1), the District of Columbia Department of Housing and Community Development (DHCD) has scheduled a public hearing on Thursday, January 4, 2018 at 6 p.m. at the DHCD 1st Floor Conference Room, located at 1800 Martin Luther King Jr. Avenue, SE, Washington, DC 20020, to consider the proposed disposition of the property noted below.

Square	Lot	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood
5936	0802	3401 13th St SE	Vacant Lot	8	RA-1	No	Congress Heights

The above property was included in a round of Solicitation for Offer issued by DHCD to the general public on June 22, 2016. The property was awarded to Flywheel Development, through a competitive selection process. A project summary of Flywheel Development's proposal will be posted on the DHCD web site.

The public hearing is being conducted in order to assure that citizens are informed about the selling of the property identified above to the named buyer, and to ensure that all citizens have the opportunity to present publicly their views concerning such sale.

If you would like to present oral testimony, you are encouraged to register in advance either by e-mailing Chantese Rogers at chantese.rogers@dc.gov, or by calling 202-478-1355. Please provide your name, address, telephone number, and organization affiliation, if any. Telecommunications Device for the Deaf (TDD) relay service is available by calling (800) 201-7165. A sign language interpreter and language translation services are available upon request by calling Pamela Hillsman at 202-442-7251. If you require language translation, please specify which language (Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Language translation services will be provided to pre-registered persons only. Deadline for requiring services of an interpreter is 7 days prior to the hearing. Bilingual staff will provide services on an availability basis to walk-ins without registration.

Written statements may be submitted at the hearing, or until 4:45 p.m., Friday, January 5, 2018, and should be addressed to: Polly Donaldson, Director, DC Department of Housing and Community Development, ATTN: PADD, 1800 Martin Luther King Jr., Avenue, SE, Washington, D.C. 20020.

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JANUARY 10, 2018
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

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

TIME: 9:30 A.M.

WARD FIVE

19628 **Application of Leila Adler**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a
ANC 5D special exception under Subtitle E § 5201 from the rear yard requirements of
 Subtitle E § 5004.1, to permit an existing rear garage in the RF-1 Zone at
 premises 1829 L Street N.E. (Square 4474, Lot 117).

WARD FIVE

19639 **Application of Kara Chernet**, pursuant to 11 DCMR Subtitle X, Chapter 10, for
ANC 5B area variances from the non-conforming structure requirements of Subtitle C §
 202.2, and from the lot occupancy requirements of Subtitle D § 304.1 to construct
 a rear deck addition to an existing one-family dwelling in the R-2 Zone at
 premises 2644 10th Street N.E. (Square 3843, Lot 19).

WARD ONE

19647 **Application of Potomac Electric Power Company**, pursuant to 11 DCMR
ANC 1A Subtitle X, Chapter 9, for special exceptions under Subtitle X § 900.3 to expand
 an existing electrical substation, and under Subtitle A § 207.2 in order to extend
 the MU-4 Zone regulations to a 35 foot portion of the site zoned RF-1 and
 pursuant to Subtitle X, Chapter 10, for variances from the vehicle parking
 requirements of Subtitle C § 701.5, the bicycle parking requirements of Subtitle C
 § 802.1, the loading requirements of Subtitle C § 901.1, and from the pervious
 surface requirements of Subtitle E § 204.1 to modernize and expand the existing
 electrical substation in the MU-4 and RF-1 Zones at premises 1001 Harvard
 Street N.W. (Square 2852, Lots 33, and 807).

WARD ONE

19648 **Application of Potomac Electric Power Company**, pursuant to 11 DCMR
ANC 1C Subtitle X, Chapter 9, for special exceptions under Subtitle X § 900.3 to expand
 an existing utility use, and pursuant to Subtitle X, Chapter 10, for variances from
 the vehicle parking requirements of Subtitle C § 701.5, the bicycle parking
 requirements of Subtitle C § 802.1, the loading requirements of Subtitle C §
 901.1, and from the side yard requirements of Subtitle K § 705.1 to modernize
 and expand the existing electrical substation in the RC-3 Zone at premises 2119
 Champlain Street N.W. (Square 2562, Lot 97).

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WARD TWO

19662 **Application of Demetrios Bizbikis**, pursuant to 11 DCMR Subtitle X, Chapter
ANC 2F 10, for a use variance from the maximum number of principal dwelling unit
 regulations of Subtitle U § 301.1(b), to permit an existing four-unit apartment
 house in the RF-1 Zone at premises 924 N Street N.W. (Square 368, Lot 890).

WARD THREE

19675 **Application of Keith Krueger and Joel Lawson**, pursuant to 11 DCMR Subtitle
ANC 3F X, Chapter 9, for a special exception under Subtitle U § 253.10 from the
 accessory apartment requirements of Subtitle U § 253.7(c), to permit an accessory
 apartment with an entrance on a street facing façade in an existing one family
 dwelling in the R-2 Zone at premises 3629 Windom Place N.W. (Square 1891E,
 Lot 11).

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

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ለመነጠፍ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የደንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

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

French

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

Korean

참여하시는데 도움이 필요하세요?

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

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

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

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

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**

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JANUARY 10, 2018
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**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 CORRECTED¹ PUBLIC HEARING**

TIME AND PLACE: **Thursday, January 11, 2018, @ 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. 16-23 (Valor Development, LLC – Voluntary Design Review @ Square 1499, Lots 802, 803, 806, and 807)

THIS CASE IS OF INTEREST TO ANCs 3E and 3D

On October 27, 2016, the Office of Zoning received an application from Valor Development, LLC (the "Applicant"), on behalf of FW DC-Spring Valley Shopping Center, LLC and Apex Real Estate Company. The Applicant is requesting design review and approval of a new mixed-use (residential and retail) development project for Lots 802, 803, 806, and 807 in Square 1499 (the "Project Site"), pursuant to Subtitle X, Chapter 6 of Title 11 DCMR and specifically pursuant to 11-X DCMR § 601.2, which permits property owners to voluntarily apply for design review of a proposed development. As part of this design review, the Applicant seeks relief from the rear yard requirements of the MU-4 zone. The Commission can grant such flexibility as part of the design review process pursuant to 11-X DCMR § 603.1, which permits it to grant relief from certain development standards including the standards for "setbacks."²

The Project Site consists of approximately 160,788 square feet of land area and is generally bounded by Yuma Street on the north; Massachusetts Avenue on the south; 48th Street on the east; and the Spring Valley Exxon station on the west. The Project Site is currently improved with the Spring Valley Shopping Center ("SVSC") (Lots 802 and 803), the former American University Law School building ("AU Building") (Lot 806), and a vacant grocery store building, retail uses (restaurant and salon), and surface and below-grade parking (Lot 807). Collectively, Lots 806 and 807 make up Record Lot 9. The Project Site is zoned MU-4, a district in which residential and retail uses are permitted as a matter of right.

The proposed mixed-use development retains the existing SVSC and AU Building as currently developed, and consists of two new buildings on Lot 807. The SVSC has a height of approximately 25 - 30 feet and contains approximately 16,922 square feet of gross floor area ("GFA") of retail, service, and eating and drinking establishment use. The AU Building has a height of approximately 60 feet, not including the mechanical penthouse, and contains approximately 179,302 square feet of GFA of office use.

¹ Three corrected items on p. 1 are shown in **bold** and underlined text; no other changes were made.

² When the current versions of Subtitles G and X were first proposed, the applicable minimum rear yard requirement was referred to as a "rear setback." This terminology was later replaced with the traditional reference to a "minimum rear yard" in current Subtitle G, but the reference to "setbacks" in 11-X DCMR § 603.1 was not similarly revised.

As for the two buildings proposed on Lot 807, Building 1 will have a maximum height of approximately 50 feet, plus a penthouse that will have a maximum height of 15 feet above the roof level. The lower-level of Building 1 will contain a residential lobby, a grocery store and potential additional retail/amenity space, and access to loading and below-grade parking. The remainder of Building 1, including a portion of the penthouse, will contain residential dwelling units and amenity space. The second building, Building 2, will have a maximum height of approximately 48 feet, and will also contain a penthouse with a maximum height of 15 feet above the roof level. Building 2 will contain residential dwelling units and amenity space. Collectively, the proposed mixed-use development, including the SVSC and AU Building, will contain approximately 473,502 square feet of GFA (2.94 FAR), of which approximately 257,586 square feet of GFA (1.60 FAR) will be devoted to new residential use, and approximately 215,916 square feet of GFA (1.34 FAR) will be devoted to new and existing nonresidential use. Combined, the two buildings proposed on Lot 807 will contain approximately 219 dwelling units.

Other significant aspects of the proposed mixed-use development include streetscape improvements; paving, landscape, and other improvements to surrounding alleys; a new linear park/landscaped pedestrian extension of Windom Place through the Project Site; affordable housing in excess of the minimum required by 11-C DCMR § 1003; below-grade parking; and LEED-Gold designed buildings.

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

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11-Z DCMR § 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 DCMR Title 11-Z. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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

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

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

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

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

Pursuant to 11-Z DCMR § 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 <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, 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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Quý vị có cần trợ giúp gì để tham gia không? Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

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

DEPARTMENT OF HEALTH**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in § 15 of the Death with Dignity Act of 2016 (Act), effective February 18, 2017 (D.C. Law 21-182; to be codified at D.C. Official Code § 7-661.14), and Mayor's Order 2017-149, dated June 28, 2017, hereby gives notice of the adoption of the following amendments to add Subtitle D (Birth and Death), Chapters 1 and 2 (Reserved) and Chapter 3 (Death with Dignity) to Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The Final Rules establish the procedures for safely dispensing medication to a terminally ill resident of the District to end his or her life in a humane and peaceful manner.

A Notice of Emergency and Proposed Rulemaking was published on July 28, 2017, in the *D.C. Register* at 64 DCR 7276. The Department received two comments in response to the notice.

The first commenter submitted two questions on August 4, 2017. The first question was whether nurse practitioners were allowed to prescribe, and the second question was whether verbal requests had to be made on separate dates. The answers to these questions are in the authorizing legislation, and the rules are consistent with the authorizing legislation. Addressing the second question first, Section 3(a)(1) of the Act provides that a patient must make two oral requests for covered medication at least fifteen (15) days apart. So the answer to the question is that the requests must be made on separate dates. Addressing the first question, Section 6 of the Act provides that only an attending physician may prescribe covered medication after making a determination that the requesting patient satisfies all the qualifications—namely that the patient has a terminal disease, is capable of making decisions, has requested the covered medication voluntarily, and is a resident of the District of Columbia. So the answer to the first question is that a nurse practitioner is not authorized to prescribe covered medication.

The second comment, dated August 2017 but received September 1, 2017, was submitted to the Board of Medicine. While the comment was submitted after the comment period had closed, it has been considered by the Department. The commenter identified three concerns as follows: 1) socioeconomic disparities will have an effect on the practical application of the law; 2) the law requires a physician to ignore the proximate cause of death in completing the death certificate of death with dignity decedent; and 3) it is problematic to enact the death with dignity law when hospice and palliative care options are under-appreciated and under-utilized. All of the commenter's comments relate to the substance of the law itself rather than to the way the law is implemented. None of the comments were adopted in the final rulemaking, as they would be inconsistent with the Act.

In reviewing the Notice of Emergency and Proposed Rules it became evident that there was some redundant language in Subsection 304.3. That subsection included the phrase “,except when clearance is required by the OCME per § 304.2. When the OCME clearance is required, medical certification shall be provided by the physician to OCME within 48 hours after death.”. Subsection 304.2, however, requires Office of the Chief Medical Examiner (OCME) clearance

for all deaths for which covered medications have been dispensed. The OCME requested that the surplus language be eliminated. For the sake of clarity, the phrase has been removed from the final rule. As this change does not change the substance of the rule, it was not republished for public comment. No other changes have been made since publication of the Notice of Emergency and Proposed Rules in the *D.C. Register*.

The rules were adopted as final October 5, 2017 and shall become effective upon publication of this Notice of Final Rulemaking in the *D.C. Register*.

Title 22 DCMR, HEALTH, is amended by adding a new Subtitle D to read as follows:

Subtitle 22-D BIRTH AND DEATH

CHAPTER 1 [RESERVED]

CHAPTER 2 [RESERVED]

CHAPTER 3 DEATH WITH DIGNITY

- 300 GENERAL PROVISIONS**
- 301 PATIENT PARTICIPATION**
- 302 HEALTH CARE PROVIDER PARTICIPATION**
- 303 PHARMACIST PARTICIPATION**
- 304 FUNERAL SERVICES REQUIREMENTS**
- 305 SAFE DISPOSAL OF COVERED MEDICATION**
- 306 CONFIDENTIALITY**
- 399 DEFINITIONS**

300 GENERAL PROVISIONS

300.1 This chapter shall apply to the following:

- (a) District residents diagnosed with a terminal disease;
- (b) Physicians licensed in the District;
- (c) Pharmacists licensed in the District;
- (d) Pharmacies registered in the District; and
- (e) Funeral directors and funeral services providers licensed in the District

300.2 Information collected pursuant to this chapter shall not be a public record and shall not be available for inspection by the public under the Freedom of Information Act of 1976, pursuant to Section 17 of the Act.

- 300.3 This chapter shall not be construed to authorize any person to end a person's life by lethal injection, mercy killing, active euthanasia, or any other method of medication not authorized under the Act or this chapter.
- 300.4 Actions taken in accordance with the Act or pursuant to this chapter shall not constitute suicide, assisted suicide, mercy killing, active euthanasia, or homicide for the purposes of any provision of District law.
- 300.5 This chapter shall not be construed to authorize a qualified patient to ingest a covered medication in a public place or in such a way that death will result in a public place.
- 300.6 For the purpose of this chapter a patient may establish residency by providing any two (2) of the following original documents that include a valid address in the District:
- (a) A utility bill or computer printout (water, gas, electric, oil, or cable), with name and address, issued within the last sixty (60) days (disconnect notices not accepted);
 - (b) A telephone bill or computer printout (cell phone, wireless, or pager bills acceptable), reflecting patient's name and current address, issued within the last sixty (60) days (disconnect notices not accepted);
 - (c) A deed, mortgage, or settlement agreement reflecting the patient's name and property address;
 - (d) An unexpired lease or rental agreement with the name of the patient listed as the lessee, permitted resident, or renter (may be a photocopy). The unexpired lease or rental agreement shall be signed by all parties;
 - (e) A District property tax bill or tax assessment issued within the last twelve (12) months reflecting the applicant's name and property address;
 - (f) An unexpired homeowner's or renter's insurance policy reflecting the patient's name and address;
 - (g) A letter with picture from the Court Services and Offender Supervision Agency or the Department of Corrections certifying the patient's name and District residency issued within the last sixty (60) days;
 - (h) A Department of Motor Vehicles proof of residency form signed by the certifier residing at the residence and a copy of the certifier's unexpired District driver's license or District identification card;
 - (i) A bank, credit union, credit card, or investment account statement issued within the last sixty (60) days reflecting the patient's name and address;

- (j) A piece of official mail—received from any government agency (with the patient’s full name and address) to include contents and envelope received within the last sixty (60) days;
- (k) A form from a social service provider that includes the patient’s name and address issued within the last sixty (60) days;
- (l) A medical bill issued within the last sixty (60) days reflecting the patient’s name and address;
- (m) A student loan statement issued within the last sixty (60) days reflecting the patient’s name and address;
- (n) A home line of equity statement issued within the last sixty (60) days reflecting the patient’s name and address;
- (o) A car or personal loan statement (no coupon books/vouchers accepted) issued within the last sixty (60) days reflecting the patient’s name and address; or
- (p) A home security system bill issued within the last sixty (60) days reflecting the patient’s name and address.

300.7 If at any time a patient participating in the Program or the patient’s agent disposes of covered medication, the patient shall be considered to have withdrawn from the Program and shall re-initiate the three step process (two oral requests and a written request) if the patient wishes to acquire covered medication again.

301 PATIENT PARTICIPATION

301.1 A patient may participate in the Program if the patient is:

- (a) At least eighteen (18) years of age;
- (b) A resident of the District;
- (c) Under the care of a physician; and
- (d) Diagnosed with a terminal disease.

301.2 To participate in the Program a patient shall first complete the training module provided by the Director regarding the Program.

- (a) The training module shall include:

- (1) Advice on the selection of witnesses;
- (2) A link to the appropriate form for requesting covered medication;
- (3) Information on who may prescribe and dispense a covered medication;
- (4) Information on executing a Do Not Resuscitate Order or similar document;
- (5) Information on the responsible use of a covered medication; and
- (6) Information on the responsible disposal of unused covered medications.

(b) The patient shall attest to having completed the training module on the application form provided by the Director.

301.3 After completing the training module, a patient may request covered medication from an attending physician by making two (2) oral requests to the physician that are separated by at least fifteen (15) days. In addition, the patient shall submit a written request to the physician, on a form provided by the Director, before making the second oral request and at least forty-eight (48) hours before covered medication is prescribed or dispensed. The patient may, on the written request form, designate any person the patient chooses to serve as the patient's agent for the purpose of safely disposing of unused covered medication. Any person so designated shall acknowledge acceptance of responsibility to safely dispose of unused covered medication by signing the form.

301.4 The written request required by § 301.3 shall be witnessed by two (2) individuals, neither of which may be the patient's attending physician at the time of the request, and one of which shall not be:

- (a) A relative of the patient by blood, marriage, or adoption;
- (b) Entitled to any portion of the patient's estate under a will or by operation of law at the time the patient or any witness signs the request; or
- (c) An owner, operator, or employee of a health care facility where the patient is receiving treatment or resides.

301.5 If a patient is a resident of a long-term care facility at the time of the written request, one of the witnesses required by § 301.4 shall be an individual the facility designates, provided that the facility shall not designate an owner, operator, or employee of the facility.

- 301.6 The patient may:
- (a) Execute, at any time, a “Do Not Resuscitate Order”, “Comfort Care Order”, or other document that provides instructions to emergency responders not to prolong the life of a person who has a terminal disease and is experiencing cardiac or pulmonary arrest.
 - (b) Notify the Director, after completing the three step process (two oral requests and a written request), that the patient is participating in the Program; or
 - (c) Provide, at any time, health instructions to emergency responders by registering with smart 911 at www.smart911.com.
- 301.7 If a patient notifies the Director that the patient is participating in the Program, the Director shall notify the Office of Unified Communications and the Office of the Chief Medical Examiner.
- 301.8 If the patient chooses to withdraw from the Program, the patient shall notify the Director of the withdrawal. The Director shall provide notice of the patient’s withdrawal from the Program to the Office of Unified Communications and the Office of the Chief Medical Examiner (OCME).

302 HEALTH CARE PROVIDER PARTICIPATION

- 302.1 A health care provider, including a health care professional, shall not be required, by contract or otherwise, to dispense or prescribe covered medication.
- 302.2 If a health care provider, including a health care professional, is unable or unwilling to participate in the Program, and the patient transfers his or her care to a new health care provider, the prior health care provider shall, upon the patient’s request, transfer a copy of the patient’s medical record to the new health care provider.
- 302.3 A health care provider may prohibit any health care provider it employs or contracts with from participating in the Program on the prohibiting health care provider’s premises or within the scope of the health care provider’s duties for the prohibiting health care provider, provided that the prohibiting health care provider has notified the employee or contractor of this policy before the employee or contractor has provided the covered medication.
- 302.4 An attending physician who is licensed in the District, and who is not prohibited from participation under this section, may participate in the Program after completing the training module approved by the Director.

302.5 After completing the training module and receiving a written request for covered medication, an attending physician shall:

- (a) Determine that the patient:
 - (1) Has a terminal disease;
 - (2) Is capable;
 - (3) Has made the request voluntarily; and
 - (4) Is a resident of the District;
- (b) Inform the patient of:
 - (1) The patient's medical diagnosis;
 - (2) The patient's prognosis;
 - (3) The potential risks associated with taking a covered medication;
 - (4) The probable result of taking a covered medication;
 - (5) The feasible alternatives to taking a covered medication, including comfort care, hospice care, and pain control; and
 - (6) The availability of supportive counseling to address the range of possible psychological and emotional stress involved with the end stages of life;
- (c) Refer the patient to a consulting physician;
- (d) Refer the patient for counseling if the attending physician believes the patient may have a psychiatric or psychological disorder or depression that impairs the patient's judgment;
- (e) Recommend that the patient notify next of kin, friends, and a spiritual advisor, if applicable, of the decision to request covered medication;
- (f) Counsel the patient about the importance of having another person present when the patient ingests covered medication, and of not taking covered medication in a public place;
- (g) Inform the patient that the patient may rescind a request for covered medication at any time and in any manner; and

- (h) Verify, immediately before dispensing a covered medication or delivering a prescription for a covered medication, that the patient is making an informed decision.

302.6 The attending physician shall document, file in the patient's medical record, and make available to the Department for compliance review:

- (a) The date of each patient oral request for covered medication;
- (b) The date of receipt of the written request for covered medication;
- (c) The attending physician's:
 - (1) Diagnosis and prognosis of the patient;
 - (2) Determination that the patient is a District resident and the documentation the patient supplied to support the determination;
 - (3) Determination that the patient is capable, is acting voluntarily, and has made an informed decision to request covered medication;
 - (4) Offer to the patient to rescind the request for covered medication before the second oral request;
 - (5) Notation on the form provided by the Director that all requirements of the Act have been met;
 - (6) Notation on the form provided by the Director of all steps taken to carry out the patient's request for covered medication, including the medication dispensed or prescribed;
- (d) The consulting physician's:
 - (1) Diagnosis and prognosis of the patient;
 - (2) Verification that the patient is capable, acting voluntarily, and has made an informed decision to request covered medication;
- (e) The report by the psychiatrist or psychologist of the outcome and determinations of counseling, if applicable; and
- (f) For a patient who died after using a covered medication:
 - (1) The patient's age at death;
 - (2) The patient's education level, if known;

- (3) The patient's race or ethnicity;
- (4) The patient's sex;
- (5) The patient's type of insurance, if known;
- (6) The patient's terminal disease; and
- (7) Whether the patient died due to using a covered medication.

302.7 When a patient has been referred to a consulting physician, as required by § 302.5(c), the consulting physician shall:

- (a) Examine the patient and the patient's medical records to confirm, in writing, the attending physician's diagnosis and prognosis that the patient has a terminal disease;
- (b) Verify, in writing, to the attending physician that the patient:
 - (1) Is capable, including that patient does not suffer from a psychiatric or psychological disorder or depression that impairs the patient's judgment;
 - (2) Is acting voluntarily; and
 - (3) Has made an informed decision;
- (c) Complete the consult form provided by the Director and immediately submit the completed form to the attending physician; and
- (d) Refer the patient for counseling if the consulting physician believes the patient may have a psychiatric or psychological disorder or depression that impairs the patient's judgment.

302.8 The attending physician shall not dispense or prescribe covered medication to a patient who has been referred for counseling until the patient receives counseling and the psychologist or psychiatrist who counseled the patient determines and reports to the attending physician that the patient does not have a psychiatric or psychological disorder or depression that causes impaired judgment. The attending physician shall document the results of the psychological or psychiatric evaluation on the form to be submitted to the Department.

302.9 After the attending physician has completed all the requirements of §§ 302.5 and 302.6, and after the attending physician offers the patient another opportunity to rescind the patient's request, the attending physician may dispense directly to the

patient, or prescribe, covered medication, including ancillary medication intended to minimize patient discomfort.

- 302.10 If the attending physician prescribes covered medication rather than dispensing it directly to the patient, the attending physician first shall offer the patient another opportunity to rescind the patient's request and then shall:
- (a) Contact a pharmacist who is licensed in the District and authorized to participate in the Program, and inform the pharmacist of the prescription;
 - (b) Deliver the written prescription to the pharmacist personally, by telephone, by facsimile, or electronically; and
 - (c) Record the date the prescription was delivered in the patient's medical record.
- 302.11 If the attending physician dispenses the medication, the attending physician shall immediately notify the Department on a form provided by the Director that covered medication has been dispensed. The Department shall provide the notification form, or information contained therein, to the OCME.
- 302.12 Within thirty (30) days after a patient dies from ingesting a covered medication, or as soon as practicable after the health care provider is made aware of a patient's death resulting from ingesting the covered medication, the health care provider shall notify the Department of the patient's death.

303 PHARMACIST PARTICIPATION

- 303.1 A pharmacist licensed in the District may participate in the Program after completing the training module approved by the Director.
- 303.2 A pharmacist shall only provide covered medication to a qualified patient when the pharmacist has received the prescription for covered medication from the attending physician.
- 303.3 After a pharmacist has prepared a prescription for covered medication, the pharmacist shall dispense the covered medication only to the following:
- (a) The qualified patient;
 - (b) The attending physician; or
 - (c) An agent the qualified patient has designated to the pharmacist verbally or in writing.

303.4 If the qualified patient has verbally designated an agent to receive covered medication, the pharmacist shall, as soon as practicable, document the name of the person the qualified patient has verbally designated as an agent.

303.5 Immediately upon dispensing covered medication, the pharmacist shall notify the attending physician by facsimile or electronically, and shall notify the Department by emailing the Pharmacy Dispensing Form to the address provided on the Form. The Department shall provide the Pharmacy Dispensing Form, or information contained therein, to the OCME.

304 FUNERAL SERVICES AND DEATH RECORDS REQUIREMENTS

304.1 Neither a funeral director nor any funeral services personnel shall disclose to anyone any information they may have that the decedent has participated in the Program.

304.2 Death record clearances by the OCME shall be required for all deaths occurring in the District of Columbia for which covered medications have been dispensed regardless of disposition type or place. Death record clearance includes review of the death certificate to ensure that the:

- (a) Cause of death is etiologically specific; and
- (b) Manner of death is appropriate for a non-OCME physician (natural) or as determined by the Chief Medical Examiner.

304.3 Within forty-eight (48) hours after death, the physician in charge of a patient's care for the condition that resulted in death shall complete, sign, and return the medical certification portion of the death certificate to the funeral director.

304.4 An attending physician completing the death certificate for a decedent who participated in the Program shall identify the cause of death as the underlying medical condition consistent with the International Classification of Diseases without reference to the fact that the decedent ingested a covered medication.

304.5 An attending physician completing the death certification for a decedent who participated in the Program shall not include any of the following terms in the cause of death or manner of death sections:

- (a) PAS (physician assisted suicide);
- (b) MAID (medical assistance in dying or medically assisted dying);
- (c) Physician Assisted;
- (d) DWD (death with dignity);

- (e) Legally prescribed or legal prescription;
- (f) Physician-assisted dying;
- (g) The term for any covered medication; and
- (h) Any reference to the Act or this chapter.

304.6 A death record related to a participant in the Program shall only list “natural” as the manner of death, or as otherwise determined by the Chief Medical Examiner.

304.7 The Registrar may require an attending physician for a patient who participated in the Program to furnish related information to the Registrar sooner than the thirty (30)-day notification deadline provided for in the Act if necessary to complete the certificate of death.

305 SAFE DISPOSAL OF COVERED MEDICATION

305.1 If a patient participating in the Program chooses not to use covered medication, the patient, or an agent the patient has designated to dispose of unused covered medication, shall not:

- (a) Dispose of covered medication by flushing it down a toilet, sink, sewer, or any other source that may result in the covered medication being conducted to the waters of the District; or
- (b) Return the covered medication to a pharmacy or the physician that dispensed the covered medication.

305.2 A person in possession of unused covered medication, regardless of whether the person is the patient or an agent of the patient, shall safely dispose of the covered medication. Safe disposal may consist of the following:

- (a) Take the covered medication out of the original container;
- (b) Mix the covered medication with an undesirable substance such as cat litter or used coffee grounds;
- (c) Place the mixture of covered medication and undesirable substance into a disposable container, such as a used plastic food container or sealable bag;
- (d) Conceal or remove personal information, including the prescription number, from the prescription container by scratching off the information or covering it with permanent black marker; and

- (e) Place the sealed container and the empty covered medication containers into the household trash.

306 CONFIDENTIALITY

306.1 No person may permit inspection of, disclose information contained in, or copy or issue a copy of any part of a record or related death record except as authorized by the Act and this chapter.

306.2 The Registrar may authorize the disclosure of information contained in death records, including Death with Dignity supporting documentation, for research purposes.

399 DEFINITIONS

399.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Act—the Death with Dignity Act of 2016, effective February 18, 2017 (D.C. Law 21-182; D.C. Official Code §§ 7-661.01 *et seq.*), applicable as of June 6, 2017.

Agent—a person chosen by a qualified patient to receive covered medication on the patient’s behalf, to safely dispose of unused covered medication on the patient’s behalf, or both.

Attending physician—the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

Capable—having the mental capacity to make and communicate health care decisions to a health care provider.

Consulting physician—a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s disease and who is willing to participate in the provision of covered medication to a qualified patient in accordance with the Act.

Covered medication—a drug, which when prescribed for a person with a terminal illness, is intended to result in humane and peaceful death. This term includes: Secobarbital, Pentobarbital, Phenobarbital, chloral hydrate, and morphine sulfate.

Day—Calendar day.

Department—Department of Health.

Director—Director of the Department of Health.

Health care professional—a physician who is a doctor of osteopathic medicine (DO), a doctor of allopathic medicine (MD), or a pharmacist (PharmD).

Health care provider—a person, partnership, corporation, facility, or institution that is licensed, certified, or authorized under District law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

Oral request—means:

- (a) Spoken in-person communication or sign language interpretation;
- (b) Communication over the telephone;
- (c) Communication through an electronic speech generation device; or
- (d) A request, by a patient who is not capable of using the means of communication described in (a) and (b), that is written or typed by the patient in the attending physician's presence and is immediately given directly to the attending physician by the patient.

Program—the process authorized by the Act by which a qualified patient may request covered medication from a physician and self-administer covered medication to achieve humane and peaceful death.

Record—a certificate, report, or form submitted to the Director for the Program.

Registrar—the person appointed by the Director to administer the system of vital records for the District.

Terminal disease—an incurable and irreversible disease that has been medically confirmed and is expected, within reasonable medical judgment, to result in death within six (6) months.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF FINAL RULEMAKING

The Director of the Department of Motor Vehicles (“Director”), pursuant to the authority set forth in Sections 1825 and 1826 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-904 and 50-905 (2014 Repl.)), Sections 6 and 7 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121, 1125; D.C. Official Code §§ 50-2201.03 and 50-1401.01 (2014 Repl.)), and Mayor’s Order 2016-077, dated May 2, 2016, hereby gives notice of the adoption of the following amendments to Sections 106 (Special Physical Requirements and Examinations: Persons with Diabetes, Seizure Disorders, Alteration or Loss of Consciousness, and Hearing Impairment) and 111 (Re-Examination Requirements) of Chapter 1 (Issuance of Driver Licenses) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (“DCMR”).

The rulemaking expands the resources available for a person age seventy (70) or over seeking a driver license or renewal of a driver license by allowing a medical practitioner, such as a physician’s assistant, rather than just a physician, to certify that the individual is physically and mentally competent to operate a motor vehicle, and repeal the reference to a Medical Board and referral of a driver involved in a traffic fatality to the Department of Human Services for a medical examination.

The Proposed Rulemaking was published in the *D.C. Register* on September 29, 2017 at 64 DCR 009636. No comments were received. No changes were made to the text of the proposed rules. The final rules were adopted on November 1, 2017 and will be effective upon publication of this notice in the *D.C. Register*.

Chapter 1, ISSUANCE OF DRIVER LICENSES, of Title 18 DCMR, VEHICLES AND TRAFFIC, is amended as follows:

Sections 106, SPECIAL PHYSICAL REQUIREMENTS AND EXAMINATIONS: PERSONS WITH DIABETES, SEIZURE DISORDERS, ALTERATION OR LOSS OF CONSCIOUSNESS, AND HEARING IMPAIRMENT, is amended as follows:

Subsections 106.1, 106.7, 106.8, 106.9 and 106.10 are amended by striking the word “physician” wherever found and inserting the phrase “licensed medical practitioner” in its place.

Subsection 106.2 is amended by striking the phrase “Medical Board for evaluation” and inserting the phrase “the Department of Motor Vehicles’ Driver Services Administrator for review and approval” in its place.

Subsection 106.3 is amended by striking the phrase “Medical Board for evaluation and clearance” and inserting the phrase “the Department of Motor Vehicles’ Driver Services Administrator for review and approval” in its place.

Subsection 106.12 is amended by striking the phrase “Medical Board” and inserting the phrase “the Department of Motor Vehicles’ Driver Services Administrator” in its place.

Section 111, RE-EXAMINATION REQUIREMENTS, is amended as follows:

Subsection 111.3(b) is repealed.

Subsection 111.5(a) is amended by striking the word “physician” wherever found and inserting the phrase “licensed medical practitioner” in its place.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**NOTICE OF FINAL RULEMAKING****AND****Z.C. ORDER NO. 14-11D****Z.C. Case No. 14-11D****(Text Amendment – 11 DCMR)****(Subtitle A § 301, Vesting Provision for Z.C. Case No. 14-11B)****October 30, 2017**

The Zoning Commission for the District of Columbia (Commission), pursuant to the authority set forth in § 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 the adoption of an amendment to Chapter 3 (Administration and Enforcement) of Title 11 (Zoning Regulations of 2016), Subtitle A (Authority and Applicability), of the District of Columbia Municipal Regulations (DCMR). Subtitle A contains administrative regulations (*See* 11 DCMR § 200.3) and, therefore, this amendment is not considered to be an amendment to the text of the Zoning Regulations and no referral to the National Capital Planning Commission (NCPC) is required. (*See* 11-Z DCMR § 603.1(b).)

This amendment is an exception to 11-A DCMR § § 301.4. That provision vests development rights based upon the Zoning Regulations in place on the date a building permit is issued. The exemption applies to building permit applications that proposed construction of a rear wall of an attached or semi-detached building that would extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property, if the application was filed and accepted as complete by the Department of Consumer and Regulatory Affairs on or before March 27, 2017 and not substantially changed after filing. Such construction became unlawful on April 28, 2017 as a result of the Commission's March 28, 2017 vote to adopt amendments proposed in Z.C. Case No. 14-11B (Case 14-11B Prohibition).

As of May 12, 2017, there were at least twenty (20) applications filed on or before March 27, 2017, which proposed rear additions that were now subject to the Case 14-11B Prohibition, and thirteen (13) remained pending as of September 14, 2017. Several had already received zoning clearance. Compliance with the Case 14-11B Prohibition would require extensive and costly re-design or obtaining a special exception, either of which cause delays. In response, the Commission adopted this amendment on an emergency basis on May 22, 2017, and re-adopted it September 14, 2017. The permanent adoption of the rule will allow any of the twenty (20) applications that remain pending to continue to be processed notwithstanding the Case 14-11B Prohibition and provides a permanent explanation as to how these structures were permitted. Other than these twenty (20) applications, the adoption of this rule does not relieve any other building permit application from compliance with the Case 14-11B Prohibition.

At the time it adopted the first emergency, the Commission also authorized the publication of a notice of proposed rulemaking and the advertisement of a public hearing. A Notice of Emergency and Proposed Rulemaking was published in the June 16, 2017 edition of the *D.C.*

Register at 64 DCR 5735, along with notice that a public hearing would be held on September 14, 2017.

Written comments in support of the proposed rule were received from Cunningham Quill Architects, PLLC; Ian and Allison Milne; Fowler Architects; Stephen and Ann Reiling; Heliocentric, LLC; Maher Kalijian; Tara Guelig and Yuri Horwitz; and Lerch Early Brewer on behalf of Giuseppe Farrugio. No comments in opposition were submitted. Generally, the comments expressed concern about the loss of time and money associated with rear addition projects where a special exception would now be necessary absent the adoption of a vesting provision for the Case 14-11B Prohibition. Lerch Early Brewer's comments on behalf of Giuseppe Farrugio requested broader amendment language to allow projects to vest if a significant project milestone was achieved or a land use government approval obtained on or before March 27, 2017.

Through a letter dated September 7, 2017, the Chair of Advisory Neighborhood Commission (ANC) 6C advised the Commission that on July 12, 2017, at a duly noticed, regularly scheduled monthly meeting and with a quorum present, the ANC voted 6-0 to submit a letter stating its strong opposition to Z.C. Case No. 14-11D. The ANC identified one major issue and concern. The ANC has a pending appeal before the Board of Zoning Adjustment (BZA) involving construction authorized through a building permit that was filed and accepted as complete before March 27, 2017 and issued March 31, 2017. The structure includes a rear addition that exceeds the size disallowed by the Case 14-11D Prohibition, but since that prohibition was not in effect on March 31, 2017, construction of the rear addition was matter of right as of building permit issuance. In its appeal, the ANC is alleging zoning violations unrelated to the rear addition. The ANC is concerned that if it prevails on the appeal, and the owner submits new plans that address the errors it alleges, the project will be vested as to the non-compliant rear addition because of the proposed amendment. The original permit application was filed and accepted as complete prior to the March 27, 2017 vesting date of the proposed amendment. If the non-compliant rear addition is vested, there would be no requirement for the owner to obtain special exception approval to build it. The ANC stated that "[s]uch a result would be grossly unfair to the abutting property owners, whose situation is exactly the type Order 14-11B sought to address."

At the public hearing on September 14, 2017, the Commission heard testimony from persons in support of and in opposition to the permanent adoption of the rule. The written testimony of the Committee of 100 on the Federal City (Committee) opposed the amendment's vesting provision because they considered it to be inconsistent with the Commission's intent when it adopted the Case 14-11B Prohibition to stop the proliferation of unsightly "pop-back" structures throughout the District. Laura Richards, in her testimony on behalf of the Committee, further stated that if the purpose of the rules was to vest the twenty (20) applicants with pending applications, the emergency rule addressed that issue and that there was no need for a permanent rule.

Lynn Grosso's written and oral testimony expressed concern about the amendment's possible effect on projects where building permits had been applied for prior to March 27, 2017, but not pursued, thereby creating an indefinite vesting. In Ms. Grosso's case, her neighbor filed a building permit involving a rear addition that she believes has been pending since January 2016, but is not being pursued. She therefore suggested revising the proposed amendment so that

vesting would apply only to building permit applications filed on or within six months prior to March 27, 2017. Ms. Grosso further urged the Commission to clarify the terms "filed and accepted as complete" and "not substantially changed after filing".

The Commission also heard oral testimony from Leonard and Sheryl Bennett, who filed for building permits on March 31, 2017, four days after the March 27, 2017 vesting date. Mr. Bennett explained that that they purchased their property in June 2016 with the intent to renovate, but because the property was located in a historic district their renovation plans were required to go through historic preservation and that process was not completed until early 2017. Thereafter, they revised their plans to comply with the recommendation received and therefore were not able to file for a building permit until four days after the vesting date had passed. The Bennetts did not indicate the date that the application was accepted as complete by DCRA or whether it has been modified.

At the conclusion of the hearing, the Commission requested the Office of Planning (OP) to submit a supplemental report concerning the length of time an application for building permit can be dormant in the Department of Consumer and Regulatory Affairs' system and still be considered active. Through a Supplemental Report dated October 5, 2017, OP advised the Commission that an application for building permit is deemed abandoned one hundred eighty (180) days after the filing date unless such application has been pursued in good faith or a permit has been issued.

At its public meeting on October 16, 2017, the Commission discussed the Department of Consumer and Regulatory Affairs' response and voted to refer the case to NCPC, which as explained above was unnecessary. Upon recognizing that such review was not needed, the case was placed on the agenda for the Commission's October 30, 2017 public meeting.

At the public meeting on October 30, 2017, the Commission took final action to adopt the amendment without making changes to the text.

In response to the written comments and testimony, the Commission declined to expand the vesting to include significant project milestones achieved or land use governmental approvals obtained on or before March 27, 2017 because its limited intent was to assure that only twenty (20) applications reached building permit based on the date it took final action in Z.C. Case No. 14-11B. An expansion of the vesting to land use governmental approvals would address the circumstance faced by the Bennetts, who apparently received conceptual historic preservation review approval in January of this year and would be vested under the expansion suggested. Though the Commission is sympathetic for the couple's predicament, moving the vesting date to March 31, 2017, the date the Bennett filed their application, may not prove helpful to their circumstances because it is the date the application is accepted as complete that vests the project not the date the application is filed. The Commission does not know what date the Bennetts' application was accepted as complete. As noted, March 27, 2017 was chosen because that was the date the Commission took final action on Z.C. Case No. 14-11B. This is consistent with the Commission's past practice of choosing early vesting dates based on its actions (setdown or final action vote), and not the needs of a particular project. Applying for a special exception may add

some delay and cost, but that burden is relatively modest when compared to the need for the Case 14-11B Prohibition to be consistently enforced.

The Commission is equally sympathetic to Ms. Gross' issue, but notes that if in fact her neighbor has failed to pursue the permit in good faith since January of 2016, that application should have been deemed abandoned by DCRA. The 20 building permit applications of concern to the Commission were all active as of March 27th and therefore Ms. Gross' suggested revision is not needed. As to Ms. Gross' suggestion that the terms "filed and accepted as complete" and "not substantially changed after filing" need clarification, the Commission has already set down Z.C. Case No. 17-03 to accomplish that.

Finally, as to the Committee of 100's thoughtful testimony, the Commission does not view this limited vesting as inconsistent with its intent to require special exception approval for extensive rear additions. As the Committee notes, the rule's scope will affect a limited number of projects. As to the need for a permanent rule, the Commission cannot be certain that DCRA's review of remaining applications will be completed by the termination of the second emergency on January 12, 2018. Also, there is value in having a permanent regulatory explanation for divergences of this kind.

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 ANCs, which in this case are all ANC's. To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. In this instance, only ANC 6C submitted a written report, in which it stated its strong opposition to the amendment for the reasons discussed above. As noted, the ANC is concerned about a project including a rear addition that was issued a building permit prior to the effective date of the Case 14-11B Prohibition; the ANC is appealing the permit for reasons unrelated to the rear addition. The ANC is concerned that should it prevail, the property owner would still be able to build the rear addition without special exception approval because the Zoning Administrator might consider the rear addition to be vested based on the fact the building permit application was filed and accepted as of March 27, 2017. Though the Commission understands the ANC's concern, the Commission does not find the ANC's advice to be persuasive. The application for the project the ANC is appealing was filed and accepted as complete by March 27, 2017 but the project is not vested on this basis but rather because the project was issued a building permit on March 31, 2017. The ANC apparently believes that if it prevails on its appeal, the project must not be only re-designed to eliminate the zoning violations found, but must also be redesign so that its rear addition, which the ANC did not challenge, is consistent with the Case 14-11 Prohibition. As explained, the ANC is concerned that this divestment will not occur should the proposed rule be adopted. Even assuming that a rear addition vested as a result of the issuance of a building permit becomes divested should the BZA find that other aspects of the project violate the Zoning Regulations, the mere possibility that this divestment would not occur in is not sufficient cause for not going forward with this amendment. All that will be lost is a BZA review on the rear addition. Whatever value is lost is more than made up in the certainty afforded through the permanent adopting of this rule at this time.

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

Chapter 3, ADMINISTRATION AND ENFORCEMENT, of Title 11-A DCMR, AUTHORITY AND APPLICABILITY, is amended as follows:

A new § 301.14 is added to § 301, BUILDING PERMITS, to read as follows:

301.14 Notwithstanding Subtitle A § 301.4, Subtitle D §§ 306.3, 306.4, 706.3, 706.4, 1006.2, 1006.3 1206.3, and 1206.4, and Subtitle E §§ 205.4 and 205.5, a rear wall of an attached or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property provided that the building permit application for such construction was filed and accepted as complete by the Department of Consumer and Regulatory Affairs on or before March 27, 2017 and not substantially changed after filing.

On May 22, 2017, upon the motion of Commissioner Turnbull, as seconded by Commissioner Shapiro, the Zoning Commission **ADOPTED** this rulemaking on an emergency basis and **AUTHORIZED** publication of a notice of proposed rulemaking and advertisement of a public hearing 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 and approve)

On September 14, 2017, upon the motion of Vice Chairman Miller, as seconded by Commissioner May, the Zoning Commission **RE-ADOPTED** this rulemaking on an emergency basis at the conclusion of its public hearing by a vote of 4-0-1 (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Peter A. Shapiro, not present, not voting).

On October 30, 2017, upon the motion of Commissioner Shapiro, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** this rulemaking 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 *D.C. Register*; that is on November 24, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, and the intent to adopt on a permanent basis, of an amendment to amend Chapters 9 (Medicaid Program) and 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), operates the Medicaid Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) under the supervision of DHCF. The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012, and ending November 19, 2017. An amendment to renew the ID/DD Waiver for another five-year period beginning November 20, 2017, and ending November 19, 2022, was approved by the Council through the Medicaid Assistance Program Emergency Amendment Act of 2017, effective July 20, 2017 (D.C. Act 22-0104; D.C. Official Code § 1-307.02(a)(11)(D) (2017 Supp.)), and subsequently was sent by DHCF to CMS for its approval. DHCF anticipates that CMS will approve the renewal amendment effective November 20, 2017.

This rulemaking repeals Section 926 (Environmental Accessibility Adaptation Services), Section 1914 (Vehicle Modifications), and Section 1927 (Personal Emergency Response System (PERS) Services), and makes amendments to Sections 1901, 1904, 1906, 1909, 1910, 1913, 1915, 1916, 1920, 1922, 1924, 1925, 1928, 1929, 1931, 1936, 1938, 1941, 1942, and 1999. These emergency and proposed rules are necessary to amend the twenty-eight (28) provisions that govern participation in the ID/DD Waiver because of changes, clarifications, or other improvements to the language. The renewal application: (a) continues all utilized services and supports for people currently enrolled in the ID/DD Waiver; (b) eliminates two (2) services that were not utilized – Environmental Accessibility Adaptation Services (29 DCMR § 926) and Vehicle Modification Services (29 DCMR § 1914); (c) eliminates Personal Emergency Response System (PERS) Services (29 DCMR § 1927) and incorporates it into a new service known as Assistive Technology Services (29 DCMR § 1941); and (d) includes new Parenting Support Services (29 DCMR § 1942). In this emergency and proposed rulemaking, twenty-three (23) current rules are being amended, three (3) rules are being repealed, and two (2) new rules are being created as follows:

- (1) Environmental Accessibility Adaptation Services, 29 DCMR § 926, is being repealed;
- (2) Covered Services and Rates, 29 DCMR § 1901, is amended to reflect the addition of two (2) new services and the repeal of three (3) former services, and to clarify service authorization requirements and DHCF reimbursement rules;
- (3) Provider Qualifications, 29 DCMR § 1904, is amended to align with DDS's current policies and to clarify the requirement for providers to comply with DDS's procedures, transmittals and issued guidance;
- (4) Provider Enrollment Process, 29 DCMR § 1905, is amended to align with the current DHCF and DDS provider enrollment process;
- (5) Requirements for Direct Support Professionals, 29 DCMR § 1906, is amended to add qualifications for peer supporters for Parenting Support Services and Family Training Services, to allow a Certificate of Individualized Education Program (IEP) Completion as an alternative to a high school diploma for Direct Support Professionals (DSPs), and to clarify the right to accommodations under the Americans with Disabilities Act of 1990, effective July 26, 1990 (Pub. L. No. 101-336, 104 Stat. 328);
- (6) Records and Confidentiality of Information, 29 DCMR § 1909, is amended to update requirements for record-keeping and storage;
- (7) Personal Care Services, 29 DCMR § 1910, is amended to align with Medicaid State Plan requirements regarding provider qualifications and to clarify that such services may occur at home, in the day setting, at school or work, or in the community;
- (8) One-Time Transitional (OTT) Services, 29 DCMR § 1913, is amended to clarify the definitions of essential household furnishings and services necessary for the person's health, safety and wellbeing, to ensure OTT providers' use of Person-Centered Thinking skills/tools, and to limit the service to a one-time, non-recurring expense;
- (9) Vehicle Modification Services, 29 DCMR § 1914, is being repealed;
- (10) Host Home Without Transportation Services, 29 DCMR § 1915, is amended to require use of Person-Centered Thinking and Discovery tools and skills, to realign and add requirements for the ID/DD waiver provider and the principal care provider, to describe provider requirements for Medicaid reimbursement, and to require compliance with the HCBS settings rule;
- (11) In-Home Supports Services, 29 DCMR § 1916, is amended to clarify where a person may receive in-home support services; to allow services to be provided in person, by phone or by any other technology device that supports the use of video-audio communication, subject to limitations and the person's Individual Support Plan; to add a new High Intensity In-Home Supports Services tier; and to require an In-Home Supports Plan;
- (12) Day Habilitation Services, 29 DCMR § 1920, is amended to include requirements for Small Group Day Habilitation; to require the use of the Learning Log for certain notes; and to require any new settings to fully comply with the requirements of the HCBS settings rule; and to add daily census limitations, and service limitations based on age and Level of Need day composite scores;

- (13) Employment Readiness Services, 29 DCMR § 1922, is amended to describe when a person can receive this service along with Vocational Rehabilitation services, to include requirements for Medicaid reimbursement, to describe requirements for 1:1 staffing, to add daily census limitations, to time limit this service, and to require all Employment Readiness providers to become Rehabilitation Services Administration providers;
- (14) Family Training Services, 29 DCMR § 1924, is amended to include a small group option and to allow peer supporters as an alternative to professional providers;
- (15) Individualized Day Supports Services, 29 DCMR § 1925, is amended to clarify that the service may be used for employment discovery and exploration; to change qualifications for certain direct support professionals; and to allow a person to start and end their day at their place of residence if preferred;
- (16) Personal Emergency Response System (PERS) Services, 29 DMCR § 1927, is being repealed;
- (17) Physical Therapy Services, 29 DCMR § 1928, is amended to clarify where services may be delivered;
- (18) Residential Habilitation Services, 29 DCMR § 1929, is amended to limit the size to not more than four (4) people per setting with grandfathering for current residents; to require compliance with the HCBS settings rule; to clarify staffing ratios and requirements;
- (19) Skilled Nursing Services, 29 DCMR § 1931, is amended to align with the Medicaid State Plan requirements regarding provider qualifications and to clarify where services may be delivered and when Medicaid reimbursement is available for additional skilled nursing services;
- (20) Speech, Hearing and Language Services, 29 DCMR § 1932, is amended to clarify where services may be delivered and to include a new small group option;
- (21) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 1933, is amended to require compliance with the Home and Community-Based Services (HCBS) settings rule; limit the size of small groups to two (2) to four (4) workers; to require benefits counseling for participants; to allow services to be provided in person, by phone or by any other technology device that supports the use of video-audio communication, subject to limitations and the person’s Individual Support Plan; and to describe requirements for Medicaid reimbursement eligibility;
- (22) Supported Living Services, 29 DCMR § 1934, is amended to require compliance with the requirements of the HCBS settings rule; to require a daily schedule; to describe requirements for Medicaid reimbursement for twenty-four (24) hour one-to-one Supported Living Services in a single occupancy supported living residence; clarify staffing requirements; and to allow Supported Living Periodic services to be provided in person, by phone or by any other technology device that supports the use of video-audio communication, subject to limitations and the person’s Individual Support Plan;
- (23) Wellness Services, 29 DCMR § 1936, is amended to be more person-centered; to clarify provider qualifications for professionals delivering wellness services; and to modify service limitations;

- (24) Cost Reports and Audits, 29 DCMR § 1937, is amended to rename it as Cost Reports, Audits, and Oversight Monitoring; to set forth the DHCF Division of Program Integrity's audit review processes; to establish the DHCF Long Term Care Administration's oversight and monitoring responsibilities; and to update the subsections on provider cost reporting;
- (25) Home and Community-Based Setting Requirements, 29 DCMR § 1938, is amended to detail requirements for compliance with the HCBS settings rule, for example, the person's right to choice, privacy, dignity, opportunities to seek employment, and full access to the greater community;
- (26) Assistive Technology Services, 29 DCMR § 1941, is a new regulation which includes eligibility requirements, provider qualifications, and service limitations for Assistive Technology Services;
- (27) Parenting Supports Services, 29 DCMR § 1942, is a new regulation which includes eligibility requirements, provider qualifications, individual and small group services, and service limitations for Parenting Supports Services; and
- (28) Definitions, 29 DCMR § 1999, is amended to delete ten (10) terms and phrases that are no longer used in the ID/DD Waiver; to amend eight (8) terms and phrases in order to, among other things, better use People First language and to update the definition of Qualified Intellectual Disabilities Professionals to align with the ID/DD waiver renewal; and to include one (1) new term.

To facilitate stakeholder input, copies of this Notice of Emergency and Proposed Rulemaking and a redlined version of these regulatory changes are available on the DDS website at <https://dds.dc.gov/page/waiver-amendment-information> and on the DHCF website at <https://dhcf.dc.gov>.

The ID/DD Waiver serves some of the District's most vulnerable residents. In order to prevent impediments that adversely affect access to quality Medicaid services delivered by eligible Medicaid providers, DHCF is taking emergency action for the immediate preservation of the health, safety and welfare of persons receiving these services. These rules must be in place upon the effective date of the renewal amendment.

The emergency rulemaking was adopted on November 8, 2017, and will become effective on the date CMS approves the renewal amendment or November 20, 2017, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until March 8, 2018, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

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

Section 926, ENVIRONMENTAL ACCESSIBILITY ADAPTATION SERVICES, is deleted in its entirety and amended to read as follows:

926 [REPEALED].

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, is amended as follows:

Section 1901, COVERED SERVICES AND RATES, is amended to read as follows:

1901 COVERED SERVICES AND RATES

1901.1 Services available under the Waiver shall include the following:

- (a) Assistive Technology Services, 29 DCMR § 1941;
- (b) Behavioral Support Services, 29 DCMR § 1919;
- (c) Companion Services, 29 DCMR § 1939;
- (d) Creative Arts Therapies Services, 29 DCMR § 1918;
- (e) Day Habilitation Services, 29 DCMR § 1920;
- (f) Dental Services, 29 DCMR § 1921;
- (g) Employment Readiness Services, 29 DCMR § 1922;
- (h) Family Training Services, 29 DCMR § 1924;
- (i) Host Home without Transportation Services, 29 DCMR § 1915;
- (j) Individualized Day Supports Services, 29 DCMR § 1925;
- (k) In-Home Supports Services, 29 DCMR § 1916;
- (l) Occupational Therapy Services, 29 DCMR § 1926;
- (m) One-Time Transitional Services, 29 DCMR § 1913;
- (n) Parenting Supports Services, 29 DCMR § 1942;
- (o) Personal Care Services, 29 DCMR § 1910;
- (p) Physical Therapy Services, 29 DCMR § 1928;
- (q) Residential Habilitation Services, 29 DCMR § 1929;

- (r) Respite Services, 29 DCMR § 1930;
- (s) Skilled Nursing Services, 29 DCMR § 1931;
- (t) Speech, Hearing and Language Services, 29 DCMR § 1932;
- (u) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 1933;
- (v) Supported Living Services, 29 DCMR § 1934; and
- (w) Wellness Services, 29 DCMR § 1936.

1901.2 For dates of services beginning November 20, 2016, which aligns with Waiver Year 5, the Medicaid provider reimbursement rate(s) to be paid for the Waiver services identified in Subsection 1901.1 shall be posted on the District of Columbia Medicaid fee schedule at www.dc-medicaid.com. DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s) for Waiver services.

1901.3 No Waiver provider shall provide Waiver services unless in receipt of a Service Authorization from the Department on Disability Services, Developmental Disabilities Administration (DDS/DDA) for that Waiver service. A Service Authorization is an approval for a prescribed Waiver service issued by DDS/DDA to the provider prior to rendering service and is located on MCIS, DDS/DDA's case management information system, or its successor. DDS/DDA will not retroactively authorize services, except in the event of an emergency in which the provider has notified DDS and provided the services in good faith to avoid any service disruptions for the person, and subject to the approval of the Deputy Director for DDA.

1901.4 DHCF shall not reimburse any Waiver provider for services to the extent the provider:

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

- (e) Fails to comply with the terms of the Medicaid Provider Agreement.
- 1901.5 Each Waiver provider shall agree to accept, as payment in full, the amount determined by DHCF as reimbursement for the authorized Waiver services provided to beneficiaries.
- 1901.6 Each Waiver provider shall agree to bill any and all known third-party payers prior to billing Medicaid.
- 1901.7 A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed.

Subsections 1904.1 and 1904.4, and a new Subsection 1904.5, of Section 1904, PROVIDER QUALIFICATIONS, are amended to read as follows:

- 1904.1 Home and Community-Based Services (HCBS) Waiver provider agencies shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the Medicaid provider enrollment application and the following organizational information:
 - (a) A resume and three (3) letters of reference demonstrating that the owner(s)/operator(s) have a degree in the Social Services field or a related field with at least three (3) years of experience of working with people with intellectual and developmental disabilities; or a degree in a non-Social Services field with at least five (5) years of experience working with people with intellectual and developmental disabilities, unless waived by the Department on Disability Services Deputy Director for the Developmental Disabilities Administration;
 - (b) Documentation proving that the program manager of the HCBS Waiver provider agency has a Bachelor's degree in the Social Services field or a related field with at least five (5) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities or a Master's degree in the Social Services field or a related field with at least three (3) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities;
 - (c) A copy of the business license issued by the Department of Consumer and Regulatory Affairs (DCRA);
 - (d) A description of ownership and a list of major owners or stockholders owning or controlling five percent (5%) or more outstanding shares;

- (e) To the extent its corporate structure includes a Board of Directors, a list of Board members representing a diverse spectrum of the respective community and their affiliations;
- (f) A roster of key personnel, with qualifications, resumes, background checks, local license, if applicable, and a copy of their position descriptions;
- (g) A copy of the most recent audited financial statements of the agency performed by a third-party Certified Public Accountant or auditing company (not applicable for a new organization);
- (h) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreements, if applicable;
- (i) A copy of the Bylaws or similar documents regarding conduct of the agency's internal affairs;
- (j) A copy of the certificate of good standing from the DCRA;
- (k) Organizational policies and procedures, such as personnel policies and procedures required by DDS and available at:
<http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1>;
- (l) A continuous quality assurance and improvement plan that includes, but is not limited to, requirements of the applicable Waiver services, and community integration and person-centered thinking principles and values as intentional outcomes for persons supported;
- (m) A copy of professional/business liability insurance of at least one million dollars (\$1,000,000) prior to the initiation of services, or more as required by the applicable Human Care Agreements;
- (n) A sample of all documentation templates, such as progress notes, evaluations, intake assessments, discharge summaries, and quarterly reports;
- (o) For providers of Supported Living, Supported Living with Transportation, Host Homes, and Residential Habilitation, a Continuity of Operations Plan;
- (p) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day

Habilitation, Individualized Day Supports, and Employment Readiness, evidence of fiscal and organizational accountability; and

- (q) Any other documentation deemed necessary to support the approval as a provider.

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1904.4 In order to provide services under the Waiver and qualify for Medicaid reimbursement, DDS approved HCBS Waiver providers shall meet the following requirements:

- (a) Maintain a copy of the approval letter issued by DHCF;
- (b) Maintain a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for services under the Waiver;
- (c) Obtain a National Provider Identification (NPI) number from the National Plan and Provider Enumeration System website;
- (d) Comply with all applicable District of Columbia licensure requirements and any other applicable licensure requirements in the jurisdiction where services are delivered;
- (e) Maintain a copy of the most recent Individual Support Plan (ISP) and Plan of Care that has been approved by DDS for each person;
- (f) Maintain a signed copy of a current Human Care Agreement with DDS for the provision of services, if determined necessary by DDS;
- (g) Ensure that all staff are qualified, properly supervised, and trained according to DDS policy;
- (h) Ensure that a plan is in place to provide services for non-English speaking people pursuant to DDA's Language Access Policy available at: <http://dds.dc.gov/publication/language-access-policy>;
- (i) Offer the Hepatitis B vaccine to all employees;
- (j) Ensure that staff are trained in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), as set forth in 29 CFR § 1910.1030;
- (k) Ensure compliance with the provider agency's policies and procedures and DDS policies, procedures, transmittals and issued guidance. This includes,

but is not limited to: reporting of unusual incidents, human rights, language access, employee orientation objectives and competencies, individual support plan, most integrated community based setting, health and wellness standards, behavior management, and protection of the person's funds, available at:

<http://dds.dc.gov/page/policies-and-procedures-dda>;

- (l) For providers of Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness services, complete mandatory training in Person-Centered Thinking, Supported Decision-Making, Supporting Community Integration, and any other topics as determined by DDS, and in accordance with the most current DDS Training Policy and Procedure;
- (m) Provide a written staffing schedule for each site where services are provided, if applicable;
- (n) Maintain a written staffing plan, if applicable;
- (o) Develop and implement a continuous quality assurance and improvement system, that includes person-centered thinking, community integration, and compliance with the HCBS Settings Rule, to evaluate the effectiveness of services provided;
- (p) Ensure that a certificate of occupancy is obtained, if applicable;
- (q) Obtain approval from DDS for each site where residential, day, employment readiness, and supported employment services are provided prior to purchasing or leasing property;
- (r) Ensure that, if services are furnished in a private practice office space, spaces are owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice;
- (s) Ensure that a sole practitioner shall individually supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner;
- (t) Complete the DDA abbreviated readiness process, if applicable;
- (u) Participate, and support willing waiver recipients to participate, in the National Core Indicators surveys, or successors surveys, as requested by DDS and/ or its assigned contractors; and

- (v) Adhere to the specific provider qualifications in each service rule.

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1904.6

In order to provide services under the Waiver and qualify for Medicaid reimbursement, a Qualified Intellectual Disabilities Professional (QIDP), also known as a Qualified Developmental Disabilities Professional or QDDP as defined in D.C. Official Code § 7-1301.03(21), shall oversee the initial habilitative assessment of a person; develop, monitor, and review ISPs; and integrate and coordinates Waiver services. The QIDP shall have at least one (1) of the following qualifications:

- (a) A psychologist with at least a master's degree from an accredited program and with specialized training or one (1) year of experience in intellectual disabilities;
- (b) A physician licensed to practice medicine in the District and with specialized training in intellectual disabilities or with one (1) year of experience in treating persons with intellectual disabilities;
- (c) An educator with a degree in education from an accredited program and with specialized training or one (1) year of experience in working with persons with intellectual disabilities;
- (d) A social worker with a master's degree from an accredited school of social work and with specialized training in intellectual disabilities or with one (1) year of experience in working with persons with intellectual disabilities;
- (e) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification and who has specialized training in intellectual disabilities or one (1) year of experience in working with persons with intellectual disabilities;
- (f) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or one (1) year of experience in working with persons with intellectual disabilities;
- (g) A human service professional with at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology) and who has specialized training in intellectual disabilities or one (1) year of experience in working with persons with intellectual disabilities; or

- (h) A registered nurse with specialized training in intellectual disabilities or with one (1) year of experience in working with persons with intellectual disabilities.

Section 1905, PROVIDER ENROLLMENT PROCESS, is amended to read as follows:

1905 PROVIDER ENROLLMENT PROCESS

- 1905.1 Prospective providers shall send a letter of intent to DDA to enroll as a Medicaid provider of Waiver services to the Letter of Intent mailbox at letterofintent.potentialproviders@dc.gov. DDA will provide a written response of disposition to the prospective provider within three (3) business days of receipt of the letter of intent.
- 1905.2 With acceptance of a qualified letter of intent, prospective providers will receive an invitation to the DDA Quarterly Prospective Provider's Information Session. Prospective providers shall be notified by DDA of the DHCF contractor schedule for the Provider Data Management Systems (PDMS) training. After the PDMS training, providers shall access the PDMS to initiate the Medicaid provider enrollment application.
- 1905.3 Upon receipt of the Medicaid provider enrollment application by DDA, prospective providers shall receive a denial letter or an invitation to be interviewed. The denial letter shall be issued by DDA within sixty (60) business days from the time a Medicaid provider enrollment application is received by DDA and shall meet the requirements set forth in § 1905.5.
- 1905.4 If the Medicaid provider enrollment application is incomplete, the prospective provider will be notified by the DHCF contractor. DDA may issue a denial letter, in accordance with § 1905.5, within sixty (60) business days from the time a Medicaid provider enrollment application is received.
- 1905.5 The denial letter shall include the following:
- (a) The basis and reasons for the denial of the prospective provider's Medicaid provider enrollment application;
 - (b) The prospective provider's right to dispute the denial of the application and to submit written argument and documentary evidence to support its position; and
 - (c) Specific reference to the particular sections of relevant statutes and/or regulations.
- 1905.6 Prospective providers shall be required to interview with the DDA Provider Review Committee (PRC) Panel for further eligibility towards final approval.

Prospective providers shall receive written notification from DDA to attend a DDA scheduled interview with the PRC Panel.

- 1905.7 Pursuant to the committee's recommendation and the overall merit of the application, DDA shall either issue a denial letter to the prospective provider or send the application of the DDA-recommended provider to DHCF for its review within five (5) business days of the committee's review date. The denial letter shall be issued in accordance with the requirements set forth in § 1905.5. If a denial letter was issued by DDA, the prospective provider may submit a written dispute for reconsideration in no more than five (5) business days and/or appeal the denial of the application to the Office of Administrative Hearings in accordance with Chapter 94 of Title 29 DCMR.
- 1905.8 Upon approval by DDA, the DDA Provider Relationship Specialist will facilitate the newly enrolled provider's acknowledgement of final approval to DHCF via the DHCF's contractor portal PDMS.
- 1905.9 If a denial letter was issued by DDA and there was no reconsideration requested or granted the prospective provider shall be prohibited from submitting an application to enroll as a provider for a period of one year from the date the denial letter was issued.
- 1905.10 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR; to the provider certification standards established by DDS, currently known as the Provider Certification Review process; to all policies and procedures promulgated by DDS that are applicable to providers during the provider's participation in the Waiver program; and to participation and cooperation in the reporting requirements pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by order of the Superior Court of the District of Columbia.
- 1905.11 Each provider who has been terminated or has voluntarily withdrawn from the Waiver program may not reapply to the Waiver program for a period of at least one (1) year.

Section 1906, REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS, is amended to read as follows:

1906 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS

- 1906.1 The basic requirements for all employees and volunteers providing direct services, with the exception of peer support employees as set forth in subsection 1906.3, are as follows:

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

- (b) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;
- (c) Possess a high school diploma, Certificate of Individual Educational Program (IEP) Completion, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;
- (d) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;
- (e) Complete pre-service and in-service training as described in DDS policy;
- (f) Have the ability to communicate with the person to whom services are provided;
- (g) Be able to read, write, and speak the English language, with reasonable accommodation as appropriate in accordance with the Americans with Disabilities Act;
- (h) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and
- (i) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*) for the following employees or contract workers:
 - (1) Individuals who are unlicensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code, who assist licensed health professionals in providing direct patient care or common nursing tasks;
 - (2) Nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides; and
 - (3) Housekeeping, maintenance, and administrative staff who may foreseeably come in direct contact with Waiver recipients or patients.

- (j) Be acceptable to the person for whom they are providing supports.
- 1906.2 Volunteers who work under the direct supervision of an individual licensed pursuant to Chapter 12 of Title 3 of the D.C. Official Code shall be exempt from the unlicensed personnel criminal background check requirement set forth in § 1906.1(i).
- 1906.3 The basic requirements for peer support employees providing direct services in Parenting Supports and Family Training services are as follows:
- (a) Be at least eighteen (18) years of age;
 - (b) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*);
 - (c) Complete DDS required training for peer support employees;
 - (d) Be acceptable to the person for whom they are providing supports; and
 - (e) The person is a person with a disability or the family or other unpaid caregiver of a person with a disability and has experience with at least two of the following:
 - (1) Advocating on behalf of people with disabilities;
 - (2) Being trained in advocacy on behalf of people with disabilities by an advocacy organization;
 - (3) Being trained and certified in peer counseling by a certified peer counseling organization;
 - (4) Being knowledgeable about the scope of services provided by DDS/DDA and the Child and Family Services Agency;
 - (5) Possessing skills in Engagement, Relationship Building, and Collaboration with Families and Caregivers; and/or
 - (6) Being knowledgeable about Community Systems, Partnerships and Resources

Subsections 1909.1, 1909.2, 1909.5, 1909.8, and 1909.11, and a new Subsection 1909.12, of Section 1909, RECORDS AND CONFIDENTIALITY OF INFORMATION, are amended to read as follows:

- 1909.1 Each Waiver provider shall allow appropriate personnel of DHCF, DDS and other authorized agents of the District of Columbia government or of other jurisdictions where services are provided, and the federal government full access, whether the visit is announced or unannounced, to all waiver provider locations, including access to the people receiving supports and all records, in any form. For purposes of this section, the term “records” includes, but is not limited to, all information relating to the provider, the services and supports being provided, and the people for whom services are provided; any information which is generated by or in the possession of the provider; the information required by the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*) or its successor; and any information required by the regulations implementing the HCBS Waiver program.
- 1909.2 Each Waiver provider entity shall maintain the following records at the site of service delivery, where applicable, for each person receiving services for monitoring and audit reviews. For people receiving In-Home Supports, the person and his or her support team make the determination of which records to store in the person’s home and which are kept off-site.
- (a) General information including each person’s name, Medicaid identification number, address, telephone number, date of birth, sex, name and telephone number of emergency contact person, physician’s name, address and telephone number, and the DDS Service Coordinator’s name and telephone number;
 - (b) A copy of the most recent DDS approved ISP and Plan of Care indicating the requirement for and identification of a provider who shall provide the services in accordance with the person’s needs;
 - (c) A record of all service authorization and prior authorizations for services;
 - (d) A record of all requests for change in services;
 - (e) The person’s medical records;
 - (f) The person’s financial records;
 - (g) A discharge summary;
 - (h) A written staffing plan, if applicable;

- (i) A back-up plan detailing who shall provide services in the absence of staff when the lack of immediate care poses a serious threat to the person's health and welfare;
- (j) Documents which contain the following information:
 - (1) The results of the provider's functional analysis for service delivery;
 - (2) A schedule of the person's activities in the community, if applicable, including strategies to execute goals identified in the ISP and the date and time of the activity, the staff as identified in the staffing plan;
 - (3) Teaching strategies utilized to execute goals in the ISP and the person's response to the teaching strategy as further described in Subsection 1909.11; and
 - (4) A support plan with SMARTER goals and outcomes using the information from the DDS approved person-centered thinking and discovery tools, the functional analysis, the ISP, Plan of Care, and other information as appropriate to assist the person in achieving his or her goals;
- (k) Any records relating to adjudication of claims;
- (l) Any records necessary to demonstrate compliance with all rules and requirements, guidelines, and standards for the implementation and administration of the Waiver;
- (m) Progress notes, as set forth in each service rule, containing the following information:
 - (1) The progress in meeting the specific goals in the ISP and Plan of Care that are addressed on the day of service and relate to the provider's scope of service;
 - (2) The health or behavioral events or change in status that is not typical to the person;
 - (3) Evidence of all community integration and inclusion activities attended by the person and related to the person's ISP goals and for each, a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?" DDS recommends the use of the Person Centered Thinking Learning Log for recording this information;

- (4) The start time and end time of each shift for any services received including the signature of the Direct Support Professional (DSP)(Note that, where progress notes are written using an electronic record system, an electronic signature meets the requirement for signature.);
 - (5) For services that require awake overnight shifts, the progress notes shall include the support provided as indicated in the specific residential schedule; and
 - (6) The matters requiring follow-up on the part of the Waiver service provider or DDS.
- (n) Reports on a quarterly basis, containing the following information (DDS recommends use of the Person Centered Thinking 4+1 Tool for recording this information.):
- (1) An analysis of the goals identified in the ISP and Plan of Care and monthly progress towards reaching the goals;
 - (2) The service interventions provided and the effectiveness of those interventions;
 - (3) A summary analysis of all habilitative support activities that occurred during the quarter;
 - (4) For providers of Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, the quarterly report shall include information on the person's employment, including place of employment, job title, hours of employment, salary/hourly wage, information on fringe benefits, and current checking, savings and burial fund balances, as applicable;
 - (5) Any modifications or recommendations that may be required to be made to the documents described under Subsection 1909.2(j), ISP, and Plan of Care from the summary analysis; and
 - (6) For providers of Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, and High Intensity In-Home Supports, documentation of the review, implementation, and update, if applicable, of the person's Health Care Management Plan, in accordance with the DDS Health and Wellness Standards.

...

1909.5 Each Waiver provider shall ensure the person’s privacy and limit access to the person’s records to only authorized individuals, including the person. Waiver providers shall not publicly post mealtime protocols, clinical therapy schedules, or any other health information.

...

1909.8 Each Waiver provider shall implement a written strategy that outlines where and how records are stored. For residential programs, the written strategy will be unique to each home and developed in coordination with the people who live there. For non-facility based programs, the written strategy shall identify the location for the records and shall include the process for making them available when audits and other reviews are conducted.

...

1909.11 For purposes of Subsection 1909.2(j)(3), the teaching strategy used to execute goals in the ISP shall include enough information so that any provider staff member or DSP could step in to assist the person in completing the goal. At minimum, the teaching strategy shall contain:

- (a) The goal statement;
- (b) The purpose of the goal/measurable outcome;
- (c) The materials needed to implement the goal;
- (d) The preferred learning/teaching style for the person;
- (e) The learning steps (*i.e.* individual actions that need to be completed for success); and
- (f) The method for measuring success.

1909.12 A staff member, designated by the provider, develops and implements an annual supervision plan for each staff member who is classified as a DSP. The annual supervision plan contains the following information:

- (a) The name of the DSP and date of hire;
- (b) The DSP’s place of employment, including the name of the provider entity or day services provider;
- (c) The name of the DSP’s supervisor who shall have at least two (2) years’ experience working with persons with intellectual and developmental disabilities;

- (d) A documentation of performance goals for the DSP;
- (e) A description of the DSP’s duties and responsibilities;
- (f) A comment section for the DSP’s feedback;
- (g) A statement of affirmation by the DSP’s supervisor confirming statements are true and accurate;
- (h) The signature, date, and title of the DSP; and
- (i) The signature, date, and title of the DSP’s supervisor.

Subsections 1910.2, 1910.12, and 1910.23 of Section 1910, PERSONAL CARE SERVICES, are amended to read as follows:

1910.2 Personal care services are identical in scope to those described in 29 DCMR § 5000. Personal care services may be delivered at home, in the day setting, at school or work, or in the community.

...

1910.12 To be eligible for Medicaid reimbursement for personal care services, a provider shall:

- (a) Be a home care agency licensed pursuant to the requirements for home care agencies as set forth in the Health Care and Community Residence Facility, Hospice and Home 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.* (2012 Repl.)), and implementing rules;
- (b) Be enrolled as a Medicare home health agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 CFR § 484;
- (c) Comply with the requirements under Section 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR; and
- (d) Comply with all of the requirements for Medicaid State Plan personal care service providers.

...

1910.23 In order to be eligible for Medicaid reimbursement, personal care services shall not be provided at the same time as the following ID/DD Waiver services, except that a person may receive personal care services at school and at work:

- (a) Residential Habilitation;
- (b) Supported Living; and
- (c) Host Home.

Subsections 1913.5, 1913.9, and 1913.12 of Section 1913, ONE-TIME TRANSITIONAL SERVICES, are amended to read as follows:

1913.5 Medicaid reimbursable OTT services may include the following:

- (a) Security deposits required in order to obtain a lease for an apartment or home. In order to qualify for OTT services, the lease or other written residency agreement shall include all of the responsibilities and protections from eviction that apply under the jurisdiction’s landlord-tenant laws.
- (b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items and bed linens, which reflect the person’s preferences, and other expenses required to occupy or maintain an apartment or home;
- (c) Start-up fees or deposits for utility or service access, including telephone, gas, electricity, and water;
- (d) Services necessary for the person’s health, safety and wellbeing, such as pest eradication, including bed bugs that may require multiple treatments as part of the process, and one-time cleaning prior to occupancy;
- (e) Home accessibility adaptations such as, but not limited to, carpeting and one-time general home repair, including roof repair, painting and fence repair; and
- (f) Moving expenses related to transporting personal belongings.

...

1913.9 Each provider of Medicaid reimbursable OTT services shall submit a written report, thirty (30) days after the service has been completed, that includes an itemized list of all expenses tied to the person’s ISP goal, referencing the receipts provided, and evidence that the OTT provider used Person-Centered Thinking skills and/or tools to support the person to select items and set up his or her new home.

...

1913.12 Medicaid reimbursement for OTT services shall be limited to a maximum dollar amount per person as a one-time, non-recurring expense.

Section 1915, HOST HOME WITHOUT TRANSPORTATION SERVICES, is amended to read as follows:

1915 HOST HOME WITHOUT TRANSPORTATION SERVICES

1915.1 The purpose of this section is to establish standards governing Medicaid eligibility for host home without transportation services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver), and to establish conditions of participation for providers of host home services.

1915.2 Host home without transportation services enable a person to retain or improve skills related to: health; activities of daily living; money management; community mobility; recreation; cooking; shopping; use of community resources; community safety; and to develop other adaptive skills needed to live in the community, based upon what is important to and for the person as documented in his or her Individual Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.

1915.3 To be eligible for Medicaid reimbursement of host home without transportation services, each person shall demonstrate a need for support for up to twenty-four (24) hours per day, and the services shall be:

- (a) Provided in a private home, referred to as “host home,” which may be leased or owned by the principal care provider; and
- (b) Identified as a need in the person’s ISP and Plan of Care.

1915.4 The total number of persons living in the host home (including those served in the ID/DD Waiver) and who are unrelated to the principal care provider cannot exceed three (3).

1915.5 In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall:

- (a) Use the Department on Disability Services (DDS) approved Person-Centered Thinking tools and the person’s Positive Personal Profile and Job Search and Community Participation Plan to develop a functional assessment that includes what is important to and for the person, within the first month of the person residing in the host home. This assessment shall be reviewed and revised annually or more frequently as needed;

- (b) Participate as a member of the person's support team, and coordinate with the principal care provider to participate, including making recommendations for the development of the ISP and Plan of Care;
- (c) Assist in the coordination of all services that the person may receive;
- (d) Develop a program plan with measurable outcomes using the functional assessment from the DDS approved Person-Centered Thinking tools, Positive Personal Profile and Job Search and Community Participation Plan, the ISP, Plan of Care, and other information as appropriate to enable the person to safely reside in and be integrated as a member of his or her community; and
- (e) Review the person's ISP and Plan of Care goals, DDS-approved Person-Centered Thinking tools, Positive Personal Profile and Job Search and Community Participation Plan, objectives, and activities at least quarterly, and more often as necessary, and submit quarterly reports to the person, family and/or guardian, and DDS Service Coordinator in accordance with the requirements described, under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1915.6

In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall coordinate care with the principal care provider, Direct Support Professionals (DSP) working for the respite provider, and others as applicable, to ensure the person's needs are met in the following categories of support, unless the person has demonstrated independence and capacity in any of the areas. Supports provided shall be related to the person's ISP goals and habilitative in nature, aimed at teaching the person to increase his or her skills and self-reliance. These categories or areas of support shall include, but are not limited to, the following:

- (a) Room and board (not included in the ID/DD Waiver reimbursement rate);
- (b) Assistance with eating and food preparation, including learning about healthy eating choices;
- (c) Assistance with personal hygiene;
- (d) Assistance with dressing;
- (e) Assistance with monitoring the person's health and physical condition;
- (f) Assistance with the administration of medication;
- (g) Assistance with communication between the person and other health care providers;

- (h) Assistance with interpersonal and social skills;
- (i) Assistance with household chores;
- (j) Assistance with mobility;
- (k) Assistance with motor and perceptual skills;
- (l) Assistance with problem-solving and decision-making;
- (m) Maintenance of medical records;
- (n) Maintenance of financial records;
- (o) Assistance with attending health care appointments, by the coordination of transportation to and from the person's appointments;
- (p) Assistance with planning and attending events;
- (q) Habilitative support in activities of daily living and/or therapeutic goals and objectives as described in the ISP and Plan of Care;
- (r) Assistance with enhancing the person's opportunities for engagement in community life, including but not limited to social, recreational, and religious activities utilizing community resources;
- (s) Assistance with ensuring that the person's adaptive equipment is appropriate and functioning;
- (t) Provide assistance with finding opportunities for employment in the community in a competitive and integrated setting; and
- (u) Other supports that are identified as important to or for the person as identified in his or her ISP.

1915.7

In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall coordinate the delivery of professional services to each person residing in a host home that may include, but are not limited to, the following disciplines or services:

- (a) Medical Care;
- (b) Dentistry;
- (c) Education;

- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Behavioral support;
- (i) Assistive Technology;
- (j) Parenting Supports;
- (k) Speech, hearing and language therapy; and
- (l) Wellness.

1915.8 In order to be reimbursed by Medicaid, each ID/DD Waiver provider that oversees a person's host home placement shall:

- (a) Receive and review packets submitted by DDS requesting development of a host home for a particular applicant;
- (b) Respond to inquiries for host home development in a timely manner;
- (c) Recruit a principal care provider to deliver host home services;
- (d) Identify and develop on-going relationships with local medical professionals, including those in community health clinics (*e.g.*, dentist, physician, psychiatrist, psychologist, occupational therapist, physical therapist, etc.);
- (e) Coordinate and document a matching process that includes at a minimum two (2) visits, at least one (1) of which must be an overnight stay by the person at the prospective principal care provider's home. This should include exploration of the person's and principal care provider's culture, language, preferences and routines;
- (f) Coordinate transportation with the DDS Service Coordinator for visits to the prospective host home of the principal care provider;
- (g) Participate as a member of the person's support team, in accordance with his or her preference, including making recommendations for the development of the person's ISP and Plan of Care;

- (h) Arrange for essential supports, including training, supplies and equipment to be in place prior to the person's move into a host home setting;
- (i) Arrange for non-essential, but recommended and necessary supports to be put into place subsequent to a person's move into a host home setting; and
- (j) Provide information as needed to the person, the person's family or authorized representative, support team, DDS Service Coordinator, and the principal care provider.

1915.9

In order to be reimbursed by Medicaid, the ID/DD Waiver provider shall:

- (a) Coordinate the use of transportation for each person residing in a host home to his or her day programs, places of employment, and/or community engagements as needed;
- (b) Coordinate general support monitoring at least twice per month to review conditions in the host home, the person's health status, implementation of the ISP, update activity schedules, review medical and other appointments, and draft progress notes;
- (c) Coordinate health care monitoring for each person residing in the host homes, including frequency of nursing visits, and document this in the person's Health Care Management Plan. This must include, at a minimum, monitoring by a registered nurse (RN) at least every ninety (90) days for persons with no prescribed medications, and at least monthly for persons on prescribed medications. Additionally, the ID/DD Waiver provider shall ensure that the RN completes progress notes during each visit as well as quarterly reports, as appropriate;
- (d) Provide respite to the principal care provider for up to a total of fourteen (14) days per year. If respite care and emergency support is provided in the host home, Medicaid reimbursement payments for host home without transportation services shall continue for fourteen (14) days. If respite is provided in another location, the host home services percentage of the reimbursement rate shall be paid to the ID/DD Waiver provider;
- (e) Provide emergency support to the person enrolled in the ID/DD Waiver, in the event that an emergency renders a principal care provider unable to provide supports;
- (f) Coordinate compliance with DDS policies and procedures;
- (g) Provide training to ensure that the principal care provider is knowledgeable about DDS policies and procedures;

- (h) Ensure that, for people who take prescribed medications and need assistance with administration, it is provided by a Trained Medication Employee, at a minimum; and
- (i) Accompany the person to annual review court hearings and provide reports to be utilized during court hearings, where applicable.

1915.10 [RESERVED]

1915.11 In order to be reimbursed by Medicaid, the host home residence and the ID/DD Waiver provider shall meet the DDS Certification Standards as set forth in the Human Care Agreement between the principal care provider, the ID/DD Waiver provider, and DDS, if applicable.

1915.12 In order to be reimbursed by Medicaid, host home without transportation services shall be administered by supported living service providers or residential habilitation service providers, which in this section shall be referred to as the ID/DD Waiver provider.

1915.13 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home services without transportation shall demonstrate verification of passing the DDS Provider Certification Review (PCR) for residential or respite services for at least three (3) years, unless waived by a designated DDA staff. Waiver providers with less than three (3) years of PCR certification shall provide verification of at minimum of three (3) years of experience providing residential or respite services to the ID/DD population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as an ID/DD Waiver provider in the District of Columbia, if applicable.

1915.14 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home without transportation services shall agree to the following:

- (a) Participate on the person's support team, in accordance with his or her preference;
- (b) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment) of Chapter 19 of Title 29 DCMR; and
- (c) Maintain a signed, current Human Care Agreement with DDS when deemed necessary by DDS.

1915.15 In order to be reimbursed by Medicaid, each host home residence and supporting ID/DD Waiver provider located out-of-state shall be licensed and/or certified in accordance with the host state's laws and regulations and/or consistent with the

terms and conditions set forth in an agreement between the District of Columbia and the host state. Each out-of-state host home and ID/DD Waiver provider shall comply with the following additional requirements:

- (a) Remain in good standing in the jurisdiction where the program is located;
- (b) Submit a copy of the current license, annual certification or survey performed by the host state and provider's corrective action to DDS;
- (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews; and
- (d) Successfully meet the certification review requirements of DDS.

1915.16 Each principal care provider and direct support professional (DSP) providing host home without transportation services shall meet all of the requirements in Section 1906 (Requirements for direct support professionals) of Chapter 19 of Title 29 DCMR.

1915.17 In order to be reimbursed by Medicaid, each principal care provider shall agree to cooperate and attend mandatory training sessions provided by DDS and the ID/DD Waiver provider regarding abuse and neglect, incident reporting, and training on the unique needs of the person, and to allow DDS Service Coordinator and other DDS employees' reasonable access to the host home.

1915.18 In order to be reimbursed by Medicaid, host home without transportation services shall be authorized for reimbursement in accordance with the following provider requirements:

- (a) DDS shall provide a written service authorization before the commencement of services;
- (b) The ID/DD Waiver provider shall conduct an assessment and develop a host home assessment plan with training goals and techniques that will assist the principal care provider, within the first thirty (30) days of service delivery;
- (c) The service name and the ID/DD Waiver provider delivering services shall be identified in the ISP and Plan of Care;
- (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received; and
- (e) Services shall not conflict with the service limitations described under Subsection 1915.25.

- 1915.19 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home without transportation services shall maintain the following documents for monitoring and audit reviews:
- (a) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR;
 - (b) A copy of the person's most recent DDS approved ISP and Plan of Care;
 - (c) A current written staffing plan, if additional DSP support services in the home are needed;
 - (d) A written explanation of staffing responsibilities when the principal care provider is unavailable to provide support to the person enrolled in the ID/DD Waiver;
 - (e) Current financial records of expenditures of public and private funds for each person;
 - (f) The records of any nursing care provided pursuant to a physician ordered protocol and procedure, charting, and other supports provided in accordance with a physician's order relating to the development and management of the Health Care Management Plan; and
 - (g) Progress notes written by the principal care provider on a weekly basis and archived at the ID/DD Waiver provider's central office.
- 1915.20 In order to be reimbursed by Medicaid, each ID/DD Waiver provider of host home without transportation services shall comply with Sections 1908 (Reporting Requirements), 1911 (Individual Rights), and 1938 (Home and Community-Based Setting Requirements) of Chapter 19 of Title 29 DCMR. All Host Home settings must fully comply with the requirements of the HCBS Settings Rule.
- 1915.21 Host home without transportation services shall not be reimbursed by Medicaid if they are billed at the same time as the following ID/DD Waiver services are provided to the person:
- (a) Supported Living;
 - (b) Residential Habilitation;
 - (c) Personal Care, unless provided when a person is working or in school;
 - (d) Respite; and

(e) In-Home Supports.

1915.22 In order to be eligible for Medicaid reimbursement, host home without transportation services shall not include a day when the person is hospitalized, on vacation, or other days during which the person is not residing at the host home, with the exception of days when the person is on vacation with the principal care provider or with other host home ID/DD Waiver provider supports.

1915.23 In order to be eligible for Medicaid reimbursement, host home without transportation services shall not include a day when the person is not residing at the host home, with the exception of days when the person is temporarily residing in a hotel or other facility due to an emergency situation.

1915.24 The following individuals shall not be authorized to enroll as an ID/DD Waiver provider of host home without transportation services for the person or as the principal care provider:

- (a) The person's legal guardian;
- (b) The person's parent;
- (c) The person's spouse; or
- (d) Any other legally responsible person.

1915.25 Reimbursement for host home without transportation services shall not include:

- (a) Cost of room and board;
- (b) Cost of facility maintenance, upkeep, and improvement;
- (c) Activities for which payment is made by a source other than Medicaid; and
- (d) Time when the person is in school or employed.

1915.26 The reimbursement rate for host home without transportation services is a daily inclusive rate based on the person's acuity level. The acuity level shall be determined by DDS based on the results of the Level of Need Assessment and Screening Tool, or its successor, or as documented in the person's ISP.

1915.27 The daily inclusive reimbursement rate for host home without transportation services shall be broken down by the person's acuity level into the basic support rate, the moderate support rate, and the intensive support rate. The host home without transportation services reimbursement rate shall include:

- (a) Programmatic supplies;
- (b) Oral/topical medication management;
- (c) General and administrative costs for ID/DD Waiver services;
- (d) Relief of the caregiver and emergency support;
- (e) All direct support costs based on the needs of the person; and
- (f) Additional supports provided by a DSP for up to twenty (20) hours per week.

1915.28 In the event that additional DSP supports are requested, the ID/DD Waiver provider shall submit to the DDS Service Coordinator, the following documents:

- (a) A written justification; and
- (b) A summary of the responsibilities of the DSP who is scheduled to provide the additional supports.

1915.29 Persons with extraordinary needs may be eligible to receive a specialized reimbursement rate not to exceed a maximum dollar amount per day, subject to DDS approval.

1915.30 Forty percent (40%) to sixty percent (60%) of the daily reimbursement rate shall be paid to the principal care provider by the ID/DD Waiver provider for support services. The remaining forty percent (40%) to sixty percent (60%) of the daily reimbursement rate shall be retained by the ID/DD Waiver provider for training, additional in-home support services based on the needs of the person, medication management, general and administrative costs for ID/DD Waiver services, general supervision, and relief and emergency coverage. The actual percentage of the daily reimbursement rate allocated between the principal care provider and the ID/DD Waiver provider shall be negotiated between the parties based on the specific support needs of the person.

1915.31 The person receiving host home without transportation services shall contribute an amount based on his or her Social Security benefits to the principal care provider to pay towards his or her room and board expenses.

Subsections 1916.2, 1916.4, 1916.11, and 1916.19 of Section 1916, IN-HOME SUPPORTS SERVICES, are amended to read as follows:

1916.2 In order to be reimbursed by Medicaid, in-home supports are services that may only be provided to people enrolled in the Waiver who have an assessed need for

assistance with acquisition, retention or improvement in skills related to activities of daily living that are necessary to enable the person to reside successfully at home in his or her community and participate in community activities based upon what is important to and for the person as documented in his or her Individual Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.

- (a) Services may be provided to people in the home or community, with the place of residence as the primary setting. A person may receive in-home supports services when his or her place of residence is his or her own home, a family home, a friend’s home, or transitional housing.
- (b) Services may be provided in person, by phone or by any other technology device that supports the use of video-audio communication, such as Skype, FaceTime, etc., as approved by the person and his or her support team and documented in the ISP. In-home supports services using technology to communicate with the person shall not exceed twenty (20) percent of the total hours of in-home supports services that the person receives each week.
- (c) For people with higher intensity support needs, high acuity in-home supports services are available with the additional supports described below in Subsection 1916.4.

...

1916.4 In order to be reimbursed by Medicaid, in-home supports services shall include a combination of hands-on care, habilitative supports, skill development and assistance with activities of daily living. Supports provided shall be aimed at teaching the person to increase his or her skills and self-reliance. In addition to the direct in-home supports eligible for reimbursement below in Subsection 1916.5, high acuity in-home supports shall also include the following:

- (a) Assistance in the coordination of behavioral, health and wellness services that a person may receive, including working with the person’s natural supports, if any, to ensure that each person enrolled in the Waiver receives the professional services required to meet his or her goals as identified in the person’s ISP and Plan of Care;
- (b) Development and implementation of the person’s Health Care Management Plan, in accordance with the DDS Health and Wellness Standards;
- (c) Training on the Health Care Management Plan for high acuity in-home supports Direct Support Professionals and any other residents of the person’s home who provide natural (unpaid) supports; and

- (d) Supports to ensure that staff delivering day habilitation, individualized day supports, companion, employment readiness, or supported employment services shall receive training about the person’s health care needs as identified in the person’s Health Care Management Plan, and are informed about those needs that are relevant to the person in those settings and that are identified in the person’s Health Care Management Plan and Behavior Support Plan, if applicable.

...

1916.11 In order to be reimbursed by Medicaid, an In-Home Supports Plan shall be developed by the provider within thirty (30) days of the start of the service authorization and shall be revised as needed and on an annual basis. The In-Home Supports Plan shall be maintained in the home where services are provided with a copy also maintained at the Provider’s main office. The In-Home Supports Plan shall include:

- (a) Activities and supports that will be provided during the service, based upon what is important to and important for the person, as identified in the Person Centered Thinking and Discovery tools and reflected in the person’s ISP;
- (b) A staffing plan and schedule;
- (c) A list of licensed non-medical professionals who will be providing services, if applicable; and
- (d) Emergency and contingency plans to address potential behavioral, health or emergency events.

...

1916.19 In-home supports services, including those provided in the event of a temporary emergency, shall be billed at the unit rate of fifteen (15) minutes and shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. There shall be a Medicaid reimbursement rate for both the in-home supports identified in Subsection 1916.5 and the high acuity in-home supports identified in Subsection 1916.4. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

Subsections 1920.4, 1920.10, 1920.11, and 1920.22, and new Subsections 1920.33, 1920.34, 1920.35, and 1920.36, of Section 1920, DAY HABILITATION SERVICES, are amended to read as follows:

1920.4 Medicaid reimbursable day habilitation services may also be delivered in small group settings at a ratio of 1:3 for persons who are medically and/or behaviorally complex, as verified by the DDA Level of Need (LON) Assessment and

Screening Tool, or its successor tool, and/or the person's Behavior Support Plan, and who would benefit from day habilitation services in a smaller setting. Small group day habilitation settings must include integrated skills building in the community and support access to the greater community. In order to be Medicaid reimbursable, small group day habilitation:

- (a) Cannot be provided in the same building as a large day habilitation facility setting;
- (b) Must be located in places that facilitate community integration and inclusion;
- (c) Must full comply with the requirements of the HCBS Settings Rule; and
- (d) May not be delivered in settings that have a daily census larger than fifteen (15) persons.

...

1920.10

In order to be reimbursed by Medicaid, day habilitation services shall consist of the following age-appropriate learning and/or habilitative activities that are based on what is important to and for the person as documented in his or her Individualized Support Plan and reflected in his or her Person-Centered Thinking and Discovery tools:

- (a) Training and skills development that increase participation in community activities, enhance community inclusion, and foster greater independence, self-determination and self-advocacy;
- (b) A diversity of activities that allow the person the opportunity to choose and identify his or her own areas of interest and preferences;
- (c) Activities that provide opportunities for socialization and leisure activities in the community, community explorations, and activities that support the person to build and maintain relationships;
- (d) Training in the safe and effective use of one or more modes of accessible public transportation;
- (e) Coordination of transportation to enable the person to participate in community activities;
- (f) Activities to support community integration and inclusion:
 - (1) These must occur in the community in groups not to exceed four (4) participants for regular day habilitation or three (3) participants for persons in small group day habilitation;

- (2) The activities, frequency and duration of these activities must be based on a person's interests and preferences as reflected in his or her Individualized Support Plan and Person-Centered Thinking and Discovery tools;
 - (3) There shall be a system to match persons together in community outings based on common interests, goals, and/ or friendships, including that a person is given a choice as to whom he or she would like to spend time with during these activities;
 - (4) Except when a person's ISP indicates a lower frequency, each person must be offered the opportunity to engage in community integration and inclusion activities at least once per week, and more if indicated by the ISP;
 - (5) The Department on Disability Services (DDS) encourages the use of learning logs for documentation of community integration and inclusion activities;
 - (6) At least quarterly, there must be a community integration activity for each person in which a Day Habilitation Program Coordinator, Assistant Director, and/or a Qualified Intellectual and Developmental Disabilities Professional participates to ensure: proper matching of participants; that the community outings reflect each person's interests, goals, or friendships; that each person receiving supports has opportunities to engage with people while in the community and to coach Direct Support Professionals (DSPs) on the skills needed to successfully connect persons receiving supports with the broader community, and this must be fully documented in the quarterly report; and
 - (7) Each day habilitation provider must have, and must train their DSP staff on, written protocols regarding how DSPs are expected to support persons in the community and requirements for documenting progress notes regarding community engagement activities; and
- (g) Individualized or group services that enable the person to attain his/her maximum functional level based on the ISP and Plan of Care.

1920.11 Day habilitation services shall include a Registered Nurse for the purposes of:

- (a) Medication administration;
- (b) Staff training in components of the Health Care Management Plan (regardless of the author of the plan); and

- (c) Oversight of Health Care Management Plans (regardless of the author of the plan).

...

1920.22 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements) of Chapter 19 of Title 29 DCMR and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR. Additionally, quarterly reports shall include a description of the person's activities in the community that support community integration and inclusion using the Person-Centered Thinking Learning Log, available on-line at: <https://dds.dc.gov/publication/person-centered-thinking-tools-procedure>.

...

1920.33 Any day habilitation setting that is established after the effective date of these regulations must fully comply with the requirements of the HCBS Settings Rule. The daily census of any new setting may not exceed fifty (50) people. The daily census includes people who receive support through the ID/DD HCBS Waiver and people who receive ICF/IID supports and are engaged in active treatment at the setting. However, the daily census does not include people who are in the setting only for morning arrival and afternoon departure and who spend the remainder of their day in the community.

1920.34 Non-small group day habilitation settings established prior to the effective date of these regulations that have a daily census under fifty (50) people may only receive authorizations for services for new participants up to a daily census of fifty (50) people in the setting. Current non-small group day habilitation settings that have a daily census of fifty (50) people or more in the setting will not be eligible for authorizations for services for new participants until their daily census is less than fifty (50) people in the setting.

- (a) The daily census includes people who receive support through the ID/DD HCBS Waiver and people who receive ICF/IID supports and are engaged in active treatment at the setting; and
- (b) The daily census does not include people who are in the setting only for morning arrival and afternoon departure and who spend the remainder of their day in the community.

1920.35 The following service limitations apply to new enrollees in non-small group day habilitation services:

- (a) No new enrollee may attend non-small group day habilitation for more than twenty-four (24) hours per week;

- (b) People who are sixty-four (64) years old and younger and have a level of need (LON) Day Composite score of two (2) or less would not be eligible to attend day habilitation services, unless approved by DDA due to extenuating circumstances or barriers that are expected to be resolved within six (6) months:
 - (1) This limitation is applicable to small group day habilitation services;
 - (2) Exceptions may only be granted by DDA for six (6) month periods and must be accompanied by an Individual Support Plan goal aimed at addressing the barrier to participation in other day or employment Waiver supports; and
 - (3) Alternative services, including Employment Readiness, Small Group Supported Employment, Individualized Day Supports, and Companion services that are offered during regular day service hours, would be available, in combination, for up to forty (40) hours per week.

- (c) People who are sixty-four (64) years old and younger and have a LON Day Composite score of three (3) or higher would not be eligible to attend day habilitation services, unless they already have tried other day and employment options for at least one year:
 - (1) This limitation is not applicable to small group day habilitation services;
 - (2) DDS may approve an exception to this prohibition due to extenuating circumstances or barriers that are expected to be resolved within six (6) months. Any exceptions must be accompanied by an ISP goal aimed at addressing the barrier to participation in other day or employment Waiver supports;
 - (3) Alternative services including Supported Employment, Individualized Day Supports, Employment Readiness and Companion would be available, in combination, for up to forty (40) hours per week.

1920.36 The following service limitations apply to people who are currently attending non-small group day habilitation services:

- (a) Within one (1) year from the Waiver renewal effective date, any person with a LON Day Composite score of one (1) or two (2) would no longer be eligible for day habilitation services and services may no longer be authorized:

- (1) For any person with a LON Day Composite score of one (1) or two (2), the person should be offered employment services, either through the Waiver, the Rehabilitation Services Administration, or other community-based options;.
 - (2) The transition from day habilitation services would be implemented on a rolling basis over the course of the year, with the new service limitation discussed and choice of alternative options offered at the person's next ISP meeting, subject to the exception described in subparagraph (3) of this subsection; and
 - (3) For a person with an ISP meeting that is scheduled within ninety (90) days of the Waiver effective date, DDA may authorize day habilitation services for up to ninety (90) days following the ISP meeting to ensure a smooth transition;.
- (b) Within one (1) year from the effective date of the Waiver renewal, non-small group day habilitation services may not be authorized for any Waiver participant with a LON Day Composite score above two (2) for more than twenty-four (24) hours per week, subject to the exception described below:
- (1) Wrap around services are available, including Supported Employment, Individualized Day Supports, Employment Readiness and Companion, in combination, for up to forty (40) hours per week;
 - (2) For people with an ISP meeting that is scheduled within ninety (90) days of the Waiver renewal effective date, DDA may authorize up to forty (40) hours of day habilitation services per week for up to ninety (90) days following the ISP meeting to ensure a smooth transition; and
 - (3) This limitation is not applicable to small group day habilitation services.
- (c) For any person who is currently receiving non-small group day habilitation services who will be subject to a reduction in authorized service hours due to the service limitations identified in these provisions, DDA will provide timely and adequate due process notice of the change in services and the person's appeal rights, using the process described in the DDS Person-Centered Planning Process and Individual Support Plans policy and procedures, or the successor documents.

Subsections 1922.5, 1922.8, 1922.12, 1922.19, 1922.21, 1922.24 and 1929.25, and new Subsections 1922.27, 1922.28, 1922.29 and 1922.30, of Section 1922, EMPLOYMENT READINESS SERVICES, are amended to read as follows:

1922.5 Volunteer experiences, as part of employment readiness, shall be time limited and must allow the person to develop experience and build skills to further the person’s employment goal, as identified in his or her ISP. A person enrolled in the Waiver may volunteer at a for-profit private sector entity, a not-for-profit organization or an approved government agency, but may not volunteer for the provider agency or another business affiliated with the provider. Volunteering at a for-profit business shall meet any requirements released by the U.S. Department of Labor. Guidance for those requirements can be found at: <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

...

1922.8 Each provider of Medicaid reimbursable employment readiness services shall develop an individualized service delivery plan reflecting the person enrolled in the Waiver’s interests, career preferences, choices, goals and prioritized needs. The plan shall:

- (a) Define the specific outcomes to be achieved over a specified period of time;
- (b) Describe the activities in the plan that are developed with the person and support the person on his or her pathway to competitive, integrated employment;
- (c) Describe how the plan shall support a person in the development of employment related skills, including social skills such as interviewing skills, professionalism, building and maintaining relationships, self-determination and self-advocacy, and attending to the person’s needs; and
- (d) Describe community-based employment preparation experiences that are related to the person’s employment goals.

...

1922.12 To receive Medicaid reimbursement, employment readiness services shall provide opportunities for community engagement, inclusion and integration.

...

1922.19 Employment readiness services shall be authorized for Medicaid reimbursement if:

- (a) DDS provided a written service authorization before the commencement of services;

- (b) The provider develops a Positive Personal Profile and Job Search and Community Participation Plan, conducts an additional initial vocational assessment and then an annual Positive Personal Profile and Job Search and Community Participation Plan and additional vocational assessment thereafter; and develops an employment readiness plan with training goals and techniques that will assist the person to achieve employment readiness goals and outcomes based upon the person’s interests and preferences. The initial Positive Personal Profile and Job Search and Community Participation Plan shall be completed within the first thirty (30) days of service delivery and the additional vocational assessment shall be completed within the first ninety (90) days of service delivery;
- (c) The service name and provider delivering services are identified in the ISP and Plan of Care;
- (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
- (e) Services shall not conflict with the service limitations described under Subsection 1922.20 (Service Limitations).

...

1922.21 Medicaid reimbursable employment readiness services shall not be provided, or billed at the same time as the following services:

- (a) Day Habilitation;
- (b) Supported Employment;
- (c) In-Home Supports;
- (d) Companion;
- (e) Personal Care Services; and
- (f) Individualized Day Supports.

...

1922.24 Employment readiness services are not available to people who are eligible to participate and are fully supported in programs funded under Section 110 of the Rehabilitation Act of 1973, enacted September 26, 1973, as amended (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Sections 602(16) and (17) of the Individuals with Disabilities Education Act, enacted April 13, 1970, as amended (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*). However, employment readiness services may be used to provide additional supports for employment for persons eligible for and participating in those programs.

1922.25 Each provider of employment readiness services shall maintain the required staff-to-person ratio, as indicated in the person's ISP and Plan of Care, with a maximum staffing ratio of 1:4. For a person that requires 1:1 supports (behavioral and/or medical) in an Employment Readiness setting:

- (a) The direct support professional (DSP) providing 1:1 employment readiness services shall be trained in physical management techniques, positive behavioral support practices and other training required to implement the person's health care management plan and behavioral support plan (BSP), in accordance with DDS's Training policy and procedure;
- (b) There shall be an approved BSP or physician's order for 1:1 staffing support; and
- (c) When required by a person's BSP, the DSP shall accurately complete the behavioral data sheets.

...

1922.27 No Employment Readiness setting may have a daily census that exceeds fifty (50) people who are in the setting for more than twenty (20) percent of the day, inclusive of people who receive supports through the Waiver and people who live in intermediate care facilities for individuals with intellectual disabilities and are engaged in active treatment at the setting.

1922.28 The following time limitations apply to the use of employment readiness services:

- (a) For people who are not currently enrolled in employment readiness services, the service may only be authorized for up to one (1) year, except that DDS may approve up to a one-year extension if there is documentation that the person is making progress towards competitive integrated employment and would benefit from extended services;.
- (b) For people who are currently enrolled in employment readiness services, the service may only be reauthorized for up to one (1) year from the person's next ISP effective date, except that DDS may approve up to a one-year extension if there is documentation that the person is making progress towards competitive integrated employment and would benefit from extended services. For people who have an ISP meeting scheduled within ninety (90) days of the Waiver renewal effective date, DDS may authorize an additional ninety (90) days of employment readiness services if needed to ensure a smooth transition.;
- (c) If a person has exhausted employment readiness services and has had at least one (1) year since the end of that service; expresses an interest in employment; and the support team has identified specific goals around

building employment skills that are reflected in the ISP, then DDS may authorize employment readiness services one time for up to one (1) year.;

- (d) Any time that a person loses his or her job, voluntarily leaves employment, or is employed and is seeking to learn new job skills, DDS may authorize employment readiness services for up to one (1) year; and.
- (e) For any person who is currently receiving employment readiness services who will be subject to a reduction in authorized service hours due to the service limitations listed above, DDS will provide timely and adequate due process notice of the change in services and the person's appeal rights in accordance with 29 DCMR § 1912 (Initiating, Changing, or Terminating Any Approved Service) and using the process described in the DDS Person-Centered Planning Process and Individual Support Plans policy and procedures, or the successor documents.

1922.29 As of the effective date of this regulation, any new Employment Readiness setting must be fully compliant with the requirements of the HCBS Settings Rule.

1922.30 Within one (1) year of the effective date of this Subsection 1922.30, all existing Employment Readiness providers must become enrolled as a provider for Rehabilitation Services Administration services. Any new Employment Readiness providers must become enrolled as a provider for Rehabilitation Services Administration services within one (1) year of becoming an HCBS Waiver Employment Readiness provider.

Subsections 1924.1, 1924.2 and 1924.8 of Section 1924, FAMILY TRAINING SERVICES, are amended to read as follows:

1924.1 This section shall establish conditions of participation for Medicaid providers enumerated in § 1924.9 ("Medicaid Providers") and family training services professionals and peer employees enumerated in § 1924.8 to provide family training services to caregivers of persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver).

1924.2 Medicaid reimbursable family training services are training, counseling, and other professional support services offered to uncompensated caregivers who provide support, training, companionship, or supervision to persons enrolled in the ID/DD Waiver.:

- (a) Family training services includes instruction about treatment regimens and other services included in the plan of care, use of equipment specified in the plan of care, and includes updates as necessary to safely maintain the individual at home. Counseling may be aimed at assisting the unpaid

caregiver in meeting the needs of the individual. All training and counseling must be included in the individual’s plan of care;

- (b) Family training services are available both as a 1:1 service for a person, and in small group settings not to exceed 1:4, based upon the recommendation of the person’s support team as reflected in the person’s Individual Support Plan (ISP). For persons enrolled in small group family training services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests;
- (c) Family training services may be provided by professionals or peer employees who meet the qualification at 1906.3; and
- (d) A person served through the ID/DD Waiver may utilize both 1:1 and small group family training services, and services provided by professionals and qualified peer employees subject to the limitations in Subsection 1924.14.

...

1924.8 Medicaid reimbursable family training services shall be provided by either professionals or peer employees as follows:

- (a) Professionals shall be qualified as at least one (1) of the following:
 - (1) Special Education Teacher;
 - (2) Licensed Graduate Social Worker;
 - (3) Licensed Clinical Social Worker;
 - (4) Physical Therapist;
 - (5) Occupational Therapist;
 - (6) Registered Nurse; or
 - (7) Speech Pathologist.
- (b) Peer employees shall meet the basic requirements set forth in 29 DCMR § 1906.3.

Subsections 1925.5, 1925.7, 1925.9, 1925.10, 1925.14, and 1925.20 of Section 1925, INDIVIDUALIZED DAY SUPPORTS SERVICES, are amended to read as follows:

1925.5 Medicaid reimbursable individualized day supports (IDS) services shall provide:

- (a) Highly individualized, pre-planned activities and opportunities that occur within integrated and inclusive community settings and that emphasize the development of skills to support community participation and involvement, self-determination, community membership, community contribution, retirement or vocational exploration, and life skills training;
- (b) Activities that maximize the person’s functional abilities for successful participation in integrated community activities and opportunities that match a person’s interests and goals;
- (c) Activities that support the person’s informed choice in identifying his or her own areas of interest and preferences, including but not limited to community mapping, employment exploration and discovery where appropriate;
- (d) Activities that provide community-based opportunities for personal and adult skill development through socialization, participation in membership-based community groups and associations, and forming and maintaining relationships with other community members;
- (e) Training in the safe and effective use of one or more modes of accessible public transportation and/or coordination and provision of transportation by the individualized day supports provider to support participation in community activities consistent with the intent of this service; and
- (f) For persons who live in their own home or with their family and who select this, IDS may include provision of one (1) nutritionally adequate meal including preparation, packaging, and delivery, as needed. The provision of meals shall take place during typical lunchtime hours (11 a.m. to 1 p.m.), prepared based on the person’s specific needs as per the Level of Need Assessment (LON), and when necessary, the nutritionist/doctor’s recommendation. This meal must be one-third (1/3) of a person’s Recommended Dietary Allowance (RDA) and must be comprised of foods the person enjoys eating when not medically contraindicated.

...

1925.7 Services shall only be authorized for Medicaid reimbursement if the following conditions are met:

- (a) DDS provides a written service authorization before service delivery begins;
- (b) The IDS service name and enrolled provider are identified in the ISP, Plan of Care and Summary of Support Services;

- (c) The amount and frequency of services to be received is documented in the ISP, Plan of Care and Summary of Support Services;
- (d) Services shall not conflict with the service limitations described under Subsection 1925.12;
- (e) The staffing plan and initial community integration plan described under Subsection 1925.10 are submitted within five (5) business days of the start of services using the template required by DDS;
- (f) An on-going community integration plan, using the template required by DDS, and described under Subsection 1925.10 is submitted thirty (30) calendar days, plus seven (7) business days, from the start date of the individualized day supports service and then within seven (7) business days after the conclusion of each ISP quarter; and
- (g) A quarterly report, using the template required by DDS, is submitted within seven (7) business days after the conclusion of each ISP quarter.

...

1925.9 In order to be eligible for Medicaid reimbursement, each DSP providing IDS services shall meet the following requirements:

- (a) To the extent the DSP is providing 1:1 individualized day supports services based upon the person’s medical or behavioral support needs, have at least one year of experience supporting people with Intellectual and Developmental Disabilities;
- (b) Meet additional training requirements for an Individualized Day Supports DSP, as required by DDS policy and procedure, within one year of the effective date of the waiver amendment;
- (c) Assist with the development of the initial and on-going community integration plans to implement the individualized day supports services;
- (d) Coordinate the scheduled activities specified under the initial and on-going community integration plans;
- (e) Assist with the writing of quarterly reports;
- (f) Utilize positive behavioral support strategies and crisis interventions as described in the approved Behavioral Support Plan to address emergency situations; and
- (g) Support persons enrolled in the Waiver to learn to use public transportation.

- 1925.10 Each provider approved to provide IDS services shall, in order to be eligible for Medicaid reimbursement, maintain documents for monitoring and audit reviews as described under Section 1909 (Records and Confidentiality of Information) of Chapter 19, of Title 29 DCMR, and maintain the following additional records:
- (a) A contingency plan that describes how the IDS will be provided when the primary DSP is unavailable; and, if the lack of immediate support poses a serious threat to the person's health and welfare, how the support will be provided when back-up DSPs are also unavailable;
 - (b) An initial community integration plan, during the first thirty (30) days a person is receiving IDS, utilizing the template required by DDS and containing the following information:
 - (1) The name of the person receiving the service;
 - (2) Service start date;
 - (3) The names of the primary and back-up DSPs that will be delivering the service during the first thirty (30) days of service;
 - (4) The back-up staffing plan if neither the primary or back-up DSPs are available to deliver the service;
 - (5) Goals in ISP that trigger authorization for individualized day supports;
 - (6) Schedule of service and calendar of activities for the first thirty (30) days;
 - (7) Back-up activities for the first thirty (30) days that relate to the person's individualized day supports goals and/or exploration and discovery; and
 - (8) Goals to be achieved in the first thirty (30) days of service and methods that will be used to achieve the goals.
 - (c) After a person has received IDS for thirty (30) calendar days, an on-going community integration plan utilizing the template required by DDS and containing the following information:
 - (1) The name of the person receiving the services;
 - (2) The names of the primary and back-up DSPs delivering services;

- (3) The back-up staffing plan if neither the primary or back-up DSPs are available to deliver the service;
 - (4) Goals for the service falling under any of the following categories: Community Membership; Relationships & Natural Supports; Career Exploration & Employment; Retirement (for individuals 61 or older); Community Contribution; Self-Determination; Community Navigation; Wellness/Fitness, or others as listed in the community integration plan template;
 - (5) The highly individualized, integrated community activity/activities or opportunity/opportunities that will support achievement of the goals;
 - (6) Specific skills the person will be assisted to learn that can help with achievement of his/her goals and help the person participate successfully, and as independently as possible, in the Activities/Opportunities;
 - (7) Measureable outcomes promoting community integration which are expected and will indicate the goals have been achieved;
 - (8) Calendar of activities for the quarter and back-up activities for the quarter; and
 - (9) Teaching objectives, strategies and measurable outcomes for skill development goals;
- (d) Within seven (7) business days of the conclusion of each ISP quarter, submit to the DDS service coordinator a quarterly report, utilizing the template required by DDS and containing the following information:
- (1) Description of person's attendance and participation;
 - (2) Description of person's relationship with the assigned DSPs;
 - (3) Description of the person's relationships with others paired with the person to receive the service, if applicable;
 - (4) Description of how the activities and opportunities offered through individualized day supports contributed to the achievement of the person's service goals;
 - (5) Description of skill development gains and next steps to continue progress on skill development; and

(6) Description of career and vocational exploration activities and outcomes for working-age participants in individualized day supports.

(e) A Positive Personal Profile and Job Search and Community Participation Plan shall be developed annually and reviewed at least quarterly, and that is updated as needed, based upon what is being learned about the person’s needs and interests by the individualized day supports provider. Positive Personal Profile and Job Search and Community Participation Plan shall be used to inform, and attached to, the initial and on-going community integration plans.

...

1925.14 Time spent in transportation to and from IDS generally shall not be included in the total amount of services provided per day. However, IDS may include the time a DSP spends accompanying the person on public transportation (excluding Medicaid funded non-emergency transportation) for the purposes of training the person to travel using public transportation, including when the person’s IDS day begins and ends at the person’s residence. IDS and Medicaid funded non-emergency transportation may not be billed during the same period of time. Medicaid funded non-emergency transportation may not be used during the provision of IDS. Medicaid funded non-emergency transportation may be used to transport the person to and from IDS; however, it should not preclude opportunities for the person to learn to use public transportation as part of participation in IDS.

...

1925.20 A person receiving IDS may start and end his or her day at his or her place of residence, if that is the person’s preference and/or is recommended by the person’s support team and reflected in his or her IDS Community Participation Plan.

Subsection 1928.2 of Section 1928, PHYSICAL THERAPY SERVICES, is amended to read as follows:

1928.2 Physical therapy services are services that are designed to treat physical dysfunctions or reduce the degree of pain associated with movement, prevent disability and regression of functional abilities, promote mobility, maintain health and maximize independence. These services are delivered in a location of the person’s choice, including his or her home, day service setting, or community.

Subsections 1929.2, 1929.5, 1929.16, 1929.18, 1929.19, 1929.24, and 1929.25, and a new Subsection 1929.28, of Section 1929, RESIDENTIAL HABILITATION SERVICES, are amended to read as follows:

1929.2 Residential habilitation services are supports, provided in a home shared by at least four (4), but no more than six (6), persons. However, any new setting cannot exceed four (4) people. Settings that are in existence on the effective date of this regulation are grandfathered in, but are not eligible for new referrals, until their size is less than four (4) people in the setting. The service assists each person in: acquiring, retaining, and improving self-care, daily living, adaptive and other skills needed to reside successfully in a shared home within the community, based upon what is important to and for the person, as documented in his or her Individualized Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.

...

1929.5 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives hands-on support, skill development, habilitation, and other supports, aimed at teaching the person to increase his or her skills and self-reliance. This shall include, but not be limited to, the following categories of support, unless the person has demonstrated independence and capacity in any of the following areas.

- (a) Eating and food preparation, including learning about healthy eating choices;
- (b) Personal hygiene;
- (c) Dressing;
- (d) Monitoring health and physical conditions;
- (e) Assistance with the administration of medication;
- (f) Communications;
- (g) Interpersonal and social skills including building and maintaining relationships;
- (h) Household chores;
- (i) Mobility;
- (j) Financial management;
- (k) Motor and perceptual skills;

- (l) Problem-solving and decision-making;
- (m) Human sexuality;
- (n) Providing opportunities to engage in community life, including but not limited to social, recreational, and religious activities utilizing community resources;
- (o) Ensuring that the person has appropriate and functioning adaptive equipment;
- (p) Providing opportunities for the person to seek employment to work in the community in a competitive and integrated setting; and
- (q) Other supports that are identified as important to or for the person in supports as identified in the person’s ISP.

...

1929.16 The minimum daily ratio of on-duty direct care staff to persons enrolled in the Waiver and present in each GHPID must meet the minimum staffing ratio requirements set forth in Chapter 35 of Title 22-B DCMR and described in §§ 1929.24 and 1929.25 (reimbursement rates), unless it is determined by DDS to require a higher acuity level. For intensive residential habilitation services, one of the direct support staff must be a licensed practical nurse (LPN) for all awake hours.

...

1929.18 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements), Section 1909 (Records and Confidentiality of Information), Section 1911 (Individual Rights), and Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR; except that the progress notes as described in Subsection 1909.2(m) shall be maintained on a daily basis. Additionally, all residential habilitation settings must fully comply with all of the requirements of the HCBS Settings Rule.

1929.19 Residential habilitation services cannot be delivered on the same day as the following Waiver services:

- (a) Supported Living;
- (b) Respite;
- (c) Host Home;

- (d) Companion, except that Companion services can be used with Residential Habilitation services during regular daytime hours on Mondays through Fridays, not to exceed more than forty (40) hours per week, or in combination with any other waiver day or vocational support service, including Day Habilitation, Employment Readiness, Supported Employment and Individualized Day Supports not to exceed forty (40) hours per week;
- (e) In-Home Supports; and
- (f) Skilled Nursing.

...

1929.24 There shall be a Medicaid reimbursement rate for residential habilitation services for a group home for persons with intellectual disabilities (GHPID) with four (4) persons as follows:

- (a) The Basic Support Level 1 daily rate for a direct care staff support ratio of 1:4 for all awake and overnight hours;
- (b) The Moderate Support Level 2 daily rate for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (d) The Intensive Support daily rate for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support with Skilled Nursing daily rate for twenty-four (24) hours for a direct care staffing support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home; with 2:4 direct care staffing and 1:4 licensed practical nursing staff during all awake hours and 1:4 direct care staff and 1:4 licensed practical nursing services during awake overnight.

1929.25 There shall be a Medicaid reimbursement rate for residential habilitation services for a GHPID with five (5) to six (6) persons as follows:

- (a) The Basic Support Level 1 daily rate for a direct care staff support ratio of 1:5 or 1:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home;

- (b) The Moderate Support Level 2 daily rate for a direct care staff support ratio of 2:5 or 2:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (c) The Enhanced Moderate Support Level 3 daily rate for a staff support ratio of 2:5 or 2:6 staff awake overnight and 3:5 or 3:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;
- (d) The Intensive Support daily rate for increased direct care staff support for sleep hours to 2:5 or 2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home and adjusted for increased absenteeism; and
- (e) The Intensive Support daily rate for twenty-four (24) hours for a direct care staffing support ratio of 2:5 or 2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home, with 1:5/6 licensed practical nursing staff during all awake hours and 1:5/6 direct care staff and one licensed practical nursing services awake overnight.

...

1929.28 In order to be eligible for Medicaid reimbursement, residential habilitation services may only occur on days when the person is residing in the home or is on vacation with provider support.

Subsections 1931.2, 1931.6, 1931.11, 1931.16, 1931.19, 1931.20, and 1931.25 of Section 1931, SKILLED NURSING SERVICES, are amended to read as follows:

1931.2 Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These services include health assessments and treatment, health related trainings and education for persons receiving Waiver services and their caregivers. Skilled nursing services may be delivered in the home and/or in the community.

...

1931.6 The physician’s order described in Subsection 1931.5 shall include the scope, frequency, and duration of skilled nursing services; shall be updated at least every sixty (60) calendar days; and shall be maintained in the person’s records.

...

1931.11 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR. All ID/DD Waiver providers of skilled nursing services must

comply with all of the requirements for Medicaid State Plan skilled nursing providers.

...

1931.16 Each skilled nursing provider shall review and evaluate skilled nursing services provided to each person, at least every sixty (60) days.

...

1931.19 Skilled nursing services shall not be available when provided with Residential Habilitation or when Supported Living or Supported Living with Transportation is billed using the rate that includes direct skilled nursing services.

1931.20 Upon exhaustion of the number of hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for additional skilled nursing services based upon medical need when required to support a person to live in the community, for persons who would otherwise be required to live in a nursing facility.

...

1931.25 [RESERVED]

Subsections 1932.2 and 1932.18 of Section 1932, SPEECH, HEARING, AND LANGUAGE SERVICES, are amended to read as follows:

1932.2 Speech, hearing, and language services are therapeutic interventions to address communicative and speech disorders to maximize a person’s expressive and receptive communication skills.

- (a) These services may be delivered at a person’s home, day service setting, and/or in the community.
- (b) These services are available either as an individual service or may be provided in small group settings of 1:3 based upon the recommendation of the person’s support team as reflected in the person’s Individual Support Plan (ISP). A person may use either individual, small group, or a combination of such services, subject to the service limitations described in Subsection 1932.16. For persons enrolled in small group speech, hearing and language services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests.

...

1932.18 There shall be a Medicaid reimbursement rate for both individual and small group speech, hearing and language services. The billable unit of service for speech,

hearing and language therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service. For small group speech, hearing and language services, there shall be a Medicaid reimbursement rate for each person in a group of two (2) to three (3) people enrolled in the Waiver.

Subsections 1933.2, 1933.3, 1933.4, 1933.8, 1933.13, 1933.16, 1933.18, 1933.20, 1933.21, 1933.29, 1933.31, and 1933.34, and new Subsections 1933.46 and 1933.47, of Section 1933, SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES, are amended to read as follows:

1933.2 Medicaid reimbursable supported employment services are designed to provide opportunities for persons with disabilities to obtain competitive work in integrated work settings, at minimum wage or higher and at a rate comparable to workers without disabilities performing the same tasks. All Medicaid reimbursable supported employment services must fully comply with the requirements of the HCBS Settings Rule.

1933.3 Medicaid reimbursable supported employment services may be delivered individually or in a small group, based upon the recommendations of the person and his or her support team, as reflected in the person’s Individual Support Plan (ISP) and Plan of Care. For persons enrolled in small group supported employment services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests.

1933.4 Medicaid reimbursable small group supported employment services are services and training activities that are provided in regular business, industry, or community setting for groups of two (2) to four (4) workers.

...

1933.8 The three (3) models of supported employment services eligible for Medicaid reimbursement are as follows:

- (a) An Individual Job Support Model, which evaluates the needs of the person and places the person into an integrated competitive or customized work environment through a job discovery process;
- (b) A Small Group Supported Employment Model, which utilizes training activities for groups of two (2) to four (4) workers with disabilities to place persons in an integrated community based work setting; and
- (c) An Entrepreneurial Model, which utilizes training techniques to develop on-going support for a small business that is owned and operated by the person.

...

1933.13 Medicaid reimbursable intake and assessment activities include, but are not limited to, the following:

- (a) Conducting a person-centered vocational and situational assessment based upon what is important to and for the person as reflected in his or her Person-Centered Thinking and Discovery tools and related ISP goals;
- (b) Developing a person-centered employment plan that includes the person's job preferences and desires, through a discovery process and the development of a Positive Personal Profile and Job Search and Community Participation Plan;
- (c) Assessing person-centered employment information, including the person's interest in doing different jobs, transportation to and from work, family support, and financial issues;
- (d) Engaging in community mapping to identify available community supports and assisting the person to establish a network for job development, placement and mentoring;
- (e) Counseling an interested person on the tasks necessary to start a business, including referral to resources and nonprofit associations that provide information specific to owning and operating a business;
- (f) Providing employment counseling, which includes, but is not limited to, the person's rights as an employee with a disability; and
- (g) Providing or coordinating access to benefits counseling, defined as analysis and advice to help the person understand the potential impact of employment on his or her public benefits, including, but not limited to Supplemental Security Income, Medicaid, Social Security Disability Insurance, Medicare, and Supplemental Nutrition Assistance Program (SNAP).

...

1933.16 Job placement and development activities eligible for Medicaid reimbursement include, but are not limited to, the following:

- (a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;
- (b) Conducting workshops or other activities to instruct the person on appropriate work attire, work ethic, attitude, and expectations;
- (c) Assisting the person with the completion of job applications;

- (d) Assisting the person with job exploration and placement, including assessing opportunities for the person’s advancement and growth, with a consideration for customized employment, as needed;
- (e) Visiting employment sites, participating in informational interviews, attending employment networking events, and job shadowing;
- (f) Making telephone calls and conducting face-to-face informational interviews with prospective employers, individuals in the person’s network, utilizing the internet, social media, magazines, newspapers, and other publications as prospective employment leads;
- (g) Collecting descriptive data regarding various types of employment opportunities, for purposes of job matching and customized employment;
- (h) Negotiating employment terms with or on behalf of the person;
- (i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start-up capital, and other tasks necessary to starting a small business;
- (j) Providing or coordinating access to benefits counseling; and
- (k) Working with the person and employer to develop group placements.

...

1933.18 Medicaid reimbursable job training and support activities include, but are not limited to, the following:

- (a) On-the-job training in work and work-related skills required to perform the job;
- (b) Work site support that is intervention-oriented and designed to enhance work performance and support the development of appropriate workplace etiquette
- (c) Supervision and monitoring of the person in the workplace;
- (d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, attendance and punctuality, mobility training, re-training as job responsibilities change, and attaining new jobs; including, where appropriate, the use of assistive technology, *i.e.* calendar alerts, timers, alarm clocks and other devices that assist a person with meeting employment requirements;

- (e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of job placement, integration into the work environment, and need for functional adaptation modifications at the job site;
- (f) Providing or coordinating access to ongoing benefits counseling, including but not limited to prior to the person reaching the end of his or her Trial Work period and/or attaining Substantive Gainful Activity (SGA);
- (g) Consulting with other professionals and the person's family, as necessary;
- (h) Providing support and training to the person's employer, co-workers, or supervisors so that they can provide workplace support, as necessary; and
- (i) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities.

...

1933.20 Medicaid reimbursable long-term follow-along activities include, but are not limited to, the following:

- (a) Periodic monitoring of job stability with a minimum of two (2) visits per month;
- (b) Intervening to address issues that threaten job stability;
- (c) Providing re-training, cross-training, and additional supports as needed, when job duties change;
- (d) Facilitating integration and natural supports at the job site;
- (e) Providing or coordinating access to benefits counseling prior to and after the person reaching the end of his or her Trial Work period and/or attaining SGA, and to ensure a person maintains eligibility for benefits and that earnings are being properly reported;
- (f) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities; and
- (g) Facilitating job advancement, professional growth, and job mobility.

1933.21 Each provider of Medicaid reimbursable supported employment services shall be responsible for delivering ongoing supports to the person to promote job stability after they become employed.

- (a) Once the person exhibits confidence to perform the job without a job coach present, the provider shall make a minimum of two (2) visits to the job site per month for the purpose of monitoring job stability.
- (b) On the job coaching supported employment services may be provided in person, or by phone or by any other technology device that supports the use of Skype, FaceTime, etc., where approved by the person and his or her support team and documented in the ISP. Supported employment services by phone or other technology to communicate cannot exceed twenty (20) percent of the total hours of supported employment services that the person receives each week.

...

1933.29 Services shall be authorized for Medicaid reimbursement in accordance with the following Waiver provider requirements:

- (a) DDS provides a written service authorization before the commencement of services;
- (b) The provider conducts a comprehensive vocational assessment, at minimum consisting of a Positive Personal Profile and Job Search and Community Participation Plan, if the person does not already have a comprehensive assessment. If the person does have a comprehensive vocational assessment, this must be reviewed to ensure that it is current and reflects what is important to and for the person, and updated as needed;
- (c) The provider develops an individualized employment plan with training goals and techniques within the first two (2) hours of service delivery;
- (d) The service name and provider delivering services are identified in the ISP and Plan of Care;
- (e) The ISP, Plan of Care, and Summary of Supports and Services document the amount and frequency of services to be received;
- (f) The provider completes an employment progress plan, using the template required by DDS, and submits it as an attachment to the required quarterly report; and
- (g) Services shall not conflict with the service limitations described under Subsections 1933.31-1933.42.

...

1933.31 Supported employment services are not available to people who are eligible to participate and are fully supported in programs funded under Title I of the Rehabilitation Act of 1973, Section 110, enacted September 26, 1973 (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 USC §§ 1401(16) and (71), enacted October 30, 1990 (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*). However, supported employment services may be used to provide additional supports for employment for persons eligible for and participating in those programs.

...

1933.34 Medicaid reimbursement is not available if supported employment services are provided in specialized sheltered workshop or other similar type facilities that are not part of the general workforce. Medicaid reimbursement is not available for volunteer work.

...

1933.46 DDS shall only approve an extension for Job Training and Supports when there is documentation in the employment progress plan that the person continues to demonstrate progress on the job, including but not limited to: learning the job and related tasks, following directions, interaction with others, following supervision, reluctance or reliance on the job coach, etc. However, if recommended by the person and/or his or her support team and reflected in the ISP, DDS would authorize long-term follow-along supported employment services as needed to support the person on an ongoing basis.

1933.47 In order to be eligible for Medicaid reimbursement, each Waiver provider of supported employment services shall comply with Section 1908 (Reporting Requirements); Section 1909 (Records and Confidentiality of Information); and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

Subsections 1934.4, 1934.9, 1934.17, 1934.21, 1934.27, 1934.37 and 1934.38, and new Subsections 1934.47, 1934.48 and 1934.49, of Section 1934, SUPPORTED LIVING SERVICES, are amended to read as follows:

1934.4 To be eligible for Medicaid reimbursement, twenty-four (24) hour one-to-one supported living services in a single occupancy supported living residence (SLR):

- (a) The person must have a history of challenging behaviors that may put others at risk, require intensive supports as determined by a psychological assessment which is updated annually or pursuant to a court order, and have a behavior support plan (BSP) that identifies the challenging behaviors and the need for one-to-one supervision that was approved by the Department on Disability Services (DDS); or
- (b) The person and/or his or her support team have recommended that the

person live in a single person setting, and the person is able to pay for the non-Waiver costs of the supported living services placement (for example, rent, utilities, etc.); or

- (c) The person and/or his or her support team have recommended that the person, based on medical or behavioral needs, live in a single person setting and it has been approved by the DDS Deputy Director for DDA.

...

1934.9 [RESERVED]

...

1934.17 Each provider of Medicaid reimbursable supported living services shall assist persons in the acquisition, retention, and improvement of skills related to activities of daily living, and other social and adaptive skills necessary to enable the person to become a fully integrated member of their community. To accomplish these goals, the provider shall:

- (a) Use the DDS-approved Person-Centered Thinking tools, the person’s Positive Personal Profile, and the Job Search and Community Participation Plan to develop a functional assessment that includes what is important to and for the person, within the first month of providing services. This assessment shall be reviewed and revised annually or more frequently as needed;
- (b) Participate as a member of the person’s support team, at his or her preference, including making recommendations for the development of the ISP and Plan of Care;
- (c) Review the person’s ISP and Plan of Care goals, DDS- approved person centered thinking tools, Positive Person Profiles and Job Search and Community Participation plan, objectives, and activities at least quarterly and more often, as necessary, and submit quarterly reports to the person, family, as appropriate, guardian, and DDS Service Coordinator no later than seven (7) business days after the end of the first ISP quarter or each subsequent quarter thereafter and in accordance with the requirements described, under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR;
- (d) Provide access and information as requested for service coordination, visits and reviews;
- (e) Assist in the coordination of all services that a person may receive; and

- (f) Develop and implement the person’s Health Care Management Plan, in accordance with the DDS Health and Wellness Standards.

...

1934.21 Each provider of Medicaid reimbursable supported living services shall maintain the records as prescribed under Section 1909 of Title 29 DCMR for monitoring and auditing purposes for each person receiving services and shall also maintain the following documents:

- (a) If providing twenty-four (24) hour supported living services in a single occupancy or one-to-one supports, a copy of the annual BSP or court order;
- (b) Progress notes that describe the person’s leisure and recreation activities, in accordance with his or her interests as identified in the ISP or Person-Centered Thinking and Discovery tools;
- (c) A daily schedule that complies with DDS guidance;
- (d) The records of any nursing care, procedures, and other supports related to the development and management of the Health Care Management Plan; and
- (e) A record of monitoring and maintenance of adaptive equipment, if applicable.

...

1934.27 Each provider of Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing shall:

- (a) Provide skilled nursing services and supports to the person living in the SLR;
- (b) Complete any skilled nursing assessment and document hourly nursing interventions and treatments;
- (c) Provide as appropriate, all of the supported living activities listed in Subsections 1934.18, 1934.19, and 1934.20; and
- (d) Ensure that at least one staff person is a licensed practical nurse during all awake hours, including awake overnight hours.

...

1934.37 There shall be a Medicaid reimbursement rate for supported living services without transportation as follows:

- (a) Basic Support Level 1, which provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours when individuals are awake and receiving services;
- (b) Basic Support Level 2, which provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours when the residents are receiving services;
- (c) Moderate Support Level 1, which provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage;
- (d) Moderate Support Level 2, which provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight;
- (e) Intensive Support Level 1, which provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (f) Intensive Support Level 2, which provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (g) Basic Support Level 1, which provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 during all hours when individuals are awake and receiving services;
- (h) Basic Support Level 2, which provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the residents are receiving services;
- (i) Moderate Support Level 1, which provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage overnight;

- (j) Moderate Support Level 2, which provides support in a SLR with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are in the home and adjusted for increased absenteeism;
- (k) Intensive Support Level 1, which provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are in the home and adjusted for increased absenteeism;
- (l) Supported living periodic services, as described under Subsection 1934.6, which shall be authorized up to sixteen (16) hours per day without transportation. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service;
- (m) A specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5, when there are at least three (3) people living in the SLR and residing in a home that requires skilled nursing services and demonstrates extraordinary medical needs; provided, however, that this service requires a direct care staffing support ratio of 2:3, including at least one staff who is a licensed practical nurse during all awake hours, including awake overnight hours; and
- (n) A specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4, for asleep overnight staff and for one-to-one awake overnight staff.

1934.38 There shall be a Medicaid reimbursement rate for supported living services with transportation as follows:

- (a) Basic Support Level 1, which provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours;
- (b) Basic Support Level 2, which provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours;
- (c) Moderate Support Level 1, which provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage;

- (d) Moderate Support Level 2, which provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight;
- (e) Intensive Support Level 1, which provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (f) Intensive Support Level 2, which provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (g) Basic Support Level 1, which provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 staff asleep overnight coverage and 1:2 staff awake coverage when residents are receiving services;
- (h) Basic Support Level 2, which provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the resident is receiving services;
- (i) Moderate Support Level 1, which provides awake overnight daily rate for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage overnight;
- (j) Moderate Support Level 2, which provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (k) Intensive Support Level 1, which provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs;
- (l) Supported living periodic services, described under Subsection 1934.6, which shall be authorized up to sixteen (16) hours per day with

transportation. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service;

- (m) A specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5, when there are at least three (3) people living in the SLR and residing in a home that requires skilled nursing services and demonstrates extraordinary medical needs; provided, however, that this service requires a direct care staffing support ratio of 2:3, including at least one staff who is a licensed practical nurse during all awake hours, including awake overnight hours; and
- (n) A specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4 for asleep overnight staff and for one-to-one awake overnight staff.

...

1934.47 Medicaid reimbursable supported living periodic services are calculated based on the time the person is scheduled to use residential services and may include the time the person is being transported by the provider to day programs, employment, professional appointments, community activities, and events.

1934.48 All Supported Living and Supported Living with Transportation settings must be fully compliant with the requirements of the HCBS Settings Rule, 79 *Federal Register* 2947.

1934.49 Supported Living Periodic services may be provided in person, by phone or by any other technology device that supports the use of Skype, FaceTime, etc., as approved by the person and his or her support team and documented in the ISP. Supported Living Periodic services using technology to communicate with the person shall not exceed twenty (20) percent of the total hours of Supported Living Periodic services that the person receives each week.

Subsections 1936.4, 1936.5, 1936.6, 1936.7, 1936.15, 1936.16, and 1936.21 of Section 1936, WELLNESS SERVICES, are amended to read as follows:

1936.4 Fitness training is available as either an individual service, or in small group settings of 1:2 based upon the person's request and/or recommendation of the person's support team. A person may utilize both 1:1 and small group fitness services subject to the limitations in Subsection 1936.21. When a person is enrolled in small group fitness, efforts should be made to match the person with another person of his or her choosing, or, if not available, with a person who has similar skills and interests.

1936.5 To be eligible for Medicaid reimbursement of bereavement counseling:

- (a) The person must have experienced a loss through death, relocation, change in family structure, or loss of employment;
- (b) The service must be requested by the person and/or recommended by the person’s support team; and
- (c) The service shall be identified as a need in the person’s ISP and Plan of Care.

1936.6 To be eligible for Medicaid reimbursement of sexuality education, the services shall be:

- (a) Requested by the person and/or recommended by the person’s support team; and
- (b) Identified as a need in the person’s ISP and Plan of Care.

1936.7 To be eligible for Medicaid reimbursement of fitness training and massage therapy, the services shall be:

- (a) Requested by the person and/or recommended by the person’s support team;
- (b) Identified as a need in the person’s ISP and Plan of Care; and
- (c) Ordered by a physician.

...

1936.15 In order to be eligible for Medicaid reimbursement, professionals delivering wellness services shall meet the following licensure and certification requirements:

- (a) Bereavement counseling services shall be performed by a professional counselor licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2016 Repl.)) and certified by the American Academy of Grief Counseling as a grief counselor or other equivalent national certification as approved by DDS;
- (b) Fitness services shall be performed by professional fitness trainers who have been certified by any of the following national and/or international certifications, or other equivalent national certification as approved by DDS: the American Fitness Professionals and Associates, the National Athletic Training Association, the National Academy of Sports Medicine,

the Aerobics and Fitness Association of America, and the American College of Sports Medicine; or professional fitness trainers who have a bachelor’s degree in physical education, health education, exercise, science or kinesiology; or recreational therapists;

- (c) Dietetic and nutrition counselors shall be licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2016 Repl.)); and
- (d) Massage Therapists shall be licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2016 Repl.)) and certified by the National Certification Board for Therapeutic Massage and Bodywork, or other equivalent national certification as approved by DDS.

1936.16 In order to be eligible for Medicaid reimbursement, sexuality education services shall be delivered by:

- (a) A Sexuality Education Specialist who is certified to practice sexuality education by the American Association of Sexuality Educators, Counselors and Therapists Credentialing Board, or other equivalent national certification as approved by DDS; or
- (b) Any of the following professionals with specialized training in Sexuality Education:
 - (1) Psychologist;
 - (2) Psychiatrist;
 - (3) Licensed Clinical Social Worker; or
 - (4) Licensed Professional Counselor.

...

1936.21 Wellness services shall be limited to one hundred (100) hours per ISP year per service. Additional hours may be authorized before the expiration of the ISP and Plan of Care year and when the person’s health and safety are at risk and the person is demonstrating progress towards achieving established outcome and/or maintenance of goals. Requests for additional hours may be approved when accompanied by a physician’s order or if the request passes a clinical review by staff designated by DDS.

Section 1937, COST REPORTS AND AUDITS, is amended to read as follows:

1937 COST REPORTS, AUDITS, AND OVERSIGHT MONITORING

- 1937.1 Beginning October 1, 2015, each waiver provider of residential habilitation, host home, supported living, supported living with transportation, day habilitation, in-home supports, individualized day supports, respite, employment readiness and supported employment services shall report costs to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception, on request. Such cost reporting will be for the purpose of informing rate setting parameters to be the most cost-effective for the government and to reimburse allowable costs for the providers. All cost reports shall cover a twelve (12) month cost reporting period.
- 1937.2 A cost report that is not completed shall be considered an incomplete filing, and DHCF shall notify the waiver provider within thirty (30) days of the date on which DHCF received the incomplete cost report.
- 1937.3 All of the facility's accounting and related records, including the general ledger and records of original entry, and all transaction documents and statistical data, shall be permanent records and be retained for a period of not less than five (5) years after the filing of a cost report.
- 1937.4 DHCF shall evaluate expenditures subject to the requirements in this Section through annual review of cost reports.
- 1937.5 DHCF, or its designee, shall review each cost report for completeness, accuracy, compliance, and reasonableness.
- 1937.6 Every five (5) years, for purposes of renewing the Waiver, DHCF shall rely on audited cost reports submitted by Waiver providers to DHCF. In the absence of audited cost reports, Waiver providers may submit unaudited costs reports or financial statements.
- 1937.7 DHCF, Division of Program Integrity shall perform ongoing audits to ensure that the provider's services for which Medicaid payments are made are consistent with programmatic duties, documentation, and reimbursement requirements as required under this chapter.
- 1937.8 The audit process shall be routinely conducted by DHCF to determine, by statistically valid scientific sampling, the appropriateness of services rendered to IDD Waiver program beneficiaries and billed to Medicaid.

- 1937.9 If DHCF denies a claim during an audit, DHCF shall recoup, by the most expeditious means available, those monies erroneously paid to the provider for denied claims, following the process for administrative review as outlined below:
- (a) DHCF shall issue a Notice of Proposed Medicaid Overpayment Recovery (NPMOR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review.
 - (b) The Provider shall have thirty (30) days from the date of the NPMOR to submit documentary evidence and written argument to DHCF against the proposed action;
 - (c) The documentary evidence and written argument shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested;
 - (d) Based on review of the documentary evidence and written argument, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNMOR);
 - (e) Within fifteen (15) days of receipt of the FNMOR, the Provider may appeal the written determination by filing a written notice of appeal with the Office of Administrative Hearings (OAH), 441 4th Street, N.W., Suite 450 North, Washington, D.C. 20001; and
 - (f) Filing an appeal with the OAH shall not stay any action to recover any overpayment.
- 1937.10 The recoupment amounts for denied claims may be determined by the following formula:
- (a) A fraction shall be calculated with the numerator consisting of the number of denied paid claims resulting from the audited sample; and
 - (b) The denominator shall be the total number of paid claims from the audit sample. This fraction will be multiplied by the total dollars paid by DHCF to the Provider during the audit period, to determine the amount recouped.
- 1937.11 All participant, personnel, and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for inspection and review by authorized government officials or their agents, as requested.
- 1937.12 All records and documents required to be kept under this chapter and other applicable laws and regulations which are not maintained or accessible in the

operating office visited during an audit shall be produced for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the auditing official.

- 1937.13 The failure of a provider to release or to grant access to program documents and records to the DHCF auditors in a timely manner, after reasonable notice by DHCF to the provider to produce the same, shall constitute grounds to terminate the Medicaid Provider Agreement.
- 1937.14 DHCF shall retain the right to conduct audits or reviews at any time. Each waiver provider shall grant full access, during announced or unannounced on-site audits or review by DHCF, DHCF's designee, other District of Columbia officials, and representatives of the U.S. Department of Health and Human Services auditors, to relevant financial records, statistical data to verify costs previously reported to DHCF, program documentation, and any other documents relevant to the administration and provision of the Waiver service.
- 1937.15 As part of the audit process, providers shall grant access to any of the following documents to DHCF Program Integrity personnel, which may include, but are not limited to the following:
- (a) A record of all service authorization and prior authorizations for services;
 - (b) A record for all request for change in services;
 - (c) A written staffing plan, if applicable;
 - (d) A schedule of the beneficiary's activities in the community, if applicable, including strategies to execute goals in the Individualized Service Plan, the date and time of the activities, and staff, as identified in the staffing plan;
 - (e) Any records relating to adjudication of claims, including, the number of units of the delivered service, the period during which the service was delivered and dates of service, and the name, signature, and credentials of the service provider;
 - (f) Progress notes, as described in 29 DCMR § 1909; and
 - (g) Any record necessary to demonstrate compliance with rules, requirements, guidelines, and standards for implementation and administration of the Waiver.
- 1937.16 DHCF's Long Term Care Administration's Waiver Oversight and Monitoring team shall conduct monitoring reviews as follows:

- (a) Quarterly oversight and monitoring reviews to ensure compliance with established federal and District regulations and applicable laws governing the operations and administration of the Waiver Program; and
- (b) Quarterly oversight and monitoring reviews to monitor progress and performance against quality measures.

1937.17 As part of the oversight monitoring process, providers shall grant access to any of the following documents to the DHCF monitor, which may include, but shall not be limited to the following:

- (a) Person-Centered Service Plan and Plan of Care/service delivery plan;
- (b) Employee records;
- (c) A signed, current copy of the Medicaid Provider Agreement;
- (d) Licensure information;
- (e) Policies and procedures;
- (f) Incident reports and investigation reports; and
- (g) Complaint related reports.

Section 1938, HOME AND COMMUNITY-BASED SETTING REQUIREMENTS, is amended to read as follows:

1938 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS

1938.1 All Supported Living, Supported Living with Transportation, Host Home Without Transportation, Residential Habilitation, Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Companion, Supported Employment, Small Group Supported Employment and Employment Readiness settings must:

- (a) Be chosen by the person from HCBS settings options including non-disability settings. For residential settings, this includes, but is not limited to, ensuring that:
 - (1) People select their home and know that they have protections against eviction;
 - (2) People choose their roommates and know how to request a roommate change; and

- (3) People who have a roommate are offered the choice of available residential settings with a private bedroom, if they have the ability to pay.
- (b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint. This includes, but is not limited to, ensuring that:
 - (1) People are provided personal care assistance in private, as appropriate;
 - (2) Information is provided to people on how to make an anonymous complaint;
 - (3) People's health and other personal information (e.g., mealtime protocols, therapy schedules) are kept private;
 - (4) Staff do not talk about people's private information in front of other people who do not have a right and/ or need to know; and
 - (5) Staff address people by their names or preferred nicknames.
 - (c) Be physically accessible to the person and allow the person access to all common areas. For residential settings, this includes, but is not limited to, ensuring that:
 - (1) People have full access to the kitchen, dining area, living room, laundry, and all other common areas of their home; and
 - (2) The home is fully accessible to meet the needs of the people living there, including all common areas and supports as needed, such as grab bars and ramps.
 - (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;
 - (e) Provide opportunities for the person to seek employment and meaningful non-work activities in the community. This is evidenced in part by the following:
 - (1) People who desire to work are supported to pursue work in the community; and
 - (2) People engage in meaningful non-work activities in the community.

- (f) Provide information on individual rights;
- (g) Optimize the person's initiative, autonomy, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;
- (h) Facilitate the person's choices regarding services and supports, and who provides them;
- (i) Create individualized daily schedules for each person receiving supports, that includes activities that align with the person's goals, interests and preferences, as reflected in his or her ISP, in accordance with DDS guidance;
- (j) Provide opportunities for the person to engage in community life, as evidenced in part by people being able to shop, attend religious services, schedule appointments, have lunch with friends and family, etc. in the community, as they choose;
- (k) Provide opportunities to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS, as evidenced in part by people using community resources, such as parks, recreational centers, community health clinics, etc.;
- (l) Control over his or her personal funds and bank accounts, as evidenced in part by people being able to access their funds, when they want to, and without advanced notice;
- (m) Allow visitors at any time within the limits of the lease or other residency agreement;
- (n) Be integrated in the community and support access to the greater community. This is evidenced in part by the following:
 - (1) People receive the supports they need to see family and friends and spend time doing activities of their choosing in the community; and
 - (2) People are encouraged to learn travel skills so that they can use public transportation.
- (o) Allow full access to the greater community.

1938.2

All Supported Living, Supported Living with Transportation, Host Home Without Transportation, and Residential Habilitation settings must:

- (a) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under the relevant landlord/tenant law for that jurisdiction. This includes a responsibility to ensure that each person knows their rights regarding housing, as explained by their lease or written residency agreement, including when they could be required to relocate, and understand the eviction process and appeals rights. This provision applies equally to leased and provider owned properties;
- (b) Develop and adhere to policies which ensure that each person receiving services has the right to the following:
 - (1) Privacy in his or her personal space, including entrances to living spaces that are lockable by the person (with staff having keys as needed). This is evidenced in part by staff knocking and receiving permission prior to entering a person's living space;
 - (2) Freedom to furnish and decorate his or her personal space, as evidenced in part by people's living space reflecting their taste and preferences (*e.g.*, furniture, linens and other household items reflect people's choices), within the limits of the lease or other residency agreement or consistent with the governing Human Care Agreement;
 - (3) Privacy for telephone calls, texts and/or emails, or any other form of electronic communication, *e.g.* FaceTime or Skype, with or without support, based on person's preference; and
 - (4) Access to food at any time, as evidenced in part by:
 - (A) Each person has meals at the time and place of his or her choosing;
 - (B) People can request an alternative meal, if desired; and
 - (C) Snacks are available and accessible at any time unless there is documentation of a medical condition that requires restrictions.

1938.3 All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment, Companion and Employment Readiness settings must develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (a) A secure place to keep their belongings;
- (b) Access to snacks at any time;
- (c) Privacy for telephone calls, texts and/or emails, or any other form of electronic communication, *e.g.* FaceTime or Skype, with or without support, based on the person's preference; and
- (d) Meals at the time and place of a person's choosing.

1938.4 Any deviations from the requirements in §§ 1938.1(l) and (m), 1938.2(b) and § 1938.3 must be supported by a specific assessed need, justified and documented in the person's person-centered Individualized Support Plan, as well as reviewed and approved as a restriction by the Provider's Human Rights Committee (HRC). There must be documentation that the Provider's HRC review and person-centered planning meeting included discussion of the following elements:

- (a) What the person's specific individualized assessed need is that results in the restriction;
- (b) What prior interventions and supports have been attempted, including less intrusive methods;
- (c) Whether the proposed restriction is proportionate to the person's assessed needs;
- (d) What the plan is for ongoing data collection to measure the effectiveness of the restriction;
- (e) When the HRC and the person's support team will review the restriction again;
- (f) Whether the person, or his or her substitute decision-maker, gives informed consent; and
- (g) Whether the HRC and the person's support team has assurance that the proposed restriction or intervention will not cause harm.

A new Section 1941, ASSISTIVE TECHNOLOGY SERVICES, is adopted to read as follows:

1941 ASSISTIVE TECHNOLOGY SERVICES

1941.1 The purpose of this section is to establish standards governing eligibility for assistive technology services for persons enrolled in the Home and Community-

Based Services Waiver for Persons with Intellectual and Developmental Disabilities (Waiver), and to establish conditions of participation for professionals and providers of assistive technology services to receive reimbursement.

- 1941.2 Assistive technology services include both goods and services that are designed to enable the person to function with greater independence, avoid institutionalization and reduce the need for human assistance.
- (a) Assistive technology goods means an item, piece of equipment, service animal or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities and can also support increased community inclusion, including in employment settings. Assistive technology goods must not be otherwise available through another funding source.
 - (b) Assistive technology service means a service that directly assists a person in the selection, acquisition, or use of an assistive technology device and includes, but is not limited to:
 - (1) The evaluation of assistive technology needs, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the person in his/her customary environment;
 - (2) Services consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for persons served through the waiver;
 - (3) Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
 - (4) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with other services in the service plan;
 - (5) Training or technical assistance for the person or, where appropriate, his/her family members, guardians, advocates, or authorized representatives who provide unpaid support, training, companionship or supervision; and
 - (6) Training or technical assistance for professionals or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the person served.

- (c) Assistive technology specifically includes, but is not limited to, Personal Emergency Response System (PERS), an electronic device that enables persons who are at high risk of institutionalization to secure help in an emergency. The person may also wear a portable “help” button to allow for mobility. The system is connected to the person’s phone and programmed to signal a response center once the ‘help’ button is activated. Trained professionals staff the response center. PERS is available to those individuals who live alone, who are alone for significant parts of the day, or who would otherwise require extensive routine supervision. Coverage of the PERS is limited to the rental of the electronic device. PERS services shall include the maintenance costs and training the recipient to use the equipment, and twenty-four (24) hour, seven (7) day a week, response center services. Reimbursement will be made for an installation fee for the PERS unit. A monthly fee will be paid for the maintenance of the PERS.

1941.3 A person qualifies for assistive technology services when he or she requests the service and/or it is recommended by the person’s support team to enhance or maintain the person’s independence, increase, maintain, or improve functional capabilities, and/or support increased community inclusion; or there is a physician’s order for the service. Assistive technology services must be included in the person’s Individual Support Plan (ISP) and Plan of Care.

1941.4 In order to be eligible for Medicaid reimbursement, each professional providing assistive technology services shall:

- (a) Conduct a comprehensive assessment within the first four (4) hours of service delivery, which shall include the following:
 - (1) A background review and current functional review of the person’s capabilities in different environments;
 - (2) An environmental review in places of employment, residence, and other sites as necessary; and
 - (3) A needs assessment for the use of assistive technology.
- (b) Develop and implement an assistive technology plan within the first four (4) hours of service delivery that describes strategies, including recommended assistive technology goods, coordination with professional services, training of caregivers, monitoring requirements and instructions, and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP and Plan of Care.

- 1941.5 If the person enrolled in the Waiver is between the ages of eighteen (18) and twenty-one (21) years old, the DDS Service Coordinator shall ensure that Early Periodic Screening and Diagnostic Treatment (EPSDT) services under the District of Columbia State Plan for Medical Assistance are fully utilized before accessing assistive technology services under the Waiver.
- 1941.6 Assistive technology services may be provided by the following professionals:
- (a) Approved Waiver providers of occupational therapy, physical therapy, and speech, hearing and language services, who are licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*) and implementing rules; and
 - (b) Assistive technology professionals who are certified through the Rehabilitation Engineering and Assistive Technology Society of North America, or another comparable national accreditation body, as approved by DDS.
- 1941.7 Assistive technology services may be provided by the following agency provider types.
- (a) An Assistive Technology Professional Agency or Supplier that is an approved vendor for the Rehabilitation Services Administration; or
 - (b) A licensed provider agency of any of the following clinical services: occupational therapy, physical therapy, and speech, hearing and language pathology.
- 1941.8 Each provider of Medicaid reimbursable assistive technology services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1941.9 Each provider of Medicaid reimbursable assistive technology services shall maintain the following documents for monitoring and audit reviews:
- (a) A copy of the assistive technology assessment and treatment plan;
 - (b) A copy of the physician's order, if applicable;
 - (c) A copy of receipts documenting the date, item, amount expended, and any related warranty; and
 - (d) Any other applicable documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, where applicable.

- 1941.10 In order to be eligible for Medicaid reimbursement, each provider shall comply with Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1941.11 In order to be eligible for reimbursement, each Medicaid provider of assistive technology services must obtain a written Service Authorization from the Department on Disability Services (DDS) before providing assistive technology services.
- 1941.12 Assistive technology services is subject to the follow limitations:
- (a) There is a maximum dollar amount per participant over a five-year period for this service. A person may be able to exceed this limitation on a case-by-case basis with the approval of DDS, based upon documented need, but shall be authorized prior to rendering the Waiver service; and
 - (b) Assistive technology provided through the Waiver is available only after the person has fully utilized services available under the Medicaid State Plan, or programs funded under Section 110 of the Rehabilitation Act of 1973, enacted September 26, 1973, as amended (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Sections 602(16) and (17) of the Individuals with Disabilities Education Act, enacted April 13, 1970, as amended (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*), and where the assistive technology is not the obligation of the individual's employer.
- 1941.13 The billable unit of service for assistive technology services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

A new Section 1942, PARENTING SUPPORT SERVICES, is adopted to read as follows:

1942 PARENTING SUPPORT SERVICES

- 1942.1 The purpose of this section is to establish standards governing eligibility for parenting support services for persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver), and to establish conditions of participation for professionals and providers of parenting support services to receive Medicaid reimbursement.
- 1942.2 Parenting support services assist people who are or will be parents in developing appropriate parenting skills. Parents will receive training that is individualized and focused on the health and welfare and developmental needs of their child, as well as building necessary parenting skills. Close coordination will be maintained with informal and other formal supports.

- (a) Parenting support services may include training of individuals who provide unpaid support, training, companionship or supervision to persons served through the waiver to reinforce strategies provided to the person served;
- (b) Parenting support services is available both as a 1:1 service for a person, and in small group settings not to exceed 1:4. For persons enrolled in small group parenting support services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests;
- (c) Parenting support services may be provided by professionals or qualified peer employees;
- (d) Parenting support services shall be provided in the person's home or in a variety of community based settings, based upon the person's needs and choices;
- (e) A person served through the ID/DD Waiver may utilize both 1:1 and small group parenting support, and services provided by professionals and qualified peer employees and both services combined are subject to the limitations in Subsection 1942.10; and
- (f) Parenting support services do not include activities that are the responsibility of Supported Living, Supported Living with Transportation, Residential Habilitation, Host Home or In-Home Supports and can be offered in combination with any ID/DD Waiver residential services.

1942.3 Parenting support services will be authorized when:

- (a) The person is an expectant parent, a parent with physical custody or visitation with his or her child, or a parent who is pursuing reunification with his or her child;
- (b) The person requests the service and/or it is recommended by the person's support team; and
- (c) Parenting support services is included in the person's Individual Support Plan (ISP) and Plan of Care.

1942.4 In order to be eligible for Medicaid reimbursement, each parenting support services provider shall comply with the following service delivery requirements:

- (a) Conduct an assessment, within the first four (4) hours of service delivery, which shall include the following:

- (1) A background review and current functional review of the person's parenting capabilities in different environments;
 - (2) An environmental review in the person's home, and other community site as necessary; and
- (b) Develop and implement a parenting support plan, within the first four (4) hours of service delivery, that describes strategies, and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP and Plan of Care.

1942.5 Parenting support services may be provided by any of the following agency provider types:

- (a) In-Home Supports;
- (b) Supported Living;
- (c) Supported Living with Transportation; and
- (d) Host Home Without Transportation.

1942.6 Medicaid reimbursable parenting support services shall be provided by either professionals or peer employees:

- (a) Professionals shall meet the following qualifications:
 - (1) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 effective April 20, 1999 (D.C. Law 12- 238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*);
 - (2) Documented completion of required training in accordance with the DDS Training policy;
 - (3) Master's degree in field related to supporting people with disabilities, including but not limited to social services, education, and psychology;
 - (4) At least five (5) years of experience working with people with intellectual disabilities and/or their families; and

- (5) Demonstrated ability, experience and education to teach adult learners; conduct support needs assessments; implement service/support plans; assist parent in specific areas of support described in the plan; serve as an advocate; and work with people of varied ethnic and cultural backgrounds.
 - (b) Peer employees shall meet the basic requirements set forth in 29 DCMR § 1906.3.
 - (1) A peer employee may be the person's relative, but may not be legally responsible for the person, or the person's legal guardian.
 - (2) A peer employee shall not provide parenting support services to a person for whom he or she provides the following ID/DD Waiver services: Residential Habilitation; Supported Living; Supported Living with Transportation; Host Home Without Transportation; or In-Home Supports.
- 1942.7 Each Medicaid provider of parenting support services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1942.8 Each Medicaid provider of parenting support services shall maintain the following documents for monitoring and audit reviews:
- (a) A copy of the most recent DDS approved ISP and Plan of Care, which shall include the documentation required by Subsection 1942.4;
 - (b) The parenting support plan developed in accordance with the requirements of Subsection 1942.4; and
 - (c) The documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.
- 1942.9 Each Medicaid provider of parenting support services shall comply with Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1942.10 There shall be a total of four (4) Medicaid reimbursement rates for parenting support services: for 1:1 services and for small group services (*i.e.* 1:2, 1:3 and 1:4 staffing ratios) based on whether the services are provided by a professional or peer employee. Parenting support services shall not exceed one thousand four hundred sixty (1,460) hours per ISP year. Support is available from the first trimester until the eligible participant's child transitions from high school.

1942.11 The billable unit of service for parenting support services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

Section 1999, DEFINITIONS, Subsection 1999.1, is amended as follows:

The following ten (10) terms and phrases are deleted:

Client

Community Participation Plan

Health Management Care Plan

Homeowner

Intermediate Care Facility for Persons with Mental Retardation

Mentally Retarded

Quality Assurance Plan

Qualified Developmental Disabilities Professional

Qualified Mental Retardation Professional

Vocational Rehabilitation Counselor

The following eight (8) terms and phrases are amended to read as follows:

Competitive Integrated Employment - Full or part-time work at minimum wage or higher, with wages and benefits, and opportunities for advancement similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities.

Group Home for a Person with an Intellectual Disability – The same as the definitions and licensure requirements as set forth in Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules.

Individual Habilitation Plan (IHP) - That plan as set forth in Section 403 of the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Intermediate Care Facility for Individuals with Intellectual Disabilities - The same meaning as an “Intermediate Care Facility for Individuals with Intellectual Disabilities” as set forth in Section 1905(d) of the Social Security Act.

Principal care provider - The person who owns and/or leases the host home and provides host home services and supports to the person enrolled in the ID/DD Waiver. This person is not a Direct Support Professional (DSP).

Qualified Intellectual Disabilities Professional (QIDP) - Also known as Qualified Developmental Disabilities Professional or QDDP as defined in D.C. Official Code § 7-1301.03(21), is someone who oversees the initial habilitative assessment of a person; develops, monitors, and review ISPs; and integrates and coordinates Waiver services.

Substantial Gainful Activity (SGA) – A level of work activity and earning that have a meaning consistent with 20 CFR §§ 404.1510 and 404.1571-404.1576.

Trained Medication Employee – An individual employed to work in a program who has successfully completed a training program approved by the Board of Nursing and is certified to administer medication to program participants.

The following term is included to read as follows:

Continuous Quality Assurance Plan – A plan that has a systematic approach to assessing Waiver services and supports designed to ensure Waiver requirements are implemented on an ongoing basis including activities that emerge from a systematic and organized framework that tracks improvement.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, NOVEMBER 29, 2017
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Jake Perry, Donald Isaac, Sr.

Protest Hearing (Status) **9:30 AM**
Case # 17-PRO-00056; 2335, LLC, t/a XS Lounge, 2335 Bladensburg Road NE
License #104228, Retailer CT, ANC 5C
**Substantial Change (Request for a Summer Garden Endorsement with 96
seats)**

Protest Hearing (Status) **9:30 AM**
Case # 17-PRO-00041; NAI Saturn Eastern, LLC, t/a Safeway, 1701 Corcoran
Street NW, License #105295, Retailer B, ANC 2B
Application for a New License

Show Cause Hearing (Status) **9:30 AM**
Case # 17-CC-00022; 1447 Maryland Ave Holding, LLC, t/a New York
Liquors, 1447 Maryland Ave NE, License #102370, Retailer A, ANC 6A
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal
Drinking Age, Interfered with an Investigation**

Show Cause Hearing (Status) **9:30 AM**
Case # 17-CMP-00464; Trabra, Inc., t/a Union Liquors, 1537 Good Hope Road
SE, License #79922, Retailer A, ANC 8A
**Ownership Interest Issues, Attempted Bribery, Willfully gave False
Testimony**

Show Cause Hearing (Status) **9:30 AM**
Case # 17-CMP-00460; TMI International, Inc., t/a Sip, 1812 Hamlin Street NE
License #95164, Retailer CT, ANC 5C
**Substantial Change in Operation Without Board Approval, Failed to
Comply with hours of Operation, Violation of Settlement Agreement**

Show Cause Hearing (Status) 9:30 AM
Case # 17-CMP-00033; Prospect Dining, LLC, t/a Chinese Disco, 3251
 Prospect Street NW, License #78058, Retailer CR, ANC 2E
**Substantial Change in Operation Without Board Approval, Violation of
 Settlement Agreement**

Show Cause Hearing (Status) 9:30 AM
Case # 17-CMP-00368; Partners at 723 8th St SE, LLC, t/a The Ugly Mug
 Dining Saloon, 723 8th Street SE, License #71793, Retailer CR, ANC 6B
Failed to File Quarterly Statement

Show Cause Hearing (Status) 9:30 AM
Case # 16-CMP-00841; Shaw Howard Deli, LLC, t/a Shaw Howard Deli, 1911
 7th Street NW, License #95169, Retailer B, ANC 1B
No ABC Manager on Duty

Show Cause Hearing* 10:00 AM
Case # 17-CC-00017; Minnesota Store, LLC, t/a Minnesota Store, 3728
 Minnesota Ave NE, License #95245, Retailer B, ANC 7B
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal
 Drinking Age**

Show Cause Hearing* 11:00 AM
Case # 17-CC-00078; Sunami, LLC, t/a Sportsman's Wine and Liquors, 3249
 Mount Pleasant Street NW, License #70310, Retailer A, ANC 1D
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal
 Drinking Age**

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Fact Finding Hearing* 1:30 PM
 Adams Morgan F & B, LLC, t/a Jack Rose, 2007 18th Street NW, License
 #81997, Retailer CR, ANC 1C
Request for Clarification on DC Official Code §25-125

Show Cause Hearing* 3:00 PM
Case # 17-CMP-00397; Kiss, LLC, t/a Kiss Tavern, 637 T Street NW, License
 #104710, Retailer CT, ANC 1B
Failed to Comply with Board Order, Violation of Settlement Agreement

***The Board will hold a closed meeting for purposes of deliberating these
 hearings pursuant to D.C. Official Code §2-574(b)(13).**

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

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, NOVEMBER 29, 2017
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, November 29, 2017 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case# 17-AUD-00065, Shake Shack, 1216, 18th Street N.W., Retailer DR, License # ABRA-086070

2. Case# 17-AUD-00066, Maddy’s Tap Room, 100 13th Street N.W., Retailer CR, License # ABRA-086770

3. Case# 17-AUD-00068, Sequoia Grill, 3000 K Street N.W., Retailer CR, License # ABRA-071453

4. Case# 17-AUD-00069, Cedar, 822 E Street N.W., Retailer CR, License # ABRA-081157

5. Case# 17-CMP-00006 (b), Ping Pong, 900 7th Street N.W., Retailer CR, License # ABRA-082097

6. Case# 17-251-00185, Chinese Disco, 3251 Prospect Street N.W., Retailer CR, License # ABRA-078058

7. Case# 17-CC-00114, Reyna Mkt & Deli, 4201 Massachusetts Avenue N.W., Retailer A, License # ABRA-093799

8. Case# 17-MGR-00001, Christopher Olivarius-Imlah, ABC Manager, License # ABRA-107194

9. Case# 17-CC-00079, Park Market, 3400 13th Street N.W., Retailer A, License # ABRA-094178

10. Case# 17-CC-00085, Big Valu Liquors, 3174 Bladensburg Road N.E., Retailer A, License # ABRA-026228

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, NOVEMBER 29, 2017 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 5E. SMD 5E10. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Jubilee Market*, 2316 4th Street NE, Retailer B, License No. 074162.

2. Review Application for Safekeeping of License – Original Request. ANC 5E. SMD 5E05. No outstanding fines/citations. No outstanding violations. There is one pending protest. No conflict with Settlement Agreement. *Kearney's Grocery*, 90 O Street NE, Retailer B, License No. 078591.

3. Review Request for Change of Hours. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption*: Sunday Closed, Monday-Friday 11:30am to 10pm, Saturday 4pm to 10pm. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption*: Sunday-Saturday 11:30am to 10pm. ANC 6C. SMD 6C02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *DC Kyoto Sushi*, 201 Massachusetts Avenue NE, Retailer CR, License No. 102890.

4. Review Application for Entertainment Endorsement to provide Live Entertainment. *Proposed Hours of Live Entertainment*: Sunday-Wednesday 6pm to 11pm, Thursday 6pm to 12am, Friday-Saturday 6pm to 3am. ANC 2C. SMD 2C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *& Pizza*, 705 H Street NW, Retailer CR, License No. 098584.

5. Review Request to Increase Total Occupancy Load from 44 patrons to 89 patrons, as permitted by Certificate of Occupancy. ANC 4A. SMD 4A02. The Establishment has a pending Show Cause Hearing. No outstanding fines. No conflict with Settlement Agreement. *Champion Kitchen*, 7730 Georgia Avenue NW, Retailer CR, License No. 103055.

***In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

CARLOS ROSARIO PUBLIC CHARTER SCHOOL**REQUEST FOR QUOTES****HP Laser Printer Service and Maintenance**

Carlos Rosario International Public Charter School is seeking submissions for a Request for Quote (RFQ) for an HP laser printer service and maintenance contract. The quote will minimally include a 3-year term, **all** service and maintenance of approximately 125 laser printers across 2 campuses, the provision of unlimited toner, original HP parts, and certified HP technicians to perform any necessary work. Response are due by 5p, 12/01/2017 to Gwen Ellis at gellis@carlosrosario.org She also can be contacted for a copy of the full RFQ.

CITY ARTS AND PREP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

City Arts + Prep PCS solicits proposals for the following:

- **Heating and air conditioning (HVAC) services**
- **Project Financing Services**
- **Project Manager**

Proposals and requests for the full RFP should be emailed to bids@cityartspcs.org no later than 5:00 P.M., Tuesday, December 5, 2017

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

WEDNESDAY, DECEMBER 6, 2017 AT 3:00 PM
441 4TH STREET N.W., ROOM 1112, WASHINGTON, D.C., 20001

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, December 6, 2017 at 3pm. 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 of Conspiracy:
 - (A) First Draft of Report #12 - Definition for a Criminal Conspiracy
 - (B) Advisory Group Memo #13 - Definition for a Criminal Conspiracy Supplementary Materials.
- III. Discussion of Advisory Group Written Comments on Property Offenses:
 - (A) First Draft of Report #8 Recommendations for Property Offense Definitions, Aggregation, Multiple Convictions
 - (B) First Draft of Report #9 Recommendations for Theft and Damage to Property Offenses
 - (C) First Draft of Report #10 Recommendations for Fraud and Stolen Property Offenses
 - (D) First Draft of Report #11 Recommendations for Extortion, Trespass, and Burglary Offenses
 - (E) Advisory Group Memo #12 Property Offense Supplementary Materials.
- IV. Adjournment.

D.C. BILINGUAL PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS

D.C. Bilingual Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide the following services for SY17.18:

- Comprehensive Site Assessment and UST Removal Monitoring

Proposal Submission

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **3:00 p.m. EST on Thursday, December 7, 2017**. Proposals should be emailed to Elle Carne ecarne@programmanagers.com or call 202-540-2425.

No phone call submission or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

DC SCHOLARS PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Modular Contractor Services**

DC Scholars Public Charter School solicits proposals for a modular contractor to provide professional management and construction services to construct a modular building to house four classrooms and one faculty office suite, with a projected life expectancy of approximately 2 years. The Request for Proposals (RFP) specifications can be obtained on Monday, November 27th from Emily Stone via communityschools@dcscholars.org.

After receiving and reviewing bids, DC Scholars PCS will award a contract on Friday, January 26, 2018. The selected contractor shall complete the building design, permit and construction activities to achieve substantial completion of the modular building to allow occupancy by August 3, 2018.

Bids must be received by 5:00 PM on Thursday, December 14th at DC Scholars Public Charter School. Mail or hand-deliver bids to: DC Scholars Public Charter School, ATTN: Sharonda Mann, 5601 E. Capitol Street SE, Washington, DC 20019.

All questions should be submitted in writing by e-mail to communityschools@dcscholars.org. Please put "Modular Contractor RFP" in the subject heading. No phone calls regarding this RFP will be accepted. **Any bids not addressing all areas as outlined in the RFP specifications will not be considered.**

BOARD OF ELECTIONS**CERTIFICATION OF ANC/SMD VACANCY**

The District of Columbia Board of Elections hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 3D07 and 7F07

Petition Circulation Period: **Monday, November 27, 2017 thru Monday, December 18, 2017**

Petition Challenge Period: **Thursday, December 21, 2017 thru Thursday, December 28, 2017**

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

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

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

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

NOTICE OF FUNDING AVAILABILITY

Release Date- Request for Applications: November 27th 2017 12:00 PM

Notice of Funding: November 27th 2017 12:00 PM

Pre-Application Meeting Webinar: November 30th 11:00 AM

Letter of Intent to Apply Due: December 8th, 2017 12:00 PM

GRANT APPLICATIONS DUE: December 15th, 2017 12:00 PM

Pathways for Young Adults Program (PYAP) Innovation Grants Program - Pilot A

The District of Columbia Department of Employment Services (DOES), Office of Youth Programs (OYP) is seeking qualified organizations to provide services to District youth through its Pathways for Young Adults Program (PYAP) – Innovation Grants Program -Pilot Opportunity. The PYAP Innovation Grants Program – Pilot is funded by the Workforce Innovation and Opportunity Act (WIOA), which became effective on July 1, 2015.

The purpose of this PYAP Innovation Grants Program – Pilot is to support the delivery of innovative workforce solutions that will drastically improve the opportunities for Post-Secondary Education for youth between the ages of 18-24 and/or youth must be a recipient of a high school diploma or GED and not currently enrolled. The Post-Secondary pathway under PYAP Innovation Grants Program – Pilot will provide the educational fundamentals around pre-college preparation, re engagement with college, educational financial literacy and enrollment in a Post-Secondary Institution.

DOES OYP will solicit grant applications from eligible organizations to assist youth with entering into a Post-Secondary Institution, while providing support structures to minimize the effects of WIOA identified barriers.

DOES OYP aims to fund integrated service models that explore pathways which lead to post-secondary enrollment at an accredited community college, college and/or university.

Please refer to the WIOA guidelines and Fact Sheet for Youth Programs when determining eligibility criteria to be met.

https://www.doleta.gov/wioa/Docs/WIOA_YouthProgram_FactSheet.pdf

Eligible Applicants

Applicants must be an entity who is eligible to do business with the District Government or an eligible training provider with documented experience providing training for DC's youth. A pre-application meeting/webinar will be held on Thursday, November 30th 2017 at 11:00 a.m. This

meeting will afford interested parties an opportunity to learn more about the grant opportunity and ask questions. To apply for this grant opportunity, applicants should go to the grants portal at the below web address and complete a Letter of Intent (LOI) by Friday, December 8th, 2017 12:00 PM. Once your organization's LOI is submitted and approved your organization will receive an approval email and then be able to respond to the official RFA located within the grants portal. Please be advised if organizations do not submit an LOI through the grant portal your organization will not be able to submit a proposal for the grant.

Up to two (2) awards at \$187,500 each, totaling \$375,000 in grant funds will be made available.

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

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

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

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

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

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

For more information or questions, please contact:

Office of Youth Programs
4058 Minnesota Ave, NE, 2nd Floor
Washington, DC 20019
Email: youthjobs@dc.gov

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

NOTICE OF FUNDING AVAILABILITY

Release Date- Request for Applications: November 27th 2017 12:00 PM

Notice of Funding: November 27th 2017 12:00 PM

Pre-Application Meeting Webinar: November 30th 11:00 AM

Letter of Intent to Apply Due: December 8th, 2017 12:00 PM

GRANT APPLICATIONS DUE: December 15th, 2017 12:00 PM

Pathways for Young Adults Program (PYAP) Innovation Grants Program - Pilot B

The District of Columbia Department of Employment Services (DOES), Office of Youth Programs (OYP) is seeking qualified organizations to provide services to District youth through its Pathways for Young Adults Program (PYAP) – Innovation Grants Program - Pilot Opportunity. The PYAP Innovation Grants Program – Pilot is funded by the Workforce Innovation and Opportunity Act (WIOA), which became effective on July 1, 2015.

The purpose of this program PYAP Innovation Grants Program – Pilot is to support the delivery of innovative workforce solutions that will drastically improve the opportunities for youth between the ages of 18-24 years to provide the educational fundamentals around entrepreneurship, financial literacy, business corporation education, business plan development and to successfully build a business foundation and provide guidance on launching a business to obtain a life-sustaining income.

DOES, (OYP) will solicit grant applications from eligible organizations to assist youth with entering this pathway while providing support structures to minimize the effects of WIOA identified barriers.

DOES OYP aims to fund integrated service models that explore pathways to building a business and a successful business launch.

Please refer to the WIOA guidelines and Fact Sheet for Youth Programs when determining eligibility criteria to be met.

https://www.doleta.gov/wioa/Docs/WIOA_YouthProgram_FactSheet.pdf

Eligible Applicants

Applicants must be an entity who is eligible to do business with the District Government or an eligible training provider with documented experience providing training for DC's youth. A pre-application meeting/webinar will be held on Thursday, November 30th 2017 at 11:00 a.m. This

meeting will afford interested parties an opportunity to learn more about the grant opportunity and ask questions. To apply for this grant opportunity, Applicants should go to the grants portal at the below web address and complete a Letter of Intent (LOI) by Friday, December 8th, 2017 12:00 PM. Once your organization's LOI is submitted and approved your organization will receive an approval email and then be able to respond to the official RFA located within the grants portal. Please be advised if organizations do not submit an LOI through the grant portal your organization will not be able to submit a proposal for the grant.

Up to two (2) awards at \$187,500 each, totaling \$375,000 in grant funds will be made available.

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

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

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

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

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

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

For more information or questions, please contact:

Office of Youth Programs
4058 Minnesota Ave, NE, 2nd Floor
Washington, DC 20019
Email: youthjobs@dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF FOR-HIRE VEHICLES (DFHV)

NOTICE OF FUNDING AVAILABILITY (NOFA)
DFHV INNOVATIONS PROGRAMS GRANTS

The Government of the District of Columbia, Department of For-Hire Vehicles (“DFHV”), is soliciting applications for DFHV-licensed independent taxicab owner-operators, company-affiliated owners, and rental drivers through which the Department will make several awards. Funding under this RFA is up to seven hundred and fifty thousand dollars (**\$750,000**) in grant funds. The purpose of these grant opportunities is to select one or more For-Hire Vehicle companies, taxicab owners, and operators with current DFHV operating authority to participate in innovative pilot projects and partnership programs aimed at improving transportation equity, expanding economic opportunities, solving problems within the taxicab industry that benefit taxicab consumers, and fostering innovation.

The Request For Application (RFA) release date is **Friday, November 24, 2017**, and a copy may be obtained at the DFHV website. To access the RFA click on <https://dfhv.dc.gov/page/grant-funding>. Subsequent new program announcements and information sessions under this NOFA will also be found on the same page as new programs are developed. DFHV will publish on its website, any new funding opportunities under the DFHV Innovations Program.

ONLINE APPLICATION PROCESS: To view and complete the online application email Gladys.Kamau@dc.gov and have *Expression of Interest* in the subject line. DFHV will activate your online access within two business days and notify you via email once your online access has been established. Access will be granted to one e-mail address per applicant.

APPLICATION DEADLINE(S): Applicants interested in the School Transportation Service Pilot Program must apply by **December 15th, 2017, 4:00 p.m. EST.**

Applicants interested in applying for the other Innovation Pilot Programs must complete an online application on or before **June 29, 2018, 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.

INFORMATION SESSION: An information session will be held at **1:30 p.m. EST November 29, 2017**, at DFHV’s *Hearing Room* at 2235 Shannon Place SE, Washington, DC 20020. ID’s are required for access to the building. During the session, clients will be walked through the online application

SELECTION PROCESS: Each application will be scored against a rubric and applications will have multiple reviewers to ensure accurate scoring. Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s). The Agency Director or his designee will make all final award decisions.

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.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**NOTICE OF FUNDING AVAILABILITY**

Polly Donaldson, Director, Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) for funding under the 9% Low Income Housing Tax Credit (LIHTC) program, the Housing Production Trust Fund (HPTF) program, the Community Development Block Grant (CDBG) program, Home Investment Partnerships (HOME) program, the National Housing Trust Fund (NHTF) program, the Department of Behavioral Health (DBH) funds administered by DHCD, the District of Columbia Housing Authority's (DCHA) Local Rent Supplement Program (LRSP) and Annual Contributions Contract Program (ACC), and the Department of Human Services (DHS) supportive services funds for Permanent Supportive Housing.

DHCD will issue a Consolidated Request for Proposals (RFP) for real estate development projects that Produce or Preserve affordable housing and that require gap financing. For new construction and vacant rehabilitation rental projects, DHCD requires at least a 5% of funded units be set aside as Permanent Supportive Housing (PSH). PSH programs must adhere to the Housing First model and all vacancies must be filled through the Coordinated Entry system. PSH projects will be also eligible for funding from the sources listed below.

AFFORDABLE HOUSING CAPITAL SUBSIDY (DHCD and DBH)

The Department of Housing and Community Development will accept requests for 9% Low Income Housing Tax Credits and gap financing (multiple federal and local funding sources available) for projects that Produce or Preserve affordable housing, as described in detail in the forthcoming RFP.

OPERATING SUBSIDY (DCHA)

The District of Columbia Housing Authority will accept requests for LRSP and ACC funds to provide project-based rental subsidies to units for qualified persons or households.

SUPPORTIVE SERVICES (DHS)

The Department of Human Services will accept funding requests from community based organizations to deliver intensive supportive services to single adult and family participants (who are chronically homeless, vulnerable, and face significant barriers to achieving self-sufficiency) in permanent supportive housing programs/projects funded through this NOFA.

The Consolidated Request for Proposals (RFP) will be released on Thursday, November 30, 2017 and applications will be due on Wednesday January 31, 2018.

Application materials, further instructions, and information about the RFP orientation session will be available online at dhcd.dc.gov and at <https://octo.quickbase.com/db/bjc34b76f>. The entire application and submission process will be online and no hard copy submissions will be required or accepted.

**Muriel Bowser, Mayor of the District of Columbia
Brian Kenner, Deputy Mayor for Planning and Economic Development
Polly Donaldson, Director, Department of Housing and Community Development**

INGENUITY PREP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

Ingenuity Prep PCS solicits proposals for the following:

- **Janitorial services**

Full RFP(s) available in the DC Register and by request. Proposals shall be emailed as PDF documents no later than 5:00 PM on Tuesday, December 5, 2017. Contact: bids@ingenuityprep.org

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****HR Consulting Services**

KIPP DC is soliciting proposals from qualified vendors for HR Consulting Services. The RFP can be found on KIPP DC's website at <http://www.kippdc.org/procurement>. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on December 5, 2017. Questions can be addressed to dane.anderson@kippdc.org.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA
RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after January 2, 2018.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on November 24, 2017. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary
 Recommendations for appointment as DC Notaries Public

Effective: January 2, 2018

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Anaya Granados	Oscar Alfredo	Slocumb Law Firm, LLC 777 6th Street, NW, Suite 520	20001
Andegeorgis	Michael	Law Office of Michael Andegeorgis 2141 P Street, NW, Suite 103	20037
Armstrong	Rebecca Kathryn	International Life Sciences Institute 1156 15th Street, NW, Suite 200	20005
Barisic-Arthur	Snjezana	Self (Dual) 405 10th Street, NE, # 302	20002
Brown	Kelley M.	District of Columbia Housing Finance Agency 815 Florida Avenue, NW	20001
Byrd Miller	Regenia	AT& T 1120 20th Street, NW, Suite 800	20036
Calderon	Cristina M.	WMR Immigration Law Group 1789 Columbia Road, NW, Suite 200	20009
Capuchinho	Rebekah	Self (Dual) 4809 Bass Place, SE	20009
Cavness	Evelyn	Washington DC Convention & Tourism Corporation 901 7th Street, NW	20001
Cecil	Scott B.	Students for Sensible Drug Policy 1011 O Street, NW	20001
Chintaluri	Sundara S.	Global Registrations, LLC 2141 P Street, NW, Unit 103	20037
Coleman	Davonne	Soto Architecture & Urban Design, PLLC 1348 T Street, NW, Suite 200	20009
Creek	Danielle C.	Self (Dual) 3423 25th Street, SE, Apartment 34	20032
Davis	Kimberly D.	DC Water and Sewer Authority 5000 Overlook Avenue, SW	20032

D.C. Office of the Secretary
 Recommendations for appointment as DC Notaries Public

Effective: January 2, 2018

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Day	April	M & T Bank 555 12th Street, NW	20004
Dixon	Marilyn A.	Self (Dual) 819 Longfellow Street, NW	20060
Douglas	Joyce D.	Federal Energy Regulatory Commission 888 First Street, NE	20426
Elias	Brittania	Neighborhood Legal Service Program 64 New York Avenue, NE, Suite 180	20002
Emade	Christina	Slocumb Law Firm 777 6th Street, NW	20001
Figueroa	Linda	Executive Office for United States Trustees, Department of Justice 441 G Street, NW, Suite 6150	20530
Foster	John T.	Public Health Foundation 1300 L Street, NW, Suite 800	20005
Galindo	Victor	Continental Properties, Ltd 2548 Massachusetts Avenue, NW	20008
Grammes	Katherine B.	Brennan Title Company 5100 Wisconsin Avenue, NW, Suite 515	20016
Hall	Charmette L.	The May Firm, PLLC 3200 Martin Luther King, Jr., Avenue, Jr., SE, 3rd Floor	20032
Hall-Trawally	Khaliah	Self 24 Quincy Place, NE	20002
Hay	Ariana Jeanne	International Association of Fire Fighters 1750 New York Avenue, NW	20006
Henry	Jacquelyn	Department of Employment Services 4058 Minnesota Avenue, NE	20019
Hicklyn	Carol W.	Wells Fargo Bank, NA 5100 Wisconsin Avenue, NW	20016

D.C. Office of the Secretary
 Recommendations for appointment as DC Notaries Public

Effective: January 2, 2018

Page 4

Hinsch	Julia	Carr Properties 1615 L Street, NW, Suite 650	20036
Kaanehe	Brenda	PilieroMazza, PLLC 888 17th Street, NW, 11th Floor	20006
Katz	Jeanne G.	Caplin & Drysdale, Chartered 1 Thomas Circle, NW, Suite 1100	20005
Kelly	Andrea J.	The Cochran Firm 1100 New York Avenue, NW, Suite 340, West Tower	20005
Kurpaska	Angelika	Antonoplos & Associates 1725 Desales Street, NW, Suite 600	20036
Lambright	Sandra E.	U.S. Department of Commerce 14th and Constitution Avenue, NW, Room H-3839	20230
Lindo	Jalliznett	USCG Commandant Office of Legal Policy and Program Development 2703 Martin Luther King, Jr., Avenue, SE, Stop	20593
Lindsay	Cecilie	Siman Companies 460 K Street, NW Suite 100	20001
Lupunga-Phillips	Chanda	Martha's Table, Inc 2114 14th Street, NW	20009
Marlais	Donald	Self (Dual) 411 10th Street, NE	20002
Marshall	Brenda F.	Jenner & Block, LLP 1099 New York Avenue, NW, Suite 900	20001
Martin	Pamela Jean	The Residences at Market Square East 701 Pennsylvania Avenue, NW	20004
McCarthur	Tanzanear	The UPS Store 611 Pennsylvania Avenue, SE	20003

D.C. Office of the Secretary
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McCrimmon	Tracy	Self (Dual) 2640 Bowen Road, SE	20020
Melhotra	Ria	Dechert, LLP 1900 K Street, NW	20006
Messick	Tracey Fotta	Associated Protective Service 700 12th Street, NW, Suite 700	20005
Mickens	Larry	Child and Family Services Agency 200 I Street, SE	20003
Miller	Daryl Vincent	RGS Title, LLC 1529 B 14th Street, NW	20005
Nemeshajmer	Ana	PNC Bank 1201 Wisconsin Avenue, NW	20007
Ouedraogo	Safietou	M & T Bank 1899 L Street, NW	20036
Parker	Candas E.	Self (Dual) 4235 Benning Road, NE	20019
Plumlee	Amy E.	Kuder, Smollar, Friedman & Mihalik 1350 Connecticut Avenue, NW, Suite 600	22032
Purnell	Alexsa C.	St Coletta of Greater Washington 1901 Independence Avenue, SE	20003
Richards Sr.	Randy A.	Self 612 Mellon Street, SE, # 201	20032
Robinson	Kyana R.	The May Firm, PLLC 3200 Martin Luther King, Jr., Avenue, SE, 3rd Floor	20032
Roffe	Abdo B.	11th Property Group 1321 Rhode Island Avenue, NW	20005
Schneider	Alexander	Self 2 M Street, NE, Apartment 708	20002

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Seavers	Bear D.	Wells Fargo 1447 P Street, NW	20005
Shittu	Rasaki A.	Self 14 Todd Place, NE	20002
Smith	Tracy C.	Ifrah Law 1717 Pennsylvania Avenue, NW, Suite 650	20006
Symes	Madison Glenna	The German Marshall Fund of the United States 1744 R Street, NW	20009
Tague	Jennifer L.	The German Marshall Fund of the United States 1744 R Street, NW	20009
Tanis	Jamie M.	Jones Day 51 Louisiana Avenue, NW	20001
Thorpe	Kevin	PNC Bank 1201 Wisconsin Avenue, NW	20007
Turner	Tammy L.	Insured Retirement Institution 1100 Vermont Avenue, NW, 10th Floor	20005
Villarreal	Lizette Ashley	BEST Kids, Inc 1212 4th Street, SE, Suite 201	20003
White	Demetrius	The UPS Store 611 Pennsylvania Avenue, SE	20003
Williams	Dorothy M.	Williams & Connolly, LLP 725 12th Street, NW	20005
Williamson	Forrest Graham	DC Registered Agent, Inc 1120 20th Street, NW, #300	20036
Younger	Analyse	Agriculture Federal Credit Union 1400 Independence Avenue, SW, Room SM-2	20250

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Zeiger	Alexandra J.	TD Bank 4849 Wisconsin Avenue, NW	20016
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SUSTAINABLE FUTURES PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Multiple Services**

Sustainable Futures PCS is seeking competitive bids for Special Education Coordination and Related Services. Proposals must be received by December 8, 2017.

1. RFP for Special Education Coordination: SFPCS is seeking competitive bids for Special Education Services, including but not limited to: LEA Representation, Special Education, Compliance Management, SPED Related Professional Development, ADA Coordinator.

2. RFP for Mental Health and Related Service Provider: SFPCS is seeking competitive bids for Mental Health and Related Services, including but not limited to: Clinician services, speech and language services, and occupational therapy. The vendors of mental health and related services will perform the following services: Provide Behavior Support Services, Speech and Language, Occupational Therapy, Physical Therapy.

Sustainable Futures reserves the right to cancel the abovementioned RFPs at any time. Please Reply to LBryant@SustainableFuturesPCSDC.org with the subject **“SPED RFP”**.

GOVERNMENT OF THE DISTRICT OF COLUMBIA**DISTRICT DEPARTMENT OF TRANSPORTATION
OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS
OFFICE OF THE CHIEF TECHNOLOGY OFFICER****Notice of Meeting to Release Permitting Process for
Small Cell Facilities on Streetlight Poles in the District of Columbia**

The Office of Public-Private Partnerships (OP3), Office of the Chief Technology Officer (OCTO) and the District Department of Transportation (DDOT) have established a permitting process for interested parties to install small cell facilities on streetlight poles in the District. The OP3, OCTO and DDOT will hold a meeting at **55 M Street, SW, Washington, DC 20003 in Room 439 A-B on November 27, 2017 at 2:00 p.m.** at which time the permitting process and a required Master License Agreement to participate in the program will be discussed.

For additional information and to receive the Master License Agreement, please contact:

Seth W. Miller Gabriel
Executive Director, Office of Public-Private Partnerships
Office of the City Administrator
1350 Pennsylvania Ave, NW
Suite 533
Washington, DC 20004
(202) 724-6683
seth.millergabriel@dc.gov

A copy of the Master License Agreement may also be found online at: <https://octo.dc.gov/page/small-cells>

TWO RIVERS PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Owner's Representative for Construction Project Management**

Two Rivers Public Charter School is soliciting proposals from qualified firms to provide project management services for a small construction project at its Young campus. The project to be managed is an additional set of classrooms to expand the elementary school program at the campus. For a copy of the RFP, please email Sarah Richardson at procurement@tworiverspcs.org. Deadline for submissions is December 6, 2017.

UNIVERSITY OF THE DISTRICT OF COLUMBIA
REGULAR MEETING OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The regular meeting of the Board of Trustees of the University of the District of Columbia will be held on Tuesday, November 28, 2017 at 6:00 p.m. in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

- I.** Call to Order and Roll Call
- II.** Approval of the Minutes – September 19, 2017
- III.** Action Items
 - a. NFRM: Proposed Modifications to the University Rules Regarding Progressive Discipline
 - b. NFRM: Proposed Modifications to the University Rules Regarding Performance Management
 - c. NFRM: Proposed Modifications to the University of the District of Columbia's Probationary Period
 - d. NFRM: Amendments to Chapter 6, Increasing Daily Parking Fee for Students, Faculty, and Staff with University Issued Identification
 - e. Approval of FY 19 Budget Request
- IV.** Report of the Chairperson
- V.** Report of the President
- VI.** Committee Reports
 - a. Executive – Mr. Bell
 - b. Committee of the Whole – Mr. Bell
 - c. Academic and Student Affairs – Dr. Tardd
 - i. Alumni Task Force – Mr. Shelton
 - ii. Communications Task Force – Ms. Jackson
 - d. Audit, Budget and Finance – General Schwartz
 - e. Community College – Dr. Tardd
 - f. Operations – Mr. Shelton
- VII.** Unfinished Business
- VIII.** New Business
- IX.** Closing Remarks

Adjournment

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

Application No. 19131-B of Delta Sigma Theta Sorority, pursuant to 11 DCMR Subtitle Y, § 705.1, for a two-year time extension of BZA Order No. 19131A approving a variance from the non-profit organization requirements under § 217.1(b)¹, and a special exception from the non-profit organization requirements under § 217.1, to permit the use of an existing residential building for non-profit office use in the D/DC/R-5-B District at premises 1711 New Hampshire Avenue N.W. (Square 154, Lot 26).

HEARING DATE (Case No. 19131):	December 8, 2015
DECISION DATE (Case No. 19131):	December 8, 2015
ORDER ISSUANCE DATE (Order No. 19131 & 19131A):	December 14, 2015
TIME EXTENSION DECISION:	November 8, 2017

**SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 19131A**

The Underlying BZA Order

On December 8, 2015, the Board of Zoning Adjustment (the "Board") approved the Applicant's request pursuant to the 1958 Zoning Regulations under 11 DCMR §§ 3103.2 and 3104.1, for a variance from the non-profit organization requirements under § 217.1(b), and a special exception from the non-profit organization requirements under § 217.1, to permit the use of an existing residential building for non-profit office use in the D/DC/R-5-B District at premises 1711 New Hampshire Avenue N.W. (Square 154, Lot 26).

The Board issued its written order ("Order") on December 14, 2015.² Pursuant to 11 DCMR § 3125.9 (now Subtitle Y § 604.11 of the 2016 Regulations), the Order became final on December 14, 2015 and took effect 10 days later.

¹ This and all other references to the relief granted in Order No. 19131A are to provisions that were in effect the date the Application was heard and decided by the Board of Zoning Adjustment (the "1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text (the "2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's original decision or the validity of Order No. 19131A.

² The Board issued an order and a corrected order in this case. The only correction in the corrected order (No. 19131A) was to the final all-capitalized paragraphs in the original order. The final date of the order was not altered.

Under the Order and pursuant to 11 DCMR § 3130 (now Subtitle Y § 702.1 of the 2016 Regulations), the Order was valid for two years from the time it was issued -- until December 14, 2017. (Exhibits 1 and 5.)

Motion to Extend Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

On October 5, 2017, the Applicant submitted an application for a time extension requesting that the Board grant a two-year extension of Order No. 19131A. (Exhibits 1-7.) This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations of 2016, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Criteria for Evaluating Motion to Extend

Pursuant to Subtitle Y § 705.1(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. The record reflects that the Applicant served all parties at least 30 days in advance of the public meeting. The only other party to the original application included the affected Advisory Neighborhood Commission (“ANC”) which is ANC 2B. (Exhibit 6.)

Pursuant to Subtitle Y § 705.1(b), the Applicant indicated in its request that there has been no substantial change in any of the material facts upon which the Board based its original approval of the application. (Exhibit 6.)

Under Subtitle Y § 705.1(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant’s reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board’s order because of delays that are beyond the applicant’s reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant’s reasonable control.

The Applicant demonstrated that there is good cause for an extension of the Board’s approval. The Applicant stated that there have been a number of factors that have affected their ability to do this project before the expiration of the approval due to a complicated and delayed construction financing and design process. The Applicant noted that the financing and design process has become more complicated than expected due to the complex issues associated with conversion of the building from residential to commercial use, as well as connecting the existing headquarters building to the subject property. The Applicant stated that it is currently working with an architect and intends to preserve and enhance the front façade of the building while renovating the entire building, which has created some complex design issues. Also, the organization that owns the property recently had a leadership change which significantly delayed the building renovation process, but the organization is now ready to proceed with the project. The Applicant is in the process of finalizing the architectural plans and intends to apply for permits and secure construction financing as soon as possible. (Exhibits 6, 7, and 9.)

The Merits of the Request to Extend the Validity of the Order Pursuant to 11 DCMR Subtitle Y § 705.1

The Board finds that the motion has met the criteria of Subtitle Y § 705.1 to extend the validity of the underlying order. To meet the requirements of Subtitle Y § 705.1(a), the record reflects that the Applicant served the parties to the application and all parties were allowed at least 30 days to respond. The only parties to the case were the Applicant and ANC 2B and the record reflects that ANC 2B was served with the request and allotted sufficient time to respond. ANC 2B did not submit a report regarding the time extension request. Nevertheless, a letter was submitted by single member district member, ANC 2B02, wherein he explained that the full ANC had been unable to consider the request at a meeting due to timing, and noted he had no concerns about the request and that the ANC had been in support of the underlying project. (Exhibit 11.) The Office of Planning (“OP”) submitted a timely report recommending approval of the request for the time extension. (Exhibit 9.) No party to the application objected to an extension of the Order.

As required by Subtitle Y § 705(b), the Applicant demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 19131A. There have also been no substantive changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order that would affect the approval.

To meet the burden of proof for "good cause" required under Subtitle Y § 705.1(c), the Applicant provided a statement and other evidence regarding the reasons for the delay in securing funding and completing the design process and securing permits. The Applicant described their efforts to finalize permit drawings and secure construction financing for the project to convert an existing residential building at 1711 New Hampshire Avenue, N.W. into additional non-profit office use by the Applicant, which currently operates its administrative offices in the building immediately south of the subject property at 1703-1709 New Hampshire Avenue, N.W. Because the funding and design process has become more complicated than the Applicant expected and the organization has undergone significant internal change with the election of a new National President and CEO along with the retirement of the long-serving Executive Director, the Applicant has requested a two-year extension of the Board's approval to give it time to complete the design process and secure financing and permits. (Exhibits 6 and 7.)

In evaluating the extension request, the Board considered the Applicant's good faith and diligent efforts to move forward with the approved project on the Property. The Applicant indicated that it has every intention of proceeding with this project, as shown by their efforts to work with an architect to complete the design process. The Applicant stated that it intends to preserve and enhance the front façade of the building while renovating the entire building, which has created some complex design issues. Also, the leadership change at the organization that owns the property significantly delayed the building renovation process, but the Applicant has indicated that it is now ready to proceed with the project. The Applicant is in the process of finalizing the

architectural plans and intends to apply for permits and secure construction financing as soon as possible. (Exhibits 6 and 7.)

The Applicant has submitted an affidavit from its Executive Director that attested to the foregoing reasons for the delay in the project and explained why, despite the Applicant's good faith efforts, additional time is required so the Applicant can complete final development plans and apply for a building permit. (Exhibit 7.)

Given the totality of the conditions and circumstances described above and after reviewing the information that was provided, the Board finds that the Applicant satisfied the "good cause" requirement under Subtitle Y § 705.1(c), specifically meeting the criteria for Subtitle Y § 705.1(c)(2). The Board finds that the delay in securing the necessary governmental approvals is beyond the Applicant's reasonable control and that the Applicant demonstrated that it has acted diligently, prudently, and in good faith to proceed towards the implementation of the Order.

OP expressed its support for the project and recommended approval of the requested time extension. OP, in its report dated October 26, 2017, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR Subtitle Y § 705.1, and noted that the Applicant had demonstrated that: (a) the application had been served on ANC 2B with time for the ANC to respond; (b) there had been no substantive change in the Zoning Regulations that would impact the material facts upon which the Board based its original approval; and (c) the Applicant made a statement of good cause for an time extension for the project based on a complicated and delayed construction financing and design process whereby the Applicant does not have sufficient time left in which to complete its development plans and apply for a building permit before the Order expires. OP indicated that it had reviewed the materials submitted by the Applicant and has no objection to the requested two-year time extension. (Exhibit 9.) Having given OP's recommendation great weight, the Board concludes that extension of the approved relief is appropriate under the current circumstances and that the Applicant has met the burden of proof for a time extension under Subtitle Y § 705.1.

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

Pursuant to 11 DCMR Subtitle Y § 702, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 19131-B for a two-year time extension of Order No. 19131-A, which Order shall be valid until **December 14, 2019**, within which time the Applicant must file plans for the proposed project with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 3-0-2 (Frederick L. Hill, Carlton E. Hart, and Michael G. Turnbull to APPROVE; Lesylleé M. White, recused and not participating; one Board seat vacant.)

**BZA APPLICATION NO. 19131-B
PAGE NO. 4**

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

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

FINAL DATE OF ORDER: November 14, 2017

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 14-11D
Z.C. Case No. 14-11D
(Text Amendment – 11 DCMR)
(Subtitle A § 301, Vesting Provision for Z.C. Case No. 14-11B)
October 30, 2017**

The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-06
Z.C. Case No. 17-06
Capitol Vista Community Partners and the District of Columbia
(Consolidated PUD and Related Map Amendment
@ Square 563N, Lots 2-6 and 800-805)
September 11, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 20, 2017, to consider applications for a consolidated planned unit development (“PUD”) and a related zoning map amendment filed by Capitol Vista Community Partners and the District of Columbia (“Applicant”). The Commission considered an application pursuant to Subtitle X, Chapter 3 and Subtitle Z 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 Subtitle Z, Chapter 4. For the reasons stated below, the Commission **HEREBY APPROVES** the application.

FINDINGS OF FACT

The Applications, Parties, Hearings, and Post-Hearing Filings

1. On March 27, 2017 the Applicant filed an application with the Commission for consolidated review of a PUD and a related zoning map amendment from the MU-4 zone to the D-4-R zone for Lots 2-6 and 800-805 in Square 563N (“PUD Site”).
2. The PUD Site has a land area of approximately 9,648 square feet and is bounded by Reservation 194 to the north, New Jersey Avenue, N.W. to the east, H Street, N.W. to the south, and 2nd Street, N.W. to the west.
3. The PUD Site is presently vacant and is leased by the Deputy Mayor’s Office for Planning and Economic Development (“DMPED”) for temporary event parking. The Applicant proposes to replace the existing vacant lot with a new building that includes an all affordable apartment house, with ground-floor retail.
4. The PUD Site is surrounded by a variety of uses, including retail, service, and dining opportunities along 5th Street and K Street; the campus of Gonzaga High School; and dense mixed-use urban development. The PUD Site is located approximately one half-mile from Union Station and the H Street-Union Station Streetcar station, and is in close proximity to numerous Metrobus routes and stops.
5. Pursuant to D.C. Council Resolution R21-718 and R21-719, dated December 20, 2016, the District selected the Applicant to redevelop the PUD Site. As described in the resolutions, the District determined that the PUD Site is no longer required for public purposes and the most pragmatic solution for activating the PUD Site is for redevelopment with new construction.

6. The project comprises an apartment house that includes a total of 104 residential units and approximately 3,200 square feet of ground-floor retail (“Project”). All of the new residential units will be set aside as affordable units, with 16 units dedicated to families earning up to 30% of the area median income (“AMI”), 16 units dedicated to families earning up to 50% AMI, and 72 units dedicated to families earning up to 60% AMI or below.
7. The overall PUD Site will be developed with approximately 109,590 square feet of gross floor area, with a density of 11.35 floor area ratio (“FAR”), and will have an overall lot occupancy of approximately 97.6%. The building on the PUD Site will have a maximum height of 129 feet, 10 inches measured to the top of the parapet and 130 feet measured to the top of the sunshade. No parking spaces will be provided on the PUD Site since none are required by zoning. The Project also includes significant streetscape improvements along New Jersey Avenue, H Street, and 2nd Street, including new landscaping, lighting, paving, and tree planting.
8. By report dated May 12, 2017, the District of Columbia Office of Planning (“OP”) recommended that the applications be set down for a public hearing. (Exhibit [“Ex.”] 12.) At its public meeting on May 22, 2017, the Commission voted to schedule a public hearing on the applications. At the public meeting, the Commission approved the Applicant’s request for a hearing fee waiver. (Ex. 3.)
9. The Applicant filed a prehearing submission on May 23, 2017, and a public hearing was timely scheduled for the matter. (Ex. 14-14K.) On June 5, 2017, the notice of public hearing was sent to all owners of property located within 200 feet of the PUD Site; Advisory Neighborhood Commission (“ANC”) 6E, the ANC in which the PUD Site is located; Kevin Rogers, the Single Member District commissioner for ANC 6E07; and to Councilmember Charles Allen. A description of the proposed development and the notice of the public hearing in this matter were published in the *DC Register* on June 9, 2017.
10. On June 13, 2017, the Applicant filed its Transportation Impact Study. (Ex. 22-22A2.) On June 30, 2017, the Applicant filed its supplemental prehearing submission. (Ex. 23-23B.) The supplemental prehearing submission included: (i) revised architectural plans and elevations; (ii) information regarding the Enterprise Green Communities standards and LEED; (iii) a statement regarding proposed ground-floor uses; (iv) a restatement of the project benefits and amenities; and (v) an analysis describing how the Project is not inconsistent with *Policy CW-1.1.19: Goods Movement and Service Delivery within Central Washington*, *Policy E-3.4.3: Environmental Assessments*, and *Policy E-4.1.7: Best Available Control Technology of the Comprehensive Plan*.
11. On July 7, 2017, OP submitted a hearing report, which recommended approval of the application and stated that the application is not inconsistent with the Comprehensive Plan Future Land Use Map, the Generalized Policy Map, or the text of the Comprehensive Plan. (Ex. 24, p. 11-12.)

12. On July 10, 2017, the District Department of Transportation (“DDOT”) submitted a hearing report. (Ex. 26.) The DDOT hearing report indicated no objection to the application subject to the conditions listed on page three of its report.
13. On July 10, 2017, the Department of Energy and Environment (“DOEE”) submitted a hearing report. (Ex. 25.) The DOEE hearing report indicated no objection to the application and indicated that any comments can be “fully addressed through any of DOEE’s normal regulatory review processes.” (Ex. 25, p. 1.)
14. On July 10, 2017, the District of Columbia Public Schools (“DCPS”) submitted a report, which identified the schools that potential children at the PUD Site could attend. (Ex. 27.)
15. ANC 6E submitted a resolution in support of the Project, indicating that at its regularly scheduled and duly noticed public meeting of April 4, 2017, at which a quorum of commissioners was present, ANC 6E voted 6-0-0 to support the application including the flexibility requested and project benefits and amenities. (Ex. 15.)
16. Councilmember Charles Allen submitted a letter of support. (Ex. 30.) The letter states that the Project provides a host of benefits for Ward 6, including monetary contributions to a variety of Ward 6 organizations and that the Project’s affordable units will create housing that is affordable for teachers, police officers, and other working professionals who live within Ward 6.
17. The record includes a number of additional letters of support for the Project as follows: the Save the Butler-Wyatt Clubhouse #2 Fund, the DC Public Library Foundation, DC Local Initiatives Support Corporation, the Mount Vernon Triangle Community Improvement District, and the Perry School Community Services Centers, Inc., all of which are local community groups that operate in Ward 6 and in the vicinity of the PUD Site. (Ex. 29-34.)
18. In addition, as part of the District Council process of approving the surplus and disposition of the PUD Site, NOMA Connected, Holy Redeemer Catholic Church, Enterprise, the Coalition for Nonprofit Housing and Economic Development, and Sursum Corda Cooperative Association, Inc. submitted letters to the Council in support of the disposition. The letters generally state that redevelopment of the PUD Site is consistent with neighborhood needs and will provide additional affordable housing near downtown DC. (Ex. 36.)
19. The parties to the case were the Applicant and ANC 6E.
20. The Commission convened a public hearing on July 20, 2017, which concluded that evening. The Applicant presented three witnesses in support of the applications: Buwa Binitie, on behalf of the Applicant; Ashish Mayer of Grimm + Parker Architects, architect for the Project; and Nicole White, of Symmetra Design, transportation consultant for the Project. Based upon their professional experience and qualifications,

the Commission qualified Mr. Mayer as an expert in architecture and Ms. White as an expert in transportation planning and engineering.

21. Stephen Cochran of OP and Haley Peckett of DDOT testified in support of the application at the public hearing.
22. At the conclusion of the public hearing, the Commission closed the record and took proposed action to approve the referral of the application to the National Capital Planning Commission (“NCPC”). The Commission left the record open until September 8, 2017 for ANC 6E to submit any comments on the Applicant’s final proffers and draft conditions.
23. On July 27, 2017, the Applicant submitted its proposed findings of fact and conclusions of law and its proposed list of proffers and draft conditions. (Ex. 40A-40B.) On August 10, 2017, the Applicant submitted its final list of proffers and conditions. (Ex. 41.)
24. The application was referred to NCPC on July 24, 2017, pursuant to § 492 of the Home Rule Act. (Ex. 39.)
25. The Executive Director of NCPC, by delegated action dated August 31, 2017, found that the PUD is not inconsistent with the Federal Elements of the Comprehensive Plan or any other identified federal interest. (Ex. 42.)
26. The Commission took final action to approve the PUD on September 11, 2017.

The PUD Site and Surrounding Area

27. The PUD Site consists of Lots 2-6 and 800-805 in Square 563N. The PUD Site has a land area of approximately 9,648 square feet and is bounded by Reservation 194 to the north, New Jersey Avenue, N.W. to the east, H Street, N.W. to the south, and 2nd Street, N.W. to the west.
28. The Applicant requested a zoning map amendment to rezone the PUD Site from the MU-4 zone to the D-4-R zone. As detailed in finding of facts, the Commission finds that the requested map amendment is consistent with the Comprehensive Plan Future Land Use Map designation of the PUD Site as High-Density Residential and High-Density Commercial since the D-4-R zone is defined as a high-density mixed-use zone. (*See* 11-I DCMR § 530.1.)
29. The PUD Site is situated amongst a diverse mosaic of downtown neighborhoods such as Mount Vernon Triangle, NoMa, and Chinatown. The Mount Vernon Triangle area has become one of downtown Washington’s most active and convenient neighborhoods, with an exciting variety of places to live, work, shop, and dine. The neighborhood is positioned at an ideal location in the east end of downtown, and the PUD Site is within walking distance of the Convention Center, Gallery Place/Verizon Center, and the U.S. Capitol. (*See* Washington, DC Economic Partnership, DC Neighborhood Profiles 2014,

- p. 34.) This neighborhood provides a unique mix of historic and modern buildings, longtime and new residents, and diverse cultures, restaurants, and experiences. (*Id.*) Mount Vernon Triangle has become known for its vibrancy, with more than 45 restaurants and retailers, 1.7 million square feet of existing office space, and 3,824 residential units existing or under construction.
30. The PUD Site is also located within one-half mile of Union Station and the H Street-Union Station Streetcar station. As a result, the PUD Site is located near various modes of public transportation that link the PUD Site to the remainder of the District.
31. Furthermore, the PUD Site was identified as a property in need of development in the Mount Vernon Action Agenda from 2003. (*See*, Mount Vernon Action Agenda, p. 34.) The PUD Site is located to the northeast of Capitol Crossing, which is currently under construction; directly to the north of 111 Massachusetts Avenue (i.e., the “Darth Vader” Building); and directly to the south of US Reservations 193 and 194.

Waiver of the Minimum Land Area Requirements of 11-X DCMR § 301.1

32. Since the PUD Site has a land area of approximately 9,648 square feet where a minimum of 15,000 square feet of land area is required pursuant to 11-X DCMR § 301.1, the Applicant requested a waiver of the minimum land area requirements of 11-X DCMR § 301.1.
33. The Commission may waive not more than 50% of the minimum area requirements provided: (i) the Commission finds after a public hearing that that development is of exceptional merit and in the best interest of the District or country; and (ii) at least 80% of the gross floor area of the development shall be used exclusively for dwelling units and uses accessory thereto. (11-X DCMR § 301.2.)
34. The Commission finds that Project is of exceptional merit and in the best interest of the District since the Project will significantly improve the existing area by redeveloping a vacant, underutilized site with a mixed-use building that will activate New Jersey Avenue and provide a significant amount of new affordable housing. One hundred percent of the units will be affordable units, with 16 units dedicated to families earning up to 30% AMI, 16 units dedicated to families earning up to 50% AMI, and 72 units dedicated to families earning up to 60% AMI or below.
35. The Commission finds that greater than 80% of the gross is devoted to residential use as shown on Sheet A-0.1 of the plans. Specifically, 106,390 square feet of the 109,590 square feet of the gross floor area of the Project – or 97% – is devoted to residential use.

Existing and Proposed Zoning

36. The PUD Site is presently zoned MU-4. The MU-4 zone is intended to permit moderate-density mixed-use development; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the

central core; and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate-bulk mixed-use centers. (11-G DCMR § 400.3.) As a matter of right, property in the MU-4 zone can be developed to a maximum building height of 50 feet, a maximum density of 2.5 FAR, and a maximum lot occupancy of 60%. (11-G DCMR §§ 402.1, 403.1, 404.1.)

37. Consistent with the PUD Site's designation as High-Density Residential and High-Density Commercial on the Future Land Use Map, which defines High-Density Residential as the "neighborhoods and corridors where high-rise (eight stories or more) apartment buildings are the predominant use" and High-Density Commercial as characterized by office and mixed office/retail buildings greater than eight stories in height, the Applicant proposes to rezone the PUD Site to the D-4-R zone in connection with the application. (See 10-A DCMR §225.6 and 225.11.) The purposes of the D-4-R zones are to promote the development of high-density residential and mixed-use neighborhoods on Massachusetts Avenue between Thomas Circle and New Jersey Avenue, N.W.; the Mount Vernon Triangle neighborhood located between New York, New Jersey, and Massachusetts Avenues, N.W.; and the blocks between Massachusetts Avenue, N.W. and Judiciary Square. (11-I DCMR § 530.1 (emphasis added).) The provisions of Subtitle I (Downtown D Zones) are also intended to "[e]ncourage the development of housing, including the development and preservation of affordable housing, in Central Washington consistent with the policies of the Central Washington Element and other relevant elements of the Comprehensive Plan." (11-I DCMR §100.2(g).)
38. As a matter of right, the D-4-R zone permits a maximum building height of 130 feet, with no limit on the number of stories for property that fronts on a street with a right-of-way width of greater than or equal to 110 feet; the maximum permitted non-residential FAR is 3.5, there is no maximum FAR if all FAR exceeding the non-residential density permitted is devoted to residential uses; and the maximum permitted lot occupancy is 100%. (11-I DCMR §§ 532.1, 531.1, 531.5, 202.1.) Since New Jersey Avenue has a right-of-way width of 160 feet adjacent to the PUD Site, the maximum permitted building height is 130 feet.
39. No rear yard is required in the D-4-R zone for a through lot, including a lot fronting on three or more streets. (1-I DCMR § 205.2(b).) The PUD Site fronts on 2nd Street, New Jersey Avenue, and H Street, thus no rear yard is required. No side yard is required for a principal structure in a D zone; however, if a side yard is provided on any portion of the principal building, it must be least four feet wide. (11-I DCMR § 206.1.) At least 75% of each newly constructed building wall fronting on New Jersey Avenue shall be constructed to or within four feet of the property line between the PUD Site and the abutting street right-of-way, to a height of at least 15 feet above the higher of the building's measuring point or the level of the curb from which the building is drawing its height. (11-I DCMR §§ 533.1, 203.1.) Furthermore, each building in the D-4-R zone is required to achieve a green area ratio ("GAR") of 0.20. (11-I DCMR § 208.1.)

40. Vehicle parking spaces are not required in D zones, other than areas west of the centerline of 20th Street N.W. (11-I DCMR § 212.1.) The PUD Site is not located west of the centerline of 20th Street and thus no parking is required for the Project. A residential building with more than 50 units is required to provide one loading berth and one service delivery space. (11-C DCMR § 901.1.) In addition, retail uses with 5,000 to 20,000 square feet of gross floor area are required to provide one loading berth. (*Id.*) All loading berths must be a minimum of 12 feet wide, have a minimum depth of 30 feet, and have a minimum vertical clearance of 14 feet. (11-C DCMR § 905.2.) All service/delivery spaces must be a minimum of 10 feet wide, have a minimum depth of 20 feet, and have a minimum vertical clearance of 10 feet. (11-C DCMR § 905.3.)
41. A tabulation of the PUD's development data is included on Sheet A-0.1 of the Architectural Plans and Elevations dated June 30, 2017 (the "Plans"). (Ex. 23A1.)

Description of the PUD Project

42. The proposed building on the PUD Site will have a maximum height of 129 feet, 10 inches measured to the top of the parapet and 130 feet measured to the top of the sunshade. The building also includes a rooftop terrace.
43. The Project includes ground-floor retail space of approximately 3,200 square feet of gross floor area. The retail space is accessible from New Jersey Avenue and 2nd Street. The residential amenities and building entrance are located on New Jersey Avenue and 2nd Street. The Project's trash room is accessible from 2nd Street and a curbside loading zone adjacent to the PUD Site is located on the east of 2nd Street. The parking on 2nd Street will be relocated from the west side of the street to the east.
44. The building's design includes horizontal lines that demarcate building floors and façades that are distinctly broken down into a top, middle, and bottom. Conforming to the triangular site, the building utilizes bold forms and prominent horizontal lines that pronounce the building's structure while creating a mosaic pattern that breaks down the otherwise flat façade into proportionate smaller "tiles."
45. The primary façade materials include a metal panel and glass system that provides clean and straight lines. Additional materials include terracotta color cementitious panels, which are added as accents on all three sides of the building, and large windows that provide uninterrupted views of the skyline from all three sides of the building. Metal panel walls juxtapose the façade at different projection levels to create interest and provide much needed relief to ensure that the building does not read as having a long, monotonous, flat façade. The northernmost tip of the building also includes step out balconies with glass railings on floors two through 12, and 20 Juliet balconies are included on the west façade.
46. The PEPCO vaults and transformers will be located in public space along 2nd Street. The vaults will be buffered on all sides by three-foot-wide planters. All of the penthouse mechanical equipment, except a portion of the elevator override, is screened using a

10-foot-high pre-finished metal screen that encloses the VRF system used for residential units, the mechanical system for common amenity spaces, and an emergency generator for the Project. The portion of the elevator override that is not screened will be painted the same color as the 10-foot-high pre-finished metal screen. The roof includes a separate unenclosed stair tower. All features on the roof have been designed to meet all the applicable setback requirements. The Project also includes an expansive green roof.

47. The Project will be certified under the Enterprise Green Communities standards and will use Enterprise Green Communities certification to meet the applicable Green Building Act Requirements. (See Sheets GC-0.1 through GC-0.6 of the Plans.) The sustainable design features for the Project include:
- a. Integrative design for early and efficient planning and documentation of sustainability goals, objectives, and strategies, and design for health and resilience;
 - b. Sensitive site location as a connected, previously developed site with access to existing infrastructure, services, and public transportation options, as well as developed at densities that are enhanced from its surroundings while still appropriate and sustainable;
 - c. Site features that include environmental assessment, erosion and sediment control, and low-impact design and best management practices for storm water management;
 - d. Water conservation in standard and advanced selections of plumbing fixtures and infrastructure;
 - e. Energy efficiency in Energy Star program compliance, advanced building performance in the building envelope insulation and tightness of construction, as well as high efficiency system selection and performance, all measured through HERS indices at advanced levels;
 - f. Material selection that includes low-and no-VOC components; Green Label flooring; durable, cleanable surfaces to discourage mold formation, particularly in wet areas of kitchens and bathrooms; and a waste management plan and robust recycling program;
 - g. Healthy living for indoor air quality that addresses unit and building ventilation, including for clothes dryers, kitchens and baths, as well as fresh air intake, passive radon ventilation ready systems; and
 - h. Operations and management assurances and education programs for both the property management staff and new residents to facilitate the proper and efficient performance and maintenance of the sustainable features provided.

Zoning Flexibility

48. The Applicant requested the following areas of flexibility from the Zoning Regulations:
49. Loading. Pursuant to 11-C DCMR § 901.1, the Project requires one loading berth at 30 feet deep; one loading platform at 100 square feet; and one service/delivery space at 20 feet deep. The Applicant is not proposing to provide any loading berths or service/delivery spaces, thus necessitating flexibility from 11-C DCMR § 901.1. Since the PUD Site is narrow, the Applicant is unable to provide loading within the building for the Project. If loading were provided within the building on the PUD Site, trucks accessing the PUD Site would be required to do either back-in or back-out maneuvers in public space and in proximity to an intersection. In lieu of providing loading berths within the building, the Applicant will provide a curbside loading zone adjacent to the PUD Site on the east of 2nd Street, N.W. This results in moving parking on 2nd Street adjacent to the PUD Site from the west side to the east side of 2nd Street.
50. Moreover, as shown on the Plans, the building includes an area on the ground floor to provide for service, trash removal, and other loading activities. Thus, the proposed loading facilities are appropriate for the type of residential development provided. The Commission finds that the requested flexibility is also consistent with the Comprehensive Plan's recommendations to minimize curb cuts on streets to the greatest extent possible. Given the nature and size of the residential units, it is unlikely that residents will need a loading berth to move in and out of the buildings. Thus, the Commission finds that the loading facilities as proposed will not create any adverse impacts and will adequately serve the proposed development.
51. The Applicant has worked with DDOT to develop a plan that manages residential loading activities for the building from the curbside areas adjacent to the PUD Site. (Ex. 22, pp. 29–31.) The Commission finds that Loading Management Plan addresses trash removal, the loading area, loading and delivery schedules, loading operations, and enforcement. In addition, the TIS addendum provides additional details regarding how residential move-ins will occur on 2nd Street. (Ex. 22.) DDOT submitted a report to the record indicating their support of the Project and for the Applicant's proposed Loading Management Plan. (Ex. 26.) DDOT stated in its report that the Loading Management Plan is "sufficient to meet the loading demand for [the] site." (Ex. 26 at 6.)
52. Open Court Width. Pursuant to 11-I DCMR § 207.1, open courts in residential structures with more than three units are required to be a minimum of four inches per foot of height of the court; but not less than 10 feet. As shown on Sheet A 1.1 of the Plans, the Project includes an open court at the tip of the northern portion of the PUD Site. Since the height of the open court on the northern portion of the PUD Site is 125 feet, the required the open court width is 41 feet, eight inches. However, the court width is only eight feet, six inches. The court opens up onto US Reservations 193 and 194, which are located directly to the north of the open court. The edge of the building (court length) is approximately 36 feet, four and one-half inches from the tip of the property line. As a result, the Commission finds that the open court as proposed will not create any adverse impacts on

the residents of the Project since there is a large open space adjacent to the open court. Moreover, the units on this portion of the building have balconies, which provide adequate light and air to the building's residents.

Development Flexibility

53. The Applicant also requests 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, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction;
 - c. To increase the final number of residential units by no more than 10% above the total number approved to respond to market demand, or to decrease the final number of residential units within the approved gross floor area in order to accommodate demand for larger units, so long as the Project includes 15% of the units dedicated to families earning up to 30% AMI, 15% of the units dedicated to families earning up to 50% AMI, and 70% of units dedicated to families earning up to 60% AMI or below;
 - d. To vary the square footage of the ground-floor retail space plus or minus 10%;
 - e. To vary the location, attributes and general design of the streetscape incorporated in the Project to comply with the requirements of and the approval by the DDOT Public Space Division;
 - f. To vary the types of uses designated as "retail" use on the Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); and
 - g. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and spacing, or any other changes that otherwise do not significantly alter the exterior design to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals.

Project Benefits and Amenities

54. Urban Design and Architecture (11-X DCMR § 305.5(a)). The Commission finds that the proposed architecture is appropriately scaled to match the surrounding neighborhood, and the building will be made of high-quality materials that will blend well with the surrounding urban context. In addition, the ground-floor retail space has a floor-to-floor height 20 feet, eight inches and the residential amenity space on ground floor has a floor-to-floor height of 17 feet. Thus, the large floor-to-floor heights for the ground-floor retail space and amenity space will create a welcoming and pedestrian-friendly environment along the Property's adjacent streetscapes. The Applicant will replace the existing vacant lot with a vibrant new community that includes an all affordable apartment house, with ground floor-retail. The improved sidewalks along New Jersey Avenue, H Street, and 2nd Street will provide for a better pedestrian experience through the provision of street trees, enhanced lighting, and repaving.
55. Landscaping and Creation or Preservation of Open Spaces (11-X DCMR § 305.5(b)). The PUD includes extensively landscaped outdoor spaces surrounding the Property, which includes significant public space enhancements. The improved sidewalks along New Jersey Avenue, H Street, and 2nd Street will provide for a better pedestrian experience through the provision of street trees, enhanced lighting, and repaving.
56. Site Planning, and Efficient and Economical Land Utilization (11-X DCMR § 305.5(c)). The PUD will implement a number of best planning practices for a site that has been vacant for approximately 40 years and is currently used as temporary event parking. These practices include creating density on the Property and incorporating a variety of residential unit types, and reactivating New Jersey Avenue with substantial streetscape improvements.
57. Public Art (11-X DCMR § .305.5(d)). The Applicant will make a \$50,000 contribution to a local art gallery for the art gallery to purchase and install public art on New Jersey Avenue. The local art gallery will partner with neighborhood nonprofit organizations to facilitate grant applications and awards through the D.C. Commission on the Arts and Humanities, bringing together all facets of the community and city government to create exceptional place-making public art experiences. The Applicant (or the Mount Vernon Triangle Community Improvement District ("CID"), or its successor) will be responsible for maintenance of the artwork. Consistent with the requirements of 11-X DCMR § 305.3(d) of the Zoning Regulations, prior to the issuance of a final Certificate of Occupancy for the building, the Applicant will provide proof to the Zoning Administrator that the Applicant has contributed the funds and that the funds are being used by the art gallery to acquire and install art on New Jersey Avenue.
58. Housing and Affordable Housing (11-X DCMR § 305.5(f) and (g)). The Commission finds that the PUD's most significant benefit is the creation of new housing, including additional affordable housing units, consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative. One hundred percent of the 104 units in the PUD will be affordable units, with 16 units dedicated to families earning

up to 30% AMI, 16 units dedicated to families earning up to 50% AMI, and 72 units dedicated to families earning up to 60% AMI or below. The Applicant will set aside the affordable housing in accordance with the following chart:

Residential Unit Type	Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	106,390 sf of GFA	104 Units	NA	NA	NA
Affordable/Non IZ	15%	16 Units	Up to 30% AMI	Life of the Project	Rental
Affordable/Non IZ	15%	16 Units	Up to 50% AMI	Life of the Project	Rental
Affordable/Non IZ	70%	72 Units	Up to 60% AMI or below	Life of the Project	Rental

59. The above chart indicates that none of the affordable housing will be subject to the Inclusionary Zoning requirements set forth in Subtitle C, Chapter 10 of Title 11 DCMR. This is because the Applicant will be requesting the Zoning Administrator to grant an exemption from those requirements pursuant to 11-C DCMR § 1001.6. The Commission makes no finding as to whether the exemption should be granted and notes that if the request is denied the requirements of Chapter 10 of Title 11-C DCMR as well as the Inclusionary Zoning Act as defined at 11- B DCMR § 100.1 will apply.
60. If the Property was not rezoned to the D-4-R zone and remained MU-4, then the Applicant would be required under the Zoning Regulations to set aside the greater of eight percent of the gross floor area dedicated to residential use including penthouse habitable space, or 50% of its achievable bonus density to inclusionary units, which would result in a requirement of approximately 2,000 square feet of inclusionary zoning units at 60% AMI. However, the Applicant’s proposal to dedicate all of the proposed units as affordable housing – with 16 units dedicated to families earning up to 30% AMI, 16 units dedicated to families earning up to 50% AMI, and 72 units dedicated to families earning up to 60% AMI or below – will result in a significantly greater amount of affordable housing, and at deeper levels of affordability, than would have been required if the Property was developed as a matter of right and exceeds the requirements of D.C. Official Code § 10-801 (b-3) (A), which would require at least 30% of the units to be dedicated as affordable housing.
61. Employment and Training Opportunities (11-X DCMR § 305.5(h)). The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services (“DOES”). In addition, the Applicant has signed an acknowledgement that it will enter into a Certified Business Enterprise Agreement with the District Department of Small and Local Business Development (“DSLBD”) to ensure that a preference is made to District-based firms pursuing District government issued procurement opportunities.
62. Environmental Benefits (11-X DCMR § 305.5(k)). The PUD promotes environmental sustainability by implementing a variety of sustainable design features. The PUD provides a host of environmental benefits consistent with the recommendations of 11-X DCMR § 305.5(k), including new public space landscaping, street tree planting and maintenance, energy efficient appliances, methods to reduce stormwater runoff, and green engineering practices. Pursuant to the Green Building Act, the PUD is required to

meet the Enterprise Green Communities standard. (*See*, D.C. Official Code § 6-1451.02(a)(3)(A).) In order to be certified under the Enterprise Green Communities standard, a project must meet all of the mandatory criteria and must attain 35 optional points. The PUD is designed to integrate a host of sustainable features and meets all of the mandatory criteria of the Enterprise Green Communities standard, and attains 88 optional points. (*See* Sheets GC-0.1 through GC-0.6 of the Plans.) Thus, the PUD exceeds the Green Building Act requirements.

63. The Commission finds that the Applicant has demonstrated a favorable comparison between the Enterprise Green Communities standards and the LEED standards. Therefore, the Commission finds that the Applicant's commitment to achieve a minimum of 88 points under the Enterprise Green Communities standard constitutes a public benefit under 11-X DCMR § 305.5(k). The Applicant is not seeking LEED certification for the Project, but as designed, the Commission finds that the Project shows exemplary performance in the LEED credits for Community Resources, Compact Development, Access to Transit, and Site Selection.
64. The Commission also finds that the Enterprise Green Communities program has credits unique and distinct from LEED such as Design for Health, Design for Resilience, Access to Fresh and Local Foods, Local Economic Development and Community Wealth Creation, Resilient Energy Systems, Active Design, and Interior and Outdoor Activity Spaces, all of which the Project will achieve.
65. Streetscape Plans (11-X DCMR § 305.5(l)). As shown on Sheets L-1.0 through L-4.1 of the Plans, the PUD includes landscaped and improved streetscapes surrounding the Property. The improved and widened sidewalks along New Jersey Avenue, H Street, and 2nd Street will provide for a better pedestrian experience through the use of street trees, enhanced lighting, and upgraded paving, all of which will reactivate the portion of New Jersey Avenue adjacent to the PUD Site once approved by DDOT during the public space permitting process.
66. Uses of Special Value to the Neighborhood (11-X DCMR § 305.5(q)). In order to help support enhancements to local non-profit organizations and to support recreational, outdoor, and educational activities, the Applicant has agreed to make the following contributions prior to the issuance of a final Certificate of Occupancy for the building:
 - a. The Applicant will contribute \$20,000 to Mt. Vernon Community Improvement District ("CID") to enhance their services designed to promote the cleanliness and safety of the small park to the north of the Project, National Park Service Reservations 193 and 194, including but not limited to:
 - i. Grass cutting, mulching, and weeding;
 - ii. Trash pick-up (including trashcan emptying and new liner replacement) and illegal dumping removal);

- iii. Homeless outreach (when needed);
 - iv. 311 requests to the District of Columbia and National Park Service;
 - v. Pruning of trees/low-hanging branches;
 - vi. Removal of illegal dumping;
 - vii. Sidewalk pressure washing as needed; and
 - viii. Snow removal for sidewalk walkability;
- b. The Applicant will contribute \$10,000 to Perry School Community Services Center to enhance salaries/stipends, and/or training for program staff for the Home Instruction for Parents of Preschool Youngsters (“HIPPY”) for approximately one year;
 - c. The Applicant will contribute \$10,000 to the DC Public Library Foundation (the “Foundation”) to enhance key programs and series at the Northwest One Neighborhood Library including but not limited to, the Adult Literacy Program and Books from Birth Program, and/or to enhance the library’s physical space, such as the technology center; and
 - d. The Applicant will contribute \$10,000 to the Save the Bill Butler and Julius Wyatt #2 Clubhouse Fund, Inc. (“Fund”) to support the hiring of the following instructors for the afterschool and summer Health, Wealth, and Knowledge program on an hourly rotating basis – Zumba Instructor, Fitness Instructor, Yoga Class Instructor, Art/Drama/Music Instructor, Computer Instructor, After School Learning Instructor, Life Skills Instructor, and Job Skills Instructor. Each Instructor will provide their program for four hours per week. The Applicant anticipates that the funding will result in approximately 80 to 100 hours of instruction over a period of approximately one year, depending upon when the classes are scheduled.

Consistent with the requirements of 11-X DCMR §305.3(d), the Applicant will provide proof to the Zoning Administrator that the above contributions have been made and that the funds are being used for the above purposes.

Consistency with District Plans and Policies

- 67. As set forth below, the Commission finds that the Project is consistent with the Generalized Policy Map and Future Land Use Map, advances the purposes of the Comprehensive Plan, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan.

Interpretation of the Comprehensive Plan

68. The Comprehensive Plan guides the District's development, both broadly and in detail. (10-A DCMR § 103.2.) The Comprehensive Plan includes detailed maps and policies for the physical development of the District, and addresses social and economic issues that affect and are linked to the development of the city and its citizens. The Plan allows the District to ensure that its resources are used wisely and efficiently and that public investment is focused in the areas where it is needed most. (*See* 10-A DCMR § 100.14.)
69. The Comprehensive Plan "is a broad framework intended to guide future land use planning decisions for the District." (*Tenley & Cleveland Park Emer. Comm. v. D.C. Bd. of Zoning Adjustment*, 550 A.2d 331, 337 (D.C. 1988).) It has several purposes, including "[d]efin[ing] the requirements and aspirations of District residents, and accordingly influenc[ing] social, economic, and physical development" and "[a]ssist[ing] in the conservation, stabilization, and improvement of each neighborhood and community in the District." (D.C. Official Code § 1-306.01(b)(1), (6).)
70. The Comprehensive Plan includes Citywide Elements that each address a topic that is citywide in scope, and Area Elements that focus on issues that are unique to particular parts of the District. (*See* 10-A DCMR §§ 104.4-104.5.) It also includes a Generalized Policy Map and a Future Land Use Map, which are incorporated as part of the plan and provide the foundation for land use decision-making and zoning. (10-A DCMR § 108.3.) Section 226.1(d) of the Comprehensive Plan provides that the "zoning of any given area should be guided by the Future Land Use Map, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements, as well as approved Small Area Plans." In this case, the Commission finds that the Future Land Use Map designations, combined with the text of the Comprehensive Plan, have appropriately guided the proposed use and development of the PUD Site.
71. The Commission notes that the Comprehensive Plan, including the Future Land Use Map and the Generalized Policy Map, is not a code of compulsory requirements. (10-A DCMR § 226.1; *Durant I v. Dist. Of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013).) Rather the Comprehensive Plan is "an interpretative guide, which the Commission must consider holistically." (*Durant I*, 65 A.3d at 1168; *cf. Tenley & Cleveland Park*, 550 A.2d at 338) ("[a]lthough the Plan serves as an important policy guide, its legal mandate is more limited. Except as provided by other law or the Plan itself, the District elements are advisory"). (*Id.*)
72. Moreover, even if a PUD application arguably "conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole." (*Durant I*, 65 A.3d at 1168.) The Comprehensive Plan reflects numerous "occasionally competing policies and goals," and, "[e]xcept where specifically provided, the Plan is not binding." (*Id.* at 1167, 1168 (internal quotation marks omitted).) Thus "the Commission may balance competing priorities" in determining whether a PUD is consistent with the Comprehensive Plan as a whole. (*D.C.*

Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n, 73 A.3d 107, 126 (D.C. 2013).

Generalized Policy Map

73. **The Project is Consistent with the Generalized Policy Map.** The Comprehensive Plan Generalized Policy Map designates PUD Site as a Land Use Change Area. Land Use Change Areas are areas where change to a different land use from what exists today is anticipated... The guiding philosophy in the Land Use Change Areas is to encourage and facilitate new development and promote the adaptive reuse of existing structures. Many of these areas have the capacity to become mixed-use communities containing housing, retail shops, services, workplaces, parks and civic facilities. As Land Use Change Areas are redeveloped, the District aspires to create high-quality environments that include exemplary site and architectural design and that are compatible with and do not negatively impact nearby neighborhoods. Programs to avoid and mitigate any undesirable impacts of development of the Land Use Change Areas upon adjacent neighborhoods should be required as necessary. (10-A DCMR §§ 223.11, 223.12.)
74. The Commission finds that the Zoning Map amendment will enable the enhancement of this vacant site that is identified as property in need of development in the Mount Vernon Action Agenda from 2003. (See, Mount Vernon Action Agenda, p. 34.) The Project proposes a new mixed-use affordable community with significant streetscape improvements that will contain ground-floor retail. The ground floor of the building is designed with large floor-to-floor ceiling heights to activate the New Jersey Avenue streetscape and provide an enhanced pedestrian experience. In addition, the Project is designed and will be constructed according to the same high-quality architectural design standards used for market-rate dwelling units in the vicinity of the PUD Site, and will be indistinguishable from market-rate dwelling units in their exterior appearances. As a result, the Commission finds that the Project is compatible with, and will not negatively impact, nearby neighborhoods and the Project is consistent with the PUD Site's designation on the Generalized Policy Map.

Future Land Use Map

75. The District of Columbia Comprehensive Plan Future Land Use Map designates the PUD Site as mixed-use High-Density Residential and High-Density Commercial. As described in the Framework Element of the Comprehensive Plan, the High-Density Residential designation is used to “define neighborhoods and corridors where high-rise (8 stories or more) apartment buildings are the predominant use. Pockets of less dense housing may exist within these areas. The corresponding Zone Districts are generally R-5-D and R-5-E, although other zones may apply.” (10-A DCMR § 225.6 (emphasis added).) The corresponding zone designations under the current Zoning Regulations are RA-4 and RA-5.
76. The High-Density Commercial designation is used to define the central employment district of the city and other major office employment centers on the downtown

perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including historic buildings) are interspersed. The corresponding Zone Districts are generally C-2-C, C-3-C, C-4, and C-5, although other districts may apply. (10-A DCMR § 225.11.) The C-3-C, C-4, and C-5 Districts all permit a maximum building height of 130 feet for a PUD. The C-4 Zone District permits a maximum FAR of 11.0 for a building that faces a street with a right-of-way width of at least 110 feet and the C-5 Zone District permits a maximum FAR 12.0 for a PUD. The corresponding zone designations under the current Zoning Regulations are D-4, D-4-R, D-5, D-5-R, and D-6.

77. Pursuant to Z.C. Order No. 08-07A, the Commission approved a PUD for the property to the south of the PUD Site in Square 563 with a maximum FAR of 9.2 and a maximum height of 130 feet. Pursuant to Z.C. Case Nos. 08-34(A)-(E), the Commission also approved a PUD with a maximum FAR of 9.0 and a maximum building height of 130 feet to the southeast of the PUD Site in Squares 564, 566, and 568.
78. The Commission finds that the D-4-R zone proposed for the PUD Site is appropriate given the Future Land Use Map designation for the PUD Site as mixed-use high-density designations, the surrounding uses and neighborhood context, and the density in the immediate vicinity. Specifically, the C-2-C Zone District is a zone that is identified as an appropriate High-Density Commercial Zone, which converts to the D-4-R zone under the current zoning regulations.
79. In addition, the Commission previously found that the D-5-R zone, which is a denser zone than D-4-R, is consistent with the High-Density Residential and High-Density Commercial designation on the Future Land Use Map. (*See* Z.C. Order No. 14-09 (approving a Zoning Map amendment to the DD/C-3-C Zone District, which converts to the D-5-R zone under the 2016 Zoning Regulations).)
80. The Commission also finds that the Project's maximum building height of 130 feet, as measured to the top of the parapet, and FAR of 11.35 is consistent with the maximum building height and densities permitted in High-Density Commercial Districts which allow building heights of up to 130 feet and up to 12 FAR.

Mount Vernon Action Agenda

81. The Mount Vernon Action Agenda ("MVAA") is the result of a joint effort by the District of Columbia, OP, DMPED, the National Capitol Revitalization Corporation (NCRC), DDOT, and the Mount Vernon Triangle Alliance, which calls for redevelopment of Mount Vernon Triangle as the location of a new downtown residential and mixed-use neighborhood. (*See*, MVAA, p. 1. (available at <https://planning.dc.gov/publication/mount-vernon-triangle-action-agenda>)).
82. The MVAA encourages the development of residential buildings and affordable housing, within the Action Agenda boundaries that responds to the market demand of "empty nesters, young professions and non-traditional families seeking downtown housing, while

still providing choices that are affordable.” (*Id.* at 2.) Specifically, the MVAA encourages a minimum of 20% of the units in residential projects developed on publicly held sites to be affordable units. (*Id.* at 11.) The MVAA also states that new developments should include “a streetscape program incorporating public art.” (*Id.* at 9.) Furthermore, the MVAA encourages “streetscape improvements” along the avenues within the Action Agenda boundaries. (*Id.* at 10.) The PUD Site is also explicitly identified in the MVAA as property in need of development. (*Id.* at 34.)

83. Since the Project will result in redevelopment of the PUD Site with a 100% affordable residential building, the Commission finds that the Project is consistent with key features of the MVAA. Moreover, the Commission finds that the Project is consistent with the Mount Vernon Action agenda since it includes streetscape improvements adjacent the PUD Site along New Jersey Avenue, and includes the installation of public art.

Purposes, Guiding Principles, and Major Elements of the Comprehensive Plan.

84. **The Project is Consistent with the Purposes of the Comprehensive Plan.** The purposes of the Comprehensive Plan are six-fold: (1) to define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development; (2) to guide executive and legislative decisions on matters affecting the District and its citizens; (3) to promote economic growth and jobs for District residents; (4) to guide private and public development in order to achieve District and community goals; (5) to maintain and enhance the natural and architectural assets of the District; and (6) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Official Code §1-245(b) (¶ 1-301.62).)
85. The Commission finds that the Project advances these purposes by promoting the social, physical, and economic development of the District through the provision of a vibrant new mixed-income community that includes a variety of housing types for households of varying income levels. The Project will achieve District goals by providing new affordable housing that respects the character of the surrounding neighborhood, enhances the natural and architectural assets of the District, and improves the community.
86. **The Project is Consistent with the Guiding Principles of the Comprehensive Plan.** The Comprehensive Plan establishes guiding principles that express crosscutting goals for the District’s future that guide the Comprehensive Plan’s policies and actions. (10-A DCMR § 200.4.) Based on evidence in the record, the Commission finds that the Project is consistent with many of the guiding principles for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as discussed in the paragraphs below.
87. **Managing Growth and Change.** The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The Commission finds that the Project is fully consistent with this goal. Specifically, the Project will help to attract a diverse population through the

provision of a mix of housing types available for households of different incomes. (10-A DCMR §§ 217.2 and 217.3.) In addition, as shown on the Plans, the Project will help connect the PUD Site to the rest of the neighborhood and will improve the overall urban fabric of the area by replacing a vacant site with a new mixed-use walkable community. The Project will also enhance the pedestrian experience with new streetscape improvements and facilities. (10-A DCMR § 217.6.)

88. Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is improving the residential character of neighborhoods. (10-A DCMR § 218.1.) Moreover, the production of new affordable housing is essential to the success of neighborhoods. (10-A DCMR § 218.3.) Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (10-A DCMR § 218.8.) The Project furthers each of these guiding principles with the construction of a significant amount of affordable housing. As part of the PUD process, the Applicant has been working closely with ANC 6E and other community stakeholders to ensure that the Project provides a positive impact to the immediate neighborhood and is designed to be consistent with community goals
89. Connecting the City. The Commission finds that the Project will help to implement a number of the guiding principles of this element. As shown on the Plans, the Project will include streetscape improvements to provide improved mobility and circulation through the overall neighborhood. (10-A DCMR § 220.2.) In addition, the Project and streetscape improvements will help to reinforce and improve the surrounding community. (10-A DCMR § 220.3.)
90. Building Green and Healthy Communities. The Commission finds that the Project is fully consistent with the guiding principles of the Building Green and Healthy Communities element, since the Project will increase the District's tree cover, minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (See 10-A DCMR §§ 221.2 and 221.3.) In addition, the proposed streetscape improvements will also help to facilitate pedestrian and bicycle travel. The Project is designed to integrate a host of sustainable features and will be certified under the Enterprise Green Communities standards and will use Enterprise Green Communities certification to meet the applicable Green Building Act Requirements.
91. The Project is Consistent with the Major Elements of the Comprehensive Plan. The Comprehensive Plan includes Citywide Elements that each address a topic that is citywide in scope, and Area Elements that focus on issues that are unique to particular parts of the District. (See 10-A DCMR §§ 104.4-104.5.) As set forth in the Applicant's initial submission and in the OP setdown report, the PUD is consistent with many of the guiding principles of the Comprehensive Plan, including managing growth and change, creating successful neighborhoods, and increasing access to education. (Ex. 4, 12.) In addition, the PUD is consistent with over 50 policies in the Land Use; Transportation;

Housing; Environmental Protection; Economic Development; and Parks, Recreation, and Open Space Citywide Elements of the Comprehensive Plan.

92. The Central Washington Area Element. The Commission finds that Project is consistent with the Central Washington Area Element. For example, the Project is consistent with *Policy CW – 1.1.1: Promoting Mixed Use Development*; *Policy CW – 1.1.4: New Housing Development in Central Washington*; and *Policy CW – 1.1.8: Promote Central Washington Retail*, since the Project is a high-density mixed-use development with ground floor retail that will create additional street-life and provide neighborhood services to the Project’s residents. Moreover, the Project is consistent with *Policy CW – 1.1.13: Creating Active Street Life and Public Spaces*; and *Policy CW – 1.2.2: Central Washington Open Space*, which emphasizes the need for high-quality outdoor public spaces throughout Central Washington. In response, the Project will develop new landscaped spaces along New Jersey Avenue, will facilitate the installation of public art, and will undertake greening and planting along the streetscapes that surrounds the PUD Site.
93. The OP setdown also stated that the Project was consistent with the following additional policies of the Central Washington Area Element:
- a. *Policy CW-1.1.5: Central Washington Housing Diversity*: Preserve Central Washington’s existing low- to moderate-income housing, including public housing, Section 8 housing – both contracts and vouchers – and other subsidized units. While this will be expensive, it is important to keep Central Washington a mixed income community and avoid the displacement of lower-income residents;
 - b. *Policy CW-1.1.11: Leveraging Public Development Sites*: Use publicly-owned development sites, such as urban renewal sites, WMATA joint development sites, and the former Washington Convention Center site to implement key objectives and policies of the Central Washington Area Element, especially with respect to land use and urban design. These sites should be viewed as a portfolio of assets that must be strategically managed to meet the long term needs of the District;
 - c. *Policy CW-1.1.17: Making Central Washington’s Streets More Pedestrian-Friendly*: Enhance Central Washington’s pedestrian network and improve pedestrian safety;
 - d. *Policy CW-2.4.2: Emphasizing the Avenues and Visual Axes*: Emphasize and reinforce the historic elements of the L’Enfant Plan in the planning and design of the Mount Vernon District;
 - e. *Policy CW-2.4.4: Mount Vernon Triangle Residential Development*: Develop the Mount Vernon Triangle (east of Mount Vernon Square) as a high-density residential neighborhood. Zoning incentives for this area should encourage the production of housing, as well as local-serving ground-floor retail, arts, and small office uses. Public and private sector improvements to parking, infrastructure,

transit, and other community services and facilities should be provided as development takes place;

- f. *Policy CW-2.4.7: Creating Pedestrian-Oriented Streets in the Mount Vernon District:* Promote active, pedestrian-friendly streets throughout the Mount Vernon District. Place a particular emphasis on improving K Streets as a major east-west pedestrian route, with wide sidewalks and abundant street trees and landscaping. Pedestrian amenities should also be provided along 5th, 7th, 8th, and 9th Streets to improve the connections between the Mount Vernon District and the Gallery Place and Chinatown areas to the south; and
 - g. *Policy CW-2.4.5: Creating a Sense of Community in Mount Vernon Triangle:* Foster a stronger sense of community in Mount Vernon Triangle by including affordable housing as well as market-rate housing, providing family-oriented amenities such as larger housing units and parks, encouraging small-scale cultural uses and small businesses, and preserving historic landmarks within the area. The 5th and K Street area should be emphasized as the area's "neighborhood center" and the 3rd and K Street area should be emphasized as its "residential core."
94. The OP setdown report also stated that the Applicant should provide additional information regarding the Project's compliance with *Policy CW-1.1.19: Goods Movement and Service Delivery within Central Washington*. The Commission finds with respect to *Policy CW-1.1.19: Goods Movement and Service Delivery within Central Washington*, the Applicant has worked with DDOT to develop a plan that manages loading activities for the building from the curbside areas adjacent to the Property. (Ex. 22 at 27-31.) The Loading Management Plan addresses trash removal, the loading area, loading and delivery schedules, loading operations, and enforcement. In addition, the Commission finds that the Comprehensive Transportation Review Addendum provided additional details regarding how residential move-ins will occur on 2nd Street. Thus, the Commission finds that the Applicant's coordination with DDOT, and the incorporation of the Loading Management Plan into the Commission and DDOT approvals for the Project will ensure that the Project is consistent with Policy CW-1.1.19 since the plan will help to minimize the obstruction of public rights-of-way by goods and service delivery activities for the Project, will help to ensure the efficient and convenient movement of goods for the Project, and provides hours for managing goods and service delivery times.
95. As a result, the Commission finds that the Project is fully consistent with the Central Washington Area Element since the Project will result in the redevelopment of a public site that is vacant and underutilized. Moreover, the Project will result in additional housing and affordable housing within the Central Washington Area element, as well as streetscape improvements, including lighting, landscaping, and pedestrian-oriented furniture, which will activate and animate the street frontages surrounding the PUD Site.
96. Land Use Element. The Commission finds that the Project supports the following policies of the Land Use Element:

- a. *Policy LU-1.2.2: Mix of Uses on Large Sites:* The Commission finds that the Project is compatible with adjacent uses and will provide a number of benefits to the immediate neighborhood and to the city as a whole as a result of the provision of a mixed-use affordable development on the PUD Site;
- b. *Policy LU-1.3: Transit-Oriented and Corridor Development:* The Commission finds that the Project exemplifies the principals of transit-oriented development. The PUD Site is located approximately one half-mile from Union Station and the H Street-Union Station Streetcar station, and is in close proximity to numerous Metrobus routes and stops, including the 96, X2, 80, 220, 240, 260, D4, D51, and P6 bus lines. In addition, the PUD Site is located within 0.3 miles of three Capital Bikeshare stations, six permanent car-share locations, and within convenient walking distance of the hearts of the Mount Vernon Square, NoMa, and Chinatown neighborhoods, which provide a variety of dining, service, and entertainment options. The Applicant worked with DDOT to formulate a Transportation Demand Management (“TDM”) Plan to encourage residents and visitors to use the abundant public transportation and bicycle options in the area. In addition, the Project is consistent with the following principles set forth in 10-A DCMR § 306.4:
 - i. A preference for diverse housing types, including affordable units;
 - ii. A priority on attractive, pedestrian-friendly design;
 - iii. Provision of well-designed, well-programmed, and well-maintained public open spaces;
 - iv. Convenient and comfortable connections to the bus system, thereby expanding access to the stations and increasing Metro’s ability to serve all parts of the city; and
 - v. A high level of pedestrian and bicycle connectivity between the stations and the neighborhoods around them;
- c. *Policy LU-1.1.5: Urban Mixed Use Neighborhoods:* The Commission finds that the Project includes an all affordable high-density apartment house, ground-floor retail, and redevelopment of the public space adjacent to the PUD Site along New Jersey Avenue in an area of the District that straddles three vibrant downtown neighborhoods: Mount Vernon Triangle, NoMa, and Chinatown;
- d. *Policy LU-1.2.1: Reuse of Large Publicly-Owned Sites:* The PUD Site was disposed of pursuant to D.C. Council Resolution R21-718 and R21-719, dated December 20, 2016. The Project creates additional affordable housing in place of a vacant and underutilized government-owned property;

- e. *Policy LU-1.3.4: Design to Encourage Transit Use:* The Project has been designed to encourage transit use and will help to enhance the safety, comfort, and convenience of passengers walking to local bus stops and Metrorail stations. The Project incorporates streetscape improvements, including lighting, landscaping, and pedestrian-oriented furniture, which will activate and animate the street frontages and create a safe and secure environment;
 - f. *Policy LU-2.1.2: Neighborhood Revitalization:* The Commission finds that the Project helps facilitate orderly neighborhood revitalization and stabilization by focusing affordable housing rehabilitation efforts in an area of the District that is in need of additional affordable housing options;
 - g. *Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods:* The Commission finds that the Project is consistent with this policy element since the Applicant has sought to balance the housing supply in the area and expand neighborhood commerce with the parallel goals of protecting the neighborhood character and restoring the environment;
 - h. *Policy LU-2.2.4: Neighborhood Beautification:* Policy LU-2.2.4 encourages projects to improve the visual quality of the District's neighborhoods. As shown on the Plans, the Project includes a number of neighborhood beautification elements, such as landscaping, street tree planting, and public art. Moreover, development of the PUD Site is a significant improvement since the PUD Site is currently vacant and underutilized; and
 - i. *Policy LU-2.1.10: Multi-Family Neighborhoods:* The Commission finds that the Project helps maintain the multi-family residential character of this High Density Residential area of the District through the rezoning of a vacant site, which is currently not compatible with the surrounding neighborhood. Moreover, the Project includes significant streetscape improvements surrounding the PUD Site that will make the streetscape adjacent to the PUD Site more attractive, pedestrian-friendly, and transit accessible.
97. The OP report also noted that the Project is consistent with the following additional policies of the Land Use Element:
- a. *Policy LU-1.1: Sustaining a Strong City Center:* Provide for the continued vitality of Central Washington as a thriving business, government, retail, financial, hospitality, cultural, and residential center. Promote continued reinvestment in central city buildings, infrastructure, and public spaces; continued preservation and restoration of historic resources; and continued efforts to create safe, attractive, and pedestrian-friendly environments;
 - b. *Policy LU-1.1.2: "Greater" Downtown:* Promote the perception of Downtown Washington as a series of connected business districts, including Metro Center/Retail Core, Golden Triangle/K Street, Federal Triangle, Northwest

Rectangle, Gallery Place/Penn Quarter, Downtown East/Judiciary Square, Mount Vernon District, NoMA, Near Southwest/L'Enfant Plaza, South Capitol, and the Southeast Federal Center. The traditional definition of Downtown (roughly bounded by 16th Street, the National Mall, and Massachusetts Avenue) does not fully convey the geographic extent of Washington's Central Business District, or the many unique activities it supports;

- c. *Policy 1.3.3: Housing Around Metrorail Station:* Recognize the opportunity to build senior housing and more affordable "starter" housing for first-time homebuyers adjacent to Metrorail stations, given the reduced necessity of auto ownership (and related reduction in household expenses) in such locations;
 - d. *Policy 1.4.1: Infill Development:* Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern; and
 - e. *Policy 1.4.2: Long Term Vacant Sites:* Facilitate the reuse of vacant lots that have historically been difficult to develop due to infrastructure or access problems, inadequate lot dimensions, fragmented or absentee ownership, or other constraints. Explore lot consolidation, acquisition, and other measures which would address these constraints.
98. As a result, the Commission finds that the Project is fully consistent with the Land Use Element since the Project will result in the construction of affordable housing and streetscape improvements, including lighting, landscaping, and pedestrian-oriented furniture, which will activate and animate the street frontages and create a safe and secure environment in close proximity to a Metrorail stations.
99. Transportation Element. The Commission finds that the Project supports the following policies of the Transportation Element:
- a. *Policy T-1.1.4: Transit-Oriented Development.* The Project is an example of transit-oriented development and includes various transportation improvements, including the construction of a new mixed-income residential community along a major transportation and mixed-use corridor, bicycle parking and storage areas, and pedestrian improvements;
 - b. *Policy T-1.2.3: Discouraging Auto-Oriented Uses:* As stated above, the Project is an example of transit-oriented development that discourages auto-oriented uses. The Project does not include any parking and will not include any retail tenants that will require large surface parking lots. In addition, the Project includes no new curb cuts and no vehicle access points that break-up sidewalks, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas;

- c. *Policy T-2.2.2: Connecting District Neighborhoods:* The Commission finds that the Project will encourage improved connections between District neighborhoods due to its location in a mixed-use community and its convenient access to Metrorail and Metrobus routes, as well as the H Street Streetcar;
 - d. *Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning:* As shown on the Plans and as described above, the Applicant has carefully considered and integrated bicycle and pedestrian planning and safety considerations in the development of the Project;
 - e. *Policy T-2.3.3: Bicycle Safety and Action T-2.3-A: Bicycle Facilities :* This element encourages new developments to include bicycle facilities. The Applicant proposes to provide secure indoor bicycle parking, as well as short-term exterior bicycle parking as Project amenities that accommodate and encourage bicycle use;
 - f. *Policy T-2.4.1: Pedestrian Network:* The Project includes the development and improvement of pedestrian facilities adjacent to the PUD Site along New Jersey Avenue, H Street and 2nd Street, which includes improvements and widening to the sidewalk system; and
 - g. *Policy T-3.1 Transportation Demand Management:* The primary purpose of a TDM plan is to reduce the number of vehicles using the road system while providing a variety of mobility options to those who wish to travel. The Applicant worked with DDOT to formulate a TDM Plan to encourage residents and visitors to use the abundant public transportation and bicycle options in the area.
100. The OP report also noted that the Project is consistent with the following additional policies of the Transportation Element:
- a. *Policy T-1.3 Regional Smart Growth Solutions:* ...A regional strategy of promoting infill, mixed-use and transit-oriented development in urbanized areas is needed to ensure transportation efficiency both in the District and the region...; and
 - b. *Policy T-1.2.1: Boulevard Improvements:* Continue to work across District agencies to beautify and stabilize selected boulevards by implementing coordinated transportation, economic development, and urban design improvements.
101. As a result, the Commission finds that the Project is fully consistent with Transportation Element since the Project will result in new high-density housing near a Metrorail station and other forms of public transportation in an area of the District that is within convenient walking distance of the hearts of Mount Vernon Triangle, NoMa, and Chinatown. Moreover, the streetscape improvements and landscaping will improve surrounding sidewalks and generally enhance the pedestrian experience in the vicinity of the PUD Site.

102. Housing Element. The Commission finds that the Project supports the following policies of the Transportation Element:
- a. *Policy H-1.1.1: Private Sector Support*: The Commission finds that the Project helps to meet the needs of present and future District residents at locations consistent with District land use policies and objectives. Specifically, the Project will include 104 new residential units, with 16 of the units dedicated to families earning up to 30% AMI, 16 of the units dedicated to families earning up to 50% AMI, and 72 of units dedicated to families earning up to 60% AMI or below;
 - b. *Policy H-1.1.3: Balanced Growth*: This policy strongly encourages the development of new housing on surplus, vacant, and underutilized land in all parts of the city, and recommends ensuring that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the needs for affordable housing and higher-density housing. The Commission finds that the Project supports these policy goals by developing new high-density housing on underutilized land in a rapidly growing and changing mixed-use neighborhood. All housing provided on the PUD Site will be affordable housing units to ensure that a sufficient housing supply is provided for District residents;
 - c. *Policy H-1.1.4: Mixed Use Development and Policy H-1.1.6: Housing in the Central City*. This policy encourages mixed-use development, including housing, on commercially-zoned land, particularly in neighborhood commercial centers in Central Washington, along Main Street mixed-use corridors, and near appropriate Metrorail stations. The Commission finds that the Project supports this goal by developing new high-density housing near a Metrorail station and in an area of the District that is and within convenient walking distance of the hearts of the Mount Vernon Triangle, NoMa, and Chinatown neighborhoods;
 - d. *Policy H-1.1.5: Housing Quality*: The Applicant will devote all of the Project's residential gross floor area to affordable dwelling units, which exceeds the set aside requirement of the existing inclusionary zoning regulations and D.C. Official Code § 10-801 (b-3) (A). The affordable housing is designed and will be constructed according to the same high-quality architectural design standards used for market-rate dwelling units, and will be indistinguishable from market-rate dwelling units in their exterior appearance. Furthermore, the Project will respect the design integrity of adjacent properties and the surrounding neighborhood;
 - e. *Policy H-1.2.1: Affordable Housing Production as a Civic Priority; Policy H-1.2.2: Production Targets; and Policy H-1.2.4: Housing Affordability on Publicly Owned Sites*: The Commission finds that the Project embodies these policies by developing housing for low- and moderate-income households on a site that was previously owned by the District. Specifically, the Project will include 104 new residential units, with 16 units dedicated to families earning up to 30% AMI, 16

units dedicated to families earning up to 50% AMI, and 72 units dedicated to families earning up to 60% AMI or less;

- f. *Policy H-1.2.3: Mixed Income Housing:* The residential component of the Project is mixed-income and includes all affordable housing units for families earning up to 30%, 50%, and 60% AMI or. Thus, the Commission finds that the Project will advance the District's policy of distributing mixed-income housing equitably across the city, rather than concentrating poverty within areas of the city that already have substantial affordable housing;
 - g. *Policy H-2.1.1: Protecting Affordable Rental Housing:* The Commission finds that the Project exemplifies the goal of Policy H-2.1.1, which is to protect affordable rental housing. The Project will include 104 new residential units, with 16 of the units dedicated to families earning up to 30% AMI, 16 of the units dedicated to families earning up to 50% AMI, and 72 of units dedicated to families earning up to 60% AMI or below. The housing options will not only create housing for the lowest-income households, but will also establish new units that are affordable for teachers, police officers, and other working professionals in the District. Therefore, the Project provides a substantial new supply of affordable rental housing while preserving the well-being and diversity of the District's neighborhoods; and
 - h. *Action H-1.1.A: Rezoning of Marginal Commercial Land:* This Action item encourages an evaluation of commercially-zoned land in the District, focusing on the "Great Streets" corridors, other arterial streets, and scattered small commercially-zoned pockets of land which no longer contain active commercial land uses. The Project is consistent with this Action item since it includes redevelopment of a vacant, underutilized, commercially-zoned property.
103. The OP report also noted that the Project is consistent with the following additional policies of the Housing Element:
- a. *Policy H-1.1 Expanding Housing Supply:* Expanding the housing supply is a key part of the District's vision to create successful neighborhoods;
 - b. *Policy H-1.1.6: Housing in the Central City:* Absorb a substantial component of the demand for new high-density housing in Central Washington and along the Anacostia River;
 - c. *Policy H-1.2.4: Housing Affordability on Publicly Owned Sites:* Require that a substantial percentage of the housing units built on publicly owned sites, including sites being transferred from federal to District jurisdiction, are reserved for low and moderate-income households; and
 - d. *Policy H-1.2.7: Density Bonuses for Affordable Housing: Provide zoning incentives to developers proposing to build low- and moderate-income housing.*

Affordable housing shall be considered a public benefit for the purposes of granting density bonuses when new development is proposed. Density bonuses should be granted in historic districts only when the effect of such increased density does not significantly undermine the character of the neighborhood.

104. As a result, the Commission finds that the Project is fully consistent with Housing Element since the Project will result in an increase in housing supply in Central Washington, DC, including a significant amount of affordable housing. Furthermore, the amount of affordable housing proposed for the Project is greater than the amount required by the Zoning Regulations and D.C. Official Code § 10-801 (b-3) (A). The Commission finds that the Project will result in the distribution of mixed-income housing equitably across the city, rather than in areas of the District that already have substantial amounts of affordable housing.
105. Environmental Protection Element. The Commission finds that the Project supports the following policies of the Environmental Protection Element:
- a. *Policy E-1.1.1: Street Tree Planting and Maintenance:* encourages the planting and maintenance of street trees in all parts of the city;
 - b. *Policy E-1.1.2: Tree Requirements in New Development:* encourages the use of planning, zoning, and building regulations to ensure that trees are retained and planted when new development occurs;
 - c. *Policy E-1.1.3: Landscaping:* encourages the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity;
 - d. *Policy E-2.2.1: Energy Efficiency:* promotes the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses through mixed-use and shared parking strategies to reduce unnecessary construction of parking facilities;
 - e. *Policy E-2.2.3: Reducing Home Heating and Cooling Costs:* encourage the use of energy-efficient systems and methods for home insulation, heating, and cooling, both to conserve natural resources and also to reduce energy costs for those members of the community who are least able to afford them;
 - f. *Policy E-2.2.5: Energy Efficient Building and Site Planning:* Include provisions for energy efficiency and for the use of alternative energy sources in the District's planning, zoning, and building standards. The planning and design of new development should contribute to energy efficiency goals;
 - g. *Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff:* calls for the promotion of tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction;

- h. *Policy E-3.1.3: Green Engineering*: has a stated goal of promoting green engineering practices for water and wastewater systems;
 - i. *Policy E-4.1.3: Evaluating Development Impacts On Air Quality*: encourages reduction of potential air emissions from new and expanded development, including transportation improvements and municipal facilities, to ensure that measures are taken to mitigate any possible adverse impacts;
 - j. *Policy E-4.1.5: Improving Air Quality Through Transportation Efficiency*: Promote strategies that reduce motor vehicle emissions in the District and surrounding region. As outlined in the Land Use and Transportation Elements of this Comprehensive Plan, this includes the development of a fully integrated regional system of buses, streetcars, rail transit, bicycles, taxis, and pedestrian facilities to make it easier and more convenient to travel without an automobile;
 - k. *Policy E-4.2.3: Control of Urban Runoff*: Continue to implement water pollution control and “best management practice” measures aimed at slowing urban runoff and reducing pollution, including the flow of sediment and nutrients into streams, rivers, and wetlands; and
 - l. *Policy E-4.3.5: Noise and Land Use Compatibility*: encourages avoiding locating new land uses that generate excessive noise adjacent to sensitive uses such as housing, hospitals, and schools.
106. The Commission finds that the Project will include street tree planting and maintenance, landscaping, an expansive green roof. As shown on sheet C-7.1 of the Plans, the Project also includes practices and measures aimed at slowing urban runoff and methods to reduce stormwater runoff. In addition, the Project is designed to integrate a host of sustainable features and will be certified under the Enterprise Green Communities standards and will use Enterprise Green Communities certification to meet the applicable Green Building Act Requirements. As shown on Sheets GC 0.1 through GC 0.6 of the Plans, the sustainable design features for the Project include:
- a. Integrative design for early and efficient planning and documentation of sustainability goals, objectives, and strategies, and design for health and resilience;
 - b. Sensitive site location as a connected, previously developed site with access to existing infrastructure, services and public transportation options, as well as developed at densities that are enhanced from its surroundings while still appropriate and sustainable;
 - c. Site features that include environmental assessment, erosion and sediment control, and low-impact design and best management practices for storm water management;

- d. Water conservation in standard and advanced selections of plumbing fixtures and infrastructure;
 - e. Energy efficiency in Energy Star program compliance, advanced building performance in the building envelope insulation and tightness of construction, as well as high efficiency system selection and performance, all measured through HERS indices at advanced levels;
 - f. Material selection that includes low-and no-VOC components, Green Label flooring, durable, cleanable surfaces to discourage mold formation, particularly in wet areas of kitchens and bathrooms, and a waste management plan and robust recycling program;
 - g. Healthy living for indoor air quality that addresses unit and building ventilation, including for clothes dryers, kitchens and baths, as well as fresh air intake, passive radon ventilation ready systems; and
 - h. Operations and management assurances and education programs for both the property management staff and new residents to facilitate the proper and efficient performance and maintenance of the sustainable features provided.
107. As indicated in the letter submitted by Wiles Mensch, the civil engineer for the Project, as part of developing the erosion and sediment control, utility, grading, and stormwater management plans for the project, Wiles Mensch has worked with the architects and design team to ensure that the plans meet (and in some instances, exceed) all applicable District water, sewer, environmental, fire, safety, and noise laws and regulations. Once the schematic plans are approved by the Commission, Wiles Mensch will then work with all relevant DC utilities and agencies (such as DOEE, DC Water, PEPCO, DDOT, MPD, FEMS) during the permitting process as they review, provide any technical comments, and will then ultimately approve the plans as complying with all applicable utility, environmental, health, and safety regulations prior to issuing a final building permit for the Project. (Ex. 35, Tab G.) Therefore, the Commission finds that the Project is fully consistent with the Environmental Protection Element.
108. The Project does not include a parking garage and is located near various modes of public transportation. (*See* Sheet A-0.1 of the Plans.) Thus, the Commission finds that the Project makes it easier and more convenient to travel without an automobile and helps reduce motor vehicle emissions in the District. The Commission finds that the sustainable design and environmentally friendly features stated above will help mitigate adverse impacts on air quality and together will work to absorb carbon monoxide and other pollutants. The Project will not establish new land uses that generate excessive noise since the PUD Site will be developed predominantly as a residential use, which is compatible with the surrounding mixed-use neighborhood. Moreover, the Project will comply with all federal and District noise regulations. Thus, the proposed development will not create adverse impacts by generating excessive noise in the surrounding

neighborhood. As a result, the Project is fully consistent with the Environmental Protection Element.

109. The OP setdown report stated that the Applicant should provide additional information regarding the Project's compliance with *Policy E-3.4.3: Environmental Assessments*, and *Policy E-4.1.7: Best Available Control Technology* with respect to *Policy E-3.4.3: Environmental Assessments* and the District of Columbia Environmental Policy Act ("DCEPA"). Section E-3.4 of the Comprehensive Plan states that the DCEPA "requires all District agencies to analyze and disclose the environmental effects of their major actions, including the permitting of new development" and that this review requirement is initiated during the permitting process with the completion and submission of an Environmental Impact Screening Form ("EISF"). (See 10-A DCMR §§ 616.1 and 616.2.) Thus, as required by the DCEPA and 20 DCMR, Chapter 72, and consistent with Policy E-3.4.3 the Applicant will submit an EISF to the Department of Consumer and Regulatory Affairs ("DCRA") as part of the building permit review for the project. The EISF will be reviewed by the DOEE and other agencies and utilities as part of their review of the Project. The Commission finds that the record in this case demonstrates that the Project includes a number of features – including, for example, site protection measures, environmental remediation as necessary, ENERGY STAR compliance and appliances, and exhaust and ventilation measures as identified on the Enterprise Green Communities Checklist included as Sheets GC-0.1 through GC-0.6 of the Plans – intended to minimize and mitigate any potential adverse environmental impacts generated by the Project. Finally, the Commission finds with respect to *Policy E-4.1.7: Best Available Control Technology*, as indicated on Sheet GC-0.5 of the Enterprise Green Communities Checklist, the project includes a number of "Healthy Living Environment" features that will help to address minor sources of air pollution for the Project and is consistent with Policy E-4.1.7. Thus, the Commission finds that the Project is fully consistent with the Environmental Protection Element.
110. Economic Development Element. The Commission finds that the Project supports the following policies of the Economic Development Element:
- a. *Policy ED-3.2.1: Small Business Retention and Growth*: encourages the retention, development, and growth of small and minority businesses through a range of District-sponsored technical and financial assistance programs;
 - b. *Policy ED-3.2.6: Commercial Displacement*: encourages avoiding the displacement of small and local businesses due to rising real estate costs. Programs should be developed to offset the impacts of rising operating expenses on small businesses in areas of rapidly rising rents and prices;
 - c. *Policy ED-3.2.8: LSDBE Programs*: Expand opportunities for local, small, and disadvantaged business enterprises through city programs, incentives, contracting requirements, and other activities;

- d. *Policy ED-4.2.2: Linking Job Training to Growth Occupations:* Target job training, placement, and vocational programs towards core and growth sectors and occupations, such as hospitality, higher education, health, construction, retail, and office support;
 - e. *Policy ED-4.2.7: Living Wage Jobs:* has a stated goal of promoting the attraction and retention of living wage jobs that provide employment opportunities for unskilled and semi-skilled workers; and
 - f. *Policy ED-4.2.12: Local Hiring Incentives:* has a stated goal of maintain requirements for resident job training and placement for projects built and/or operated with any form of public subsidy/loan, grant or other incentives.
111. The Commission finds that the Project will encourage the retention, development, and growth of small and minority businesses since the Applicant has entered into a First Source Employment Agreement with DOES consistent with the First Source Employment Agreement Act of 1984, to ensure that District residents are given priority for new jobs created by municipal financing and development programs. In addition, the Applicant has signed an acknowledgement that it will enter into a Certified Business Enterprise Agreement with DSLBD to ensure that a preference is made to District-based firms pursuing District government issued procurement opportunities. Construction of the Project will also promote living wages jobs for both unskilled and semi-skilled workers. Moreover, all four development partners of the Applicant are local minority-owned businesses.
112. The Commission finds that the Project will not result in the displacement of small and local businesses since the PUD Site is presently vacant and development of the Project will not result in the closure of any existing businesses. The Project also includes a small amount of ground-floor retail space such that new retail within the Project will not displace existing businesses in the surrounding area. As a result, the Commission finds that the Project is consistent with the Economic Development Element.
113. Parks, Recreation, and Open Space Element. The Commission finds that the Project supports the following policies of the Parks, Recreation, and Open Space Element:
- a. *Policy PROS-1.2.2: Improving Access:* Improve access to the Major Park and open space areas within the city through pedestrian safety and street crossing;
 - b. *Policy PROS-1.3.3: Protecting the Triangle Parks:* Maintain the District's open space triangles as neighborhood amenities supporting a range of activities. These activities should vary based on the setting of each triangle, and should range from planted "islands" to more active spaces. The triangles should be designed in a way that mitigates stormwater runoff and air pollution from adjacent corridors;

- c. *Policy PROS-4.2.3: Parkways and Medians:* Enhance the visual and open space qualities of Washington's streets and highways through the landscaping of medians, traffic islands, and rights of way; and
 - d. *Policy PROS-4.3.1: Open Space in the Downtown Landscape:* Sustain a high-quality network of downtown pocket parks, courtyards, arcades, plazas, and rooftop gardens that provide space for recreation, scenic beauty, and outdoor activities for workers, visitors, and residents.
114. The Commission finds that while the development would not create a new park or dedicate new private open spaces for public access, the proposed landscaping will assist in making a physical link between Cobb Park and the NPS Reservations 193 and 194 to the north of the PUD Site. (Ex. 12 at 20.) Thus, the Commission finds that the Project will protect the open space surrounding the PUD Site, including the neighborhood triangle parks.
115. Urban Design Element. The Commission finds that the Project supports the following policies of the Urban Design Element:
- a. *Policy UD-1.1.2: Reinforcing the L'Enfant and McMillan Plans:* Respect and reinforce the L'Enfant and McMillan Plans to maintain the District's unique, historic and grand character. This policy should be achieved through a variety of urban design measures, including appropriate building placement, view protection, enhancement of L'Enfant Plan reservations (green spaces), limits on street and alley closings and the siting of new monuments and memorials in locations of visual prominence. Restore as appropriate and where possible, previously closed streets and alleys, and obstructed vistas or viewsheds;
 - b. *Policy UD-1.4.1: Avenues/Boulevards and Urban Form:* Use Washington's major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city;
 - c. *Policy UD-1.4.3: Avenue/Boulevard Vistas and View Corridors:* Protect views and view corridors along avenues/boulevards, particularly along streets that terminate at important civic monuments or that frame distant landmarks. Vistas along such streets should be accentuated by creating more well-defined street walls, improving landscaping, and requiring the highest architectural quality as development takes place;
 - d. *Policy UD-2.1.1: Design Character:* encourages the creation of more coherent design character for Central Washington by improving the physical linkages between the monumental core, the business sub-districts on the perimeter of the National Mall, and the expanding mixed-use areas to the east and southeast of Downtown. Urban design strategies should focus on making the entire area more

- walkable, discouraging monolithic architecture, improving signage and streetscape features, and adding new land uses which make the area more lively, interesting, and dynamic;
- e. *Policy UD-2.1.4: Architectural Excellence:* promotes excellence in the design of Downtown buildings and landscapes. Particular attention should be focused on ground floor (street) levels, with greater architectural details used to improve visual image;
 - f. *Policy UD-2.2.2: Areas of Strong Architectural Character:* Preserve the architectural continuity and design integrity of historic districts and other areas of strong architectural character;
 - g. *Policy UD-2.2.5: Creating Attractive Façades:* create visual interest through well-designed building façade, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street;
 - h. *Policy UD-2.2.7: Infill Development:* Regardless of neighborhood identity, avoid overpowering contrasts of scale, height, and density as infill development occurs;
 - i. *Policy UD-2.2.9: Protection of Neighborhood Open Space:* ensure that infill development respects and improves the integrity of neighborhood open spaces and public areas. Buildings should be designed to avoid the loss of sunlight and reduced usability of neighborhood parks and plazas;
 - j. *Policy UD-2.3.1: Reintegrating Large Sites:* reintegrate large self-contained sites back into the city pattern. Plans for each site should establish urban design goals and principles which guide their subsequent redevelopment;
 - k. *Policy UD-3.1.1: Improving Streetscape Design:* improve the appearance and identity of the District's streets through the design of street lights, paved surfaces, landscaped areas, bus shelters, street "furniture," and adjacent building façades;
 - l. *Policy UD-3.1.2: Management of Sidewalk Space:* encourages preservation of the characteristically wide sidewalks of Washington's commercial districts. Sidewalk space should be managed in a way that promotes pedestrian safety, efficiency, comfort, and provides adequate space for tree boxes. Sidewalks should enhance the visual character of streets, with landscaping and buffer planting used to reduce the impacts of vehicle traffic;
 - m. *Policy UD-3.1.8: Neighborhood Public Space:* provide urban squares, public plazas, and similar areas that stimulate vibrant pedestrian street life and provide a focus for community activities. Encourage the "activation" of such spaces through the design of adjacent structures; for example, through the location of shop entrances, window displays, awnings, and outdoor dining areas; and

- n. *Policy UD-3.1.11: Private Sector Streetscape Improvements:* as appropriate and necessary, require streetscape improvements by the private sector in conjunction with development or renovation of adjacent properties.
116. The Commission finds that the Project includes the redevelopment of an underutilized and vacant site with a mixed-use building at the nexus of various Downtown neighborhoods that has a strong, lively, architectural character, and that avoids a monolithic design. Furthermore, the Project includes significant streetscape improvements along New Jersey Avenue, H Street, and 2nd Street, such as maintaining and widening sidewalks, new landscaping, lighting, paving, public art, and tree planting. The wide sidewalks promote pedestrian safety, efficiency, comfort, and provide adequate space for tree boxes. The ground-floor retail and residential amenity space include large floor-to-floor heights that will help activate New Jersey Avenue and create a pedestrian-oriented environment along New Jersey Avenue. The building design is fresh and engaging design and is modeled after the iconic Flatiron Building in Manhattan. All of the above will help make the area surrounding the PUD Site more lively, interesting, and dynamic. The Commission finds that the triangular PUD Site is characteristic of small tracts created by the intersections of diagonal and orthogonal streets in the L'Enfant Plan and that the Project would respect and reinforce the PUD Site's shape, its location along the boulevard-like New Jersey Avenue, and its southward views to the U.S. Capitol. (Ex. 12 at 21.)
117. Infrastructure Element. The Commission finds that the Project supports the following policies of the Infrastructure Element:
- a. *Policy IN-1.2: Modernizing Water Infrastructure:* in conjunction with WASA, the District must consider the impacts of new development and ensure that water infrastructure will be able to meet future demand. Planned improvements to the water system involve normal maintenance to replace aging water distribution mains and small diameter pipes, and upgrades to keep pace with population growth and new development. This may also include the addition of new water storage facilities, increasing the capacity of certain water mains, and upgrading pump stations;
- b. *Policy IN-2.1.1: Improving Wastewater Collection:* provides for the safe and efficient collection of wastewater generated by the households and businesses of the District. Ensure that new development does not exacerbate wastewater system deficiencies, and instead supports improved system efficiency and reliability; and
- c. *Policy IN-6.1.3: Developer Contributions:* requires that private developers fund the necessary relocation or upgrading of existing utilities to address limitations with existing infrastructure on or adjacent to proposed development sites. For necessary upgrades to water and wastewater infrastructure, developers should contribute to the cost of extending utilities to the project site or upgrading existing utilities to the specifications necessary for their proposed project.

118. The Commission finds that the Project is consistent with the Infrastructure Element since the Applicant will be required to construct and maintain all public facilities and infrastructure, including water infrastructure, to accommodate future demand and maintain efficient delivery of public services for the Project. The civil sheets of the Plans include plans for utilities, grading, erosion and sediment control, and stormwater management. Moreover, the Applicant will be required to coordinate with all applicable public utilities and District agencies during the permitting process, including DC Water, to ensure that adequate services will continue to be available for the existing and new uses. The Applicant's civil engineer also indicated that Once the schematic plans are approved by the Commission, Wiles Mensch will then work with all relevant DC utilities and agencies (such as DOEE, DC Water, PEPCO, DDOT, MPD, FEMS) during the permitting process as they review, provide any technical comments, and will then ultimately approve the plans as complying with all applicable utility, environmental, health and safety regulations prior to issuing a final building permit for the Project. (Ex. 35, Tab G.) The Applicant will also pay any required costs/fees associated with securing required utility permits for the Project.
119. Arts and Culture Element. The Commission finds that the Project supports the following policies of the Arts and Culture Element:
- a. *Policy AC-2.1.1: Emphasizing Important Places with Art:* encourages using public art to strengthen the District's identity as a local cultural and arts center. Public art should accent locations such as Metro stations, sidewalks, streets, parks and building lobbies;
 - b. *Policy AC-2.2.1: Using Art to Create Identity:* encourages using art as a way to help neighborhoods express unique and diverse identities, promoting each community's individual character and sense of place; and
 - c. *Policy AC-4.2.1: Private Sector Partnerships:* develop partnerships with the private sector to encourage monetary and non-monetary support for the arts, as well as sponsorships of arts organizations and events.
120. The Commission finds the Project is consistent with *Policy AC-2.1.1: Emphasizing Important Places with Art; Policy AC-2.2.1: Using Art to Create Identity;* and *Policy AC-4.2.1: Private Sector Partnerships* of the Arts and Culture Element since the Applicant will provide \$50,000 for a public art installation on New Jersey Avenue and will partner with a local art gallery to coordinate the artist selection and installation of the art. By partnering with neighborhood nonprofit organizations, the local art gallery will help facilitate grant applications and awards through the D.C. Commission on the Arts and Humanities, bringing together all facets of the community and city government to create exceptional place-making public art experiences.
121. Therefore, taken together, based on all of the evidence in the record, and consistent with the Findings of Fact above, the Commission concludes that the Project is consistent with the Generalized Policy Map and Future Land Use Map, advances the purposes of the

Comprehensive Plan, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan.

Office of Planning Reports

122. On May 12, 2017, OP submitted a report recommending setdown of the application. (Ex. 12.) The OP setdown report stated that the Project is “not inconsistent with the Comprehensive Plan.” (Ex. 12 at 1.) The OP report further explained that the Project is consistent with the PUD Site’s designations on the Future Land Use and Generalized Policy Maps since the Project “would bring high density residential uses and some commercial uses to a central Washington site that has been vacant for over two decades” and since the “FAR and...130 foot height would not be inconsistent with the land use designation shown on the...Future Land Use map for this location on the downtown perimeter.” (*Id.* at 5-6.) The OP report concluded that the proposed FAR and mix of housing types proposed for the PUD Site is not inconsistent with the Comprehensive Plan. The OP report also listed over 50 recommendations included within the Comprehensive Plan’s written elements, which it found the Project to be consistent with. (*Id.* at 8-23.)
123. On July 7, 2017, OP submitted a hearing report (Ex. 24.) The OP hearing report stated that OP is “very supportive of the proposed development” and recommend approval of the application. (Ex. 24 at 1.) OP stated that “the proposed PUD...would not be inconsistent with the Comprehensive Plan’s Generalized Future Land Use Map, the Generalized Policy Map, the Guiding Principles of the Framework Element, the Citywide Land Use Element, the Citywide Transportation Element, the Citywide Housing Element, the Citywide Economic Development Element, the Citywide Parks, Recreation and Open Space Element, and the Citywide Arts and Culture Element. (*Id.* at 11.)
124. The OP hearing report recommended approval of the application and advised that: (i) the design shall employ the color-scheme shown on Sheets SUP-1 and SUP-2, with the color of Material 2 on those sheets matching the color shown for Material 3B; (ii) prior to a final decision, the Applicant should provide additional details about its monetary contributions to various local community groups; (iii) prior to a final decision, the Applicant should provide additional details about the public art work selection process and continued maintenance; (iv) the Applicant should confirm that the ground-floor space devoted to Financial Services will not exceed the percentage permitted by 11-I DCMR § 302.2 (f); (v) the Applicant should provide materials samples at the public hearing; (vi) the Applicant should provide details about on-street loading arrangements developed in consultation with DDOT. The OP report also noted that the application is not inconsistent with Comprehensive Plan Future Land Use Map, the Generalized Policy Map, or the text of the Comprehensive Plan. (Ex. 24 at 12.)
125. At the public hearing OP testified it recommended approval of the PUD and related map amendment and stated that the Applicant should provide additional details regarding its monetary proffers. In addition, OP stated that the Project itself is sufficient to warrant approval as a PUD. The Applicant provided the information requested by OP in its

Response to Hearing Reports. (Ex. 35.) The Commission finds that the Applicant responded to all of OP's concerns regarding: (i) the building's design including the matching the colors of the materials; (ii) additional details about monetary contributions; (iii) additional details about the public art work selection process and continued maintenance; (iv) confirmation about that the ground floor space devoted to Financial Services; (v) materials samples; and (vi) details about on-street loading arrangements developed in consultation with DDOT.

126. Consistent with D.C. Official Code § 6-623.04 (2001), the Commission places great weight on the OP reports and testimony in approving this application.

DDOT Report

127. On July 10, 2017, DDOT submitted a report, stating that DDOT has no objection to the PUD and related map amendment subject to the conditions listed on page three of its report, which are as follows: (Ex. 26.)
- a. The Applicant shall provide WMATA Metrobus routes, DC Bicycle maps, list of parking garages, and links to goDCgo.com and CommuterConnections.com to all tenants as part of the building's move-in package;
 - b. The Applicant shall provide a one-year membership to Capital Bikeshare or a car share vendor to all adult residents of the 104 apartment units;
 - c. The Applicant shall provide a one-time incentive of bicycle helmets to all residents who receive a Capital Bikeshare membership and to any other new residents, upon request;
 - d. The Applicant shall provide a preloaded \$25.00 SmartTrip card to all adult tenants (who have signed a lease) at the initial rental of units; and
 - e. The Applicant shall designate a member of the apartment building's management as a site TDM coordinator.
128. DDOT also requested that the Applicant enhance its TDM plan to include after the first year of building occupancy (during which all adult tenants will receive free Bikeshare or car share memberships), the Applicant shall provide discounted Bikeshare or car share memberships for the subsequent four years to all adult tenants who request it.
129. The Applicant agreed to all of DDOT's conditions modified as follows:
- a. Prior to the issuance of a final Certificate of Occupancy for the building, and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator that it has provided WMATA Metrobus routes, DC Bicycle maps, a list of parking garages, and links to goDCgo.com and CommuterConnections.com to tenants as part of the building's move-in package;

- b. For the first year of operation of the building, the Applicant shall offer to adult tenants of the building a one-time, one-year membership to either Capital Bikeshare or a car share vendor. After the first year of building occupancy, the Applicant shall provide discounted Capital Bikeshare memberships for the subsequent four years to adult tenants who request it. The maximum amount the Applicant shall pay for this benefit is \$10,000.00;
 - c. For the first year of operation of the building, the Applicant shall offer bicycle helmets as a one-time incentive to adult tenants of the building. The maximum amount the Applicant shall pay for this benefit is \$2,080.00;
 - d. Prior to the issuance of a final Certificate of Occupancy for the building, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 104 preloaded \$25.00 SmartTrip cards to be offered to adult tenants of the building at the initial rental of each unit. The maximum amount the Applicant shall pay for this benefit is \$2,600.00;
 - e. Prior to the issuance of a final Certificate of Occupancy for the building, and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator that it has designated a member of the building's management as a site TDM coordinator; and
 - f. Prior to the issuance of a final Certificate of Occupancy for the building, and for the life of the Project, the Applicant shall demonstrate to the Zoning Administrator that it has established a New Jersey Avenue address for the building, and for the life of the project, the Applicant shall not seek or support any change to designate the building as becoming RPP-eligible.
130. At the public hearing, DDOT confirmed that they approve the proposed TDM measures and also confirmed that the \$10,000 cap proposed by the Applicant for the Capital Bikeshare of car share memberships is sufficient to meet anticipated demand.

ANC Report

131. ANC 6E, the ANC in which the PUD Site is located, submitted a resolution in support of the Project, indicating that at its regularly-scheduled and duly-noticed public meeting of April 4, 2017, at which a quorum of commissioners was present, ANC 6E voted 6-0-0 to support the application including the flexibility requested and project benefits and amenities. (Ex. 15.) The ANC stated that "the project is not inconsistent with the Comprehensive Plan" and "the project will generate jobs for District of Columbia residents, environmental and sustainability benefits, including improved landscaping, lighting, paving, bicycle parking, a green roof, and other sustainability features, and public art." (*Id.*) The report stated no issues or concerns.

DOEE Report

132. On July 10, 2017, DOEE submitted a hearing report. (Ex. 25.) The DOEE hearing report indicated no objection to the application and indicated that any comments can be “fully addressed through any of DOEE’s normal regulatory review processes.” (Ex. 25 at 1.) DOEE made the following recommendations for the Project:
- a. That the Applicant should consider further refining its stormwater management plan through the permit review process to generate retention volume, capturing stormwater volume up to a 1.7” storm event;
 - b. That the Applicant should consider using lower-emitting technologies to the extent possible to provide power, heating, and cooling;
 - c. That the Applicant maximize all strategies to increase energy efficiency and therefor decrease tenant utility costs; and
 - d. That the Project incorporate solar panels that would generate a minimum of one to three percent of the buildings’ total energy use.
133. The Applicant provided the information requested by DOEE in its Response to Hearing Reports (Ex. 35) and at the public hearing. The Commission finds that the Applicant responded to all of DOEE’s concerns as indicated in the Applicant’s memorandum to DOEE. (Ex. 35, Tab H.) and at the public hearing. The Commission finds that:
- a. The Project will meet the regulatory requirements for retention and treatment of stormwater, as noted by DOEE and the Applicant. The Applicant stated that they will continue to work with DOEE during the permitting process to further refine the stormwater management plan; (Ex. 35 at 7.)
 - b. The Applicant has employed lower-emitting technologies for the Project. The following energy features have been specified to reduce energy consumption over 15% beyond the DC standard of ASHRAE 2010: The thermal and air barrier of the building’s envelope will be optimized through the use of continuous insulation, zip exterior sheathing, grade 1 cavity insulation, and above code R values. Heating and cooling will be provided by a high efficiency VRF system that can provide simultaneous heating and cooling. Considering the buildings thin form and predominantly east and west facing façade this heating and cooling strategy will be especially effective in balancing temperatures across the building with very low energy consumption; (Ex. 35, Tab H.)
 - c. The Commission also credits the testimony of the Applicant at the public hearing, and finds that the utility costs for the tenants of the PUD will be a reasonable rate since the tenants will only pay for electricity costs. The rents plus anticipated utility costs for the PUD’s tenants are capped, since the project is partially

financed through Low Income Housing Tax Credits (“LIHTC”); and (July 20, 2017 Transcript [“Tr.”] at 15-17.)

- d. The Applicant has explored the provision of solar panels to generate a minimum of one to three percent of the buildings’ total energy use. However, after further examination, the design team determined solar panels are not feasible for the Project. While the GAR can be offset with solar panels, storm water management cannot be offset. Given the 98% lot occupancy, the vast majority of the storm water management occurs on the building’s roof. If the roof were to be dedicated to solar rather than green roof, the development would need to buy stormwater management credits indefinitely. While solar credits could initially offset the cost of stormwater credits, the stormwater credits would need to be purchased indefinitely while the solar credits would only be provided for 10 years. Given the structure of the 99 year ground lease of the Project, all 104 units must be affordable for families earning 60% of the AMI or below for the next 99 years. Without the ability to increase rents to generate more income, the project could not commit to increase operating expenses beyond the current narrow margin to incorporate the annual purchase of stormwater credits. (Ex. 35, Tab H.)

Review by Other Agencies

134. Pursuant to 11-X DCMR § 304.4, the Commission shall find that the Project 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.
135. In this case, and as set forth in the OP setdown report, OP referred the application to other District agencies for review, including DDOT, DOEE, DC Water, the Department of Housing and Community Development (“DHCD”), the Department of Parks and Recreation (“DPR”), the Department of Public Works (“DPW”), DC Public Schools (“DPS”), Fire and Emergency Medical Services Department (“FEMS”), Metropolitan Police Department (“MPD”), and the Department of Employment Services (“DOES”). (Ex. 12.) OP’s hearing report also stated that it “circulated project information to District agencies and has had discussion about the project with DDOT, DOEE and the Department of Housing and Community Development. These discussions are reflected in [OP’s] report.” (Ex. 24 at 18.)
136. Based on the evidence in the case record, the Commission finds that the Project will not have any negative impacts on the surrounding area, and will not have an unacceptable impact on the operation of city services and facilities, and that any potential impact is capable of being mitigated. In support of this conclusion, the Commission makes the following findings:
 - a. The Project will not have any negative impacts on fire hazards or public safety because the proposed Building and site plan have been designed to meet all Fire and Construction Code requirements, and because the proposed open spaces,

activated storefronts, and pedestrian amenities will put additional “eyes and ears” on the street, thus increasing safety and security in the area; (*See e.g.*, Sheets L-1.0 through L-4.1 of Ex. 23A; Ex. 12 at 12; 35, Tab G)

- b. The District has previously determined that it has capacity to provide adequate police services throughout the city;
 - c. The Applicant will construct and maintain all necessary public facilities and infrastructure to accommodate future demand and maintain the efficient delivery of public services; (*See e.g.* Sheets C-1.3 through C-5.3 of Ex. 23A; 4 at 35-36; 35, Tab G.)
 - d. The Applicant will ensure adequate provision of utilities for the Project and for existing development in the surrounding area; (*See e.g.* Sheets C-1.3 through C-5.3 of Ex. 23A; 12 at 20.)
 - e. The Project will not result in residential or commercial displacement, and will instead spur the growth and development of businesses in the area through its mixed-use amenities. These qualities are evident through the significant amount of affordable housing; (Ex. 4 at 32-33; 12 at 20.)
 - f. The Project includes spaces that will be open to the public and incorporates landscaping and permeable materials to benefit the environment; (*See e.g.* Sheets L-1.0 through L- 4.1 of Ex. 23A.)
 - g. The District has previously determined that the DC public school system has available capacity to accommodate new students, such that the Project will not impose an unreasonable burden on the DCPS system; and (Ex. 27.)
 - h. The Project is located in close proximity to a wide variety of public transportation options, including Metrorail, Metrobus, car share, and bike share, and is also located in a mixed-use, walkable location, such that the Project will not have any negative impacts on transit capacity. (*See Sheet A-0.1 of Ex. 23.*)
137. Moreover, as part of the building permit process, the Applicant will be required to comply with all applicable laws and regulations, which are established to preclude negative impacts and ensure the continued and safe operation of city services and facilities. As set forth in 12A DCMR § 101.2.4, these laws and regulations will “safeguard the public health, safety, and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, accessibility, sustainability, and safety to life and property from fire and other hazards attributed to the built environment, and to provide safety to fire fighters and emergency responders during emergency operations.” As stated in the Applicant’s Response to Hearing Reports, the Applicant will work with all relevant DC utilities and agencies (such as DOEE, DC Water, PEPCO, DDOT, MPD, FEMS) during the permitting process as they review, provide any technical comments, and ultimately approve the plans as complying with all

applicable utility, environmental, health and safety regulations prior to issuance of a final building permit for the Project. (Ex. 35.)

138. Therefore, based on all of the evidence in the record and the Findings of Fact set forth above, the Commission finds that the Project is consistent with 11-X DCMR § 304.4 in that it will not have any negative impacts on the surrounding area, and will not have an unacceptable impact on the operation of city services and facilities. In addition, the Commission finds that given the proposed income mix, and the redevelopment of a vacant property, that the PUD will not result in the destabilization of land values, the acceleration of gentrification, or the displacement of neighboring residents.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is 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.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, 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.
3. Development of the property included in this application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential and non-residential uses for the Project are appropriate for the PUD Site. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Project should be approved.
5. The Commission waives the minimum area requirements of 11-X DCMR § 301.1 for the reasons discussed in FF Nos. 32 through 35.
6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the PUD Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. 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 reports in this case and, as explained in this decision, finds its recommendation to grant the application persuasive.
10. 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. Since ANC 6E's written report expressed no issues or concerns there is nothing to give great weight to.
11. 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 application for consolidated review and approval of a planned unit development and related Zoning Map amendment from the MU-4 zone to the D-4-R zone for Lots 2-6 and 800-805 in Square 563N. 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 June 30, 2017 ("Plans") and as modified by the guidelines, conditions, and standards of this Order. (Ex. 23A1-23A19.) The Project shall be developed with the terracotta color scheme shown on Sheets A-2.1 through A-6.2 of the Plans and the materials board presented at the public hearing (Ex. 35, Tab F.)
2. The overall PUD Site shall be developed with approximately 109,590 square feet of gross floor area (11.35 floor area ratio ("FAR")) and shall have an overall lot occupancy of approximately 97.6%. The building on the PUD Site shall have a

maximum height of 129 feet, 10 inches measured to the top of the parapet and 130 feet measured to the top of the sunshade.

3. The Applicant is granted flexibility from the loading and the open court width requirements of the Zoning Regulations, consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.
4. 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, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction;
 - c. To increase the final number of residential units by no more than 10% above the total number approved to respond to market demand, or to decrease the final number of residential units within the approved gross floor area in order to accommodate demand for larger units, so long as the Project includes 15% of the units dedicated to families earning up to 30% AMI, 15% of the units dedicated to families earning up to 50% AMI, and 70% of units dedicated to families earning up to 60% AMI or below;
 - d. To vary the square footage of the ground-floor retail space plus or minus 10%;
 - e. To vary the location, attributes and general design of the streetscape incorporated in the project to comply with the requirements of and the approval by the DDOT Public Space Division;
 - f. To vary the types of uses designated as “retail” use on the Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); and (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)). If the ground-floor space is leased by a Financial Services use, the Financial Services use shall not exceed 25% of the ground-floor area, as permitted by 11-I DCMR § 302.2(f); and
 - g. To make refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, venting, window mullions and

spacing, or any other changes that otherwise do not significantly alter the exterior design to comply with the District of Columbia Building Code.

B. Public Benefits

1. **For the life of the Project**, the Applicant shall provide approximately 106,390 square feet of residential gross floor area of affordable housing.

2. **Prior to issuance of a final Certificate of Occupancy for the residential portion of the Project and for the life of the residential portion of the Project, the Applicant shall demonstrate to the Zoning Administrator the following:**

a. For the life of the Project, the Applicant shall:

- i. Provide a total of approximately 106,390 square feet of residential gross floor area (“GFA”) of affordable housing;
- ii. Set aside no less than 15% of the building’s units as affordable units for eligible households earning equal to or less than 30% of the AMI;
- iii. Set aside no less than 15% of the building’s units as affordable units for eligible households earning equal to or less than 50% of the AMI; and
- iv. Set aside no less than 70% of the building’s units as affordable units for eligible households earning equal to or less than 60% of the AMI;

b. The affordable housing units shall be set aside and distributed in accordance with the chart below; and

Residential Unit Type	Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	106,390 sf of GFA	104 Units	NA	NA	NA
Affordable/ Non IZ	15%	16 Units	Up to 30% AMI	Life of the Project	Rental
Affordable/ Non IZ	15%	16 Units	Up to 50% AMI	Life of the Project	Rental
Affordable/ Non IZ	70%	72 Units	Up to 60% AMI or below	Life of the Project	Rental

c. As noted, the Applicant intends to seek an exemption from the Inclusionary Zoning (“IZ”) regulations set forth in Subtitle C, Chapter 10 of the Zoning Regulations, pursuant to 11-C DCMR § 1001.6. If the exemption is not granted, the Applicant shall nevertheless abide by the requirements of this condition, unless the IZ regulations impose more restrictive standards. The covenant required by 11-C DCMR

§ 1001.6(a)(4) or the Inclusionary Zoning Act, as applicable,¹ shall include a provision or provisions requiring compliance with this Condition.

2. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has completed the streetscape and landscape improvements consistent with Sheets L-1.0 through L-4.1 of the Plans. All sidewalks and elements in public space shall be built to DDOT standards and shall be subject to DDOT approval.
3. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has made a \$50,000 contribution to a local art gallery for public art on New Jersey Avenue. The local art gallery will partner with neighborhood nonprofit organizations to facilitate grant applications and awards through the D.C. Commission on the Arts and Humanities. **For the life of the Project**, the Applicant (or the Mount Vernon Triangle Community Improvement District (“CID”), or its successor) shall be responsible for maintenance of the public artwork once the artwork is installed. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall provide proof to the Zoning Administrator that the contribution has been made and that the funds are being used by the art gallery to acquire and install art on New Jersey Avenue.
4. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall contribute \$20,000 to Mt. Vernon Community Improvement District (“CID”) to enhance to a variety of their on-going services designed to promote the cleanliness and safety of the small park to the north of the Project, National Park Service reservations 193 and 194, including but not limited to:
 - a. Grass cutting, mulching, and weeding;
 - b. Trash pick-up (including trashcan emptying and new liner replacement) and illegal dumping removal;
 - c. Homeless outreach (when needed);
 - d. 311 requests to the District of Columbia and National Park Service;
 - e. Pruning of trees/low-hanging branches;
 - f. Removal of illegal dumping;
 - g. Sidewalk pressure washing as needed; and

¹ See Finding of Fact No. 59 as to why no Inclusionary Units are included in the Chart.

h. Snow removal for sidewalk walkability.

The Applicant shall provide proof to the Zoning Administrator that the contribution has been made and that the enhancements to the services listed above or to similar services have been or are being provided by CID.

5. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall contribute \$10,000 to Perry School Community Services Center to enhance salaries/stipends, and/or training for program staff for the Home Instruction for Parents of Preschool Youngsters (“HIPPY”) for approximately one year. The Applicant shall provide proof to the Zoning Administrator that the contribution has been made to the Perry School Community Services Center and that the enhanced salaries/stipends and/or training for program staff have been or are being provided by the Center.
6. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall contribute \$10,000 to the DC Public Library Foundation (the “Foundation”) to enhance to key programs and series at the Northwest One Neighborhood Library including but not limited to, adult literacy and books from birth, and/or to enhance to the library’s physical space, such as the technology center. The Applicant shall provide proof to the Zoning Administrator that the contribution has been made to the Foundation and that the enhanced services listed have been or are being provided by the Foundation and/or that the enhancements to the library’s physical space have been or are being made.
7. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall contribute \$10,000 to the Save the Bill Butler and Julius Wyatt #2 Clubhouse Fund, Inc. (“Fund”) to support the hiring of the following instructors for the afterschool and summer Health, Wealth, and Knowledge program on an hourly rotating basis – Zumba Instructor, Fitness Instructor, Yoga Class Instructor, Art/Drama/Music Instructor, Computer Instructor, After School Learning Instructor, Life Skills Instructor, and Job Skills Instructor. Each Instructor will provide their program for four hours per week. The Applicant anticipates that this funding will result in approximately 80 to 100 hours of instruction over a period of approximately one year, depending upon when the classes are scheduled. The Applicant shall provide proof to the Zoning Administrator that the contribution has been made to the Fund and the instructors have been or are being hired by the Fund.
8. **Prior to the issuance of a Building Permit for the Project**, the Applicant shall register the building with Enterprise to commence the Enterprise Green Communities certification process.
9. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall furnish a copy of it Enterprise Green Communities certification application to the Zoning Administrator that the building has been designed to

include a minimum of 88 points under the Enterprise Green Communities standards.

10. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has: (i) installed the streetscape and landscape improvements consistent with Sheets L-1.0 through L-4.1 of the Plans, subject to DDOT approval; (ii) installed energy efficient appliances in the units; and (iii) installed stormwater management features consistent with Sheets C-7.1 through C-7.5 of the Plans, subject to District approval.
11. **Prior to the issuance of a Building Permit for the Project**, the Applicant shall submit to the Zoning Administrator a copy of the executed CBE Agreement with DSLBD and a copy of the executed First Source Employment Agreement with DOES.

C. **Transportation Mitigations**

The Applicant shall implement the TDM measures as follows:

1. **Prior to the issuance of a final Certificate of Occupancy for the building, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has provided WMATA Metrobus routes, DC Bicycle maps, a list of parking garages, and links to goDCgo.com and CommuterConnections.com to tenants as part of the building's move-in package.
2. **For the first year of operation of the building**, the Applicant shall offer to adult tenants of the building a one-time, one-year membership to either Capital Bikeshare or a car share vendor. The first year of operation shall be the 12 months after the date of issuance of the final Certificate of Occupancy for the building. After the first year of building occupancy, the Applicant shall provide discounted Capital Bikeshare memberships for the subsequent four years to adult tenants who request it. The maximum amount the Applicant shall pay for this benefit is \$10,000.00.
3. **For the first year of operation of the building**, the Applicant shall offer bicycle helmets as a one-time incentive to adult tenants of the building. The first year of operation shall be the 12 months after the date of issuance of the final Certificate of Occupancy for the building. The maximum amount the Applicant shall pay for this benefit is \$2,080.00.
4. **Prior to the issuance of a final Certificate of Occupancy for the building**, the Applicant shall demonstrate to the Zoning Administrator that it has purchased 104 preloaded \$25.00 SmarTrip cards to be offered to adult tenants of the building at the initial rental of each unit. The maximum amount the Applicant shall pay for this benefit is \$2,600.00.

5. **Prior to the issuance of a final Certificate of Occupancy for the building, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has designated a member of the building's management as a site TDM coordinator.
6. **Prior to the issuance of a final Certificate of Occupancy for the building, and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has applied for a New Jersey Avenue address for the building, and for the life of the project, the Applicant shall not seek or support any change to designate the building as becoming RPP-eligible.

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 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 PUD shall be valid for a period of two years from the effective date of this Order. Within such time, an application shall 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 July 20, 2017, upon the motion of Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter A. Shapiro to approve).

On September 11, 2017, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull, and Peter A. Shapiro to approve).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 24, 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. 88-34B
Z.C. Case No. 88-34B
Children's National Medical Central
(Modification of Consequence of a PUD @ Square 3129, Lot 801)
September 25, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on September 25, 2017. At that meeting, the Commission approved the application of Children's National Medical Center ("Applicant" or "Children's Hospital") for a modification of consequence of the planned unit development ("PUD") originally approved in Z.C. Case No. 70-3, and modified by Z.C. Case Nos. 88-34M and 88-34A for Square 3129, Lot 801 ("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

The Property

1. The Property is known as Assessment and Taxation Lot 801, being a portion of Record Lot 2 in Square 3129. Lot 801 is located generally within the southwest portion of Record Lot 2, which is bounded by Michigan Avenue, Irving Street, and 1st Street, N.W. The Property is improved with facilities serving as Children's Hospital and is part of the larger medical complex in Square 3129. The Property is zoned MU-2.

Background

2. Pursuant to Z.C. Order No. 14 for Z.C. Case No. 70-3, dated April 23, 1970, the Commission approved a PUD for the development of Children's Hospital and granted a change of zoning from the R-5-A Zone District to the SP Zone District for a portion of the Property, which was then known as Lot 1 in Square 3129. The Commission also approved the development of Children's Hospital in two phases. Phase I included the construction of a four-story building with a height of 91.5 feet and a density of 1.31 floor area ratio ("FAR"). The allowable lot occupancy was 40.8%. The Phase I approval was confirmed by the Board of Zoning Adjustment (BZA) pursuant to BZA Order No. 10369. Phase II of the development was an increase in the size of the structure to six stories with a height of 127.5 feet, and a density of 2.45 FAR. The allowable lot occupancy was increased to 59.4%. The Commission also approved an underground parking facility for 1,000 vehicles.
3. Pursuant to Z.C. Order No. 619 for Case No. 88-34M, dated July 10, 1989, the Commission approved the development of additional facilities for Children's Hospital, which included an expansion to the hospital building, a helipad, and a parking facility for an additional 654 cars (providing for a total of 1,540 parking spaces on site). The height

of the building was maintained at 127.5 feet, with an overall density not to exceed 2.45 FAR. The maximum lot occupancy sought and approved was 59.4%.

4. Pursuant to Z.C. Order No. 619-A for Z.C. Case No. 88-34A, dated October 16, 2006, the Commission approved the construction of an additional 96,000 square feet of gross floor area (Floors 5 and 6) to the east addition of the hospital with a height of 117 feet, three inches; and 72,000 square feet of gross floor area for post-op at the north end of the hospital, with a maximum height of 109 feet, six inches. No modifications to parking, loading, or circulation were proposed or approved.
5. The parties to the original Commission cases were the Applicant and Advisory Neighborhood Commission (“ANC”) 5C, the ANC in which the Property was located at the time of the original approval. However, the Property is now located within the boundaries of ANC 5E.

Modification Request

6. By letter dated May 9, 2017, and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a modification of consequence to construct a 130’x108’ modular building (“Modular Building”) comprised of 18 12’x65’ modular units. The Modular Building will replace four existing temporary trailers currently located on the Property and will house office space that is being relocated from the existing hospital building. The relocation of the office space to the Modular Building will allow Children’s Hospital to address the growing demand for inpatient facilities within the existing hospital building.
7. The Modular Building will be located to the south of the existing hospital building and will be connected to the existing hospital building via an existing ramp. The Applicant is not proposing any changes to the parking or loading on the Property. However, the existing parking access gate along Michigan Avenue will be closed to vehicular traffic, which will improve traffic circulation and pedestrian and vehicular safety on and surrounding the Property. The existing parking access gate will continue to be utilized for pedestrian and emergency access to the Property.
8. The Applicant filed a Certificate of Service with the Commission, which noted that the Applicant served ANC 5E with the application. (Exhibit [“Ex.”] 1.)
9. The Office of Planning (“OP”) submitted a report on May 12, 2017. (Ex. 3.) The OP report stated that OP has no objections to the Applicant’s request being considered as a modification of consequence, and requested the Applicant provide the following: (i) an explanation of how long the structure will remain; (ii) additional plans and elevations showing the general anticipated appearance of the structure, particularly as viewed from Michigan Avenue; and (iii) confirmation that the structure will not require relief from any zoning standard, such as lot occupancy, setback, or green area ratio. OP also recommended that the Applicant consider shifting the proposed structure since it appeared to extend across a building restriction line along Michigan Avenue.

10. The District Department of Transportation (“DDOT”) submitted a report on May 22, 2017. (Ex. 5.) In its report, the agency requested that the Applicant close the existing curb cut and restore the adjacent public space.
11. At its May 22, 2017, public meeting, the Commission 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.
12. Pursuant to 11-Z DCMR § 703.17(c)(2), the Commission established a timeframe for the parties in the original proceeding 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. The Commission scheduled deliberations on the application for July 10, 2017, and requested that the Applicant provide the additional information requested by OP and DDOT no later than June 14, 2017.
13. On May 30, 2017, the Applicant requested additional time to provide the information requested in the reports filed with the Commission by OP and DDOT, which was granted by the Commission. On June 14, 2017, the Applicant requested a second postponement to provide the additional information requested by OP and DDOT. At its public meeting on June 26, 2017, the Commission set a deadline of September 18, 2017, for the Applicant to provide the status of the information requested.
14. On September 18, 2017, the Applicant filed its Supplemental Statement, which included the following information in response to OP’s and DDOT’s reports: (Ex. 8-8C.)
 - a. The Applicant desires for the Modular Building to remain on the Property for five years. During that time the Applicant will construct additional inpatient beds inside the main hospital building and relocate administrative and support functions to the Modular Building. The Applicant intends to, ultimately, relocate administrative functions and specialty services to its Walter Reed Campus or McMillian Reservoir property, subject to obtaining the necessary approvals for those sites;
 - b. The Applicant provided additional plans, elevations, and precedent photographs that show the anticipated appearance of the Modular Building. (Ex. 8B.) The Modular Building will be screened behind the existing security fence and proposed landscaping along Michigan Avenue;
 - c. The Applicant provided a memorandum from FKP Architects confirming that the Modular Building will not require any zoning relief; (Ex. 8C.)
 - d. As shown on the site plan submitted with the Supplemental Statement, the Modular Building does not extend beyond the building restriction line along Michigan Avenue; and (Ex. 8A.)

- e. The existing curb cut on Michigan Avenue, adjacent to the Property, is necessary to provide access to the Property during and after the construction of the Modular Building. Therefore, the Applicant will maintain it.
15. On September 21, 2017, OP filed a supplemental report with the Commission confirming that the Applicant provided the information requested by OP and DDOT. (Ex. 9.) The report stated that OP recommends approval of the applicant's request for a modification of consequence for a term limit of five years upon the issuance of the order.
16. The OP supplemental report incorrectly stated that the Applicant is modifying the PUD to provide a more efficient use of patient service space within the hospital until the permanent relocation of the hospital to the Walter Reed Campus. At the public meeting on September 25, 2017, OP verbally corrected its supplemental report by stating that while some research, administrative offices, and wrap around services will be relocated to the Walter Reed Campus, Children's Hospital will not be permanently relocating to the Walter Reed Campus.
17. None of the changes impact the use, proffered public benefits and amenities, or required covenants and the changes do not create any additional relief or flexibility from the Zoning Regulations not previously approved.

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 concludes that the proposed modification is not inconsistent with the previous orders for development of the Property. The Applicant is only proposing to construct a Modular Building that does not diminish or detract from the Commission's previous approvals.

4. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2012 Repl.) to give great weight to the affected ANC's written recommendation. In this case, ANC 5E did not submit a written report to the record.
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 (2012 Repl.)), 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 PUD approved in Z.C. Case No. 70-3, as modified by Z.C. Case Nos. 88-34M and 88-34A, for Square 3129, Lot 801. The PUD is subject to the guidelines, conditions, and standards set forth below:

1. The Modular Building shall be constructed in accordance with the Architectural Plans and Elevations, dated April 25, 2017, and marked as Exhibit 1D of the record, except as modified by the plans submitted with the Applicant's Supplemental Statement, dated September 11, 2017, and marked as Exhibit 8A and 8B of the record.
2. The Modular Building approved by the Commission shall be permitted on the Property for a period of five years from the effective date of this Order.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 25, 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 November 24, 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 SPECIAL PUBLIC MEETING**

The Zoning Commission of the District of Columbia, in accordance with § 103 of the District of Columbia Municipal Regulations, Title 11-Z, Zoning Commission Rules of Practice and Procedure, hereby gives notice that it has scheduled Special Public Meeting for **December 7, 2017 at 5:30 P.M.** to consider Z.C. Case No. 11-03J.

For additional information, please contact Sharon Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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