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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 22-218, Union Market Tax Increment Financing Act of 2017
- D.C. Council schedules a public hearing on Bill 22-0504, Student Loan Debt Forgiveness Act of 2017
- Department of Health establishes regulations on neonatal screening services
- Department of Health establishes regulations for body art establishments
- Department of Health Care Finance announces funding availability for the Medication-assisted Treatment Genomic Registry Grant
- Department of Parks and Recreation solicits applications for Fiscal Year 2018 Community Grants: Run or Walk Around the District

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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DISTRICT OF COLUMBIA
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ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-206

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To recognize, on an emergency basis, certain plans as master development plans that have been approved by a governmental entity within the meaning of section 118 of the Internal Revenue Code of 1986, as amended by section 13312 of the Tax Cuts and Jobs Act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Master Development Plan Recognition Emergency Act of 2017".

Sec. 2. Approved master development plans.

The following are recognized as master development plans that have been approved by a governmental entity within the meaning of section 118 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2374; 26 U.S.C. § 118), as amended by section 13312 of the Tax Cuts and Jobs Act, reported in House Report No. 115-466 on December 15, 2017 (H.R. 1):

(1) Planned unit development projects (including stage 1 approvals) that have been approved by the Zoning Commission for the District of Columbia (as such approvals may be modified from time to time);

(2) Development plans for projects that have received approval from the Zoning Commission for the District of Columbia or the Board of Zoning Adjustment (which approvals may be modified from time to time) in connection with the proposed development or redevelopment;

(3) Development plans that have been approved by an agency of the District of Columbia government;

(4) Small area plans approved by the Council;

(5) Neighborhood or area development or revitalization plans issued by an agency of the District of Columbia government;

(6) The Comprehensive Plan;

(7) A development plan to be funded in whole or in part with a tax increment financing approved by the Council;

(8) A development plan associated with a tax increment financing application submitted to the District for which a letter or final, preliminary, or conditional approval has been issued by the Mayor or the Deputy Mayor for Planning and Economic Development and for

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which the issuance of a tax increment financing bond or note is later authorized or approved by the Council; and

(9) Any other development plan, redevelopment plan, revitalization plan, or similar plan designated by the Mayor that was approved prior to the effective date of section 13312 of the Tax Cuts and Jobs Act, reported in House Report No. 115-466 on December 15, 2017 (H.R. 1).

Sec. 3. The recognition conferred by this act is intended to clarify what constitutes a master development plan that has been approved by a governmental entity for purposes of section 118 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2374; 26 U.S.C. § 118), as amended by section 13312 of the Tax Cuts and Jobs Act, reported in House Report No. 115-466 on December 15, 2017 (H.R. 1).

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto, action by the Council to override the veto), and shall remain in effect for 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
December 20, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-207

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To approve, on an emergency basis, Change Order Nos. 1 through 4 to Contract No. DCAM-15-CS-0113 with The Whiting-Turner Contracting Company for construction management at-risk services for Engine Company Number 22, and to authorize payment in the aggregate amount of $1,274,886, for the goods and services received and to be received under the change orders.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Change Orders to Contract No. DCAM-15-CS-0113 Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Change Order Nos. 1 through 4 to Contract No. DCAM-15-CS-0113 with The Whiting-Turner Contracting Company for construction management at-risk services for Engine Company Number 22, and authorizes payment in the aggregate amount of $1,274,886 for the goods and services received and to be received under the change orders.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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
December 20,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-208

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To approve, on an emergency basis, the First Amendment to Lease Agreement and the Second Amendment to Lease Agreement for 3919 Benning Road, N.E., between the District of Columbia government and Cedar East River Park, LLC.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Amendments to Lease Agreement for 3919 Benning Road, N.E., Approval Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), the Council approves the First Amendment to Lease Agreement and the Second Amendment to Lease Agreement, between the District of Columbia and Cedar East River Park, LLC, amending the terms under which the District may lease 3919 Benning Road, N.E.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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
December 20,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-209

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To approve, on an emergency basis, Modification Nos. 13, 14, 15, 16, and 17 to Contract No. DCKA-2013-C-0007 with Capitol Paving of D.C., Inc. to provide citywide alley restoration services, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Contract No. DCKA-2013-C-0007 Approval and Payment Authorization Emergency Act of 2017".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 13, 14, 15, 16, and 17 to Contract No. DCKA-2013-C-0007 with Capitol Paving of D.C., Inc. to provide citywide alley restoration services, and authorizes payment in the not-to-exceed amount of $30 million for the goods and services received and to be received under the modifications.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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
December 20, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-210

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To officially designate, on an emergency basis, a portion of the public alley system in Square 762, bounded by 2nd Street, S.E., C Street, S.E., 3rd Street, S.E., and Pennsylvania Avenue, S.E., in Ward 6, as "Lincoln Court;" and to amend the National Capital Revitalization and Self-Government Improvement Act of 1997 to exempt one of the Council appointments to the District of Columbia Corrections Information Council from the District of Columbia residency requirement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Lincoln Court Designation Emergency Act of 2017".

Sec. 2. Pursuant to sections 401, 403, and 421 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01, 9-204.03, and 9-204.21), the Council officially designates the portion of the public alley system in Square 762, which is bounded by 2nd Street, S.E., C Street, S.E., 3rd Street, S.E., and Pennsylvania Avenue, S.E., as shown on the Surveyor's plat in the committee report for the Lincoln Court Designation Act of 2017, passed on 2nd reading on December 5, 2017 (Enrolled version of Bill 22-336), as "Lincoln Court".

Sec. 3. Section 11201a(b)(2)(D) of the National Capital Revitalization and Self-Government Improvement Act of 1997, effective October 2, 2010 (D.C. Law 18-233; D.C. Official Code § 24-101.01(b)(2)(D)), is amended by striking the phrase "District of Columbia" and inserting the phrase "District of Columbia; provided, that one of the Council appointments may be a non-resident of the District" in its place.

Sec. 4. Transmittal.

The Council shall transmit a copy of this act, upon its effective date, to the Mayor, the District Department of Transportation, and the Office of the Surveyor.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Lincoln Court Designation Act of 2017, passed on 2nd reading on December 5, 2017 (Enrolled version of

ENROLLED ORIGINAL

Bill 22-336), 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. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 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
December 20, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-211

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To amend, on an emergency basis, the Drug Paraphernalia Act of 1982 to permit persons testing personal use quantities of a controlled substance to use, or possess with the intent to use, testing equipment or other objects used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of a controlled substance, and to permit community-based organizations to deliver or sell, or possess with intent to deliver or sell, testing equipment or other objects used, intended for use, or designed for use for that same purpose.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Controlled Substance Testing Emergency Amendment Act of 2017".

Sec. 2. Section 4 of the Drug Paraphernalia Act of 1982, effective September 17, 1982 (D.C. Law 4-149; D.C. Official Code § 48-1103), is amended as follows:

(a) Subsection (a) is amended by adding a new paragraph (1A) to read as follows:

"(1A)(A) Notwithstanding paragraph (1) of this subsection, it shall not be unlawful for a person to use, or possess with the intent to use, the materials described in section 2(3)(D) for the purpose of testing personal use quantities of a controlled substance.

"(B) For the purposes of this paragraph, the term "personal use quantities" means possession of a controlled substance in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance.".

(b) Subsection (b) is amended by adding a new paragraph (1A) to read as follows:

"(1A) Notwithstanding paragraph (1) of this subsection, it shall not be unlawful for a community-based organization, as that term is defined in section 4(a)(1) of An Act To relieve physicians of liability for negligent medical treatment at the scene of an accident in the District of Columbia, effective February 18, 2017 (D.C. Law 21-186; D.C. Official Code § 7-404(a)(1)), to deliver or sell, or possess with intent to deliver or sell, the materials described in section 2(3)(D).".

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).

ENROLLED ORIGINAL

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 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
December 20,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-212

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To approve, on an emergency basis, the disposition of District-owned real property located at 33-35 Riggs Road, N.E., known for tax and assessment purposes as Lots 802 and 806 in Square 3702, and commonly known as the Keene School.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Keene School Disposition Approval Emergency Act of 2017".

Sec. 2.(a) Notwithstanding section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code §10-801), or any other provision of law, the Council determines that the real property located at 33-35 Riggs Road, N.E., and known for tax and assessment purposes as Lots 802 and 806 in Square 3702 ("Property"), is no longer required for public purposes and approves the disposition of the Property to DC Bilingual Public Charter School, a District of Columbia nonprofit public charter school corporation ("Lessee"), through a negotiated ground lease of greater than 15 years, which shall require the Lessee to:

(1) Redevelop the Property in accordance with plans approved by the District and to use the Property primarily for educational purposes;

(2) Enter into a CBE Agreement with the District that shall require Lessee to contract with certified business enterprises for at least 35% of the contract dollar volume of the redevelopment of the Property and, if feasible, require at least 20% equity and development participation of certified business enterprises; and

(3) Enter into a First Source Agreement.

(b) For the purposes of this act, the term:

(1) "Certified business enterprises" mean a local business enterprise certified pursuant to the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).

(2) "First Source Agreement" means an agreement with the District governing certain obligations of the Lessee pursuant to section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), and Mayor's Order 83-265, dated November 9, 1983, regarding job creation and employment generated as a result of the construction on the Property.

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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 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
December 20, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-213

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To amend, on an emergency basis, due to congressional review, the Fiscal Year 2018 Budget Support Act of 2017, the Clean and Affordable Energy Act of 2008, the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, the Protecting Pregnant Workers Fairness Act of 2014, the Healthy Schools Act of 2010, the District of Columbia Real Estate Deed Recordation Tax Act, Title 47 of the District of Columbia Official Code, the Marion S. Barry Summer Youth Employment Expansion Amendment Act of 2016, the Early Childhood and School-Based Behavioral Health Infrastructure Act of 2012, the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, and Title 5-E of the District of Columbia Municipal Regulations to clarify provisions supporting the Fiscal Year 2018 budget; to provide funding for the collective bargaining agreement between the District of Columbia Public Schools and the Washington Teachers' Union and additional funding to District of Columbia public charter schools; and to authorize certain one-time payments to District of Columbia public charter schools.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2018 Budget Support Clarification Congressional Review Emergency Amendment Act of 2017".

TITLE I. BUDGET SUPPORT ACT CLARIFICATIONS

Sec. 101. Section 210(c) of the Clean and Affordable Energy Act of 2008, effective October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1774.10(c)), is amended as follows:

(a) Paragraph (9) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(b) Paragraph (10) is amended by striking the period at the end and inserting the phrase "; and" in its place.

(c) A new paragraph (11) is added to read as follows:

"(11) For the fiscal year beginning October 1, 2017 and ending September 30, 2018, supporting DOEE activities in the amount of $242,412.".

ENROLLED ORIGINAL

Sec. 102. Section 501 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 22-4251), is amended as follows:

(a) Subsection (b)(2) and (3) is amended to read as follows:

"(2) Of the 20 representatives, 10 shall be appointed by the Mayor and 10 shall be appointed by the Chairman of the Council no later than 60 days after October 1, 2017.

"(3) The Mayor and the Chairman of the Council shall each designate a co-chair of the Task Force, one each from the government and non-government sectors.".

(b) Subsection (c) is amended to read as follows:

"(c) No later than October 1, 2018, the Task Force shall hold at least 3 public meetings and shall present a report to the Mayor and the Council.".

Sec. 103. The Protecting Pregnant Workers Fairness Act of 2014, effective March 3, 2015 (D.C. Law 20-168; D.C. Official Code § 32-1231.01 *et seq.*), is amended as follows:

(a) Section 8(b)(3)(B) (D.C. Official Code § 32-1231.07(b)(3)(B)) is amended by striking the phrase "examiner at set forth" and inserting the phrase "examiner as set forth" in its place.

(b) Section 9(b) (D.C. Official Code § 32-1231.08(b)) is amended by striking the phrase "a determination of an independent hearing examiner" and inserting the phrase "a final decision of the Director" in its place.

Sec. 104. Section 102(c)(6) of the Healthy Schools Act of 2010, effective July 27, 2010 (D.C. Law 18-209; D.C. Official Code § 38-821.02(c)(6)), is amended to read as follows:

"(6) To increase physical activity in schools, the Office of the State Superintendent of Education shall make grants available, subject to the availability of funds in the Fund, through a competitive process or a formula grants process to public schools, public charter schools, or organizations that provide technical assistance to public schools and public charter schools to increase the amount of physical activity in schools; provided, that a school receiving a grant award shall seek to meet the requirements of section 402 , and seek to increase the amount of physical activity in which its students engage.".

Sec. 105. The District of Columbia Real Estate Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1101 *et seq.*), is amended as follows:

(a) Section 301 (D.C. Official Code § 42-1101) is amended as follows:

(1) Paragraph (16) is amended by striking the phrase "an individual who has never owned eligible property" and inserting the phrase "an individual purchaser who has never owned improved residential real property or an economic interest in a cooperative unit that qualified for the homestead deduction provided pursuant to D.C. Official Code § 47-850 or § 47-850.01" in its place.

(2) Paragraph (17) is amended to read as follows:

"(17) The phrase "eligible property" means improved residential real property, including an economic interest in a cooperative unit, purchased at an amount not to exceed the

ENROLLED ORIGINAL

purchase ceiling of $625,000 (adjusted annually beginning with real property tax year 2019 by the addition to the prior purchase ceiling of an amount equal to the percentage increase in the Washington, D.C., Standard Metropolitan Statistical Area Consumer Price Index for All Urban Consumers for the preceding calendar year in which the real property tax year begins, rounded to the next lowest multiple of $500), that qualifies for the homestead deduction provided pursuant to D.C. Official Code § 47-850 or § 47-850.01; and the phrase also includes within the purchase ceiling all other real property conveyed on the same deed.".

(b) Section 303 (D.C. Official Code § 42-1103) is amended as follows:

(1) Subsection (e) is amended as follows:

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

"(1) Beginning October 1, 2017, for eligible property purchased by a first-time District homebuyer, the rate of tax provided in subsections (a) and (a-4) of this section shall be reduced as follows; provided, that the requirements of paragraph (2) of this subsection are met; provided further, that the entire benefit of the reduced recordation tax rate shall be allocated to the grantees of the eligible property, as shown on the settlement statement or closing disclosure form:

"(A) To 0.725% for a deed of title; or

"(B) For an economic interest in a cooperative unit:

"(i) To 1.825% when consideration allocable to the real property is less than $400,000; or

"(ii) To 2.175% when consideration allocable to the real property is $400,000 or greater.".

(B) Paragraph (2) is amended to read as follows:

"(2) To be eligible for the reduced recordation tax rate provided by this subsection, the applicant for the reduced rate shall, at the time the deed is offered for recordation:

"(A) Certify that the applicant is a first-time District homebuyer and is a bona fide District of Columbia resident;

"(B) Provide proof that the combined federal adjusted gross income, as shown on all the owners' and household members' federal income tax returns originally due or filed immediately before (if filed before the original due date) the deed is offered for recordation, is no higher than 180% of the Area Median Income as provided before the beginning of the real property tax year (and effective for such tax year) by the United States Department of Housing and Urban Development as a direct calculation without taking into account any adjustment. For purposes of this subparagraph, "household" excludes any tenant occupying a separate dwelling unit under a written lease for fair market value;

"(C) Provide proof that the real property to be purchased is eligible property; and

"(D) Submit a copy of the homestead deduction application for the eligible property, signed by the applicant.".

(C) Paragraph 3 is amended to read as follows:

"(3) The Mayor or the Chief Financial Officer of the District of Columbia may require the applicant to provide such documentation as may be necessary or appropriate to substantiate entitlement to the reduced rate of tax provided under this subsection.".

(2) A new subsection (g) is added to read as follows:

"(g) Notwithstanding subsection (c) of this section and D.C. Official Code § 47-4421, any subsequent deficiency of recordation tax determined to be owed on a deed taxed at the rate provided under subsection (e) of this section when the deed was accepted for recordation shall be the liability of the grantee or grantees solely and shall not create a lien on the real property that was transferred under such deed.".

Sec. 106. Chapter 22 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation to read as follows:

"47-2202.03. Additional tax on gross receipts for transient lodgings or accommodations.".

(b) A new section 47-2202.03 is added to read as follows:

"§ 47-2202.03. Additional tax on gross receipts for transient lodgings or accommodations.

"(a) A tax, separate from, and in addition to, the taxes imposed pursuant to §§ 47-2202 and 47-2202.01 is imposed at the rate of 0.3% on the use, storage, or consumption of any room or rooms, lodgings, or accommodations furnished to a transient by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients.

"(b) Vendors engaging in the business activities listed in this section and purchasers of the vendors' tangible personal property and services shall pay the tax at the rate of 0.3% of the gross receipts for the sale or charges for any room or rooms, lodgings, or accommodations furnished to a transient by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients.

"(c) If the occupancy of a room or rooms, lodgings, or accommodations is reserved, booked, or otherwise arranged for by a room remarketer, the tax imposed by this section shall be determined based on the net charges and additional charges by the room remarketer.

"(d) The tax revenue receipted pursuant to this section shall be dedicated to the Washington Convention and Sports Authority, for transfer to Destination DC for the purposes of marketing and promoting the District of Columbia as a destination. Any tax revenue dedicated pursuant to this subsection shall be in addition to the funds dedicated to Destination DC pursuant to § 10-1202.08a.".

Sec. 107. Section 3 of the Marion S. Barry Summer Youth Employment Expansion Amendment Act of 2016, effective May 12, 2016 (D.C. Law 21-112; 63 DCR 4326), is repealed.

Sec. 108. Section 203(b)(2) of the Early Childhood and School-Based Behavioral Health Infrastructure Act of 2012, effective June 7, 2012 (D.C. Law 19-141; D.C. Official Code § 2-1517.32(b)(2)), is amended as follows:

(a) Subparagraph (A) is amended by striking the phrase "designee;" and inserting the phrase "designee, to co-chair the task force;" in its place.

(b) Subparagraph (P) is amended by striking the phrase "members." and inserting the phrase "members, to co-chair the task force." in its place.

Sec. 109. (a) Section 3500.8 of Title 5-E of the District of Columbia Municipal Regulations (5-E DCMR § 3500.8) is amended as follows:

(1) The existing text is redesignated as paragraph (a).

(2) A new paragraph (b) is added to read as follows:

"(b) Any agreement for outside use or lease of a public school building by a civic association or Advisory Neighborhood Commission shall not stipulate any liability insurance requirement nor assess any permit, custodial, or security fee; provided, that the outside use of the public school building does not impose a cost on the District except for the costs of custodial and security services.".

(b) Section 1153 of the Fiscal Year 2018 Budget Support Act of 2017, enacted on July 31, 2017 (D.C. Act 22-130; 64 DCR 7652), is repealed.

TITLE II. WASHINGTON TEACHERS' UNION AGREEMENT AND PUBLIC CHARTER SCHOOLS FUNDING

Sec. 201. The Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective March 26, 1999 (D.C. Law 12-207; D.C. Official Code § 38-2901 *et seq.*), is amended as follows:

(a) Section 104 (D.C. Official Code § 38-2903) is amended by striking the phrase "$9,972 per student for Fiscal Year 2018" and inserting the phrase "$10,257 per student for Fiscal Year 2018" in its place.

(b) Section 105 (D.C. Official Code § 38-2904) is amended by striking the tabular array and inserting the following tabular array in its place:

"

"Grade Level	Weighting	Per Pupil Allocation in FY 2018
"Pre-Kindergarten 3	1.34	$13,744
"Pre-Kindergarten 4	1.30	$13,334
"Kindergarten	1.30	$13,334
"Grades 1-5	1.00	$10,257

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"Grades 6-8	1.08	$11,078
"Grades 9-12	1.22	$12,514
"Alternative program	1.44	$14,770
"Special education school	1.17	$12,001
"Adult	0.89	$9,129

".

(c) Section 106(c) (D.C. Official Code § 38-2905(c)) is amended to read as follows:

"(c) The supplemental allocations shall be calculated by applying weightings to the foundation level as follows:

"Special Education Add-ons:

"Level/ Program	Definition	Weighting	Per Pupil Supplemental Allocation FY 2018
"Level 1: Special Education	Eight hours or less per week of specialized services	0.97	$9,949
"Level 2: Special Education	More than 8 hours and less than or equal to 16 hours per school week of specialized services	1.20	$12,308
"Level 3: Special Education	More than 16 hours and less than or equal to 24 hours per school week of specialized services	1.97	$20,206
"Level 4: Special Education	More than 24 hours per week of specialized services, which may include instruction in a self-contained (dedicated) special education school other than residential placement	3.49	$35,797

ENROLLED ORIGINAL

"Special Education Compliance	Weighting provided in addition to special education level add-on weightings on a per-student basis for Special Education compliance.	0.069	$708
"Attorney's Fees Supplement	Weighting provided in addition to special education level add-on weightings on a per-student basis for attorney's fees.	0.089	$913
"Residential	D.C. Public School or public charter school that provides students with room and board in a residential setting, in addition to their instructional program	1.67	$17,129

"General Education Add-ons:

"Level/ Program	Definition	Weighting	Per Pupil Supplemental Allocation FY 2018
"ELL	Additional funding for English Language Learners.	0.49	$5,026
"At-risk	Additional funding for students in foster care, who are homeless, on TANF or SNAP, or behind grade level.	0.219	$2,246

"Residential Add-ons:

"Level/ Program	Definition	Weighting	Per Pupil Supplemental Allocation FY 2018

"Level 1: Special Education - Residential	Additional funding to support the after-hours level 1 special education needs of students living in a D.C. Public School or public charter school that provides students with room and board in a residential setting	0.368	$3,775
"Level 2: Special Education - Residential	Additional funding to support the after-hours level 2 special education needs of students living in a D.C. Public School or public charter school that provides students with room and board in a residential setting	1.337	$13,714
"Level 3: Special Education - Residential	Additional funding to support the after-hours level 3 special education needs of students living in a D.C. Public School or public charter school that provides students with room and board in a residential setting	2.891	$29,653
"Level 4: Special Education - Residential	Additional funding to support the after-hours level 4 special education needs of limited and non-English proficient students living in a D.C. Public School or public charter school that provides students with room and board in a residential setting	2.891	$29,653

ENROLLED ORIGINAL

"LEP/NEP - Residential	Additional funding to support the after-hours limited and non-English proficiency needs of students living in a D.C. Public School or public charter school that provides students with room and board in a residential setting	0.668	$6,852

"Special Education Add-ons for Students with Extended School Year ("ESY") Indicated in Their Individualized Education Programs ("IEPs"):

"Level/ Program	Definition	Weighting	Per Pupil Supplemental Allocation FY 2018
"Special Education Level 1 ESY	Additional funding to support the summer school or program need for students who require extended school year (ESY) services in their IEPs.	0.063	$646
"Special Education Level 2 ESY	Additional funding to support the summer school or program need for students who require extended school year (ESY) services in their IEPs	0.227	$2,328
"Special Education Level 3 ESY	Additional funding to support the summer school or program need for students who require extended school year (ESY) services in their IEPs	0.491	$5,036
"Special Education Level 4 ESY	Additional funding to support the summer school or program need for students who require extended school year (ESY) services in their IEPs	0.491	$5,036

ENROLLED ORIGINAL

.".

Sec. 202. Chapter 3 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation to read as follows:

"47-368.07. Workforce Investments account.".

(b) A new section 47-368.07 is added to read as follows:

"§ 47-368.07. Workforce Investments account.

"(a) The Workforce Investments account ("Account") shall be administered by the Mayor in accordance with subsections (b) and (c) of this section.

"(b) Money in the Account shall be used for the following purposes only:

"(1) Costs related to financial, developmental, and other investments in the District government workforce, including salary increases or other items required by the terms of collective bargaining agreements and cost-of-living adjustments to salaries and hourly wages;

"(2) Payments to public charter schools authorized by section 204 of the Fiscal Year 2018 Budget Support Clarification Temporary Amendment Act of 2017, passed on 2nd reading on November 7, 2017 (Enrolled version of Bill 22-492); and

"(3) For such other purposes for which funds previously may have been deposited into the account.

"(c)(1) The money deposited into the Account shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

"(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Account shall be continually available without regard to fiscal year limitation.".

Sec. 203. The Fiscal Year 2018 Budget Support Act of 2017, enacted on July 31, 2017 (D.C. Act 22-130; 64 DCR 7652), is amended as follows:

(a) Section 4003(b) is amended to read as follows:

"(b) For District of Columbia Public Schools, no more than $30,200,000 of the Fiscal Year 2018 increase to the Uniform Per Student Funding Formula foundation level over the Fiscal Year 2017 foundation level, effectuated by section 4002, shall be used in Fiscal Year 2018 to satisfy compensation terms required by a collective bargaining agreement that becomes effective in Fiscal Year 2018.".

(b) Section 7102 is amended as follows:

(1) Subsection (a) is amended as follows:

(A) The lead-in language is amended as follows:

(i) Strike the phrase "if local revenues" and insert the phrase "the portion of local revenues" in its place.

(ii) Strike the phrase "estimate exceed the" and insert the phrase "estimate that exceeds the" in its place.

(iii) Strike the phrase "for Fiscal Year 2018, these additional revenues" and insert the phrase "for Fiscal Year 2018 ("additional revenues")" in its place.

(B) Paragraph (1) is amended as follows:

(i) Strike the phrase "50% to the Workforce Investments account," and insert the phrase "Pursuant to subsection (b)(1) under the heading "Revised Revenue Estimate Contingency Priority" in the Fiscal Year 2018 Local Budget Act of 2017, effective August 29, 2017 (D.C. Law 22-16; 64 DCR 6581), 50% of the additional revenues to the Workforce Investments account" in its place.

(ii) Strike the phrase "which shall be available to fund salary increases or other items required by the terms of collective bargaining agreements that will become effective in Fiscal Year 2018; and" and insert the phrase "; and" in its place.

(C) Paragraph (2) is amended to read as follows:

"(2) Pursuant to subsection (b)(2) under the heading "Revised Revenue Estimate Contingency Priority" in the Fiscal Year 2018 Local Budget Act of 2017, effective August 29, 2017 (D.C. Law 22-16; 64 DCR 6581), 50% of the additional revenues as follows:

"(A) $24.175 million in recurring additional revenues to the General Fund of the District of the Columbia ("offset"), which shall offset in an equal amount a dedication of general sales tax revenue to the capital improvements program ("CIP") that in turn will be dedicated to the Washington Metropolitan Area Transit Authority ("WMATA"), in accordance with subsections (b) and (c) of this section; and

"(B) All remaining additional revenues to the Workforce Investments account.".

(2) Subsection (b) is amended to read as follows:

"(b) Revenue from general sales tax imposed by section 47-2002(a) of the District of Columbia Official Code at the rate of 5.75% ("general sales tax") in an amount equal to the recurring revenue in the offset shall become a dedicated tax ("dedicated tax") for use in the CIP.".

(3) Subsection (c) is amended by striking the phrase "(b)(1)(A)" both times it appears and inserting the phrase "(b)" in its place.

Sec. 204. Payments to public charter schools.

In Fiscal Year 2018, each public charter school, as that term is defined in section 102(9) of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective March 26, 1999 (D.C. Law 12-207; D.C. Official Code § 38-2901(9)) ("UPSFF Act"), that received Fiscal-Year-2017-based uniform per student funding formula ("UPSFF") payments shall receive a payment in Fiscal Year 2018 in an amount equal to the difference between the total sum of Fiscal-Year-2017-based UPSFF payments that the public charter school received and the total sum of Fiscal-Year-2017-based UPSFF payments that the public charter school would have received if:

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(1) The foundation level set forth in section 104 of the UPSFF Act (D.C. Official Code § 38-2903) for Fiscal Year 2017 were $9,885;

(2) The per-pupil allocations for Fiscal Year 2017 set forth in section 105 of the UPSFF Act (D.C. Official Code § 38-2904) were adjusted to reflect a foundation level of $9,885;

(3) The per-pupil supplemental allocations set forth in section 106(c) of the UPSFF Act (D.C. Official Code § 38-2905(c)) were adjusted to reflect a foundation level of $9,885; and

(4) The at-risk allocations described in section 106a of the UPSFF Act (D.C. Official Code § 38-2905.01) were calculated based on a foundation level of $9,885.

TITLE III. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

Sec. 301. Applicability.

This act shall apply as of the effective date of the Fiscal Year 2018 Budget Support Act of 2017, enacted on July 31, 2017 (D.C. Act 22-130; 64 DCR 7652).

Sec. 302. 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. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 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
December 20, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-214

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To order the closing of a portion of the public alley system in Square 772, bounded by N Street, N.E., Florida Avenue, N.E., 4th Street, N.E., M Street, N.E., and 3rd Street, N.E., in Ward 6.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 772, S.O. 16-25615, Act of 2017".

Sec. 2. (a) Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 787; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds a portion of the public alley system in Square 772, as shown on the Surveyor's plat filed in S.O. 16-25615, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

(b) The approval of the Council of this alley closing is contingent upon the satisfaction of all conditions set forth in the official file for S.O. 16-25615 before the recordation of the alley closing plat by the Surveyor, including that the applicant record an easement for the benefit of the District of Columbia over a portion of the surface of the closed alley and over the property it currently owns, said easement abutting the public alley system in Square 772, with a clearance of 9 feet above the surface of the closed alley, as shown on the Surveyor's plat filed in S.O. 16-25615. The easement shall include an agreement by the owner of the property encumbered by the easement to maintain the easement area for public use. This easement shall run with the land and be recorded in the land records of the Recorder of Deeds for the District of Columbia.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

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Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1983 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 20, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-215

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To order the closing of a portion of the public alley system in Square 3594, bounded by New York Avenue, N.E., Brentwood Parkway, N.E., Penn Street, N.E., and 4th Street, N.E., in Ward 5.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 3594, S.O. 16-25309, Act of 2017".

Sec. 2. (a) Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds a portion of the public alley system in Square 3594, as shown on the Surveyor's plat filed in S.O. 16-25309, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

(b) The approval of the Council of this alley closing is contingent upon the following:

(1) That title to the closed portion of the public alley system be conveyed subject to a non-restrictive public use easement for the benefit of the District of Columbia over the surface of a portion of the closed alley, including the space above and below the alley closure area, as shown on the Surveyor's plat filed in S.O. 16-25309, which shall include an agreement by the owner of the property encumbered by the easement to maintain the closed alley for public use and shall run with the land and be recorded in the land records of the Recorder of Deeds for the District of Columbia; and

(2) The satisfaction of all the conditions set forth in the official file for S.O. 16-25309 before the recordation of the alley-closing plat.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 20, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-216

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To amend section 25-340.01 of the District of Columbia Official Code to create an exception to the class B retailer's license moratorium in Ward 4 for full-service grocery stores.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Ward 4 Full-Service Grocery Store Amendment Act of 2017".

Sec. 2. Section 25-340.01 of the District of Columbia Official Code is amended as follows:

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

"(a) For the purposes of this section, the term:

"(1) "Full-service grocery store" shall have the same meaning as provided in § 25–101(22A).

"(2) "Ward 4" means the area defined as Ward 4 in § 1-1041.03 on September 30, 2004.".

(b) Subsection (d) is amended to read as follows:

"(d) The restrictions on the issuance in or transfer into Ward 4 of a class B off-premises retailer's license set forth in subsection (b) of this section shall not apply to a full-service grocery store.".

Sec. 3. 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. 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), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 20,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-217

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To officially designate a portion of the public alley system in Square 762, bounded by 2nd Street, S.E., C Street, S.E., 3rd Street, S.E., and Pennsylvania Avenue, S.E., in Ward 6, as "Lincoln Court;" and to amend the National Capital Revitalization and Self-Government Improvement Act of 1997 to exempt one of the Council appointments to the District of Columbia Corrections Information Council from the District of Columbia residency requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Lincoln Court Designation Act of 2017".

Sec. 2. Pursuant to sections 401, 403, and 421 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01, 9-204.03, and 9-204.21), the Council officially designates the portion of the public alley system in Square 762, which is bounded by 2nd Street, S.E., C Street, S.E., 3rd Street, S.E., and Pennsylvania Avenue, S.E., as shown on the Surveyor's plat in the committee report, as "Lincoln Court".

Sec. 3. Section 11201a(b)(2)(D) of the National Capital Revitalization and Self-Government Improvement Act of 1997, effective October 2, 2010 (D.C. Law 18-233; D.C. Official Code § 24-101.01(b)(2)(D)), is amended by striking the phrase "District of Columbia" and inserting the phrase "District of Columbia; provided, that one of the Council appointments may be a non-resident of the District" in its place.

Sec. 4. Transmittal.

The Council shall transmit a copy of this act, upon its effective date, to the Mayor, the District Department of Transportation, and the Office of the Surveyor.

Sec. 5. 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).

ENROLLED ORIGINAL

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 20,2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-218

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 20, 2017

To authorize the issuance of tax increment financing bonds to support certain infrastructure and other costs for a portion of the land located within the Union Market Area.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Union Market Tax Increment Financing Act of 2017".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Authorized Delegate" means the Deputy Mayor for Planning and Economic Development, the Chief Financial Officer, the Treasurer, or any officer or employee of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(2) "Available Increment" shall have the same meaning as set forth in the Reserve Agreement.

(3) "Available Real Property Tax Revenues" means the revenues resulting from the imposition of the tax provided for in Chapter 8 of Title 47 of the District of Columbia Official Code, inclusive of any penalties and interest charges, exclusive of the special tax provided for in section 481 of the Home Rule Act pledged to payment of general obligation indebtedness of the District.

(4) "Available Sales Tax Revenues" means the revenues resulting from the imposition of the tax under Chapter 20 of Title 47 of the District of Columbia Official Code, including penalty and interest charges, exclusive of the portion thereof required to be deposited in the Washington Convention Center Fund established pursuant to section 208 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code § 10-1202.08), and any amounts to be made available to the Washington Metropolitan Transit Authority pursuant to section 7102 of the Revised Revenue Contingency List Act of 2017, enacted on July 31, 2017 (D.C. Act 22-130; 62 DCR 7652), and section 2(b)(A) of the Stable and Reliable Source of Revenues for WMATA Act of 1982, effective April 30, 1982 (D.C. Law 4-103; D.C. Official Code 9-1111.15(b)(2)(A)).

(5) "Available Tax Increment" means the sum of the Available Sales Tax Revenues and Available Real Property Tax Revenues generated in the Union Market TIF Area in any fiscal year of the District minus the sum of Available Sales Tax Revenues and Available

Real Property Tax Revenues generated in the Union Market TIF Area in the applicable base year.

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

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

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

(9) "Chief Financial Officer" means the Chief Financial Officer established by section 424(a)(1) of the Home Rule Act.

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

(11) "Council" means the Council of the District of Columbia.

(12) "Debt Service" means principal, premium, if any, and interest on the bonds.

(13) "Development Costs" has the same meaning as in section 2(13) of the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law 12-143; D.C. Official Code § 2-1217.01(13)).

(14) "Development Sponsor" means Union Market Infrastructure Corp., qualified to do business in the District of Columbia, or any other entity that undertakes the development of the project with the approval of the Mayor.

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

(16) "Financing Documents" means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the bonds, including any offering document, and any required supplements to any such documents.

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

(18) "Project" means the financing, refinancing, or reimbursing of Development Costs incurred for construction of infrastructure and retail parking within the Union Market TIF Area and adjoining public space.

(19) "Retail Parking" means structured parking located within the Union Market TIF Area that is designed to support the development of the Union Market TIF Area as a retail hub.

(20) "Reserve Agreement" means that certain Reserve Agreement, dated April 1, 2002, by and among the District, Wells Fargo Bank Minnesota, N.A., and Financial Security Assurance, Inc.

(21) "TIF" means tax increment financing.

(22) "Union Market TIF Area" means the geographical area described in section 4(a).

ENROLLED ORIGINAL

Sec. 3. Creation of the Union Market TIF Fund.

(a) There is established as a nonlapsing fund the Union Market TIF Fund. The Chief Financial Officer shall deposit into the Union Market TIF Fund the Available Tax Increment and any other taxes or fees specifically designated by law for deposit in the Union Market TIF Fund.

(b) The Mayor may pledge and create a security interest in the funds in the Union Market TIF Fund, or any sub-account within the Union Market TIF Fund, for the payment of debt service on the bonds without further action by the Council as permitted by section 490(f) of the Home Rule Act. The payment of debt service shall be made in accordance with the provisions of the Financing Documents entered into by the District in connection with the issuance of the bonds.

(c) If, at the end of any fiscal year of the District, the balance of cash and investments in the Union Market TIF Fund exceeds the amount of debt service (including prepayment of principal and interest), reserves on any bonds, and any approved bond-related administrative expenses during the upcoming fiscal year, 50% of the excess shall be used to prepay the principal of the bonds and the remaining 50% of the excess shall be transferred to the unrestricted balance of the General Fund of the District of Columbia.

Sec. 4. Creation of the Union Market TIF Area.

(a) There is created a TIF area designated as the Union Market TIF Area. The Union Market TIF Area is defined as the real property located in Lots 0001, 0002, and 0003 in Square 3594; Lots 0003, 0007, 0808, 0823, 0824, 0825, 0826, 0828, 0829, 0830, 0831, 0832, 7006, 7007, 7008, 7009, 7010, 7011, 7012, 7013, 7014, 7015, 7016, 7017, 7018, 7019, 7020, 7021, 7022, and 7023 in Square 3587; Lots 0004, 0015, 0016, 0017, 0018, 0019, 0020, 0021, 0022, 0025, 0801, 0802, and 0803 in Square 3588; Lots 0003, 0008, 0009, 0029, 0030, 0031, 0032, 0033, 0034, 0035, 0036, 0049, 0050, 0051, 0052, 0053, 0804, 0805, 0806, and 0808, in Square 3589; Lots 0001, 0002, 0003, 0004, 0005, 0006, 0010, 0011, 0013, 0014, 0800, 0801, and 0802 in Square 3590; Lots 0002, 0003, 0004 and 0800 in Square 3591; Lots 0001, 0002, 0006, 0007, 0008, 0009, 0010, 0011, 0012, 0013, 0014, 0015, 0016, 0019, 0020, 0021, 0022, 0023, 0024, 0025, 0802, and 0803 in Square 3592; and Lots 0027, 0028, 0030, 0034, 0043, 0045, 0068, 0070, 0072, 0089, 0090, 0103, 0104, 0106, and 0112 in Parcel 0129.

(b) As provided under section 3, the Available Tax Increment from the Union Market TIF Area shall be deposited in the Union Market TIF Fund and may be used for the purposes set forth in section 3.

(c)(1)(A) The base amount for determination of Available Sales Tax Revenues shall be:

(i) $2,644,943 in base year 2018;

(ii) $4,924,957 in base year 2019;

(iii) $5,984,737 in base year 2020; and

(iv) $6,529,609 in base year 2021.

(B) For base years 2022 through 2051, the base amount for determination of Available Sales Tax Revenues shall reflect an increase in the amount of 3.6% from each previous base year's amount.

(2)(A) The base amount for determination of Available Real Property Tax Revenues shall be:

(i) $3,746,069 in base year 2018;
(ii) $4,858,887 in base year 2019;
(iii) $6,202,452 in base year 2020; and
(iv) $7,488,037 in base year 2021.

(B) For base years 2022 through 2051, the base amount for determination of Available Real Property Tax Revenues shall reflect an increase in the amount of 3.0% from each previous base year's amount.

(3) The Union Market TIF Area shall terminate on the earliest of:

(A) Twenty-five years after the issuance of the last bonds issued pursuant to this act;

(B) The date on which the bonds are paid in full or are defeased and are no longer outstanding; or

(C) March 1, 2027 if no bonds are issued.

Sec. 5. Bond authorization.

(a)(1) The Council approves and authorizes the issuance of one or more series of bonds in an aggregate principal amount not to exceed $82.4 million to fund the project. The bonds, which may be issued from time to time, in one or more series, shall be tax-exempt or taxable as the Mayor shall determine and shall be payable and secured as provided in section 6.

(2) Bonds in the aggregate principal amount of $46.4 million may be issued to pay for the construction of infrastructure and related Development Costs.

(3) Bonds in the aggregate principal amount not to exceed $36 million may be issued to pay for the construction of Retail Parking and related Development Costs.

(b) The Mayor may pay from the proceeds of the bonds the financing costs and expenses of issuing and delivering the bonds, including, but not limited to, underwriting, legal, accounting, financial advisory, credit enhancement, marketing, sale, and printing costs and expenses.

Sec. 6. Payment and security.

(a) Except as may be otherwise provided in this act, the principal of, premium, if any, and interest on, the bonds, and the payment of ongoing administrative expenses related to the bond financing shall be payable solely from proceeds received from the sale of the bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Union Market TIF Fund, income realized from the temporary investment of those receipts and revenues prior to payment to the bond owners, and other funds that, as provided in the Financing Documents, may be made available to the District for payment of the bonds from sources other than the District, all as provided for in the Financing Documents.

(b) There is further allocated to the payment of debt service, on up to $36 million of the bonds the Available Increment, subordinate to the allocation of Available Increment to the Budgeted Reserve, as defined in the Reserve Agreement, all as more fully described in the Reserve

Agreement and to the extent that the Reserve Agreement continues to apply to the Available Increment, to be used for the payment of debt service on the bonds to the extent that the revenues allocated in subsection (a) of this section are inadequate to pay debt service on the bonds. The allocation of Available Increment authorized by this subsection shall be made in compliance with all existing contractual obligations of the District with respect to the Available Increment and shall terminate on the date on which all of the bonds are paid or provided for and are no longer outstanding pursuant to their terms. The foregoing allocation of Available Increment may be increased to apply to bonds in excess of $36 million; provided, that the Development Sponsor advances the amount of any reserve required in the District's budget to support such increased allocation and any amount remaining in such reserve upon payment in full of such bonds shall be returned to Development Sponsor.

(c) Payment of the bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the bond owners of certain of its rights under the Financing Documents and Closing Documents to the trustee for the bonds pursuant to the Financing Documents.

(d) The trustee or paying agent is authorized to deposit, invest, and disburse the proceeds received from the sale of the bonds pursuant to the Financing Documents.

Sec. 7. Bond details.

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

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

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

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the bonds, and the maturity date or dates of the bonds;

(5) The terms under which the bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the bonds and the replacement of mutilated, lost, stolen, or destroyed bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the bonds;

(8) The time and place of payment of the bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this act;

(10) Actions necessary to qualify the bonds under blue sky laws of any jurisdiction where the bonds are marketed; and

(11) The terms and types of any credit enhancement under which the bonds may be secured.

(b) The bonds shall contain a legend which shall provide that the bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the Available Tax Increment, the Available Increment, and any other taxes and fees allocated to the Union Market TIF Fund), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds.

(e) The bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee or paying agent to be selected by the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The bonds may be issued at any time or from time to time in one or more issues and in one or more series.

(g) The bonds are declared to be issued for essential public and governmental purposes. The bonds, the interest thereon, and the income therefrom, and all funds pledged or available to pay or secure the payment of the bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District pledges, covenants, and agrees with the holders of the bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the revenues pledged to secure the bonds or the basis on which such revenues are collected or allocated, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the bonds, will not in any way impair the rights or remedies of the holders of the bonds, and will not modify, in any way, the exemptions from taxation provided for in this act, until the bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the bonds. This subsection constitutes a contract between the District and the holders of the bonds. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Article 9 of Chapter 28 of the District of Columbia Official Code:

(1) A pledge made and security interest created in respect of the bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

Sec. 8. Issuance of the bonds.

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

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

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

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

(e) The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), and subchapter III-A of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to any contract the Mayor may from time to time enter into, or the Mayor may determine to be necessary or appropriate, for the purposes of this act.

Sec. 9. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the bonds.

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

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

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

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

Sec. 10. Limited liability.

(a) The bonds shall be special obligations of the District. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of, or involve, the faith and credit or the taxing power of the District (other than the Available Tax Increment, the Available Increment, and any other taxes or fees allocated to the Union Market TIF Fund), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

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

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

Sec. 11. District officials.

(a) Except as otherwise provided in section 10(c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the bonds or be subject to any personal liability by reason of the issuance of the bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this act, the bonds, the Financing Documents, or the Closing Documents.

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

ENROLLED ORIGINAL

Sec. 12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Expiration of issuance authority.

The authority to issue the bonds shall expire on March 1, 2027; provided, that the expiration of the authority shall have no effect on any bonds issued prior to the expiration date.

Sec. 15. Repealer.

The Union Market District TIF Inducement Act of 2015, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 2-1217.36a *et seq.*), is repealed.

Sec. 16. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 17. 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).

ENROLLED ORIGINAL

Sec. 18. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 20, 2017

ENROLLED ORIGINAL

A RESOLUTION

22-323

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the appointment of Mr. Brad Belzak to the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Homeland Security Commission Brad Belzak Confirmation Resolution of 2017".

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

Mr. Brad Belzak
1111 25th Street, N.W., #520
Washington, D.C. 20037
(Ward 2)

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), in accordance with section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), replacing Darrell Darnell, for a term to end February 22, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-326

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the appointment of Mr. Calvin Woodland, Jr. to the Corrections Information Council Governing Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Corrections Information Council Governing Board Calvin Woodland, Jr. Confirmation Resolution of 2017".

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

Mr. Calvin Woodland, Jr.
1477 Newton Street, N.W.
Washington, D.C. 20010
(Ward 1)

as a member of the Corrections Information Council Governing Board, established by section 11201a of the National Capital Revitalization and Self-Government Improvement Act of 1997, effective October 2, 2010 (D.C. Law 18-233; D.C. Official Code § 24-101.01), for a term to end June 7, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-327

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the reappointment of Mr. Michael Gill to the District of Columbia Board of Elections.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Board of Elections Michael Gill Confirmation Resolution of 2017".

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

Mr. Michael Gill
1824 Randolph Street, N.W.
Washington, D.C. 20011
(Ward 4)

as a member of the District of Columbia Board of Elections, established by section 3 of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.03), for a term to end July 7, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-328

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the reappointment of Mr. Michael Ward to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Michael Ward Confirmation Resolution of 2017".

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

Mr. Michael Ward
646 Acker Place, N.E.
Washington, D.C. 20002
(Ward 6)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-329

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the appointment of Ms. Wynter Allen to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Wynter Allen Confirmation Resolution of 2017".

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

Ms. Wynter Allen
3800 14th Street, N.W.
Washington, D.C. 20011
(Ward 4)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-330

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the reappointment of Mr. Adam Maier to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Adam Maier Confirmation Resolution of 2017".

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

Mr. Adam Maier
333 10th Street, N.E.
Washington, D.C. 20002
(Ward 6)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), for a term to end December 31, 2020.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-331

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the appointment of Mr. Gunther Sanabria to the Commission on Human Rights.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Human Rights Gunther Sanabria Confirmation Resolution of 2017".

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

Mr. Gunther Sanabria
616 5th Street, N.E.
Washington, D.C. 20002
(Ward 6)

as a member of the Commission on Human Rights, established by section 401 of the Human Rights Act of 1977, effective December 7, 2004 (D.C. Law 15-216; D.C. Official Code § 2-1404.01), in accordance with section 2(e)(8) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(8)), replacing Genora Reed, for a term to end December 31, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-334

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To confirm the appointment of Dr. Christopher Rodriguez as the Director of the Homeland Security and Emergency Management Agency.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Director of the Homeland Security and Emergency Management Agency Christopher Rodriguez Confirmation Resolution of 2017".

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

Dr. Christopher Rodriguez
4332 Westover Place, N.W.
Washington, D.C. 20016
(Ward 3)

as the Director of the Homeland Security and Emergency Management Agency, established by section 2 of An Act To authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes, approved August 11, 1950 (64 Stat. 438; D.C. Official Code § 7-2202), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), to serve at the pleasure of the Mayor.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-337

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to approve Change Order Nos. 1 through 4 to Contract No. DCAM-15-CS-0113 with The Whiting-Turner Contracting Company for construction management at-risk services for Engine Company Number 22, and to authorize payment in the aggregate amount of $1,274,886, for the goods and services received and to be received under the change orders.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Change Orders to Contract No. DCAM-15-CS-0113 Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2 (a) There exists an immediate need to approve Change Order Nos. 1 through 4 to Contract No. DCAM-15-CS-0113 with The Whiting-Turner Contracting Company for construction management at-risk services for Engine Company Number 22, and to authorize payment in the aggregate amount of $1,274,886 for the goods and services received and to be received under the change orders.

(b) On April 29, 2016, Contract No. DCAM-15-CS-0113 was deemed approved by the Council as CA21-0365.

(c) On February 14, 2017, Change Order No. 1 was issued in the amount of $231,809, increasing the total contract value from $11,234,118 to $11,465,927. The value of Change Order No. 1 was less than $1 million; thus, Change Order No. 1 did not require Council approval.

(d) On April 12, 2017, Change Order No. 2 was issued in the amount of $112,325, increasing the total contract value from $11,465,927 to $11,578,252. The aggregate value of Change Order Nos. 1 and 2 was less than $1 million; thus, Change Order Nos. 1 and 2 did not require Council approval.

(e) On September 29, 2017, Change Order No. 3 was issued in the amount of $655,577, increasing the total contract value from $11,578,252 to $12,233,829. The aggregate value of Change Order Nos. 1 through 3 was less than $1 million; thus, Change Order Nos. 1 through 3 did not require Council approval.

(f) Proposed Change Order No. 4, in the amount of $275,175, would cause the aggregate value of Change Order Nos. 1 through 4 to be $1,274,886, increasing the total contract value from $12,233,829 to $12,509,004.

(g) Proposed Change Order No. 4 would cause the aggregate value of all change orders issued after Council's last approval to exceed $1 million; thus, Council approval is now required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

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 Change Orders to Contract No. DCAM-15-CS-0113 Approval and Payment Authorization Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-338

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to approve Modification Nos. 13, 14, 15, 16, and 17 to Contract No. DCKA-2013-C-0007 with Capitol Paving of D.C., Inc. to provide citywide alley restoration services, and to authorize payment for the goods and services received and to be received under the modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Contract No. DCKA-2013-C-0007 Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve Modification Nos. 13, 14, 15, 16, and 17 to Contract No. DCKA-2013-C-0007 with Capitol Paving of D.C., Inc. to provide citywide alley restoration services, and to authorize payment for the goods and services received and to be received under the modifications.

(b) By Modification No. 13, the Office of Contracting and Procurement, on behalf of the District Department of Transportation, partially exercised Option Year 4 of Contract No. DCKA-2013-C-0007 for the period from July 22, 2017, through September 21, 2017, at no cost.

(c) Modification No. 14 was an administrative modification.

(d) Modification No. 15 partially exercised Option Year 4 of Contract No. DCKA-2013-C-0007 for the period from September 22, 2017, through November 21, 2017, at no cost.

(e) Modification No. 16 partially exercised Option Year 4 for the period from November 22, 2017, through December 12, 2017, in the not-to-exceed amount of $975,000.

(f) Modification No. 17 is now necessary to exercise the remainder of Option Year 4 and increase the total not-to-exceed amount of the modifications to $30 million.

(g) Council approval is necessary because the modifications increase the expenditures under the contract by more than $1 million during a 12-month period.

(h) Approval is necessary to allow the continuation of these vital services. Without this approval, Capitol Paving of D.C., Inc. cannot be paid for the goods and services provided in excess of $1 million for the contract period from July 22, 2017, through July 21, 2018.

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

ENROLLED ORIGINAL

Modifications to Contract No. DCKA-2013-C-0007 Approval and Payment Authorization Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-344

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to declare that the District-owned real properties located at 1220 Maple View Place, S.E., known for tax and assessment purposes as Lot 811 in Square 5800; 1648 U Street, S.E., known for tax and assessment purposes as Lot 884 in Square 5765; 1518 W Street, S.E., known for tax and assessment purposes as Lot 814 in Square 5779; 1326 Valley Place, S.E., known for tax and assessment purposes as Lot 849 in Square 5799, are no longer required for public purposes and to authorize the disposition of the properties to the L'Enfant Trust for the purpose of rehabilitating the properties in accordance with historic preservation standards and developing workforce housing.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Historic Anacostia Vacant Properties Surplus Declaration and Disposition Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists an immediate need to dispose of the properties, which have been vacant for a number of years, located at:

(1) Lot 811 in Square 5800;
(2) Lot 884 in Square 5765;
(3) Lot 814 in Square 5779; and
(4) Lot 849 in Square 5799.

(b) The properties are in need of extensive repair, and, because they are located within historic Anacostia, must be renovated in accordance with historic preservation standards.

(c) In order to expedite the repair of these properties and to bring them back into productive use, the Mayor will exercise her authority to initiate disposal of these properties via transfer to the L'Enfant Trust, a District entity with expertise in historic preservation.

(d) The L'Enfant Trust will move expeditiously to begin renovation of these properties.

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 Historic Anacostia Vacant Properties Surplus Declaration and Disposition Authorization Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-353

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $50 million of District of Columbia revenue bonds in one or more series, and to authorize and provide for the loan of the proceeds of such bonds to assist Provident Group – Howard Center, Inc. and Provident Group – Howard Center, LLC, or either of them, in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Howard Center Revenue Bonds Project Emergency Declaration Resolution of 2017".

Sec. 2. (a) The Provident Group – Howard Center, Inc., a nonprofit corporation organized and existing under the laws of the District of Columbia and the Provident Group – Howard Center, LLC, a limited liability company organized and existing under the laws of the District of Columbia ("Borrower"), seek to have District of Columbia revenue bonds issued and receive a loan of the proceeds from the sale for the financing, refinancing, or reimbursing of all or a portion of the Borrower's costs of:

(1) The acquisition from Howard University of long term leasehold interests in the site located at 2225 Georgia Avenue, N.W., comprising approximately 19,769 square feet of land ("Site"), and the use of the acquisition price by Howard University to finance a portion of its capital plan with respect to the facilities on its Main Campus (as defined in Howard Center Revenue Bonds Project Emergency Approval Resolution of 2017);

(2) The renovation of the existing approximately 90,157 square feet building located on the Site into a mix of approximately 165 dormitory and housing units, and functional meeting and event space to be utilized by Howard University;

(3) The purchase of certain equipment and furnishings, all located at the Site, together with other related property, real and personal;

(4) Funding certain working capital costs;

(5) Funding any credit enhancement costs, liquidity costs or debt service reserve fund; and

(6) Paying Issuance Costs and other related costs to the extent permissible.

ENROLLED ORIGINAL

(b) The planned financing will make available funds critically needed to finance, refinance, or reimburse the Borrower for costs of the project described in subsection (a) of this section.

(c) H.R. 1, the Tax Cuts and Jobs Act, released by the House Ways and Means Committee on November 2, 2017, proposes to eliminate the exemption of interest from federal income taxes for qualified private activity bonds described in section 141(e) of the Internal Revenue Code, of 1986, as amended, including qualified 501(c)(3) bonds such as the District of Columbia revenue bonds. The effective date of the elimination of the exemption under the proposed legislation is currently December 31, 2017. To ensure that the Borrower is able to benefit from District of Columbia revenue bonds, the issuance date of the bonds needs to occur as soon as possible.

(d) Council approval of the bond resolution authorizing the issuance of up to $50 million of District of Columbia revenue bonds would permit the revenue bonds to be issued promptly to provide maximum savings for the Borrower and enable the project described in subsection (a) of this section to be completed.

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 Howard Center Revenue Bonds Project Emergency Approval Resolution of 2017 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-357

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 5, 2017

To declare the existence of an emergency with respect to the need to approve the First Amendment to Lease Agreement and the Second Amendment to Lease Agreement for 3919 Benning Road, N.E., between the District of Columbia government and Cedar East River Park, LLC.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Amendments to Lease Agreement for 3919 Benning Road, N.E., Approval Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists an immediate need to approve the First Amendment to Lease Agreement and the Second Amendment to Lease Agreement for the continued lease of premises at 3919 Benning Road, N.E.

(b) The underlying lease was previously approved by the Council (CA19-318) on May 3, 2012. Thereafter, the Department of General Services entered into the First Amendment to Lease Agreement, which had an aggregate value of less than $1 million. Thus, the First Amendment to Lease Agreement did not require Council approval.

(c) The Second Amendment to Lease Agreement will cause the aggregate value of the amendments entered into after the Council's approval of the underlying lease to exceed $1 million during a 12-month period. Therefore, Council approval of the amendments is required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).

(d) Approval of the amendments is necessary to extend the term of the lease, which is necessary to allow the Office of the Chief Technology Officer ("OCTO") to continue to operate its primary data center at the premises. Relocation of this critical telecommunications infrastructure requires a substantial amount of time and cannot be effectuated without the extension of the lease term. As a result, OCTO needs to amend the lease to extend the lease term.

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 Amendments to Lease Agreement for 3919 Benning Road, N.E., Approval Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-364

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 19, 2017

To declare the existence of an emergency with respect to the need to approve Modification Nos. 6, 7, 7-A, 7-B, 8, 8-A, and 9 to Contract No. RM-14-RFP-200-SIL-CCI-BY4-SC with Community Connections, Inc. to provide supported independent living services and to authorize payment for the goods and services received and to be received under the contract modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Contract No. RM-14-RFP-200-SIL-CCI-BY4-SC Approval and Payment Authorization Emergency Declaration Resolution of 2017".

Sec. 2. (a) There exists a need to approve Modification Nos. 6, 7, 7-A, 7-B, 8, 8-A, and 9 to Contract No. RM-14-RFP-200-SIL-CCI-BY4-SC with Community Connections, Inc. to provide supported independent living services, and to authorize payment in the not-to-exceed amount of $1,300,000 for the goods and services received and to be received under the modifications.

(b) By Modification No. 6, the Office of Contracting and Procurement, on behalf of the Department of Behavioral Health, exercised a partial option of option year three of Contract No. RM-14-RFP-200-SIL-CCI-BY4-SC in the amount of $707,805 for the period from March 1, 2017 through September 30, 2017.

(c) Modification No. 7 was an administrative modification.

(d) Modification No. 7-A was an administrative modification.

(e) Modification No. 7-B was an administrative modification.

(f) Modification No. 8 exercised another partial option of option year three of Contract No. RM-14-RFP-200-SIL-CCI-BY4-SC in the amount of $251,370 for the period from October 1, 2017 through December 15, 2017, to the total amount of $959,175.

(g) Modification No. 8-A exercised another partial option of option year three of December 16, 2017 through January 15, 2018 at no additional cost.

(h) Modification No. 9 is now necessary to exercise the remainder of option year three of Contract No. RM-14-RFP-200-SIL-CCI-BY4-SC, in the not-to-exceed amount of $1,300,000.

(i) Council approval is necessary because the modifications increase the contract by more than $1 million during a 12-month period.

ENROLLED ORIGINAL

(j) Approval is necessary to allow the continuation of these vital services. Without this approval, Community Connections, Inc. cannot be paid for goods and services provided in excess of $1 million for the contract period from March 1, 2017, through February 28, 2018.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modifications to Contract No. RM-14-RFP-200-SIL-CCI-BY4-SC Approval and Payment Authorization Emergency Act of 2017 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

PROPOSED RESOLUTIONS

PR22-693	Board of Library Trustees Leif Dormsjo Confirmation Resolution of 2017 Intro. 12-20-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education
PR22-694	Revised ABRA Civil Penalty Schedule Resolution of 2017 Intro. 12-20-17 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

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

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC HEARING

on

B22-0504, the "Student Loan Debt Forgiveness Act of 2017"

on

Thursday, February 8, 2018
10:00 a.m., Hearing Room 412, John A. Wilson
Building 1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public hearing on B22-0504, the "Student Loan Debt Forgiveness Act of 2017." The hearing will be held at 10:00 a.m. on Thursday, February 8, 2018 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of B22-0504 is to establish a student loan debt forgiveness program for District of Columbia residents.

The Committee invites the public to testify or submit written testimony. Those who wish to testify may sign-up online at http://bit.do/educationhearings or call the Committee on Education at (202) 724-8061 by 5:00 p.m. Friday, February 6, 2018. Persons wishing to testify are encouraged to bring 10-15 copies of their written testimony.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, Committee Assistant, at astrange@dccouncil.us, or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, February 22, 2018

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

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC HEARING

on

PR22-0523, the "Sense of the Council Arts Humanities in Education Resolution of 2017"

on

Thursday, January 18, 2018
10:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public hearing of the Committee on Education on PR22-0523, the "Sense of the Council Arts Humanities in Education Resolution of 2017". The roundtable will be held at 10:00 a.m. on Thursday, January 18, 2018 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR22-0523 is to declare the sense of the Council that the District of Columbia is committed to promoting arts and humanities education in both traditional and public charter schools.

Those who wish to testify may sign-up online at http://bit.do/educationhearings or call the Committee on Education at (202) 724-8061 by 5:00 p.m. Tuesday, January 16, 2018. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on their own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to Ashley Strange, Committee Assistant, via email at astrange@dccouncil.us, or via post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, February 1, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING
on
PR22-537, Board of Zoning Adjustment Lorna John Confirmation Resolution of 2017
PR22-644, District of Columbia Commemorative Works Committee Maryam F. Foye Confirmation Resolution of 2017
&
PR22-653, Historic Preservation Review Board Thomas G. Brokaw Confirmation Resolution of 2017

on

Tuesday, January 16, 2018
10:30 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **PR22-537**, the "Board of Zoning Adjustment Lorna John Confirmation Resolution of 2017"; **PR22-644**, the "District of Columbia Commemorative Works Committee Maryam F. Foye Confirmation Resolution of 2017"; and **PR22-653**, the "Historic Preservation Review Board Thomas G. Brokaw Confirmation Resolution of 2017." The hearing will be held at 10:30 a.m. on **Tuesday, January 16, 2018** in **Hearing Room 412** of the John A. Wilson Building.

The stated purpose of **PR22-537** is to confirm the appointment of Lorna John to the Board of Zoning Adjustment ("Board"). The Board is an independent, quasi-judicial body with the ability to grant relief from the strict application of the District's zoning regulations in the form of variances, to grant special exceptions pursuant to the zoning regulations, and to hear appeals from actions taken by the Zoning Administrator of the Department of Consumer and Regulatory Affairs. The purpose of this hearing is to receive testimony from government and public witnesses as to the fitness of Ms. John for the Board.

The stated purpose of **PR22-644** is to confirm the appointment of Maryam F. Foye as a citizen member of the District of Columbia Commemorative Works Committee ("CWC"). The CWC advises the Council on each application to place a commemorative work on public space in the District of Columbia. The CWC is made up of three citizens nominated by the Mayor and confirmed by the Council, plus nine ex-officio government officials. The purpose of this hearing is to receive testimony from public witnesses as to the fitness of Ms. Foye for the CWC.

The stated purpose of **PR 22-653** is to confirm the appointment of Thomas G. Brokaw as an architect member to the Historic Preservation Review Board. The Historic Preservation Review Board ("HPRB") 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 HPRB also assists with the implementation of federal preservation programs and the review of federal projects in the District. The purpose of this hearing is to receive testimony from government and public witnesses as to the fitness of Mr. Brokaw for the HPRB.

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 **Friday, January 12, 2018.** Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on January 12, 2018 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. Hearing materials, including a draft witness list, can be accessed 24 hours in advance of the hearing at http://www.chairmanmendelson.com/circulation.

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 January 30, 2018.

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

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

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

THE DEPARTMENT OF CORRECTIONS

Thursday, February 1, 2018, 9:30 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Thursday, February 1, 2018, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public oversight roundtable on the Department of Corrections. The roundtable will take place in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:30 a.m.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the roundtable should contact the Committee via email at judiciary@dccouncil.us or at (202) 727-8232, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business, Friday, January 26, 2018.** 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 should bring **twenty double-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. The record will close at the end of the business day on February 16, 2018.

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

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR22-0658 - Public Charter School Board Enrique Cruz Confirmation Resolution of 2017

And

PR22-0693 - Board of Library Trustees Leif Dormsjo Confirmation Resolution of 2017

On

Wednesday, January 10, 2018
2:00 p.m., Hearing Room 123, John A. Wilson
Building 1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on PR22-0658 - Public Charter School Board Enrique Cruz Confirmation Resolution of 2017. The roundtable will be held at 2:00 p.m. on Wednesday, January 10, 2018 in Hearing Room 123 of the John A. Wilson Building.

The stated purpose of PR22-0658 is to confirm the reappointment of Enrique Cruz as a member of the Public Charter School Board in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), and pursuant to section 2214 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.14). .

The stated purpose of PR22-693 is to confirm the appointment of Leif Dormsjo as a member of the Board of Library Trustees in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C Law 2-142; D.C. Official Code § 1-523.01), and pursuant to section 4 of an Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896 (29 Stat. 244; D.C. Official Code § 39-104). ·

Those who wish to testify may sign-up online at http://bit.do/educationhearings or call the Committee on Education at (202) 724-8061 by 5:00pm Monday January 8, 2018. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. Witnesses

appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, astrange@dccouncil.us or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004. The record will close at 5:00 p.m. on Tuesday, January 16, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 22-0683, "Compensation Agreement between the District of Columbia and the Office of the Attorney General and the American Federation of Government Employees, Local 1403, AFL-CIO (Compensation Unit 33) Approval Resolution of 2017"

Monday, January 8, 2018, 2:00 p.m.
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 roundtable before the Committee on **PR 22-0683, Compensation Agreement between the District of Columbia and the Office of the Attorney General and the American Federation of Government Employees, Local 1403, AFL-CIO (Compensation Unit 33) Approval Resolution of 2017**. The roundtable will be held at 2:00 p.m. on Monday, January 8, 2018, in Room 123 of the John A. Wilson Building.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by close of business Friday, January 5, 2018, 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 you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted 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 January 11, 2018.

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. 22-97 Request to reprogram $2,200,000 of Fiscal Year 2018 Local funds budget authority within the Department of Energy and Environment (DOEE) was filed in the Office of the Secretary on December 20, 2017. This reprogramming ensures that DOEE can implement a new water filtering initiative to protect children in child development centers from lead poisoning.

RECEIVED: 14 day review begins December 21, 2017

Reprog. 22-98 Request to reprogram $1,400,000 of Fiscal Year 2018 Local funds budget authority, initiated from the District of Columbia Housing Authority (DCHA) Subsidy, to the Department of Housing and Community Development (DCHD) was filed in the Office of the Secretary on December 20, 2017. This reprogramming is needed to support the refinancing of the Maple View Flats project and shift some development costs to Local dollars.

RECEIVED: 14 day review begins December 21, 2017

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	December 15, 2017
Protest Petition Deadline:	January 29, 2018
Roll Call Hearing Date:	February 12, 2018
Protest Hearing Date:	April 11, 2018

License No.:	ABRA-108510
Licensee:	1201 K Street F & B Tenant, LLC
Trade Name:	TBD
License Class:	Retailer's Class "C" Restaurant
Address:	1201 K Street, N.W.
Contact:	Michael Fonseca, Esq.: 202-625-7700

WARD 2 ANC 2F SMD 2F08

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 February 12, 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 **April 11, 2018 at 1:30 p.m.**

NATURE OF OPERATION
A new restaurant that will provide food and beverage operations**for the full service restaurant, bars, cafés and **second floor event spaces within the Eaton Hotel premises. Seating Capacity of 780, Total Occupancy Load of 1,135. Sidewalk Cafe with 20 seats adjacent to the restaurant. Summer Garden on the 10th floor rooftop with 50 seats. Will include Entertainment and Dancing on premises only.

HOURS OF OPERATION INSIDE PREMISES
Sunday through Saturday 12am - 12am (24 hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION, AND HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES
Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF OPERATION FOR THE OUTDOOR SIDEWALK CAFÉ
Sunday through Saturday 6 am – 12 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SIDEWALK CAFÉ
Sunday through Saturday 8 am – 12 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE 10TH FLOOR ROOFTOP SUMMER GARDEN
Sunday through Saturday 8 am – 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	December 15, 2017
Protest Petition Deadline:	January 29, 2018
Roll Call Hearing Date:	February 12, 2018
Protest Hearing Date:	April 11, 2018

License No.:	ABRA-108510
Licensee:	1201 K Street F & B Tenant, LLC
Trade Name:	TBD
License Class:	Retailer's Class "C" Restaurant
Address:	1201 K Street, N.W.
Contact:	Michael Fonseca, Esq.: 202-625-7700

WARD 2 ANC 2F SMD 2F08

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 February 12, 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 **April 11, 2018 at 1:30 p.m.**

NATURE OF OPERATION
A new restaurant that will provide food and beverage operations for the ** restaurant, bars, cafés and **co-working office spaces within the Eaton Hotel. Seating Capacity of 780, Total Occupancy Load of 1,135. Sidewalk Cafe with 20 seats adjacent to the restaurant. Summer Garden on the 10th floor rooftop with 50 seats. Live Entertainment and Dancing inside premises only.

HOURS OF OPERATION INSIDE PREMISES
Sunday through Saturday 12am - 12am (24 hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION, AND HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES
Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF OPERATION FOR THE OUTDOOR SIDEWALK CAFÉ
Sunday through Saturday 6 am – 12 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SIDEWALK CAFÉ
Sunday through Saturday 8 am – 12 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE 10TH FLOOR ROOFTOP SUMMER GARDEN
Sunday through Saturday 8 am – 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	December 29, 2017
Protest Petition Deadline:	February 12, 2018
Roll Call Hearing Date:	February 26, 2018
Protest Hearing Date:	April 25, 2018

License No.:	ABRA-108602
Licensee:	Truth Hookah/Cigar, LLC
Trade Name:	Truth Hookah/Cigar
License Class:	Retailer's Class "C" Tavern
Address:	1220 H Street, N.E.
Contact:	Demasion Thompson: (240) 355 -7098

WARD 6 ANC 6A SMD 6A01

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 February 26, 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 **April 25, 2018 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Tavern offering Live Entertainment, with dancing and cover charge, and alcoholic beverages. Total Occupancy Load of 198 with seating for 95 patrons.

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

Sunday through Thursday 10:00 am to 2:00 am, Friday and Saturday 10:00 am to 3:00 am

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, February 8, 2018, @ 6:30 p.m. (2nd Case)**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 17-24 (Office of Planning - Fort Greble Recreation Center Map Amendment @ U.S. Reservation 412)

THIS CASE IS OF INTEREST TO ANC 8D

On December 1, 2017, the Office of Zoning received a petition from the Office of Planning requesting a Zoning Map amendment to map the District Department of Parks and Recreation Fort Greble Recreation Center site (part of U.S. Reservation 412 transferred for use as a District of Columbia recreation center) from unzoned to the RA-1 zone. At its public meeting of December 11, 2017, the Zoning Commission voted to set down the petition for a public hearing. The OP petition served as its prehearing statement.

The Property is part of U.S. Reservation 421 and consists of approximately six acres (261,891 square feet) in Southwest Washington. Jurisdiction for the District's recreation center portion of the site was transferred from the Federal Government to the District of Columbia in the 1973. The Property is currently unzoned and is designated for Parks, Recreation, and Open Space on the Comprehensive Plan Future Land Use Map.

The proposed zone for the site is RA-1 (Residential Apartment), which is the same zone district as mapped on adjacent property to the east. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments; recreation buildings and parks are allowed as a matter of right subject to conditions. The RA-1 zone allows a maximum height of 40 feet and three stories; a maximum lot occupancy of 40%; and a maximum density of 0.9 FAR (1.08 FAR when subject to Inclusionary Zoning).

The Zoning Commission has determined that this public hearing will be conducted in accordance with the rulemaking case provisions of the Zoning Commission's Rules of Practice and Procedure, 11-Z DCMR, Chapter 5.

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.

Time limits.

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

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

1. Organizations	5 minutes each
2. Individuals	3 minutes each

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.

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

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

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

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

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

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 67 (Physical Therapy) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to amend the physical therapy regulation to include the new requirement for continuing education focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression ("LGBTQ") in accordance with § 510(b)(5) of the Act (D.C. Official Code § 3-1205.10(b)(5) (2016 Repl.)).

The rulemaking was published in the *D.C. Register* as a proposed rulemaking on April 14, 2017 at 64 DCR 3501. No comments were received and there has been no change to the rule as proposed. This rule was adopted as final on June 14, 2017 and will be effective upon publication of the notice in the *D.C. Register*.

Chapter 67, PHYSICAL THERAPY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 6706, CONTINUING EDUCATION REQUIREMENTS, is amended to read as follows:

6706 CONTINUING EDUCATION REQUIREMENTS

6706.1 Subject to § 6706.2, this section shall apply to applicants for the renewal, reactivation, or reinstatement of a license for a term expiring on or after January 31, 2013, and for subsequent terms.

6706.2 This section shall not apply to applicants for the first renewal of a license.

6706.3 A continuing education credit shall be valid only if it is approved by the Board in accordance with § 6707.

6706.4 To qualify for the renewal of a license, an applicant shall have completed forty (40) hours of approved continuing education during the two (2) years' period preceding the date the license expires, which shall include:

(a) No more than twenty (20) hours of approved continuing education credits earned through internet courses; and

(b) Beginning with the licensure term starting on February 1, 2019, two (2) hours of LGBTQ continuing education.

6706.5 The Board may periodically conduct a random audit to determine licensees' compliance with the continuing education. A licensee who is selected to participate in the Board's continuing education audit shall, within thirty (30) days after receiving notice of the selection, submit proof pursuant to § 6706.8 of having completed the required approved continuing education credits during the two (2)-year period immediately preceding the date the license expires.

6706.6 To qualify for a license, a person in inactive status, within the meaning of § 511 of the Act (D.C. Official Code § 3-1205.11 (2016 Repl.)) who does not possess a valid, active license to practice physical therapy in any jurisdiction of the United States shall submit proof pursuant to § 6706.7 of having completed the following within the two (2)-year period preceding the date of the application for reactivation of that applicant's license:

(a) Twenty (20) hours of approved continuing education meeting the requirement of § 6707.1 for each year that the license remains inactive up to a maximum of one hundred (100) hours; and

(b) Two (2) hours of LGBTQ continuing education.

6706.7 To qualify for reactivation of a license, a person in inactive status, within the meaning of § 511 of the Act (D.C. Official Code § 3-1205.11 (2016 Repl.)) who maintains a valid, active license in another jurisdiction of the United States shall establish his or her current competency to the Board's satisfaction, which may include proving completion of approved continuing education within a period of no more than five (5) years preceding the date of the reactivation application. An applicant under this subsection shall also complete two (2) hours of LGTBQ continuing education within the two (2) year-period preceding the date of the application.

6706.8 To qualify for reinstatement of a license, an applicant for reinstatement of a license shall submit proof pursuant to § 6706.9 of having completed, no more than two (2) years before the date of the reinstatement application:

(a) Twenty (20) hours of approved continuing education meeting the requirement of § 6707.1 for each year that the license was not valid; and

(b) Two (2) hours of LGTBQ continuing education.

6706.9 Except as provided in § 6706.10, an applicant under this section shall prove completion of the required continuing education credits by submitting with the application the following information with respect to each program for which continuing education credit is claimed, and shall maintain for a period of at least five (5) years the following information with respect to each program:

(a) The name and address of the sponsor of the program;

(b) The name of the program;

(c) The location of the program;

(d) A description of the subject matter covered in the program;

(e) The names of the program instructors;

(f) The dates on which the applicant attended the program;

(g) The hours of credit claimed; and

(h) Verification by the sponsor of completion, by signature or stamp.

6706.10 Applicants for renewal of a license shall only be required to prove completion of the required continuing education credits by submitting proof pursuant to § 6706.9 if requested to do so as part of the random audit, or if otherwise requested to do so by the Board.

Section 6799, DEFINITIONS, is amended as follows:

Subsection 6799.1 is amended as follows:

The following definition is added before the definition of "Applicant":

Act – the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99, D.C. Official Code §§ 3-1201 *et seq.* (2016 Repl.)).

The following definition is added before the definition of "Physical therapist":

LGBTQ continuing education – continuing education focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression ("LGBTQ") meeting the requirements of § 510(b)(5) of the Act (D.C. Official Code § 3-1205.10(b)(5) (2016 Repl.)).

The following definition is added after the definition of "Restricted license":

Valid, active license – a license to practice physical therapy in any jurisdiction that is currently valid and has been valid during the relevant period.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 4 of the District of Columbia Newborn Screening Requirement Act of 1979, effective April 29, 1980 (D.C. Law 3-65; D.C. Official Code § 7-833 (2012 Repl.)), and Mayor's Order 2004-172, dated October 20, 2004, hereby gives notice of the adoption of the following amendments to Chapter 21 (Neonatal Screening Services) of Title 22 (Health), Subtitle B (Public Health and Medicine), of the District of Columbia Municipal Regulations (DCMR).

The Committee on Metabolic Disorders recommended on September 6, 2016, that Pompe Disease, X-Linked Adrenoleukodystrophy, and Mucopolysaccharidosis Type 1 be added to the list of neonatal screening services. The final rulemaking will amend 22-B DCMR § 2101.1 to add three metabolic disorders to the panel of tests that hospitals and birthing centers must make available to parents of newborns.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 28, 2017, at 64 DCR 004064. The Department received one comment that requested that the abbreviated forms of the disorders be listed in full. As a result, the Directed agreed with the recommendation, and a technical change was made so that the rule lists the full names of the three added metabolic disorders instead of just their abbreviations.

The rule was adopted as final on June 15, 2017 and will be effective upon publication of this notice in the *D.C. Register*.

Chapter 21, NEONATAL SCREENING SERVICES, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended as follows:

Subsection 2101.1 of Section 2101, METABOLIC DISORDERS, is amended by striking the word "and" at the end of paragraph (nn) and adding new paragraphs (pp), (qq) and (rr) to read as follows:

(pp) Pompe Disease (also called glycogen storage disease type II or acid maltase deficiency);

(qq) X-Linked Adrenoleukodystrophy (X-ALD); and

(rr) Mucopolysaccharidosis Type 1 (MPS1).

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.13 (2012 Repl.)); the Medical Marijuana Dispensary Temporary Amendment Act of 2016, effective April 1, 2017 (D.C. Law 21-234; D.C. Official Code § 7-1671.06(d)(2); D.C. Official Code § 7-731(d) (2012 Repl.)); and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of the adoption of the following amendments to Chapters 54 (Registration Applications), and 60 (Director Approval Procedures) of Subtitle C (Medical Marijuana) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

This action is being taken to ensure adequate access to medical marijuana for patients located in Wards 7 and 8. The Department has exercised its authority under D.C. Official Code §§ 7-1671.06(d)(2)(A) to increase the number of dispensaries registered to operate in the District by emergency and proposed rulemaking from six (6) to seven (7) so that a dispensary could be registered in Ward 7 and in Ward 8.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on July 21, 2017 at 64 DCR 6875. The Department did not receive any comments in response to this notice. Subsequent to publishing the proposed rulemaking, the Department published a Notice of Emergency and Proposed rulemaking on October 20, 2017 at 64 DCR 10602, which, *inter alia*, changed the dispensary registration application fee referenced in § 5402.9 from five thousand dollars ($5,000.00) to eight thousand dollars ($8,000.00). The Department did not receive any comments in response to that notice. Therefore the Department made a clarifying amendment to § 5402.9 to reflect the current dispensary registration application fee.

No other changes have been made to the rulemaking.

Following the required period of Council review, the rules were deemed approved by the D.C. Council on October 26, 2017. These rules were adopted as final on November 9, 2017 and will be effective upon publication of this notice in the *D.C. Register*.

Chapter 54, REGISTRATION APPLICATIONS, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:

Section 5402, SELECTION PROCESS, is amended as follows:

Subsections 5402.5 through 5402.9 are amended to read as follows:

5402.5 The panel shall prepare a report of its final proposed selections and then submit it to the Director. The report shall assign the numerical rank for each applicant based on the application's final score, include a narrative of the basis for each of the panel's final proposed selections, and shall include not more than the ten (10) highest scoring cultivation center applicants and not more than the five (5) highest

scoring dispensary applicants.

5402.6 In the event that two (2) or more applicants for a cultivation center registration receive the same total score, the panel shall give priority in rank to the applicant that received the highest score in the security plan category. In the event that the same two (2) applicants received the same score in the security plan category, the panel shall give priority in rank to the applicant that received the highest score in the cultivation plan category.

5402.7 In the event that two (2) or more applicants for a dispensary registration receive the same total score, the panel shall give priority in rank to the applicant that received the highest score in the security plan category. In the event that the same two (2) applicants received the same score in the security plan category, the panel shall give priority in rank to the applicant that received the highest score in the product safety and labeling plan category.

5402.8 In the event that a selected cultivation center or dispensary application is subsequently denied by the Director, the applicant who received the next highest ranking from the panel who was not initially accepted shall be selected.

5402.9 An applicant submitting a cultivation center or dispensary registration application shall be required to submit the eight thousand dollar ($8,000) nonrefundable application fee at the time the cultivation center or dispensary application is filed with the Director.

Section 5404, APPLICATION FORMAT AND CONTENTS, is amended as follows:

Subsection 5404.9 is amended to read as follows:

5404.9 The Director shall not permit any applicant for a cultivation center or dispensary to make any additions, changes, alterations, amendments, modifications, corrections, or deletions to the application package once it has been submitted to the Department; however, an applicant may be permitted to modify the location of the premises identified on the application pursuant to Subsection 6001.10 of this chapter.

Chapter 60, DIRECTOR APPROVAL PROCEDURES, is amended as follows:

Section 6001, DIRECTOR FINAL DECISIONS AND JUDICIAL REVIEW, is amended to read as follows:

6001 DIRECTOR FINAL DECISIONS AND JUDICIAL REVIEW

6001.1 Denial by the Director of an application or renewal application for any registration under this subtitle shall be deemed a final Department action.

6001.2 An initial applicant for registration of a dispensary or cultivation center may seek review of the Director's final decision in the Superior Court of the District of Columbia within thirty (30) days after receipt of the notice if the applicant:

(a) Submitted a Letter of Intent that was not accepted by the Department;

(b) Submitted an application that was determined to be non-responsive;

(c) Received a score of less than one hundred fifty (150) by the panel prior to the ANC review; or

(d) Received a score of one hundred fifty (150) or more by the panel prior to the ANC review and was denied registration.

6001.3 The petition for review shall include a clear and concise statement of the legal and factual grounds for which the applicant is seeking review, including copies of relevant documents, citations to statutes, or regulations claimed to be violated.

6001.4 Judicial review shall be an on the record review of the decision, and not a de novo review. Judicial review shall be conducted with deference to the agency's factual findings, and such findings shall be final and conclusive unless the decision is fraudulent, arbitrary, capricious, not supported by substantial evidence, or so grossly erroneous as to necessarily imply bad faith.

6001.5 The Department record on judicial review shall include, where relevant:

(a) Applicant's letter of intent to file an application for a cultivation center or dispensary registration with the Medical Marijuana Program;

(b) The application submitted by the applicant;

(c) Scoring sheets, provisional score report, scoring tabulations for ANC comments, and the final score and ranking report prepared by the panel for the applicant's application;

(d) The review of applicant's proposed security systems, as prepared by the Metropolitan Police Department;

(e) Notices and correspondence between the Department and the applicant pertaining to the application for registration; and

(f) Any other document or exhibits that are relevant to the scoring of applicant's application and are not proprietary or protected by confidentiality or privilege.

6001.6 A document or exhibit containing the confidential, proprietary, or privileged information of another applicant or a registered cultivation center or dispensary

may be ordered under review by the Court, but shall be sealed and reviewable by the Court via *in camera* review, only. For purposes of this chapter, confidential, proprietary, or privileged information or documents shall include but not be limited to:

(a) Security plans;

(b) Business plans;

(c) Cultivation plans;

(d) Operation plans;

(e) Marijuana transportation plans;

(f) Marijuana disposal plans; and

(g) Facility floor plans.

6001.7 The scoring of an application's criteria or individual criterion without comments from all panel members is not by itself arbitrary or capricious, provided that the panel as a whole provides comments that address each major criteria category.

6001.8 If the reviewing court rules in favor of the applicant, the case shall be remanded to the Department to rescore and rank the applicant's application according to the scoring process in § 5402 of this chapter.

6001.9 In the event that after a rescoring and ranking of the applicant's application the applicant has become eligible for registration, but issuing the applicant a registration would result in surpassing the number of dispensaries or cultivation centers permitted to operate in a single election ward under D.C. Official Code § 7-1671.06 (2012 Repl.), the applicant shall be permitted to modify the location of the premises identified on the application within one hundred eighty (180) days of notice from the Department without negatively affecting the current status of the application or registration.

6001.10 In the event that after the rescoring and ranking the applicant has become eligible for a registration, but issuing the registration would result in surpassing the number of dispensaries or cultivation centers permitted in the District under § 5200 of this chapter, the Department may, for the convenience of the District, revoke the registration of the dispensary or cultivation center that was awarded a registration in lieu of the applicant, pursuant to § 6002 of this chapter.

6001.11 In the event that after the rescoring and ranking of its application an applicant is not eligible for a registration, the Director shall notify the applicant of the outcome of the rescoring process and that the applicant's application remains

denied. Notification by the Director that an applicant is not eligible for a registration after the completion of a rescoring process shall be deemed a final Department action and the applicant may seek review of the Department action in the Superior Court of the District of Columbia.

6001.12 A registrant that has been denied the renewal of a registration for a dispensary or cultivation center may file a request for a hearing with OAH within thirty (30) days after service of the notice of denial by delivering, within thirty (30) days of service of the notice, a certified letter addressed to OAH containing a request for a hearing or hand delivery of same to OAH (receipt required for proof of delivery);

6001.13 The decision rendered by the Office of Administrative Hearings in a matter filed pursuant to § 6001.12 shall be the Final Order in the matter, and that either party may seek review of OAH's decision by the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §§ 2-501- 2-511 (2012 Repl.).

6001.14 Any party may appeal a decision by the Superior Court of the District of Columbia to the District of Columbia Court of Appeals.

6001.15 The timely filing of a petition for review in the Superior Court of the District of Columbia or a petition for review to the District of Columbia Court of Appeals shall not stay the decision of the Director or prohibit the Director from issuing registrations to the selected applicants.

Section 6002, REVOCATION OF REGISTRATION FOR CONVENIENCE OF THE DISTRICT, is amended as follows:

Subsections 6002.1 and 6002.2 are amended to read as follows:

6002.1 If the Department determines a revocation is in the District's interest, the Department may revoke a registrant's registration. Revocation pursuant to this section may occur only if there are no further cultivation center or dispensary registrations permitted by law to be awarded to an applicant that has become eligible for a registration pursuant to § 6001.10.

6002.2 The registrant whose registration is in jeopardy of revocation pursuant to § 6002.1 shall receive notice of the action in the Superior Court of the District of Columbia which places the registrant's registration in jeopardy, and be provided an opportunity to intervene in the matter pursuant to § 6002.3. If after receiving notice of the action, the registrant fails to intervene in the matter within the allotted time period, the registrant shall have no further right of appeal of the Department's final action which results in the revocation or non-issuance of his or her registration.

Subsections 6002.3 through 6002.5 are renumbered 6002.4 through 6002.6, respectively.

A new Subsection 6002.3 is added to read as follows:

6002.3 The registrant whose registration is in jeopardy of revocation pursuant to § 6002.1 may, at the registrant's option, seek to be joined as a party pursuant to the rules of the Superior Court of the District of Columbia.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 2 of the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code §§ 7-731(a)(10) (2012 Repl.) and §§ 47-2809.01 *et seq*.) (2017 Supp.)); and Mayor's Order 2007-63(#2), dated March 8, 2007, hereby gives notice of the adoption of new body art regulations in Title 25 (Food Operations and Community Hygiene Facilities), Subtitle G (Body Art Establishment Regulations) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this final rulemaking is to provide regulatory oversight of body art establishments for patrons' health and safety.

On August 25, 2017, the Fourth Notice of Proposed Rulemaking was published in the *D.C. Register* at 64 DCR 008422. The Department of Health did not receive any comments and no changes were made to this Notice of Final Rulemaking. These rules were adopted as final on October 31, 2017 and will take effect immediately upon publication of this Notice in the *D.C. Register*.

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

SUBTITLE G BODY ART ESTABLISHMENT REGULATIONS

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

CHAPTER 2 SUPERVISION AND TRAINING, AND PRE- AND POST-OPERATING PROCEDURES
200 Operators Responsibilities ─ Qualifications and Training*
201 Pre-Operating Procedures ─ Age Restrictions Signs and Posting*
202 Pre-Operating Procedures ─ Health Risk Statements, Content, and Posting*
203 Pre-Operating Procedures ─ Jewelry Selection, and Equipment Setup*
204 Post-Operating Procedures ─ Aftercare Instructions, Content*

CHAPTER 3 OPERATING PROCEDURES TO PREVENT CROSS-CONTAMINATION, AND RECORDKEEPING REQUIREMENTS
300 Preventing Contamination ─ Distilled Water, Inks, Pigments, and Pre-Sterilized, Single-Use Disposable Items
301 Preventing Contamination ─ Pre-Sterilized, Single-Use Disposable Sharps
302 Preventing Cross-Contamination from Body Artists ─ Work Areas, Construction and Design, and Restrictions

CHAPTER 1 TITLE, INTENT, SCOPE

100 TITLE ─ Body Art Establishment Regulations

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

101 INTENT ─ SAFETY

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

101.2 These regulations:

(a) Establish minimum standards for the design, construction, operation, and maintenance of body art establishments;

(b) Establish minimum operational standards for sterilization, sanitation, cleaning and safety of the establishment, equipment, supplies, and work surface areas;

(c) Set standards for maintenance and replacement of equipment and supplies;

(d) Set standards for hygienic operations for personnel including vaccinations;

(e) Establish recordkeeping and reporting requirements;

(f) Establish prohibited conduct within body art establishments;

(g) Establish licensing and registration requirements, and associated fee schedules;

(h) Provide for enforcement through inspections, suspension and revocation of licenses and registrations, including the examination, embargo, or condemnation of unsanitary or unsafe jewelry, biohazard sharps containers, disposable and non-disposable equipment, single-use products, wipes, gloves, towels, ointments, inks, needles, and disinfectants;

(i) Establish fines and penalties; and

(j) Establish definitions for this subtitle.

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

(a) A licensed physician or surgeon performing body art services for medical reasons;

(b) A licensed funeral director performing body-piercing or tattooing services as required by that profession;

(c) Laser tattoo removal procedures licensed by the District of Columbia Board of Medicine; or

(d) Skin treatment procedures such as chemical peels or microdermabrasion licensed by the District of Columbia Board of Medicine.

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

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

102 COMPLIANCE WITH FEDERAL AND DISTRICT LAWS

102.1 Body art establishments shall meet the following requirements:

(a) 29 CFR Part 1910 (Occupational Safety and Health Standard, Subpart Z – Toxic and Hazardous Substances);

(b) 29 CFR § 1910.1030(d) – Bloodborne Pathogen Standard;

(c) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01 (2015 Repl.));

(d) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2853.76c, 47-2853.76d, and 47-2853.76e (2015 Repl.));

(e) The Board of Barber and Cosmetology as specified in Chapter 37 of Title 17 of the District of Columbia Municipal Regulations, as amended; and

(f) The District of Columbia's Construction Codes Supplements of 2013, Title 12 of the District of Columbia Municipal Regulations, (61 DCR 13094; March 28, 2014 – Part 2), which consist of the following International Code Council (ICC):

(1) International Building Code (2012 edition);

(2) International Mechanical Code (2012 edition);

(3) International Plumbing Code (2012 edition);

(4) International Fire Code (2012 edition);

(5) International Existing Building Code (2012 edition); and

(6) The National Fire Protection Association (NFPA 70) National Electrical Code (2014 edition).

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

(a) Whether the establishment's physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings used in a body art establishment, are in good repair or capable of being maintained in a hygienic condition in compliance with these regulations; or

(b) The existence of a documented agreement with the operator that the physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings used in a body art establishment will be replaced by an agreed upon date.

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

200 OPERATORS' RESPONSIBILITIES – QUALIFICATIONS AND TRAINING*

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

(a) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code §§ 47-2853.76b, 76c, 47-2853.7, 47-2853.6d, and 47-2853.76e (2015 Repl.)); and

(b) The Board of Barber and Cosmetology as specified in Chapter 37 of Title 17 of the District of Columbia Municipal Regulations, as amended.

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

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

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

(a) Proof that the body artist is eighteen (18) years of age or older. Proof of age shall be satisfied with a valid driver's license, school-issued identification, or other government issued identification containing the date of birth and a photograph of the individual;

(b) Record of current hepatitis B vaccination, including applicable boosters, unless the body artist can demonstrate hepatitis B immunity or compliance with current federal OSHA hepatitis B vaccination declination form; and

(c) Training in Biohazard issues and handling in accordance with Occupational Safety and Health Administration standards in accordance with 29 CFR – Part 1910 – Occupational Safety and Health Standard, Subpart Z – Toxic and Hazardous Substances, including universal precautions in accordance with 29 CFR § 1910.1030(d) – Bloodborne pathogens.

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

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

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

201.2 Operators shall ensure that before piercing a minor's ears with an ear piercing gun, the minor shall be accompanied by a parent or legal guardian, as specified in Subsection 201.3(b) and the parent or legal guardian shall have submitted a signed "Parental/Legal Guardian Authorization Form" to the establishment, as specified in Subsection 201.3(b).

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

(a) INDIVIDUALS LESS THAN 18 YEARS OF AGE ARE PROHIBITED FROM OBTAINING ANY BODY ART PROCEDURE, ***EXCEPT EAR PIERCING PROCEDURES USING A MECHANIZED, PRE-STERILIZED SINGLE-USE STUD AND CLASP EAR PIERCING GUN;*** AND

(b) EAR PIERCING IDENTIFIED IN SECTION "(a)" IS AUTHORIZED ONLY WITH THE WRITTEN CONSENT OF A PARENT OR LEGAL GUARDIAN SUBMITTED TO THE ESTABLISHMENT AND IF THE MINOR IS ACCOMPANIED BY A PARENT OR LEGAL

GUARDIAN AT THE TIME OF THE EAR PIERCING.

202 PRE-OPERATING PROCEDURES – HEALTH RISK STATEMENTS, CONTENT, AND POSTING*

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

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

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

REQUIRED DISCLOSURE

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

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

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

(a) ASTM F138, ISO 5832-1, ISO 10993-6, ISO 10993-10 and/or 10993-11, and stainless steel;

(b) Solid 14k through 18k yellow or white gold;

(c) Niobium;

(d) ASTM F136 titanium or ASTM F67 titanium;

(e) Platinum; or

(f) Other materials found to be equally biocompatible.

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

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

204 POST-OPERATING PROCEDURES – AFTERCARE INSTRUCTIONS, CONTENT *

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

(a) The name of the body artist who performed the procedure; and

(b) The name, address, and telephone of the establishment where the procedure was performed.

204.2 Written "Aftercare Instructions" for tattoo procedures shall provide:

(a) Information on the care of the procedure site;

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

(c) The need to properly cleanse the tattooed area;

(d) The use of sterile bandages(s) or other sterile dressings(s) when necessary; and

(e) Instructions for the customer to consult the body artist or health care practitioner at the first sign of infection or an allergic reaction, and to report a diagnosed infection, allergic reaction, or adverse reaction resulting from the application of the tattoo to the body artist and to the Department at (202) 724-8800.

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

(a) Proper cleansing techniques for the pierced area;

(b) The need to minimize physical activities as specified in Subsection 204.2(b) for at least six (6) weeks;

(c) Use of sterile bandages(s) or other sterile dressings(s) when necessary;

(d) The name of the body artist, and the name, address, and telephone of the establishment where the procedure was performed; and

(e) The instructions for the customer to consult the body artist or a health care practitioner at the first sign of infection or an allergic reaction, and to report any diagnosed infection, allergic reaction, or adverse reaction resulting from the body-piercing to the body artist and to the Department at (202) 724-8800.

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

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

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

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

300.3 Operators shall ensure tattoo artists transfer the quantity of ink and pigment to be used in the body art procedure from the ink and pigment bottle and place it into a single-use paper or plastic cup or cap immediately before a tattoo is applied and discarded immediately upon completion of a tattoo.

300.4 Single-use, disposable items, including but not limited to cups, cotton swabs, corks, rubber bands, and toothpicks shall be maintained in clean condition and dispensed in a manner to prevent contamination to unused single-use disposable items.

300.5 Single-use plastic covers shall be used to cover spray bottles or other reusable accessories and discarded immediately upon completion of the procedure.

300.6 Inks, pigments, soaps, and other products in multiple-use containers shall be dispensed in a manner that prevents contamination of the storage container and the remaining unused portion through the use of a single-use receptacle.

300.7 If a tray is used for inks or pigments, it shall be decontaminated after use on each customer.

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

301.1 Operators shall ensure tattoo artists use only pre-sterilized single needles and scalpel blades. For equipment that is not pre-sterilized, operators shall ensure body artists use single-use disposable equipment that is discarded immediately into a medical-grade sharps container upon completion of a tattoo.

301.2 Operators shall ensure body artists shall use single-use disposable needles and equipment that is specifically manufactured for performing body art procedures in accordance with manufacturer's instructions.

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

302.1 Operators shall ensure body artists encountering a biohazard or other health hazards report it immediately to the manager.

302.2 Operators shall ensure body artists use only single-use jewelry on an individual and the single-use jewelry shall not be reused on another customer.

302.3 All body artists shall wear single-use aprons or lap cloths and single-use gloves which shall be disposed of after completing a procedure on a customer.

302.4 For equipment that is not disposable, operators shall ensure body artists use reusable equipment, such as surgical steel forceps, that is sterilized as specified in Subsections 304.13 and 304.14.

302.5 All operators shall ensure body artists:

(a) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty;

(b) Wash their hands, wrists and arms to the elbow thoroughly using hot or tempered water with a liquid germicidal soap before and after tattooing or body-piercing and as often as necessary to remove contaminants;

(c) Dry hands thoroughly with single use disposable towel;

(d) Don new medical-grade latex, vinyl or hypoallergenic single-use disposable gloves on both hands when touching, decontaminating, or

handling a surface, object, instrument, or jewelry that is soiled or that is potentially soiled with human blood; and

(e) Don new medical-grade latex, vinyl or hypoallergenic single-use disposable gloves while assembling tattooing and body-piercing instruments and during tattooing and body-piercing procedures, as specified in Chapter 3.

302.6 When a body art session is interrupted, or immediately after gloves are torn or perforated, operators shall ensure the tattoo artist or body-piercer:

(a) Remove and discard the gloves;

(b) Wash and dry their hands as specified in Subsections 302.5(b) and (c); and

(c) Don a new pair of gloves, as specified in Subsection 302.5(d).

302.7 Operators shall ensure body artists use the following universal precautions for all body art procedures:

(a) Don new gloves for routine disinfecting procedures;

(b) Move in such a manner as to avoid re-contamination of work surfaces;

(c) Discard and remove disposable items from work areas after completing a body art procedure on each customer;

(d) Disinfect work surface areas and all equipment that may have been contaminated during the body art procedure;

(e) Dispose of single-use apron and/or lap cloths after use on each customer;

(f) Remove and discard gloves and wash hands;

(g) Discard materials contaminated with bodily fluids immediately, or in accordance with Subsection 307.2;

(h) Disinfect all reusable equipment made of non-porous material after each use. Non-spray wipes for surfaces and liquids for soaking jewelry are preferred over spray disinfectants which may disperse pathogens into the air;

(i) Apply iodine, bacitracin and other antiseptics with single-use applicators. Applicators that have touched a customer shall not be used to retrieve antiseptics, iodine, etc. from any containers;

(j) Clean contaminated instruments (such as forceps or pliers) of bacitracin or other antibiotic solutions, blood and other particles with an appropriate soap or disinfectant cleaner and hot water, followed by an ultrasonic cleaner and steam autoclave; and

(k) Use sterilization equipment, as specified in Subsections 304.13 through 304.15, and 311.

302.8 Workstations in a body art establishment shall be constructed and maintained to ensure customer privacy by using curtains, folding screens, or individual rooms, and shall not be used as a walk-thru to gain access to other rooms or exits.

302.9 All workstations shall be constructed and equipped with floors, chairs, and table tops that are non-porous, smooth and easily cleanable and maintained in a clean and sanitary manner.

302.10 Carpet is not permitted as a floor covering in a work area where tattooing or body piercing is conducted.

302.11 All workstations shall contain a medical-grade sharps container.

302.12 Operators shall ensure each work station for tattoo or body-piercing procedure provides a body artist with a minimum of forty-five square feet (45 sq. ft.) of floor space.

302.13 Each body art establishment shall have a separate cleaning area for decontamination and sterilization procedures, in which the placement of a sterilizer is at least thirty-six (36) inches away from the placement of the required ultrasonic cleaning unit and any sink.

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

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

303 PREVENTING CROSS-CONTAMINATION FROM CUSTOMERS

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

(a) Clean the area of the customer's skin subject to the body art with an approved germicidal soap according to the label directions. In the case of:

(1) Oral piercings, the body artist shall provide the individual with antiseptic mouthwash in a single-use cup and shall ensure that the individual utilizes the mouthwash provided; or

(2) Lip, labret, or cheek piercing, the body artist shall follow the procedures identified in this section for skin and oral piercings.

(b) Use single-use disposable razors if shaving is required. The razor shall be immediately placed in a medical-grade sharps container after use;

(c) Wash the skin and surrounding area with soap and water, following shaving, and immediately discard the washing pad after use;

(d) Use single-use products only to stop the bleeding or to absorb blood, and discard immediately after use, or in accordance with Subsection 307.2; and

(e) Use sterile gauze or other sterile applicator to dispense and apply petroleum jelly, soaps, and other products in the application of stencils on the area to receive a body art procedure to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded immediately, or in accordance with Subsection 307.2.

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

304.1 Operators shall ensure reusable instruments that are used during body art procedures which may contact blood or other bodily fluids, or which come in direct contact with skin which is not intact, shall be sterilized after each use or disposed of after each use.

304.2 Operators shall ensure reusable instruments that are used during tattooing and body-piercing procedures which do not come in contact with broken skin but which may come in contact with mucous membranes and oral tissue shall be sterilized after each use.

304.3 Operators shall ensure that if it is not feasible to sterilize the reusable instruments because it will be damaged during the body art procedure, the reusable instruments, including but not limited to calipers and gauge wheels shall be treated with a germicidal solution prior to use.

304.4 Operators shall ensure reusable instruments that come in contact only with intact skin or mucosal surfaces shall either be single-use or cleaned and sterilized as specified in Section 309.

304.5 Operators shall ensure that contaminated, reusable instruments shall be placed in a labeled covered container which shall contain a disinfectant solution such as 2.0% alkaline glutaraldehyde or similar disinfectant until it can be cleaned and sterilized.

304.6 Operators shall ensure that all containers holding contaminated reusable instruments and container lids shall be emptied of contaminated solution and cleaned and sanitized daily or more often if needed.

304.7 Operators shall ensure that any part of a tattooing machine that may be touched by the tattoo artist during the procedure shall be covered with a disposable plastic sheath that is discarded upon completion of the procedure, and the tattoo machine shall be decontaminated upon completion of the procedure, as specified in Sections 308.1(c) and 309.

304.8 Operators shall ensure that a machine used to insert pigments shall be designed with removable parts between the tip and motor housing as specified in Sections 308.1(c) and 309, and shall be designed in a manner that will prevent backflow into enclosed parts of the motor housing.

304.9 Operators shall ensure that a hand tool used to insert pigment shall be disposed of in a sharps medical-grade container, with the sharps intact, unless the needle can be mechanically ejected from the hand tool and disposed of in a sharps container, and the handle is then immediately sterilized before reuse.

304.10 Operators shall ensure body art establishments:

(a) Place clean instruments to be sterilized first in sealed peel-packs that contain either a sterilizer indicator or internal temperature indicator. The outside of the pack shall be labeled with the name of the instrument, the date sterilized, and the initials of the person operating the sterilizing equipment;

(b) Place clean instruments and sterilized instrument packs in clean, dry, labeled container, or store in a labeled cabinet that is protected from dust and moisture;

(c) Store sterilized instruments in the intact peel-packs or in the sterilization equipment cartridge until time of use; and

(d) Evaluate sterilized instrument packs at the time of storage and before use. If the integrity of the pack is compromised, including but not limited to

cases where the pack is torn, punctured, wet, or displaying any evidence of moisture contamination, the pack shall be discarded or reprocessed before use.

304.11 Operators shall ensure that reusable instruments or jewelry that come in contact with a customer, are sterilized as specified in Section 311.

304.12 Operators shall ensure that all reusable instruments shall be bagged, dated, and sealed before sterilizing.

304.13 Operators shall ensure that reusable instruments shall be sterilized in an FDA validated medical sterilizer in accordance with manufacturer instructions.

304.14 Operators shall ensure that after sterilizing equipment, the equipment shall be stored in a non-porous, dark, dry, cool place, such as a medical credenza.

304.15 Operators shall ensure that each body art establishment shall be equipped with a working sterilizer and with appropriate cleansing equipment, such as a working ultrasonic cleaner.

304.16 Operators shall ensure that at least one covered, foot operated solid waste receptacle, lined with disposable bags shall be provided in each:

(a) Workstation;

(b) At each handwash sink; and

(c) In each toilet room.

305 PREVENTING CONTAMINATION – MARKING INSTRUMENTS AND STENCILS*

305.1 All licensed operators shall use marking instruments that are single-use and shall be used only on intact skin that has been treated with a germicidal soap.

305.2 Marking instruments that come in contact with mucous membranes or broken skin shall be single-use.

305.3 All stencils shall be single-use.

305.4 Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied using an aseptic technique and in a manner that prevents contamination of the original container and its content.

305.5 If measuring the body-piercing site is necessary, clean calipers shall be used and the skin marked using a single-use disposable implement, which includes a

toothpick and non-toxic ink or a single-use skin marker, and discarded immediately after the procedure.

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

306.1 Jewelry inserted into a healed piercing that has not been previously worn or contaminated shall be disinfected in accordance with manufacturer's instructions with a non-hazardous disinfectant approved by the EPA.

306.2 Jewelry placed in newly pierced skin shall be sterilized prior to piercing as specified in Subsection 304.12 or shall be purchased pre-sterilized as specified in Sections 309, 310, and 312.

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

307.1 Operators shall ensure all sharps are disposed of in medical-grade sharps containers and disposed of by professional environmental infectious waste disposal companies licensed in the District of Columbia, in accordance with Subsection 508.3.

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

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

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

308 PREVENTING CONTAMINATION – INFECTION PREVENTION AND EXPOSURE CONTROL PLAN

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

(a) Policies and procedures on universal precautions for exposure to bloodborne pathogens from blood and other potentially infectious materials;

(b) Policies and procedures for decontaminating and disinfecting environmental surfaces;

(c) Policies and procedures for decontaminating, packaging, sterilizing, and storing reusable instruments;

(d) Policies and procedures for protecting clean instruments and sterile instrument packs from exposure to dust and moisture during storage;

(e) Policies and procedures for setting up and tearing down workstations for all body art procedures performed at the body art establishment;

(f) Policies and procedures to prevent the contamination of instruments or the procedure site during a body art procedure;

(g) Policies and procedures for safe handling and disposal of sharps and bio-hazardous waste; and

(h) Recommendations by the Centers for Disease Control and Prevention to control the spread of infectious disease and treat all human blood and bodily fluids as infectious through universal precautions.

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

(a) Is exposed to an occupational hazard;

(b) Performs a new procedure or there is a change in a procedure; and

(c) The establishment purchases new equipment.

309 PREVENTING CONTAMINATION – REUSABLE INSTRUMENTS AND STERILIZATION PROCEDURES*

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

(a) Pre-clean the items in an ultrasonic cleaning unit used according to the manufacturer's instructions. A copy of the manufacturers recommended procedures for operation of the ultrasonic cleaning unit shall be available for inspection by an authorized agent of the Department;

(b) Manually clean the items by using a stiff bristle brush under water with a solution of low-residue detergent, with care taken to ensure the removal of

any pigment or body substances not visible to the eye, thoroughly rinse with at least warm water and then drain, and clean by soaking in a protein dissolving detergent-enzyme cleaner used according to the manufacturer's instructions; or

(c) Rinse and dry the items prior to packaging for sterilization.

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

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

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

(a) Initial installation;

(b) Major repair;

(c) At least once per month; or

(d) At a minimum in compliance with the manufacturer's recommendation.

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

310.4 Each sterilization load shall be monitored with mechanical indicators for time, temperature, pressure, and at a minimum, Class V Indicators. Each individual sterilization pack shall have an indicator.

310.5 Biological indicator monitoring test results shall be recorded in a log that shall be kept on the premises for three (3) years after the date of the results.

310.6 A daily written log of each sterilization cycle shall be maintained on the premises for three (3) years for inspection by the Department and shall include the following information:

(a) The date of the load;

(b) A list of the contents of the load;

(c) The exposure time and temperature;

(d) The results of the Class V Indicator; and

(e) For cycles where the results of the biological indicator monitoring test are positive, how the items were cleaned, and proof of a negative test before reuse.

311 MAINTENANCE RECORDS – STERILIZERS*

311.1 The Department shall require calibration of all sterilization equipment by an independent laboratory that will calibrate the equipment biennially or more frequently if recommended by the manufacturer and records of the calibrations shall be maintained on the premises for inspection by the Department for three (3) years.

311.2 Sterilizers shall be spore tested in accordance with manufacturer's recommendations and records of the spore tests shall be maintained on the premises for three (3) years after the date of the results for inspection by the Department.

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

312.1 Operators that do not provide access to a decontamination and sterilization area that is in compliance with these regulations, or that do not have sterilization equipment as specified in Section 310 shall:

(a) Ensure only pre-sterilized instruments, and disposable, single-use supplies are used as specified in Subsection 200.5;

(b) Purchase disposable, single-use latex, vinyl or hypoallergenic gloves; cleansing products; and FDA-approved medical-grade instruments as defined in these regulations; and

(c) Maintain for ninety (90) days:

(1) A record of the purchase and use of all pre-sterilized medical-grade instruments, disposable, single-use supplies, and pigments as specified in Subsection 314.1;

(2) A record of all body art procedures, including the names of the tattoo artist or body-piercer and the customer; and

(3) The date of the body art procedure.

313 RECORDKEEPING REQUIREMENTS – CONFIDENTIAL, PERSONNEL FILES*

313.1 Operators shall maintain a procedural manual at the body art establishment which shall be available at all times to operators and the Department during each inspection.

313.2 Each body art establishment's personnel manual shall maintain the following information regarding body artist, in addition to Subsection 200.4:

(a) Full legal name;

(b) Home address and telephone number(s);

(c) Professional licenses and training certifications, if applicable; and

(d) Proof that he or she is eighteen (18) years of age or older with a driver's license or other government issued identification containing the date of birth and a photograph of the individual, or school issued identifications; and

(e) Proof of compliance with pre-employment requirement of current hepatitis B vaccination, including applicable boosters, unless the body artist:

(1) Demonstrates hepatitis B immunity; or

(2) Compliance with current federal OSHA hepatitis B vaccination declination requirements.

314 RECORDKEEPING REQUIREMENTS – REQUIRED DISCLOSURES*

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

(a) The actual pigments used in the body art establishment;

(b) The names, addresses, and telephone numbers of the suppliers and manufacturers of pigments used in the body art establishment for the past three (3) years; and

(c) Identification of any recalled pigments used in the establishment for the past three (3) years and the supplier and manufacturer of each pigment.

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

(1) The nearest hospital;

(2) The nearest fire department; and

(3) Emergency 911 service.

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

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

315 RECORDKEEPING REQUIREMENTS – RETENTION

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

316 RECORDKEEPING REQUIREMENTS – REPORTS OF INFECTION OR ALLERGIC REACTIONS

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

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

316.3 The report shall include the following information:

(a) Name, address, and telephone number of the affected customer;

(b) Name, location, telephone number and license number of the establishment where the body art procedure was performed;

(c) The complete legal name of the body artist and his or her license number;

(d) The date the body art procedure was performed;

(e) The specific color or colors of the tattoo or type of jewelry used for the body-piercing, and when available, the manufacturer's catalogue or identification number of each color or type of jewelry used;

(f) The location of the infection and the location on the body where the body art was applied;

(g) The name and address of the health care practitioner, if any; and

(h) Any other information considered relevant to the situation.

316.4 The Department shall use these reports in their efforts to identify the source of the adverse reactions and to take action to prevent its recurrence.

316.5 Operators shall maintain all reports pertaining to infections and allergic reactions at the establishment for review until the Department authorizes their disposal, as specified in Subsection 315.1.

CHAPTER 4 PHYSICAL STRUCTURE, OPERATING SYSTEMS AND DESIGN

400 PHYSICAL STRUCTURE – BUILDING MATERIALS AND WORKMANSHIP

400.1 Operators of a newly constructed, remodeled or renovated body art establishment shall ensure that the design, construction, building materials, and workmanship complies with the District's Construction Codes Supplements of 2013, as specified in Subsection 102.1(f) of this chapter, or later construction codes.

400.2 Operators of an existing body art establishment shall maintain in good condition the physical integrity of its establishment by repairing or replacing structural or design defects, operating systems, or fixtures in use before the effective date of these regulations in accordance with the District's Construction Codes Supplements of 2013, as specified in Subsection 102.1(f) of this chapter.

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

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

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

401.2 Covering of floor and wall junctures shall be sealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Meet the water demands of the body art establishment.

(b) Meet the hot water demands throughout the body art establishment.

(c) Properly convey sewage and liquid disposable waste from the premises;

(d) Avoid creating any unsanitary condition or constituting a source of contamination to potable water, or tattoo or body-piercing equipment, instruments; and

(e) Provide sufficient floor drainage to prevent excessive pooling of water or other disposable waste in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

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

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

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

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

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

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

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

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

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

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

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

405.2 The operator shall, at a minimum:

(a) Maintain the toilet facilities in a sanitary condition that is clean and free of solid waste and litter;

(b) Keep the facilities in good repair at all times; and

(c) Provide self-closing doors or locking door.

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

405.4 Body art establishments employing:

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

(b) More than five (5) body artists shall have multiple toilet facilities that are either:

(1) Single-stall toilet rooms with a gender-neutral sign on each door as specified in Subsection 3101.2 in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c) (2016 Repl.)); or

(2) Multiple-stall toilet rooms with gender-specific signs on the doors that read "Men" and "Women" or contain gender-specific, universally recognized pictorials of "Men" and "Women".

405.5 A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door or locking doors, except that this requirement does not apply to a toilet room that is located outside a body art establishment.

405.6 Toilet room doors shall be kept closed except during cleaning and maintenance operations.

405.7 Each body art establishment shall maintain toilet facilities for body artists, which shall consist of a toilet room or toilet rooms with proper and sufficient water closets and lavatories. Toilet facilities shall be conveniently located and readily accessible to all personnel and customers.

405.8 Toilet facilities shall be deemed conveniently located and accessible to body artists during all hours of operation if they are:

(a) Located within the same building as the business they serve; and

(b) Accessible during working hours without going outside the building.

405.9 At no time shall consumers or body artists enter the bathroom, restroom, or locker room during routine cleaning or maintenance emergency.

406 OPERATING SYSTEMS AND DESIGN – ELECTRICAL, LIGHTING*

406.1 All rooms of a body art establishment shall have at least one (1) electrical source of light. Lighting luminaries and fixtures may be of incandescent, fluorescent, high density discharge, or light emitting dial (LED) types.

406.2 At least fifty (50) foot-candles of artificial light shall be provided in each procedure area that is positioned at the height of the workstation, and shall be provided in all decontamination and sterilization areas.

406.3 At least twenty (20) foot-candles of light shall be provided in each restroom, locker room, toilet room, or other areas when fully illuminated for cleaning.

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

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

407 OPERATING SYSTEMS AND DESIGN – ELECTRICAL, SMOKE ALARMS

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

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

408 OPERATING SYSTEMS AND DESIGN – HEATING AND VENTILATION SYSTEMS

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

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

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

CHAPTER 5 FACILITY MAINTENANCE

500 FACILITY MAINTENANCE – TOILETS AND URINALS, MAINTENANCE*

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

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

(b) Maintained in good repair.

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

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

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

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

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

(a) Individual, disposable towels; or

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

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

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

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

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

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

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

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

504 FACILITY MAINTENANCE – FLOORS, PUBLIC AREAS

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

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

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

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

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

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

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

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

506 FACILITY MAINTENANCE – REFUSE, REMOVAL FREQUENCY

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

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

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

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

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

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

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

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

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

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

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

(a) Properly storing or removing unnecessary equipment that is nonfunctional or no longer used, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the physical facility that may constitute an attractant, breeding place, or harborage for pests;

(b) Maintaining roads and parking lots so that they do not constitute an attractant, breeding place, or harborage for pests; and

(c) Adequately draining areas that may provide an attractant, breeding place, or harborage for pests.

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

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

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

(a) Routinely inspecting the premises for evidence of pests;

(b) Using methods, if pests are found, such as trapping devices or other means of pest control; and

(c) Eliminating harborage conditions.

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

508 FACILITY MAINTENANCE – PROFESSIONAL SERVICE CONTRACTS

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

(a) Name and address of its D.C. licensed pest exterminator/contractor;

(b) Frequency of extermination services provided under the contract; and

(c) The date on which extermination services were last provided to the establishment.

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

(a) Name and address of its District-licensed solid waste contractor; and

(b) Frequency of solid waste collection provided under the contract.

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

(a) Name and address of its D.C. licensed environmental Biohazard Waste Disposal Company; and

(b) Frequency of pickup services of biohazard waste, including but not limited to sharps; medical-grade gloves; disposable, single use cleaning products; and when necessary, materials requiring "red bag" (biohazard) disposal shall comply with 29 CFR § 1910.1030(d)(4)(iii)(A) – Contaminated Sharps Discarding and Containment; and 29 CFR § 1910.1030(d)(4)(iii)(B) – Other Regulated Waste Containment.

509 FACILITY MAINTENANCE – PROHIBITING ANIMALS*

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

509.2 Fish aquariums are not allowed in procedure areas.

CHAPTER 6 APPLICATION AND LICENSING REQUIREMENTS

600 LICENSE AND CERTIFICATE OF OCCUPANCY REQUIREMENTS

600.1 No person shall operate a body art establishment in the District without a valid body art establishment license issued by the Mayor.

600.2 No operator shall employ or permit a body artist to perform body art procedures in their body art establishment without a valid body artist license issued by the Mayor.

600.3 No person shall operate a body art establishment in the District with an expired or suspended body art establishment license.

600.4 No operator shall employ or permit a body artist to perform body art procedures in their establishment with an expired or suspended body artist license.

600.5 No person shall open or operate a body art establishment in the District without a valid Certificate of Occupancy.

601 APPLICATION PROCEDURE – PERIOD AND FORM OF SUBMISSION, PROCESSING

601.1 An applicant shall submit an application for a license at least thirty (30) calendar days before the date planned for opening a body art establishment or at least thirty (30) calendar days before the expiration date of the current license for an existing body art establishment.

601.2 Licenses shall be valid for a two (2) year period and renewed every two (2) years.

601.3 An applicant shall submit a written application for a body art establishment license on a form provided by the Department.

601.4 A new application shall be filed with the Department within thirty (30) days of any change in ownership or location. An applicant shall also notify the Department immediately if the applicant decides not to open, sell, or transfer the business at the location identified in the application.

601.5 The Department shall not process applications for a change in ownership or location where administrative actions are pending against an existing establishment that has not been resolved.

602 APPLICATION PROCEDURE – CONTENTS OF THE APPLICATION PACKET

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

(a) The present address and telephone number of each applicant:

(1) If the applicant is an individual, the individual's residential address;

(2) If the applicant is a corporation, the names, including aliases and residential addresses of each of the officers and directors of said corporation and each stock holder owning more than ten percent (10%) of the stock of the corporation, and the address of the corporation itself if it is different from the address of the body art establishment; or the address of the partnership itself if different from the address of the body art establishment;

(3) If the applicant is a partnership, the names, including aliases and residential addresses of each partner, including limited partners, and the body art establishment;

(b) Name and address of registered agent, if applicable;

(c) The address and all telephone numbers of the body art establishment;

(d) A complete set of construction plans including all schedules (for example, floor plans, elevations, and electrical schematics), if applicable, as specified in Subsection 400.3;

(e) Proof that the owner applicants and operators are at least the age of majority by a Driver's license, non-Driver's license, or other Government issued identification that displays the applicant or operator's date of birth;

(f) Whether the owner applicants have owned or operated a body art establishment or other business in the District, another city, county or state, and if this business license:

(1) Has ever been suspended or revoked; and

(2) The reason for the suspension or revocation;

(g) A description of any other business to be operated on the same premises or on adjoining premises owned or operated by the owner applicant(s) or manager(s); and

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

603 DENIAL OF APPLICATION FOR LICENSE – NOTICE

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

(a) The specific reasons and legal authority for denial of the license;

(b) The actions, if any, that the applicant must take to qualify for a new license or to renew a license; and

(c) Notice of the applicant's or licensee's right to a hearing as prescribed in Subsection 812.3.

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

604.1 Each applicant shall submit:

(a) A properly completed application packet provided by the Department;

(b) Copies of policies and procedures as specified in Sections 300 through 309;

(c) Copies of required recordkeeping as specified in Sections 310 through 316 for license renewals;

(d) Proof of payment of the application and license fees; and

(e) Proof of the Department's review and approval of required plans and specifications as specified in Sections 400.3 and 604, if applicable.

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

(a) A new body art establishment;

(b) An existing body art establishment that has changed ownership or location; or

(c) An existing body art establishment's license renewal.

605 ISSUANCE OF LICENSE – REQUIRED PLAN REVIEWS AND APPROVALS

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

(a) The construction of a body art establishment;

(b) The conversion of an existing structure for use as a body art establishment; or

(c) Major renovation, remodeling, or alteration of an existing body art establishment.

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

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

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

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

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

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

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

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

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

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

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

608 ISSUANCE OF LICENSE – NOT TRANSFERABLE

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

609 ISSUANCE OF LICENSE – DUPLICATES

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

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

610 CONDITIONS OF LICENSE RETENTION – RESPONSIBILITIES OF THE OPERATOR

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

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

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

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

610.5 An operator shall immediately discontinue operations and notify the Department if an imminent health hazard exists as specified in Section 706.

610.6 The Department may direct the replacement of existing operating systems, or equipment, devices, fixtures, supplies, or furnishings where existing equipment, devices, fixtures, supplies, or furnishings are not safe to operate, are not in good repair or are not capable of being maintained in a hygienic condition in compliance with these regulations as specified in Subsection 102.2(a).

610.7 An operator shall replace existing operating systems, or equipment, devices, fixtures, supplies, or furnishings that do not comply with these regulations pursuant to a documented agreement with the Department by an agreed upon date with an operating system, equipment, devices, fixtures, supplies, or furnishings that comply with these regulations as specified in Subsection 102.2(b).

610.8 An operator shall maintain all records in accordance with these regulations.

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

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

700.1 The Department shall determine a body art establishment's compliance with these regulations by conducting on-site:

(a) Preoperational inspections;

(b) Unannounced, routine and follow-up inspections; and

(c) Unannounced, complaint-generated inspections.

700.2 After representatives of the Department present official credentials and provide notice of the purpose and intent to conduct an inspection in accordance with these regulations, the applicant or operator shall allow the Department access to any part, portion, or area of a body art establishment, except when a private session is in progress.

700.3 The Department may enter and inspect all aspects of a body art establishment, including but not limited to work stations, locker rooms, bathrooms, lounge areas, or other areas of a body art establishment for any of the following purposes:

(a) To determine if the body art establishment is in compliance with these regulations;

(b) To investigate an emergency affecting the public health if the body art establishment is or may be involved in the matter causing the emergency;

(c) To investigate, examine, and sample or swab equipment, devices, fixtures, supplies, or furnishings, except during any procedural session as specified in Subsection 700.2; or

(d) To obtain information and examine and copy all records on the premises including but not limited to instruments, equipment, manufacturers, records and maintenance logs, supplies and suppliers, service contracts, or furnishings used in a body art establishment.

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

(a) The applicant or operator is required to allow access to the Department, as specified in Subsection 700.2;

(b) Access is a condition of the receipt and retention of a license as specified in Subsection 610.4;

(c) If access is denied, an inspection order allowing access may be obtained as specified in Subsection 700.6(c); and

(d) The Department is making a final request for access.

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

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

(a) Summarily suspend a license to operate a body art establishment in accordance with Section 807;

(b) Revoke or suspend a license to operate a body art establishment in accordance with Section 812; or

(c) Request that the Office of the Attorney General for the District of Columbia commence an appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief from the court including but not limited to administrative search warrants, to enforce these regulations in accordance with the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2012 Repl.)).

701 REPORT OF FINDINGS – DOCUMENTING INFORMATION AND OBSERVATIONS

701.1 The Department shall document on an inspection report form:

(a) Administrative information about the body art establishment's legal identity, street and mailing addresses, inspection date, and other information such as status of the license and personnel certificates that may be required or other inspectional findings; and

(b) Specific factual observations of violations of these regulations that require correction by the operator including:

(1) Nonconformance with critical items of these regulations;

(2) Failure of an operator to correct cited violations, as specified in Section 709 or 711; or

(3) Failure of an operator to ensure that personnel are licensed as specified in Sections 200 and 600.

702 REPORT OF FINDINGS – SPECIFYING TIME FRAME FOR CORRECTIONS

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

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

703.1 At the conclusion of the inspection, the Department shall provide a copy of the completed inspection report and the notice to correct violations to the operator and request a signed acknowledgment of receipt. The most recent inspection report shall contain a listing of violations by area in the operation and inspection

item with corresponding citations to applicable provisions in these regulations and shall be conspicuously posted in the reception area next to the body art establishment's license.

704 REPORT OF FINDINGS – REFUSAL TO SIGN ACKNOWLEDGMENT

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

(a) An acknowledgment of receipt is not an agreement with the finding;

(b) Refusal to sign an acknowledgment of receipt will not affect the operator's obligation to correct the violations noted in the inspection report within the time frames specified; and

(c) A refusal to sign an acknowledgment of receipt will be noted in the inspection report for the body art establishment.

705 REPORT OF FINDINGS – PUBLIC INFORMATION, RECORDS RETENTION

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

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

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

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

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

(a) Extensive fire damage that affects the body art establishment's ability to comply with these regulations;

(b) Serious flood damage that affects the body art establishment's ability to comply with these regulations;

(c) Loss of electrical power to critical systems, including but not limited to lighting, heating, cooling, or ventilation controls for a period of two (2) or more hours;

(d) No water, or insufficient water capacity, or inadequate water pressure to any part of the body art establishment in violation of Subsection 403.1(a);

(e) No hot water, or an unplanned water outage, or the water supply is cut off in its entirety for a period of one (1) or more hours in violation of Subsection 403.1(b);

(f) Incorrect hot water temperatures that cannot be corrected during the course of the inspection in violation of Subsection 404.1;

(g) A plumbing system supplying potable water that may result in contamination of the potable water;

(h) A sewage backup or sewage that is not disposed of in an approved and sanitary manner;

(i) A cross-connection between the potable water and non-potable water distribution systems, including but not limited to landscape irrigation, air conditioning, heating, or fire suppression system;

(j) A back siphonage event;

(k) Toilet or handwashing facilities that are not properly designed, constructed, installed, or maintained in violation of Subsections 403, 404, and 405;

(l) Work surfaces, including but not limited to workstations, solid surfaces and objects in the procedure and decontamination areas within a body art establishment that are stained with blood or bodily fluids, or soiled; or infested with vermin; or are in an otherwise unsanitary condition;

(m) Gross insanitary occurrence or condition that may endanger public health including but not limited to an infestation of vermin; or

(n) Fails to eliminate the presence of insects, rodents, or other pests on the premises in violation of Subsection 507.3.

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

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

(b) Employing a body artist without a valid body artist license issued by the Mayor in violation of Subsection 600.2;

(c) Operating a body art establishment with an expired or suspended license in violation of Subsection 600.3;

(d) Employing a body artist who is performing body art procedures with an expired or suspended body artist license in violation of Subsection 600.4;

(e) Operating a body art establishment without a valid Certificate of Occupancy in violation of Subsection 600.5;

(f) Operating a body art establishment without posting required signage in violation of Subsection 607.4;

(g) Operating a body art establishment without a manager who is on duty and on the premises during all hours of operation in violation of Subsection 200.2;

(h) Operating a body art establishment without a body artist who is on duty and on the premises during all hours of operation in violation of Subsection 200.3

(i) Failing to allow access to Department representatives during the facility's hours of operation and other reasonable times as determined by the Department; or hindering, obstructing, or in any way interfering with any inspector or authorized Department personnel in the performance of his or her duty in violation of Section 700; or

(j) Operating in violation of any provision specified in Section 708.

707 IMMINENT HEALTH HAZARD – RESUMPTION OF OPERATIONS

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

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

708 PROHIBITED CONDUCT – ADVERTISEMENTS AND ACTIVITIES

708.1 No operator shall permit a person to perform or offer to perform body art procedures, use any words or letters, figures, titles, signs, cards, advertisement, or any other symbols or devices indicating or tending to indicate that the person is authorized to perform such services, or use other letters or titles in connection with that person's name which in any way represents himself or herself as being engaged in the practice of body art, or authorized to do so, unless the person is licensed by and registered with the Mayor to perform body art procedures in the District of Columbia.

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

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

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

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

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

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

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

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

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

709 CRITICAL VIOLATIONS – TIME FRAME FOR CORRECTION*

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

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

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

710 CRITICAL VIOLATION – VERIFICATION AND DOCUMENTATION OF CORRECTION

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

711 NONCRITICAL VIOLATIONS – TIME FRAME FOR CORRECTION

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

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

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

712 REQUEST FOR REINSPECTION

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

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

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

CHAPTER 8 ADMINISTRATIVE ENFORCEMENT ACTIONS AND ORDERS

800 ADMINISTRATIVE REVIEW – CONDITIONS WARRANTING REMEDIES

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

(a) Fails to have a valid license as specified in Section 600;

(b) Fails to pay the required fee as specified in Subsection 604.1(d);

(c) Violates any term or condition of a license as specified in Section 610;

(d) Fails to allow the Department access to a body art establishment as specified in Subsection 700.6;

(e) Fails to comply with directives of the Department including time frames for corrective actions specified in inspection reports as specified in Subsections 709.1 and 711.1;

(f) Fails to comply with a condemnation order as specified in this chapter;

(g) Fails to comply with a summary suspension order by the Department as specified in this chapter;

(h) Fails to comply with an administrative order;

(i) Makes any material false statement in the application for licensure;

(j) Falsifies or alters records required to be kept by these regulations; or

(k) Seeks to operate with conditions revealed by the application or any report, records, inspection, or other means which would warrant the Department refusal to grant a new license.

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

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

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

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

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

803 ADMINISTRATIVE REVIEW – CONDEMNATION ORDER, CONTENTS

803.1 The condemnation order shall:

(a) State that the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings subject to the order may not be used, sold, moved from the body art establishment, or destroyed without a written release of the order from the Department;

(b) State the specific reasons for placing the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings under the condemnation order with reference to the applicable provisions of these regulations and the hazard or adverse effect created by the observed condition;

(c) Completely identify the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings subject to the condemnation order by the common name, the label or manufacturer's information, description of the

item, the quantity, the Department's tag or identification information, and location;

(d) State that the operator may request an informal conference in accordance with Subsection 806.2. A request for an informal conference does not stay the Department's imposition of the condemnation order;

(e) State that the Department may order the destruction, replacement or removal of equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings if a timely request for a hearing is not received; and

(f) Provide the name and address of the Department representative to whom a request for a hearing may be made.

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

804.1 The Department shall place a tag, label, or other appropriate marking to indicate the condemnation of equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings that do not meet the requirements of these regulations.

804.2 The tag or other method used to identify the equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings that are the subject of a condemnation order shall include a summary of the provisions specified in Section 803 and shall be signed and dated by the Department.

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

805.1 No person shall remove the tag, label, or other appropriate marking except under the direction of the Department as specified in Subsection 805.2.

805.2 The Department shall issue a notice of release from a condemnation order and shall remove condemnation tags, labels, or other appropriate markings from body art equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings if:

(a) The condemnation order is vacated; or

(b) The operator obtains authorization from the Department to discard equipment, water, inks, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings in a body art establishment identified in the condemnation order.

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

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

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

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

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

808 ADMINISTRATIVE REVIEW – CONTENTS OF SUMMARY SUSPENSION NOTICE

808.1 A summary suspension notice shall state:

(a) That the license of a body art establishment is immediately suspended and that all operations shall immediately cease;

(b) The reasons for summary suspension with reference to the provisions of these regulations that are in violation;

(c) The name and address of the Department representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and

(d) That the operator may request an informal conference in accordance with Subsection 809.2. A request for an informal conference does not stay the Department's imposition of the summary suspension.

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

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

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

810 ADMINISTRATIVE REVIEW – SUMMARY SUSPENSION, TIME FRAME FOR REINSPECTION

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

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

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

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

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

812.2 Before a license is revoked or suspended, an operator shall be given an opportunity to answer and be heard on the violations before the Office of

Administrative Hearings in accordance with the Office of Administrative Hearings Rules of Practice and Procedure in Section 2808, Title 1 DCMR, as amended.

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

CHAPTER 9 SERVICE OF PROCESS AND INFORMAL CONFERENCE

900 SERVICE OF PROCESS – NOTICE, PROPER METHODS

900.1 A notice issued in accordance with these regulations shall be deemed properly served if it is served by one (1) of the following methods:

(a) A Department representative, a law enforcement officer, or a person authorized to serve a civil process, personally services the notice to the operator, or the person operating the body art establishment without a license; or

(b) The Department sends the notice to the last known address of the operator or person operating a body art establishment without a license, in accordance with Section 205 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1802.05 (2016 Repl.)), or by other public means so that a written acknowledgment of receipt may be acquired.

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

901.1 An employee restriction order, exclusion order, condemnation order, or summary suspension order shall be:

(a) Served as specified in Subsection 900.1(a); or

(b) Clearly posted by the Department at a public entrance to the body art establishment and a copy of the notice sent by first class mail to the operator or manager of a body art establishment, as appropriate.

902 SERVICE OF PROCESS – NOTICE, EFFECTIVENESS

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

903 SERVICE OF PROCESS – PROOF OF PROPER SERVICE

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

CHAPTER 10 ADMINISTRATIVE AND CRIMINAL SANCTIONS, AND JUDICIAL REVIEW

1000 ADMINISTRATIVE SANCTIONS – NOTICE OF INFRACTIONS

1000.1 The Department may impose civil infraction fines penalties for violations of any provision of these regulations pursuant to the Department of Consumer & Regulatory Affairs Civil Infractions Act of 1985, (Civil Infraction Act), effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801, *et seq*. (2016 Repl.)).

1000.2 An operator who receives a Notice of Infraction as specified in Subsections 900.1 and 901.1, may pay the assessed fine or appear before the Office of Administrative Hearings as directed on the reverse side of the Notice of Infraction in accordance with the "Office of Administrative Hearings Rules of Practice and Procedure" in Section 2808, Title 1 DCMR, as amended.

1001 CRIMINAL SANCTIONS – CRIMINAL FINES, IMPRISONMENT

1001.1 An operator whose body art establishment is operating in violation of Subsections 200.5, 201, 202, 311, and 314.1 of these regulations shall be subject to license suspension or revocation as specified in Section 812 and a maximum fine of two thousand, five hundred dollars ($2,500) in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01(c)(5) (2015 Repl.)).

1001.2 Any person who violates Subsections 600.1 and 600.2 of these regulations shall, upon conviction, be deemed guilty of a misdemeanor and may be punished by a fine not to exceed two thousand five hundred dollars ($2,500), imprisonment for not more than three (3) months, or both in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01(d)(3) (2015 Repl.)).

1002 JUDICIAL REVIEW – APPEALS

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

CHAPTER 99 DEFINITIONS

9900 GENERAL PROVISIONS

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

9901 DEFINITIONS

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

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

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

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

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

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

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

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

Body piercing – the perforation of any human body part followed by the insertion of an object, such as jewelry, for cosmetic or other nonmedical purposes by using any of the following instruments, methods, or processes: stud and clasp, captive ball, soft tissue, cartilage, surface, surface-to-surface, microdermal implantation or dermal anchoring, subdermal implantation, and transdermal implantation. The term "body-piercing" does not include nail piercing.

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

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

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

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

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

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

Contaminated waste – any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; contaminated sharps and pathological and microbiological wastes containing blood and other potentially infectious materials, as

defined in 29 Code of Federal Regulations, Part 1910.1030, known as "Occupational Exposure to Bloodborne Pathogens".

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

Decontamination – the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where the pathogens are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

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

Department – the Department of Health.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 2 of the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code §§ 7-742.01 *et seq.* (2017 Supp.)) (Act), Sections 4902(a) and (b) of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code §§ 7-731 *et seq.* (2012 Repl. & 2017 Supp.)), and Mayor's Order 2007-63, dated March 8, 2007, hereby gives notice of the adoption of new cottage food regulations in a new Subtitle K (Cottage Food Regulations) in Title 25 (Food Operations and Community Hygiene Facilities) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this final rulemaking is to provide regulatory oversight of cottage food businesses, determine which non-potentially hazardous foods are safe to produce, package, or sell as a cottage food product, and protect public health and safety by conducting pre-operational and complaint-based inspections.

On October 14, 2016, the Notice of Proposed Rulemaking was published in the *D.C. Register* at 63 DCR 012812. The Department received public comments from one member of the public and three (3) organizations identified below and made minor edits to Subsections 103.5(l), 103.5(m), 105.1(j) and 106.1(p) of the regulations for clarification in response to the public comments, which are documented below. However, no substantive changes were made by the Department to these rules. The comments received by the Department are summarized below; common comments have been grouped in numbered sets; each of the Department's responses is labelled as DOH Response.

1. Revenue limit:

   Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

   Comment: Increase the revenue threshold to $50,000 from $25,000 to uplift families out of poverty (Note: California has set an income gap of $50,000 and an increased income gap is justified based on cost of living in DC compared to our neighbors.)

   DOH Response: No changes were made due to D.C. Official Code § 7-742.01(2)(C). The annual revenues sale of $25,000 is set by the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.01(2)(C)) and cannot be changed by regulation.

2. Approved processes, including canning:

   Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Expand approved processes to include canning with appropriate required and enhanced safety measures

Commenter: Individual Member of the Public

Comment: Canning of fruits, vegetables, pickled products, vegetables, butters, salsas, jams, jellies, marmalades, and preserves should be an allowed process (excepting low-acid or low-sugar foods canning) so long as the cottage food business operator and all other authorized persons preparing food complete a Better Food Process course approved by the Department (see Maryland regulations for comparable example).

I recommend that Section 105.1(g) "Can any food products, including but not limited to fruits, vegetables, vegetables butters, salsa, and similar foods" be allowed under the Cottage Food Regulations. The regulation as it now reads is an impediments/barrier for canning products/business[es] that generate $25,000 or less per year. These business[es] can sell everything it produces but its production capacity is limited (1000 units or less) because the owner that makes the product do not want to mass produce the product.

There are businesses that have products that want to comply with DC regulations. I believe the current regulatory environment may force some business to consider relocating to other jurisdictions because entry into the D.C. market is cost prohibitive for the amount of product that is produce. Therefore, Section 105.1(g) "Can any food products, including but not limited to fruits, vegetables, vegetables butters, salsa, and similar foods" be allowed under the Cottage Food Regulations.

DOH Response: No changes were made to Subsection 105.1(g) of the regulations.

According to the Food Code Regulations published in Subtitle A of Title 25 of the District of Columbia Municipal Regulations (DCMR) "canning" is a specialized process in which food establishments need to have approved plans to conduct.

"Canning" is a very dangerous process which increases the risk of botulism. There have been several examples of botulism outbreaks associated with home canning. In 2015, the state of Ohio experienced a large outbreak, in which 77 people were ill and 29 were hospitalized.

Further, the State of Maryland restricts food products that require temperature control for safety identified in Subsections 105.1(a) through 105.1(i) of the regulations and foods that are not allowed identified in Subsections 106.1(a) through (t) of the regulations to the following licenses:

1. On Farm Home Processing License – Must be a farmer and sales must be less than $40,000.00 annually. If sales are more than $40,000, a "Processing License" is required along with a FDA Better Process School Training course.

2. Processing License – Must meet commercial requirements. This license cost $400.00.

Thus, pursuant to the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.02(c)(2)(G)), the Department has determined that the processes and activities identified in Section 105 of the regulations, and the prohibited foods identified in Section 106 of the regulations are too risky to be performed in a cottage food business that is not regulated by the District's Food Code Regulations or the District's Food Processing Operations Code.

3. Third-party sales:

Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Include an additional Class B license that will allow the sale of cottage food products to third party vendors (*i.e.*, grocery store, food trucks, etc.)

DOH Response: No changes were made due to D.C. Official Code § 7-742.01(3). By whom and where cottage food products can be sold is set by the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.01(3)) and cannot be changed by regulation.

4. Waive inspections:

Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Waive inspection for food products that do not engage in business to business sales.

DOH Response: No changes were made due to D.C. Official Code § 7-742.01(3). Business to business sales are not permitted by the Cottage Food Amendment Act of 2013 and cannot be changed by regulations.

5. Inspection flexibility:

Commenter: NAACP DC Branch

Comment: Allow photo submission in lieu of in-home inspection to accommodate District residents challenged with availability during regular business hours for business-to-business sales.

Commenter: DREAMING OUT LOUD, Inc.

Comment: Include inspection times on weekends to accommodate District residents challenged with availability during regular business hours.

Commenter: Individual Member of the Public

Comment: Some limited inspection times should be available on evenings and/or weekends, to accommodate cottage business owners whose schedules may prohibit them from being available during standard DOH Monday to Friday business hours.

DOH Response: No changes were made to Subsections 108.1 through 108.13 of the regulations.

The Department is required to conduct an inspection by statute and this requirement cannot be changed by regulation.

The Food Safety and Hygiene Inspection is unable to conduct weekend inspections without paying staff overtime. Additionally, the staff will be visiting private residents for the first time and the full complement of supervisory staff is needed to handle any issues the inspector may encounter.

6. Allowable products:

Commenters: NAACP DC Branch and DREAMING OUT LOUD, Inc.

Comment: Inclusion of canning of fruits, vegetables, pickled products, vegetables butters, salsas, jams, jellies, marmalades, and preserves under allowable items.

Commenter: DC Food Policy Council, Office of Planning

Comment: Are jams and jellies that are shelf stable falls on the allowed list or the prohibited list? The not prohibited products list only mentions sugar-free jams and jellies.

Some of the farmer's market regulations from DOH allow additional products beyond this list, so are they now in conflict? See

http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/New%20DOH%20Guidance%20For%20Farmer%27s%20Market.pdf

Is nut butter allowed?

DOH Response: Jams and jellies are allowed. Subsection 103.5 of the regulations was amended as follows:

(l) Jams, jellies, syrups, marmalades and other preserves[.]

Farmer's markets are authorized to sell items listed in the link at: http://doh.dc.gov/sites/default/files/dc/sites/doh/publication/attachments/New%20DOH%20Guidance%20For%20Farmer%27s%20Market.pdf, and are not in conflict with the Cottage Food Business Regulations.

Cottage food businesses are not allowed to produce, package, or sell potentially hazardous food products – which require temperature control for safety, as specified in Sections 105 and 106 of the regulations.

According to the Food Code Regulations published in Subtitle A of Title 25 of the District of Columbia Municipal Regulations (DCMR) "canning" is a specialized process in which food establishments need to have approved plans to conduct.

"Canning" is a very dangerous process which increases the risk of botulism. There have been several examples of botulism outbreaks associated with home canning. In 2015, the state of Ohio experienced a large outbreak, in which 77 people were ill and 29 were hospitalized.

Thus, pursuant to the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.02(c)(2)(G)), the Department has determined that the processes and activities identified in Section 105 of the regulations, and the prohibited foods identified in Section 106 of the regulations are too risky to be performed in a cottage food business that is not regulated by the District's Food Code Regulations or the District's Food Processing Operations Code.

7. Providing information:

Commenter: NAACP DC Branch

Comment: The Department should offer information sessions and online information to ensure residents understand and comply with the law.

DOH Response: Although no section was identified, the Department agrees with this assessment.

The Department is partnering with the DC Department of Small and Local Business Development (DSLBD) in disseminating "Outreach Materials", *i.e.*, Brochures and Frequently Asked Questions (FAQs), and holding meetings with potential cottage food business owners to ensure accurate and factual information.

8. Partnering with others:

Commenter: NAACP DC Branch

Comment: Encourage the Department to partner with Department of Human Services SNAP Employment and Training Program, TANF vendors and community partners to engage residents into creating cottage food businesses.

DOH Response: No section was identified. However, the Department is partnering with the DC Department of Small and Local Business Development.

9. Food safety:

Commenter: DC Food Policy Council, Office of Planning

Comment: Where can these food safety training classes be obtained in DC and what is the cost associated with it?

DOH Response: No changes were made to Subsection 102.2(c) of the regulations.

Subsection 102.2(c) refers to food safety training classes offered by nationally accredited providers. Applicants would then bring the class results to the Department to get a District of Columbia Certified Food Protection Manager Certificate.

Comment: Is Subsection 102.2(d) of the regulations perceived as different than Subsection 102.2(c) that directly precedes it?

DOH Response: Yes. Subsection 102.2(c) refers to food safety training classes offered by nationally accredited providers, and Subsection 102.2(d) refers to a District-issued Certified Food Protection Manager Certificate that can be obtained at the Department. The cost is thirty-five dollars ($35.00).

In addition, information on the food safety course will be available in "Outreach Materials" on the Department's website along with the Application for Cottage Food Business.

Comment: Why does this time frame for this certificate differ from the Certified Food Protection Manager? Is it purposeful? It would make it easier for businesses to have this match the 3 year certification for food safe handling (especially since it could take 45 days after the business applies to get fully approved, which cuts into their first year being certified.)

DOH Response: No changes were made to Subsection 102.2(g) of the regulations.

The Certified Food Protection Manager (CFPM) is totally different from the Cottage Food Business Registration. DOH does not offer the Certified Food Protection Manager course and cannot control when the test is offered.

Additionally, many individuals who apply for the Cottage Food Business Registration are already certified as a Food Protection Managers.

Comment: Does this refer to DCRA in this instance, rather than DOH as is indicated by "The Department"?

DOH Response: No changes were made to Subsection 102.5 of the regulations.

The term "the Department" means the Department of Health as cited in the definitions section of the regulations.

Comment: Which agency will conduct the inspection?

DOH Response: No changes were made to Subsection 102.6 of the regulations.

The term "the Department" who conducts inspections means the Department of Health as cited in the definitions section of the regulations.

Comment: Will this be listed or shared publically?

DOH Response: No changes were made to Subsection 102.7(b) of the regulations.

Owners of cottage food businesses are operating out of their homes and have an expectation of privacy. However, the Application for Cottage Food Business will allow owners to select what business information – if any – they would like the Department to share with the public.

Comment: Where does honey and honeycomb fall on this permitted or not permitted list?

DOH Response: Subsection 103.5(m) of the regulation was amended as follows:

Honey and honeycomb. Applicants for cottage food businesses shall comply with "Sustainable Urban Agriculture Apiculture Act of 2012", and provide proof they are registered with the Department of Energy and Environment in accordance with Subtitle B of the Act – "Promoting Urban Agriculture through Beekeeping"[.]

Comment: Are sections b, h, g, etc. intended to prohibit the preparation and sale of jams and jellies? Or are they allowed, but certain types of processes to make them are not allowed? Many other states that have cottage food provisions allow for jams and jellies as long as they are shelf stable.

DOH Response: No changes were made to Subsections 105.1(b), 105.1(g), and 105.1(h) of the regulations.

The sales of jams and jellies are allowed, however canning, jarring, and hermetically sealing is not allowed. These processes remove oxygen from the container which increases the risk of botulism.

According to the Food Code Regulations published in Subtitle A of Title 25 of the District of Columbia Municipal Regulations (DCMR), "canning" is a specialized process in which food establishments need to have approved plans to conduct.

"Canning" is a very dangerous process which increases the risk of botulism. There have been several examples of botulism outbreaks associated with home canning. In 2015, the state of Ohio experienced a large outbreak, in which 77 people were ill and 29 were hospitalized.

Thus, pursuant to the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.02(c)(2)(G)), the Department has determined that the processes and activities identified in Section 105 of the regulations, and the prohibited foods identified in Section 106 of the regulations are too risky to be performed in a cottage food business that is not regulated by the District's Food Code Regulations or the District's Food Processing Operations Code.

Comment: There needs to be a reference back to the allowed exception in Subsections 103.3-.4 if an item is on the list or not on the permitted list they may go through the lab ph testing process and make the request to the Department.

DOH Response: The language in Subsection 105.1(j) of the regulations was amended to reference Subsections 103.3 and 103.4, as follows:

(j) Produce food products not expressly listed in Subsection 103.5 [,] except as specified in Subsections 103.3 and 103.4 of these regulations[.]

Comment: Does sugar-free apply to only the first thing in the list or all the following items?

DOH Response: Sugar-free applies to all food products in paragraph (p). Therefore, Subsection 106.1(p) of the regulations was amended as follows:

(p) Sugar-free products, such as jams, jellies, syrups, marmalades and other preserves[.]

Comment: Must all cottage food products be stored in the same location as they are originally prepared? Is that the intention, I don't find it clear currently from my reading of this.

DOH Response: No changes were made to Subsection 109.1(i) of the regulations.

In accordance with the Cottage Food Amendment Act of 2013, ingredients and supplies for cottage food products, and the finished food products are required to be stored on the premises of the cottage food business.

To avoid contaminating cottage food products with foods prepared and consumed by the residents living on the premises, the Department requires cottage food business owners to store, prepare, and package all cottage food products separate from foods intended for home use.

Section 2(e) of the Cottage Food Amendment Act of 2013, requires a sixty (60)-day Council review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The Council approved these rules on December 18, 2017 by PR 22-0432. These rules were adopted as final on February 8, 2017 and will take effect immediately upon publication of this Notice in the *D.C. Register*.

A new Subtitle K of Title 25 DCMR, FOOD OPERATIONS AND COMMUNITY HYGIENE FACILITIES, is added to read as follows:

SUBTITLE K COTTAGE FOOD REGULATIONS

Chapter 1: REGISTRATION PROCEDURES, MENU, AND REQUIREMENTS

100 Title
101 Intent and Scope
102 Application Procedures and Requirements
103 Approved Food Product List

CHAPTER 1 REGISTRATION PROCEDURES, MENU, AND REQUIREMENTS

100 TITLE

100.1 These provisions shall be known as the Cottage Food Regulations, hereinafter referred to as "these Regulations".

101 INTENT AND SCOPE

101.1 The purpose of these regulations is to: (1) regulate cottage food businesses operating in the District of Columbia; (2) identify food items that are approved for sale in cottage food businesses; (3) identify food items and specialized food processes that are prohibited in cottage food businesses; (4) ensure cottage food businesses comply with storage and labeling requirements; and (5) authorize the Department to conduct initial inspections of cottage food businesses before selling any food items, as well as complaint inspections.

101.2 Cottage food products shall only be sold at farmers' markets and public events in accordance with Section 4931(3) of Section 2 of the Cottage Food Amendment Act of 2013 effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.01(3) (2016 Supp.)).

101.3 Pursuant to Section 4932(a) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(a) (2016 Supp.)), these regulations do not:

(a) Apply to a food establishment that is required to have a food establishment license under Department regulations; or

(b) Exempt a cottage food business from any applicable District or federal tax laws.

102 APPLICATION PROCEDURES AND REQUIREMENTS

102.1 No one shall operate as a cottage food business or produce, package, store, or sell cottage food products without first obtaining a Cottage Food Business Registry Identification Number and Certificate issued by the Department.

102.2 To qualify as cottage food business, an applicant for a cottage food business shall complete a registry application on a form provided by the Department and submit the following documentation together to the Department for review and approval:

(a) A Home Occupancy Permit issued by the Department of Consumer and Regulatory Affairs (DCRA) (original only);

(b) For food sold by weight, proof of calibrated scales that comply with DCRA regulations;

(c) Proof of successfully passing a nationally accredited Certified Food Protection Manager Course approved by the Department;

(d) A District-issued Certified Food Protection Manager Certificate, obtained by the owner(s) of the cottage food business, which shall be valid for three years from the date of exam;

(e) A list of food products the cottage food business intends to produce, package, and sell, as specified in Subsection 103.5 of this subtitle. The Department may request a copy of recipes if deemed necessary;

(f) Packaging labels with the information specified in Section 104 of this subtitle for each food product; and

(g) A registration fee in the amount of fifty dollars ($50) for one (1) Cottage Food Business Registration Certificate that is valid for a two (2) year period.

102.3 Additional Cottage Food Business Registration Certificates are available at a cost of five dollars ($5.00) each.

102.4 In addition to Subsection 102.2, an applicant for a cottage food business attests that, by completing the registry application, he or she:

(a) Understands that only the cottage food products listed on their registry application are authorized by the Department to be produced, packaged, stored, or sold by the cottage food business;

(b) Expressly grants the Department of Health right of entry to the premises of the cottage food business during normal business hours or at other

reasonable times, to determine compliance with these regulations or Department Directives, and to investigate consumer complaints alleging violations of these regulations, foodborne outbreaks, or other public health emergencies, including but not limited to operating in an unsanitary manner; and

(c) Understands that refusing to allow the Department of Health entry during normal business hours or at other reasonable times, or failing to comply with Orders to Cease and Desist or any Department Directive, shall result in immediate suspension or removal of the cottage food business from the Department's Cottage Food Business Registry Identification Number.

102.5 The Department shall approve or deny a Cottage Food Registry Application within thirty (30) business days of receiving a properly completed application, as specified in Subsections 102.2 and 102.4.

102.6 If a registry application is approved, the Department shall conduct a preoperational inspection of the applicant's premises within fourteen (14) business days of application approval.

102.7 If the applicant for the cottage food business passes the preoperational inspection, the Department shall:

(a) Assign the cottage food business an identification number which shall be valid for two (2) years from the passing date of the food safety inspection;

(b) Add the cottage food business to the Department's Cottage Food Business Registry; and

(c) Issue a Cottage Food Business Registration Certificate to the Owner with the following information:

(1) Registry Identification Number;

(2) The cottage food products submitted by the applicant and approved by the Department; and

(3) An expiration date.

102.8 Each cottage food business shall have an original Cottage Food Business Registration Certificate in a conspicuous location at each event.

102.9 If a registration application is denied, the Department shall provide the applicant in writing of the following:

(a) The reason(s) for the denial; and

(b) Actions, if any, the applicant can take to qualify for a registration.

103 APPROVED FOOD PRODUCT LIST

103.1 A cottage food business is authorized to produce, package, and sell certain non-potentially hazardous food products identified in Subsection 103.5 that do not support the rapid growth of bacteria that could lead to a foodborne illness when held outside of refrigerated temperatures.

103.2 The list identified in Subsection 103.5 will be maintained and updated by the Department each quarter, if necessary, through the rulemaking process. When the Department adds or deletes food products from the approved list in Subsection 103.5, the Department shall state the:

(a) Reason for the change;

(b) Authority for the change; and

(c) Nature of the change to the approved food products list in Subsection 103.5.

103.3 If an owner of a cottage food business requests to produce, package, or sell a recipe or food product that is not on the approved list of foods in Subsection 103.5, the owner of a cottage food business shall submit confirmation of the food product's pH value and water activity from any state accredited laboratory to the Department for review.

103.4 The Department will determine if the recipe or food product is safe to produce, package, or sell as a cottage food product based on the laboratory analyses required in Subsection 103.3.

103.5 The Department approves the sale of the following non-potentially hazardous products by cottage food businesses at farmers' markets or public events within the District of Columbia:

(a) Baked goods, without cream, custard, cheese, or meat fillings, such as breads, biscuits, churros, muffins, rolls, scones, and sweet breads;

(b) Unfilled, baked donuts;

(c) Waffle cones;

(d) Pizzelles;

(e) Roasted coffee, whole beans or ground;

(f) Cakes, including celebration cakes (birthday, anniversary, and wedding);

(g) Cereals, trail mixes, and granola;

(h) Candies, such as brittles, toffee, chocolates, cotton candy, fudge, truffles, and confections;

(i) Pastries, pies, brownies, cookies, and tortillas;

(j) Snacks such as caramel corn, chocolate-covered nonperishable foods, nuts and dried fruits, crackers, pretzels, seeds, popcorn, or popcorn balls;

(k) Fruit pies, fruit empanadas, and fruit tamales;

(l) Jams, jellies, syrups, marmalades and other preserves;

(m) Honey and honeycomb. Applicants for cottage food businesses shall comply with "Sustainable Urban Agriculture Apiculture Act of 2012", and provide proof they are registered with the District's Department of Energy and Environment in accordance with Subtitle B of the Act, "Promoting Urban Agriculture through Beekeeping";

(n) Dried pasta;

(o) Dry herbs, herb blends, and seasonings blends;

(p) Dry tea blends;

(q) Dry baking mixes; and

(r) Vinegar and flavored vinegars.

104 COTTAGE FOOD PRODUCT LABELING REQUIREMENTS

104.1 A cottage food business shall label each food product in accordance with Section 4932(c)(2) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(c)(2) (2016 Supp.)), and in accordance with 21 CFR part 101 (2016), Food Labeling.

104.2 A cottage food business shall sell only approved cottage food products that are:

(a) Stored on the premises of the cottage food business; and

(b) Prepackaged with a label that contains the following information:

(1) The cottage food business identification number;

(2) The name of the cottage food product;

(3) The ingredients of the cottage food product in descending order of the amount of each ingredient by weight;

(4) The net weight or net volume of the cottage food product;

(5) Allergen information as specified by federal labeling requirements in 21 CFR part 101, Food Labeling;

(6) If any nutritional claim is made, nutritional information as specified by federal labeling requirements in 21 CFR part 101, Food Labeling and 9 CFR part 317, subpart B, Nutrition Labeling; and

(7) A statement printed in ten (10)-point or larger type letters in a color that provides a clear contrast to the background of the label that reads:

Made by a cottage food business that is not subject to the District of Columbia's food safety regulations

104.3 A label sample is shown below.

Cottage Food Business Identification Number

Chocolate Chip Cookies
2550 Kingston Lane
York, PA 17702

Ingredients: Enriched flour (Wheat flour, niacin, reduced iron, thiamine, mononitrate, riboflavin and folic acid), butter (milk, salt), chocolate chips (sugar, chocolate liquor, cocoa butter, butterfat (milk), soy lecithin, walnuts, sugar, eggs, salt, artificial vanilla extract, baking soda.

Contains: Wheat, eggs, milk, soy, walnuts

Net Wt. 3 oz.

MADE BY A COTTAGE FOOD BUSINESS THAT IS NOT SUBJECT TO THE DISTRICT OF COLUMBIA'S FOOD SAFETY REGULATIONS

105 PROCESSES AND ACTIVITIES THAT ARE NOT ALLOWED

105.1 A cottage food business shall not produce, package, or sell food products which require temperature control for safety. A cottage food business shall not:

(a) Process potentially hazardous foods;

(b) Process acidified and low acid canned food;

(c) Process food using reduced oxygen packaging;

(d) Smoke or cure food;

(e) Press juices or vegetables;

(f) Pasteurize;

(g) Can any food products, including but not limited to fruits, vegetables, vegetable butters, salsas, and similar foods;

(h) Hermetically seal food in jars;

(i) Offer for sale adulterated or misbranded food;

(j) Produce food products not expressly listed in Subsection 103.5, excepted as specified in Subsections 103.3 and 103.4; or

(k) Sell the cottage food products specified in Subsection 103.5 outside of the District of Columbia.

106 FOODS THAT ARE NOT ALLOWED

106.1 A cottage food business shall not sell potentially hazardous foods as defined in Section 991 below and by the District Food Code Regulations (Title 25-A DCMR) including but not limited to the following food:

(a) Fish or shellfish products;

(b) Fresh, dried, or dehydrated meat or meat products, including jerkies;

(c) Fresh, dried, or dehydrated poultry or poultry products;

(d) Baked goods that require any type of refrigeration such as cream, custard, or meringue pies and cakes or pastries with cream cheese icings or filings;

(e) Cheese made with unpasteurized milk;

(f) Focaccia-style breads with vegetables and/or cheeses;

(g) Raw-seed sprouts, including but not limited to alfalfa sprouts or bean sprouts;

(h) Raw cookie dough;

(i) Canned pickled products such as corn relish, pickles, or sauerkraut;

(j) Milk and dairy products including hard, soft and cottage cheeses, and yogurt;

(k) Mushrooms;

(l) Cut fresh fruits and/or vegetables;

(m) Food products made from cut fresh fruits or vegetables;

(n) Food products made with cooked vegetable products;

(o) Garlic and/or vegetable in oil mixtures;

(p) Sugar-free products, such as jams, jellies, syrups, marmalades and other preserves;

(q) Pumpkin or fruit butters;

(r) Ice or ice products;

(s) Barbeque sauces, ketchups and/or mustards; or

(t) Foods not intended for human consumption such as pet foods and/or treats.

107 COTTAGE FOOD SAMPLING REQUIREMENT

107.1 All food products, including those produced and packaged by a cottage food business, are subject to collection, examination and sampling/testing of food by the Department or an authorized representative, to determine if a food product is misbranded or adulterated. The Department shall collect cottage food products without cost. A component of the food sampling conducted pursuant to this section may include the performance of sample analyses in accordance with Section 4932(d)(4) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(d)(4) (2016 Supp.)).

108 REQUIRED INSPECTIONS AND ADMINISTRATIVE REMEDIES

108.1 When conducting preoperational inspections, the Department shall enter the premises of an applicant requesting a cottage food business on an agreed upon scheduled date and time during normal business hours from Monday through Friday.

108.2 The Department shall also inspect the premises of a registered cottage food business in response to a foodborne illness outbreak, consumer complaint, or other public health emergency.

108.3 The Department shall inspect during normal business hours, or at other reasonable times, whenever the Department has reason to believe the cottage food business is operating in violation of these regulations or is operating in an unsanitary manner.

108.4 A Department representative shall present official credentials and request to enter a cottage food business upon the Department's receipt of a complaint to investigate the cottage food business' compliance with these regulations, in accordance with Sections 4932(d)(1) and (2) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(d)(1) and (2) (2016 Supp.)) and Subsection 108.3 of these regulations.

108.5 The owner of a cottage food business shall grant a Department representative who requests entry access to inspect the premises to determine the cottage food business' compliance with these regulations, in accordance with Section 4932(d)(3)(A) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(d)(3)(A) (2016 Supp.)) and Subsection 108.3 of these regulations.

108.6 If the Department representative is unable to gain access to conduct an inspection, the Department shall leave a Notice of Attempt to Conduct an Inspection. The owner of the cottage food business shall be required to contact the Department within seventy-two (72) hours of posting of the Notice of Attempt to Conduct an Inspection.

108.7 Failure to contact the Department within the required seventy-two (72) hour period may result in the summary suspension of the Cottage Food Business Registry Identification Number.

108.8 The Department shall inspect a cottage food business operation's to ensure that:

(a) The production, packaging, storage, or sale of cottage food products listed on the cottage food business registry application and approved by the Department are the only food products being produced, packaged, stored, or sold by the cottage food business;

(b) Authorized persons other than the owner of the cottage food business, or persons under the direct supervision of the owner, are the only individuals engaged in the processing, preparing, packaging, or handling of any cottage food products, or are the only individuals in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(c) Authorized persons involved in the preparation, packaging, or handling of cottage food products:

(1) Are not working in the home kitchen when ill;

(2) Wash their hands thoroughly before any food preparation and food packaging activities; and

(3) Use single-service gloves, bakery papers, tongs, or other utensils to avoid bare hand contact with ready-to-eat foods.

(d) The preparation, packaging, or handling of cottage food products is not taking place in the home kitchen at the same time as any domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;

(e) Infants or small children are not in the home kitchen during the preparation, packaging, or handling of any cottage food products;

(f) Pets are excluded from the kitchen during the preparation, packaging or handling of cottage food products;

(g) Only standard, residential (non-commercial) kitchen equipment and utensils are used to produce the cottage food products;

(h) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products are smooth and easily cleanable, and are washed, rinsed, and sanitized before each use;

(i) The home kitchen is free from the presence of insects, rodents and other pests, and there are no entry points for insects, rodents and other pests in the home kitchen; and

(j) All cottage food products and equipment are properly stored.

108.9 The owner of a cottage food business shall not interfere with any inspection by a Department representative of the business, in accordance with Section 4932(d)(3)(B) of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02(d)(3)(B) (2016 Supp.)).

108.10 The Department may summarily suspend a Cottage Food Business Registry Identification Number by issuing a Summary Suspension Order if it determines following an inspection that there is a suspected foodborne outbreak or other public health emergency, including but not limited to operating in an unsanitary

manner, non-compliance with an Order to Cease and Desist or a Department Directive, or non-compliance with these regulations.

108.11 A summary suspension shall remain in effect until the conditions cited in the Summary Suspension Order no longer exist and abatement of the cited conditions has been confirmed by the Department through re-inspection or other means, as appropriate.

108.12 A Cottage Food Business Registry Identification Number that has been summarily suspended shall be reinstated when the Department determines that the public health hazard cited in the Summary Suspension Order no longer exists. The Department shall provide the owner of the cottage food business with a notice of reinstatement.

108.13 If the owner of a cottage food business does not comply with any provision of these regulations or refuses to comply with an Order to Cease and Desist, Summary Suspension Order, or any Department Directive, the cottage food business shall be removed from the Cottage Food Business Registry and the owner shall be required to file a new application to the Registry.

109 SAFE FOOD PRACTICES

109.1 The owner of a cottage food business should apply, at a minimum, the following safe food practices, which help to limit the potential for foodborne illnesses:

(a) Proper Handwashing

(1) Authorized persons involved with the preparation, packaging or handling of cottage food products should clean their hands and exposed portions of their arms before starting food processing, and after any activity that might contaminate their hands; and

(2) Liquid soap, paper towels, and water warm to the touch should be used for handwashing, and should be available at the handwashing sink at all times.

(b) Bare-Hand Contact with Ready-to-Eat Foods

Bare-hand contact with ready-to-eat foods shall be avoided. Single-service gloves, bakery paper, tongs, or other utensils should be used when handling ready-to-eat foods.

(c) Hair Restraint and Clean Outer Garments

Hair restraints and clean outer garments must be worn by all persons in the home kitchen during processing, preparation, packaging, or handling of cottage food products.

(d) Eating, Drinking, or Smoking

Owners of a cottage food business or persons under the owner's direct supervision should not eat, drink, or smoke or engage in any smoking activity (including but not limited to any form of tobacco, any form of hookah, any form of marijuana, or use of any e-cigarette) in the home kitchen during processing, preparation, packaging, or handling of cottage food products.

(e) Preventing Contamination When Tasting

Owners of a cottage food business or persons under the owner's direct supervision should not use a utensil more than once to taste any cottage food product.

(f) Personal Health

Owners of a cottage food business or persons under the owner's direct supervision should not process, prepare, package or handle cottage food products if they have any of the following symptoms:

(1) Diarrhea;

(2) Vomiting;

(3) Jaundice;

(4) Sore throat with fever; or

(5) Lesion containing pus, unless protected by an impermeable cover.

(g) Unauthorized Persons

Owners of a cottage food business or persons under the owner's direct supervision are the only persons authorized to be in the kitchen while producing, packaging or handling cottage food products.

(h) Food Contact Surfaces

The food-contact surfaces of all utensils and equipment should be clean to the sight and touch before beginning processing cottage food products,

and cleaned often while in use to limit the potential for contamination of the food or the ingredients.

(i) Proper Storage of Ingredients and Finished Products

Ingredients for cottage food products and the finished food products should be stored separately from all residential foods and food supplies, and in a manner that will prevent contamination from the premises and non-authorized persons.

(j) Proper Use and Storage of Chemicals

(1) Personal care items, as defined in Section 991, should not be stored or allowed in the home kitchen unless stored in such a manner that does not allow contamination of food products or food-contact surfaces;

(2) Spray bottles containing cleaning solutions should be labeled with the name of the solution;

(3) Pest control chemicals should not be used or stored in the home kitchen, in order to prevent contamination of food products and food-contact surfaces.

(k) Pests

Pests should not be present in the home kitchen. This area should be kept clean to prevent harborage of pests, and the premises should allow for easy visual inspection of pest activity.

(l) Pets

Pets are not allowed in the home kitchen at any time during the preparation, packaging or handling of cottage food products.

CHAPTER 99 DEFINITIONS

9900 GENERAL PROVISIONS

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

9901 DEFINITIONS

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

Authorized premises of cottage food business – the portion of a domestic residence housing the home kitchen where the preparation, packaging, storage, or handling of cottage food production occurs, and that has been inspected and approved by the Department to operate as a cottage food business in compliance with these regulations.

CFBR – the Cottage Food Business Registry within the Department of Health.

Consumer – a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food sales establishment or food processing plant, and does not offer the food for resale.

Cottage food business – a business that:

(a) Produces or packages cottage food products in a residential kitchen;

(b) Sells the cottage food products in accordance with Section 4932 of Section 2 of the Cottage Food Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code §§ 7-742.01 *et seq.* (2016 Supp.)), and Subsection 103.5 of these regulations;

(c) Has annual revenues from the sale of cottage food products in an amount not exceeding twenty-five thousand dollars ($25,000); and

(d) Has obtained a home occupancy permit from the Department of Consumer and Regulatory Affairs pursuant to Section 251 of Title 11 (Zoning Regulations of 2016), Subtitle U (Use Permissions), of the District of Columbia Municipal Regulations (11-U DCMR § 251).

Cottage food product – a non-potentially hazardous food, as specified in regulations adopted by the Department of Health, that is sold at a farmer's market or public event in accordance with Section 4932 of Section 2 of the Cottage Food Amendment Act of 2013 (D.C. Official Code § 7-742.02 (2016 Supp.)) and Subsection 103.5 of these regulations.

Department – Department of Health.

Domestic residence – a single-family dwelling or an area within a rental unit where a single person or family actually resides. This term does not include any group or communal residential setting within any type of structure, or any outbuilding, shed, barn, or other similar structure**.**

Easily cleanable – a characteristic of a surface that:

(a) Allows effective removal of soil by normal cleaning methods;

(b) Depends upon the material, design, construction, and installation of the surface; and

(c) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

Equipment – a normal household article that is used in the manufacture of cottage food products such as a freezer, grinder, hood, ice maker, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device, or warewashing machine. This term does not include industrial or commercial grade equipment that, due to their size, cannot be effectively cleaned in residential sinks or dishwashers.

Food – a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

Foodborne disease outbreak – the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

Hermetically sealed container – a container that is designed and intended to be secure against the entry of microorganisms or, in the case of low acid canned foods, designed and intended to maintain the commercial sterility of its contents after processing.

Home kitchen – a kitchen in a cottage food business owner's primary domestic residence, with a home occupancy permit from the Department of Consumer and Regulatory Affairs, which contains one or more stoves or ovens designed for residential use only (such as a double oven) and does not include any type of commercial equipment.

Non-potentially hazardous foods – foods that do not require temperature control because they are incapable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms.

Owner of a cottage food business – a person who produces cottage food products only in the home kitchen of that person's primary domestic residence and only for sale directly to the consumer.

Packaged – food contained in a carton, bottled, canned, securely bagged, or securely wrapped, in a cottage food operation. This term does not include a wrapper, carry-out box, or other nondurable container used to containerize food for the purpose of food protection during service or receipt of the food by the consumer.

Personal Care Items – items or substances that may be poisonous, toxic, or a substance of contamination and are used to maintain or enhance a person's health, hygiene, or appearance; which may include items such as medicines, first aid supplies, cosmetics, and toiletries such as toothpaste and mouthwash.

Potentially hazardous foods – foods requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms, or the growth and toxin production of *Clostridium botulinum*.

Public event – any event open to the general public, including but not limited to farmers markets, exhibitions, fairs, festivals, entertainment, or fundraising activities.

Public market and private market – as regulated by the Department of Consumer and Regulatory Affairs (DCRA) Vending Regulations as codified at Title 24 (Public Space and Safety), Chapter 5 (Vendors) of the District of Columbia Municipal Regulations (24 DCMR §§ 500 – 599).

Ready-to-eat food – food that is edible and does not require additional preparation to achieve food safety.

Reduced oxygen packaging – packaging of food using the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen, displacing the oxygen with another gas or combination of gases, or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere (twenty-one percent (21%) oxygen), or a process as specified in this definition that involves a food for which *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form. This term includes any of the following:

(a) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as *sous vide*;

(b) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, and an increase in the proportion of other gases such as carbon dioxide or nitrogen;

(c) Controlled atmosphere packaging, in which the atmosphere of a packaged food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, non-respiring food, and impermeable packaging material;

(d) Cook chill packaging, in which cooked food is hot-filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychotropic pathogens; or

(e) *Sous vide* packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychotropic pathogens.

Smoking or to smoke – pursuant to the Smoking Restriction Amendment Act of 2013, effective December 13, 2013 (D.C. Law 20-48; D.C. Official Code § 7-1702(7)) (2016 Supp.)):

(a) The act of puffing, having in one's possession, holding, or carrying a lighted or smoldering tobacco product, including through the use of smoking equipment of any kind including a pipe, or cigarette papers or tubes; or

(b) The lighting of a tobacco product, including through the use of smoking equipment of any kind including a pipe, or cigarette papers or tubes.

Special Event – as regulated by the Department of Consumer and Regulatory Affairs (DCRA) Vending Regulations as codified at Title 24 (Public Space and Safety), Chapter 5 (Vendors) of the District of Columbia Municipal Regulations (24 DCMR §§ 500 – 599).

Specialized food processes – including but are not limited to:

(a) Smoking food as a method of food preservation rather than as a method of enhancing flavor;

(b) Curing food;

(c) Using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement, or otherwise rendering food so that is not potentially hazardous (time/temperature control for food safety);

(d) Packaging food using a reduced oxygen method, except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled;

(e) Operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption;

(f) Custom processing animals that are for personal use as food and not for sale or service;

(g) Preparing food by methods not approved by the Department; and

(h) Sprouting seeds or beans.

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF FINAL RULEMAKING

The Deputy Mayor for Planning and Economic Development (Deputy Mayor), pursuant to the authority set forth in § 107 of the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.07 (2012 Repl.)) (Inclusionary Zoning Act) and Mayor's Order 2008-59, dated April 2, 2008, hereby gives notice of the adoption of the following amendments to Chapter 22 (Inclusionary Zoning Implementation), of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

These final rules (Final Rulemaking) amend the procedures for implementing the Inclusionary Zoning Act and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 10 of Subtitle C, Title 11 (Zoning Regulations of 2016), of the District of Columbia Municipal Regulations.

On August 2, 2013, a Notice of Proposed Rulemaking was published in the *D.C. Register* at 60 DCR 11258, and on November 14, 2014 a Notice of Second Proposed Rulemaking was published at 61 DCR 11860. In response to public comments received after the issuance of those notices, and Inclusionary Zoning Program administration and operation, changes were determined necessary or desirable to effectively implement and administer the Inclusionary Zoning Program.

The Zoning Commission Order #04-33G, dated October 17, 2016 and published in the *D.C. Register* on December 16, 2016, made substantial changes to the Inclusionary Zoning Program, and those changes were determined to become effective June 5, 2017. In order to effectively administer those changes, in conjunction with the approximately 500 existing Inclusionary Units, an amendment to the Inclusionary Zoning Act was needed, along with revisions to the Inclusionary Zoning Administrative Regulations. The Inclusionary Zoning Consistency Amendment Act of 2017, effective September 23, 2017 (D.C. Law 22-24; 64 DCR 7647 (August 11, 2017)) implemented the necessary amendments to the Inclusionary Zoning Act. These final rules will implement the necessary amendments to the Inclusionary Zoning Administrative Regulations. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* at 64 DCR 008722 on September 1, 2017. Comments were received and considered.

The following summarizes the major changes proposed in the Notice of Emergency and Proposed Rulemaking, the comments received and the District's response:

1. Consistent with the Zoning Commission order and Inclusionary Zoning Consistency Amendment Act of 2017, the terms "Low-Income Household" and "Moderate-Income Household" have been deleted and replaced with MFI (replacing Area Median Income; see below) Levels, which is a defined term in § 2299, to allow further flexibility. No comments were received regarding this change.

2. Changing "Area Median Income" or "AMI" to "Median Family Income" or "MFI" – in order to be more consistent with the Inclusionary Zoning Zoning Regulations, the Zoning Commission proposed changes and the Inclusionary Zoning Consistency Amendment Act of 2017, the term "AMI" or "Area Median Income" is replaced with "MFI" or "Median Family Income" throughout the regulations. The term "MFI" is also defined in the definitions section of DCMR (11-B DCMR § 100), which is identical to the definition in § 2299. No comments were received regarding this change.

3. Income limits on lease renewals – codifying current practice in order to allow more households to remain in their Inclusionary Units, the maximum household income upon renewal may be up to one hundred forty percent (140%) of the higher of the then-current maximum household income or the maximum household income at the time of initial lease execution. This concept is described in § 2217.6 - § 2217.9, including clarifying options for the household if the income exceeds the one hundred forty percent (140%) limit. This policy is based on the LIHTC program and is already used in other District affordable dwelling unit (ADU) programs. Comments were received in favor of the increased income limits and re-designation of Inclusionary Units and other comments were received and incorporated further clarifying the re-designation process. A comment was received opposing the change as increasing paperwork and disrupting the matching of tenants and units. The District does not believe the change will result in increased paperwork or a disruption in selecting tenants. Households leasing Inclusionary Units are required to be re-certified and sign new leases every year under the existing program. In addition, the District found that a similar policy used by the Low Income Housing Tax Credit program has been successful without excessive paperwork or disrupting the matching of tenants and units. This change will also limit the displacement of households due to increases in annual income. The Final Rulemaking clarifies that the property manager or Inclusionary Development Owner must notify DHCD in writing that a re-designation is necessary as soon as it is determined and identify the unit to be re-designated. The District will monitor the impact of these changes on housing providers, program beneficiaries and the administration of the program.

4. Combining lists of those who live and work in the District – currently, the regulations rank three groups of lottery selectees based on how long they have been on the IZ registration list (those who live in the District, those who are not District residents, but work in the District and those who neither live nor work in the District). As proposed and adopted on an emergency basis, § 2211.2 combines those who live in the District and those who are not District residents, but work in the District into one list, to be ranked by how long each household has been on the registration list. This will provide those who work in the District much greater opportunity to buy/rent an Inclusionary Unit. A comment was received opposed to this change citing a need to maintain the existing preference for current District residents given the paucity of affordable housing available to District residents. After careful consideration the District has decided not to include this change in the Final Rulemaking, reverting back to the previous system of giving first priority to those who live in the District and second priority to those who are not District residents, but work in the District. Non-resident District workers are still able to qualify for Inclusionary Units, but they are ranked below current District residents.

5. Mandatory amenity fees included in the definition of "Utilities" – the definition of "Utilities" in § 2299 has been amended to include mandatory amenity fees and other mandatory fees, which limits the amount of rent to be charged, so that households are not paying more than the maximum allowed percentage of their annual income on housing costs. The determination was made that because the fees are mandatory, they should be included in the housing costs like utility fees. Comments were received in favor of including mandatory fees in the definition of utilities and one comment suggested further clarifying the mandatory fees. In the Final Rulemaking, this was done in § 2207.4 and additional clarification was made to the definition of "utilities."

6. Housing Cost limitations – Currently households seeking to rent or purchase IZ Units must certify that they will not spend more than thirty-eight percent (38%) (for rented IZ Units) or forty-one percent (41%) (for purchased IZ Units) of their annual income on housing costs. § 2214.3 has been revised to require that Households confirm that they have been advised that this is a recommendation, but households must certify that they will spend no more than fifty percent (50%). This change was proposed because so many households are currently paying much more of their income for housings costs and may find themselves in this situation due to temporary fluctuations in income.

   A comment was received in favor of increasing the percentage of income allowed to be spent on housing costs to fifty percent (50%) and two comments were received objecting to this change.

   The proposed change reflects some important findings by DHCD.

   The first is that many households on DHCD's registration list currently pay significantly more than 50% of their income for lower quality housing. Allowing these households to make the choice to improve their housing quality and potentially reduce their cost burden seemed appropriate and increases Households' affordable housing options. Households have the choice to sign up for the lottery for specific units and they are not required to sign a lease or purchase contract for the IZ units they are offered if they consider it to be unaffordable.

   Second, the IZ program, similar to the Low Income Housing Tax Credit or the Housing Production Trust Fund programs sets rents based on threshold incomes (*i.e.*, 80% and 60% of MFI) and not individual applicants' incomes, as would be the case with programs such as Housing Choice Vouchers and Public Housing. The original narrower minimum to maximum income band assures greater affordability by selecting higher income households from the lottery and reducing the types of households DHCD forwarded to housing providers for consideration. The District is interested in having the IZ program provide opportunity to a wide range of households across the city.

   Third, and perhaps most critically, housing providers and lenders implementing threshold rent programs such as IZ have their own procedures in place to assure the unit is affordable to selected households within the requirements of the program and other applicable laws. To the extent the minimum income thresholds in the current regulation came into play in qualifying a household selected in the lottery, the limits often seemed somewhat arbitrary in the context of the housing providers' and lenders' already rigorous determination of ability to

pay. DHCD was often requested to consider cases where households' incomes were certified as close to but not over the minimum income threshold.

After careful consideration, the District has elected to adopt the proposed revision thereby leaving the maximum percentage of annual income that a Household certifies it will spend on Housing Costs at fifty percent (50%) as originally proposed. DHCD will monitor how this change affects program outcomes.

7. Affirmative Fair Housing Marketing Plans (AFHMPs) – Previously, DHCD required all Inclusionary Development Owners to submit AFHMPs and required review and approval by DHCD's Inclusionary Development Program representatives and DHCD's Fair Housing Program Coordinator prior to DHCD conducting a lottery. § 2200.7 has been added to require affirmative marketing language to be included in all marketing material. Pursuant to the regulations, DHCD will require AFHMPs when the Inclusionary Development Owner elects to conduct its own lottery or wait-list. No comments were received regarding this change.

8. Clarifying "Certifying Entities" to conduct income certifications – § 2215 clarifies that a "Certifying Entity" can include DHCD, a community based organization or a management/leasing team authorized by DHCD. DHCD plans to clarify requirements for certification and formally approve Certifying Entities going forward. Requirements will include at least 1 person being a Certified Occupancy Specialist (or having other DHCD-approved certification), all staff involved in income certifications to have attended DHCD's Inclusionary Zoning/ADU 101 course, notification of staff changes annually and renewal of certification every two (2) years. This merely clarifies the existing practice. A comment was received objecting to the approval of management/leasing teams. The District sees certification as an important quality assurance practice. While the certification process was clarified, this provision remains unchanged in the Final Rulemaking.

9. Certificate of Inclusionary Zoning Compliance (CIZC) application fee – § 2202.2 has been revised, proposing DHCD to publish the CIZC application fee in the *D.C. Register*, rather than specifying the amount, which is currently two hundred fifty dollars ($250) and has not been amended since the regulations were initially adopted. This will allow for easier amendment of the amount in the future. No comments were received regarding this change.

10. Inclusionary Development Covenants required to be recorded prior to CIZC approval – § 2204.2 was added to clarify that DHCD will provide a draft Inclusionary Development Covenant to Inclusionary Development Owners upon receipt of the CIZC and requiring the Inclusionary Development Owner to complete, sign and return it to DHCD prior to DCRA approving the CIZC. No comments were received regarding this change.

11. Clarifying timing for price notification and listing on housing locator website – § 2207.1 and § 2207.6 clarify that within seven (7) days after receipt of a Notice of Availability, DHCD shall notify the Owner of the maximum sales price or rent. Within seven (7) days after receiving the maximum sales price or rent, the Inclusionary Development Owner must list the available Inclusionary Units on the housing locator website. DCHD will not conduct a lottery for a particular Inclusionary Unit until it is listed on the housing locator website. All

comments received related to this change were in favor of the shortened time frames and no additional changes were made.

12. Clarifying method of household selection – § 2208 was clarified to emphasize that DHCD-run lotteries are the primary method to select households, but subject to certain restrictions, other methods are allowed. Comments were received in favor of the changes, including proposing further loosening of the restrictions on the re-sale of Inclusionary Units. The District will implement the proposed changes and evaluate whether additional changes are needed in the future.

13. Clarifying household registration process – § 2209 was clarified to require households to attend an Inclusionary Zoning orientation before registering for the lottery, and households interested in purchasing an Inclusionary Unit should attend the homeownership training program shortly after registering for the lottery. It was further clarified that in addition to the registration, the certificates for attending the orientation and homeownership training each expire after two (2) years and each need to be renewed. Comments were received in favor of the 2 year validity period for registrations and suggesting improvements to the process for households to register for the purchase of Inclusionary Units and attend the homeownership training. In response, the District has modified § 2209.2 and has added §§ 2209.8 and 2209.9 to clarify this process. Additional improvements will be made in the administration of the program to provide notice to registrants before removing their names from the registration list.

14. Clarifying lottery process – § 2210 was added to conform the regulations to DHCD's current practice of asking households to confirm interest in the Inclusionary Units prior to a lottery, so that only interested households are included in the lottery and therefore strengthen the pool of households chosen in the lottery. No comments were received regarding this change.

15. Shortening time frames after lotteries – § 2212 was clarified to shorten the time period from seventeen (17) days to ten (10) days for a household to confirm interest in an Inclusionary Unit after being selected in a lottery, and to shorten the time period from forty-five (45) days to thirty (30) days for a household to provide documentation to the sales/leasing team after being selected in a lottery. A number of comments were received in favor of the proposed shortened time frames. A comment in support also questioned whether the shortened period was sufficiently short, suggesting fourteen (14) days for a household to provide documentation after being selected. No additional changes were made to the Final Rulemaking but the District has taken these comments under advisement and DHCD will continue to monitor the program to see if further changes are required.

16. Clarifying marketing timeframes and requirements after lotteries – § 2213 was clarified to better explain that the #1 ranked household selected in a lottery has a thirty (30) day exclusivity period to provide documentation to the sales/leasing team and what the sales/leasing team may do during that period. The thirty (30) day period was shortened from forty-five (45) days and § 2213.3 was added to allow the #1 ranked household to waive that exclusivity period, allowing the sales/leasing team to move on to the next household sooner. Comments were received in favor of the waiver of exclusivity and suggesting that the word 'may' be changed to 'shall' in §§ 2213.3 and 2213.4 where a household is waiving the

exclusivity period and also clarifying that a household need not use the DHCD-provided form to do so. A comment was also received questioning why the requirement for the Inclusionary Development Owner to provide a copy of the Inclusionary Development Covenant was removed, but it was only moved and is currently in § 2216.4.

17. Eliminating maximum number of people in a household – § 2214.4 was modified (and moved from § 2210.2) to eliminate the maximum number of people in a household because DCRA already enforces the building code to prevent over-crowding and the DCRA maximums conflicted with the Inclusionary Zoning maximums. This will eliminate possible conflicts between the Inclusionary Zoning maximum and building code maximums. A comment was received supporting the new household size eligibilities. This change remains in the Final Rulemaking.

18. Other changes were made to clarify and simplify and make technical changes to the regulations. Additional comments were received in favor of other simplifications and clarifications. Other comments were received unrelated to the proposed changes and are not incorporated here but will be considered along with the others discussed above for future amendments.

Chapter 22, INCLUSIONARY ZONING IMPLEMENTATION, of Title 14 DCMR, HOUSING, is amended to read as follows:

CHAPTER 22 INCLUSIONARY ZONING IMPLEMENTATION

Secs.

2200 GENERAL PROVISIONS

2200.1 The purpose of this chapter is to implement the Zoning Commission's Inclusionary Zoning Regulations (11-C DCMR Chapter 10) and the Inclusionary Zoning Act.

2200.2 This chapter implements these aspects of the Inclusionary Zoning Regulations and the Inclusionary Zoning Act by establishing, among other things:

(a) The process and prerequisites for obtaining building permits and certificates of occupancy for Inclusionary Developments;

(b) The process for selecting Eligible Households for an Inclusionary Unit; and

(c) The responsibilities of and limitations on Inclusionary Development Owners, Inclusionary Unit Owners and Inclusionary Unit Tenants.

2200.3 All timeframes established in this chapter for an agency to take an action are guidelines only. An agency's failure to act within a timeframe established in this chapter shall not constitute a default by the agency and shall not permit any person to take or refuse to take any action governed by the Inclusionary Zoning Program.

2200.4 In computing a period of time specified in this chapter, calendar days shall be counted unless otherwise provided.

2200.5 In computing a period of time specified in this chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period of time so computed shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which case the period of time shall run until the end of the next day that is not a Saturday, Sunday, or official District of Columbia holiday.

2200.6 DHCD will provide all notices related to Household registration and lotteries to Households via email only, unless a Household has previously requested notice to be sent by first class mail.

2200.7 All marketing and advertising of Inclusionary Developments shall contain the following statement "Pursuant to the District of Columbia Inclusionary Zoning program, income restricted units are available at this development. Please contact the Department of Housing and Community Development at www.dhcd.dc.gov regarding the availability of such units and requirements for registration in the Inclusionary Zoning program."

2201 PREREQUISITE FOR OBTAINING BUILDING PERMIT FOR AN INCLUSIONARY DEVELOPMENT

2201.1 No building permit shall be issued for an Inclusionary Development unless DCRA receives and approves an application for a Certificate of Inclusionary Zoning Compliance, signed by the Owner of the Inclusionary Development, demonstrating that the Inclusionary Development will meet the requirements of the Inclusionary Zoning Program.

2202 APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

2202.1 The Inclusionary Development Owner shall file a written application for a Certificate of Inclusionary Zoning Compliance with DCRA no later than the date upon which the first application for an above-grade building permit is filed for the Inclusionary Development.

2202.2 The Inclusionary Development Owner shall include with its application for a Certificate of Inclusionary Zoning Compliance an application fee in an amount as indicated by publication in the *D.C. Register*.

2202.3 The Inclusionary Development Owner shall file its application for a Certificate of Inclusionary Zoning Compliance on a form prescribed by DCRA and shall provide such information as is requested on the form.

2202.4 The application form for a Certificate of Inclusionary Zoning Compliance shall include:

(a) The name of the Inclusionary Development, its marketing name if different, and the apartment or condominium name, if applicable;

(b) The street address of the Inclusionary Development;

(c) The zone district in which the Inclusionary Development is located;

(d) The current and proposed square, suffix, and lot numbers on which the Inclusionary Development will be located;

(e) A list of all Inclusionary Units in the Inclusionary Development. Each Inclusionary Unit shall be identified by unit number, net square footage, floor location, and the number of bedrooms. The list shall also include, and separately identify, any Inclusionary Units that will serve as the location for the offsite compliance of another Inclusionary Development, as approved by the Board of Zoning Adjustment, together with a copy of the Board of Zoning Adjustment order approving the offsite compliance;

(f) A certification from the Inclusionary Development's architect or engineer that the size of each Inclusionary Unit is at least ninety-eight percent (98%) of the average size of the same type of Market Rate Unit in the development or at least the size indicated in the following table, whichever is lesser;

Type of Dwelling	Type of Unit	Minimum Unit Size (net square feet)
Multiple Family Dwelling	Studio	400
	One bedroom	550
	Two bedrooms	850
	Three bedrooms	1,000
	Four or more bedrooms	1,050
One or Two Household Dwelling	Two bedrooms	1,000
	Three bedrooms	1,200
	Four or more bedrooms	1,400

(g) A copy of the site plan, front elevation or block face, and all residential floor plans for the Inclusionary Development. The floor plans shall show the location of each Inclusionary Unit and each Market Rate Unit and shall identify each by unit number;

(h) A copy of the building plat, if required by DCRA pursuant to 12-A DCMR § 106.1.12;

(i) A plan for the phasing of construction that demonstrates compliance with

11-C DCMR § 1005.4, which requires that all Inclusionary Units in an Inclusionary Development be constructed prior to or concurrently with the construction of Market Rate Units, except that in a phased development, the Inclusionary Units shall be constructed at a pace that is proportional with the construction of the Market Rate Units;

(j) The total land area of all of the lots included in the Inclusionary Development;

(k) The total gross floor area of the Inclusionary Development; the gross residential floor area of the Inclusionary Development; the net residential floor area of the Inclusionary Development ; and the gross floor area of the Inclusionary Development required to be set aside pursuant to 11-C DCMR § 1003;

(l) The total net square footage that will be set aside for Inclusionary Units as calculated by multiplying the gross floor area of the Inclusionary Development required to be set aside pursuant to 11-C DCMR § 1003 by the ratio of the net residential floor area of the Inclusionary Development to the gross residential floor area of the Inclusionary Development ;

(m) The net square footage of Inclusionary Units that will be set aside for each MFI Level;

(n) A proposed schedule of standard finishes, fixtures, equipment, and appliances for both Inclusionary Units and Market Rate Units;

(o) For each Inclusionary Unit, the approximate date by which the Inclusionary Development Owner will provide a Notice of Availability pursuant to § 2206;

(p) If construction of the Inclusionary Development will result in the temporary displacement of tenants who are entitled by law to return to comparable units, a list of the Inclusionary Units for which a right of return exists and the basis of the right to return; and

(q) Such other information as may be requested by DCRA.

2203 REVIEW AND APPROVAL OF APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE

2203.1 If DCRA determines that an application for a Certificate of Inclusionary Zoning Compliance does not demonstrate compliance with the Inclusionary Zoning Program or the information provided is insufficient, DCRA shall provide to the Inclusionary Development Owner a written notice of the deficiency and shall

allow the Inclusionary Development Owner a reasonable period of time, designated in the written notice, to cure the deficiency.

2203.2 If the Inclusionary Development Owner fails to cure the deficiency within the period of time set forth in the written notice, DCRA may deny the application for the Certificate of Inclusionary Zoning Compliance.

2203.3 If the application for a Certificate of Inclusionary Zoning Compliance demonstrates compliance with the Inclusionary Zoning Program, DCRA shall review and execute the Certificate of Inclusionary Zoning Compliance prior to issuance of the building permit.

2204 INCLUSIONARY DEVELOPMENT COVENANT

2204.1 The Inclusionary Development Covenant shall be in a form found legally sufficient by the Office of the General Counsel of DHCD and shall bind all persons with a property interest in any or all of the Inclusionary Development, and all assignees, mortgagees, purchasers, and other successors in interest, to such declarations as DHCD may require, but, at a minimum, shall include:

(a) A provision requiring that the present and all future Owners of a Rental Inclusionary Development shall construct or maintain and reserve Inclusionary Units at such MFI Levels and in such number, square footage, and comparable level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall rent such Inclusionary Units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;

(b) A provision requiring that the present and all future Owners of a For Sale Inclusionary Development shall construct and maintain Inclusionary Units at such MFI Levels and in such number, and square footage as indicated on the Certificate of Inclusionary Zoning Compliance and shall sell each Inclusionary Unit in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;

(c) A provision binding all assignees, mortgagees, purchasers, and other successors in interest to the Inclusionary Development Covenant;

(d) A provision providing for the whole or partial release or extinguishment of the Inclusionary Development Covenant only upon the reasonable approval of the Director of DHCD if required by law or pursuant to the provision described in § 2204.1(g);

(e) A provision requiring that the sale or resale of a For Sale Inclusionary Unit shall be only to an Eligible Household selected by DHCD or otherwise authorized by this chapter, at a price that does not exceed the

Maximum Resale Price established in accordance with § 2219;

(f) A provision requiring that a lease rider, pursuant to § 2216.5, shall be attached as an exhibit to the lease for a Rental Inclusionary Unit and shall be executed by the Inclusionary Development Owner and each Inclusionary Unit Tenant, including any occupant of a Rental Inclusionary Unit that is eighteen (18) years old or older; and

(g) To the extent allowed by law, a provision requiring that in the event title to a For Sale Inclusionary Unit is transferred according to the provisions of § 2223.1, the proceeds from such foreclosure or transfer shall be apportioned and paid as described therein.

2204.2 DHCD shall provide a draft or template Inclusionary Development Covenant to an Inclusionary Development Owner, who shall complete it and return an executed copy to DHCD prior to approval of the Certificate of Inclusionary Zoning Compliance by DCRA. Upon receipt of the Inclusionary Development Covenant by DHCD, signed by the Inclusionary Development Owner and otherwise conforming to the requirements of this § 2204, and upon receipt by DCHD of the fully executed Certificate of Inclusionary Zoning Compliance, DHCD shall have the Inclusionary Development Covenant fully executed and recorded with the District of Columbia Recorder of Deeds.

2204.3 DHCD may require, in its sole discretion, the use of a deed of trust to ensure compliance by an Inclusionary Development Owner or Inclusionary Unit Owner with the Inclusionary Development Covenant.

2205 CERTIFICATES OF OCCUPANCY FOR INCLUSIONARY UNITS

2205.1 An Inclusionary Development Owner shall apply for and obtain a Certificate of Occupancy for each property that contains Inclusionary Units that identifies and includes each Inclusionary Unit in the Inclusionary Development. For an Inclusionary Development where no Certificate of Occupancy is required, the submission requirements of this § 2205 must be satisfied prior to the DCRA inspection of the As-Built Foundation Survey ("Wall Check") required by 12-A DCMR § 109.3.1.2.

2205.2 Prior to the issuance of a Certificate of Occupancy for an Inclusionary Development, or DCRA acceptance of a Wall Check, an Inclusionary Development Owner shall provide to DCRA a copy of the recorded Inclusionary Development Covenant along with an update of all information provided in its application for a Certificate of Inclusionary Zoning Compliance, if there has been any substantive change to such information since the filing of the application. DCRA shall review the updated information pursuant to the procedures set forth in § 2203.

2205.3 After the submission of the application for a Certificate of Occupancy or request for a final building inspection for an Inclusionary Development where no Certificate of Occupancy is required, DCRA shall inspect the Inclusionary Development for compliance with the Certificate of Inclusionary Zoning Compliance.

2205.4 DCRA shall make good faith efforts to complete its Inclusionary Zoning compliance inspection within fifteen (15) business days after receipt of the Certificate of Occupancy application or request for final building inspection for an Inclusionary Development where no Certificate of Occupancy is required.

2205.5 No Certificate of Occupancy for an Inclusionary Development shall be issued, or Wall Check accepted or final building inspection approved for an Inclusionary Development where no Certificate of Occupancy is required, as necessary, unless DCRA determines that the Inclusionary Development Covenant is recorded with the District of Columbia Recorder of Deeds and the Inclusionary Development is in compliance with the Certificate of Inclusionary Zoning Compliance.

2206 NOTICE OF AVAILABILITY

2206.1 The provisions of this § 2206 govern the process by which:

(a) The Owner fulfills its obligation to notify DHCD that a For Sale Inclusionary Unit is available for purchase; and

(b) The owner of a Rental Inclusionary Development fulfills its obligation to notify DHCD that a Rental Inclusionary Unit is available for lease.

2206.2 An Owner shall provide the notification described in § 2206.1 to DHCD by filing a written Notice of Availability in accordance with the provisions of this § 2206.

2206.3 An Inclusionary Development Owner shall file the initial Notice of Availability for an Inclusionary Unit prior to the date of submission of the Certificate of Occupancy application to DCRA applicable to such Inclusionary Unit.

2206.4 An Owner shall file all subsequent Notices of Availability prior to marketing the Inclusionary Unit for sale or rent.

2206.5 A single Notice of Availability may be filed for one or more Inclusionary Units at a time.

2206.6 The Notice of Availability shall include:

(a) The street address and unit number for the Inclusionary Unit(s);

(b) The estimated date upon which the Inclusionary Unit(s) will be available for occupancy;

(c) For each Notice of Availability, a list of any optional or required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking. For each such fee or cost, the following information shall be provided:

(1) The amount of the fee or cost;

(2) A description of the fee or cost and how and when it will be charged; and

(3) For the initial sale of a For Sale Inclusionary Unit, the budget for the condominium, cooperative, or homeowner association, the condominium, cooperative, or homeowner association fee for each Market Rate Unit and each Inclusionary Unit, and the formula by which such fee is assessed;

(d) Whether the Inclusionary Unit is for sale or rent;

(e) For each subsequent Notice of Availability for a For Sale Inclusionary Unit, an itemized list of all capital improvements and upgrades made to the Inclusionary Unit that the Owner wishes DHCD to consider when establishing the Maximum Resale Price pursuant to § 2219.2. The Inclusionary Unit Owner shall document each cost or value claimed with receipts, contracts, or other supporting evidence, as reasonably requested by DHCD;

(f) A statement as to the Owner's chosen method of selection of Households for the Inclusionary Units in accordance with § 2208; and

(g) Such other information as may be required by DHCD.

2207 DESIGNATION OF MAXIMUM PURCHASE PRICE OR RENT AND HOUSING LOCATOR WEBSITE REGISTRATION

2207.1 Within seven (7) days after the receipt of a Notice of Availability, DHCD shall notify the Owner of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability.

2207.2 Except as provided in § 2207.5, the initial maximum purchase price or rent for an Inclusionary Unit shall be the greater of:

(a) The purchase price or rent set forth in the Rent and Price Schedule in place on the date the original Certificate of Inclusionary Zoning Compliance is approved by DCRA for the Inclusionary Development in which the Inclusionary Unit is located; or

(b) The purchase price or rent set forth in the Rent and Price Schedule in place on the date the Notice of Availability is received by DHCD for the Inclusionary Unit.

2207.3 The maximum purchase price for all subsequent sales of an Inclusionary Unit shall be the Maximum Resale Price determined by DHCD pursuant to § 2219.

2207.4 The maximum rent for all subsequent rentals shall be the rent set forth in the Rent and Price Schedule in place on the date that each such lease is executed, whether a renewing tenant or a new tenant. The maximum rent reflected in the Rent and Price Schedule is inclusive of Utilities.

2207.5 If the costs provided for an Inclusionary Unit described in § 2206.6(c) exceed by ten percent (10%) or more the cost assumptions in the applicable Rent and Price Schedule, DHCD may lower the maximum rent or purchase price to the extent needed to maintain the affordability standard set forth in § 103(a) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(a)) and this chapter.

2207.6 Within seven (7) days after receipt from DHCD of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability, the Owner shall register the Inclusionary Unit for which the Notice of Availability was filed with the Housing Locator Website and notify DHCD in writing of such registration. DHCD shall not conduct a lottery for an Inclusionary Unit prior to receipt of such notification.

2208 METHOD OF SELECTION OF HOUSEHOLDS

2208.1 Households may be selected for an Inclusionary Unit as follows:

(a) Except as provided in §§ 2208.2 through 2208.3, a Household may be selected for the initial or subsequent sale and lease of an Inclusionary Unit through a lottery conducted pursuant to § 2211;

(b) Subject to § 2211.4, the Owner may select a Household through a method established by the Owner in a marketing plan approved by DHCD; or

(c) Subject to § 2211, an Inclusionary Unit Owner may sell a For Sale Inclusionary Unit to a Household registered pursuant to § 2209, or with approval from DHCD to any Household certified by DHCD or its designee as meeting the relevant MFI Level, with or without a District licensed real estate broker or salesperson.

2208.2 No lottery shall be conducted for the initial or subsequent sale or lease of an Inclusionary Unit if the Inclusionary Unit is to be:

(a) Leased or sold to a household displaced from the Inclusionary Unit or the property before conversion to or building of the Inclusionary Development and entitled by law to return to the Inclusionary Unit;

(b) Leased or sold as a replacement unit as part of the New Communities Initiative; or

(c) Sold by an Inclusionary Unit Owner to the Inclusionary Unit Owner's spouse, domestic partner, Parent, trust for the benefit of a child, child who is subject to a guardianship, or child who is eighteen (18) years of age or older, if the spouse, domestic partner, Parent, or child submits the information and documents required by § 2212.3(b).

2208.3 If an Inclusionary Unit is subject to a requirement imposed by law or zoning that a specific group, class or type of Household occupy the Inclusionary Unit, or if the Inclusionary Unit meets the accessibility guidelines under the Fair Housing Act (42 USC § 3601), the Household shall be selected for the initial or subsequent sale or lease through a method established by the Owner in a marketing plan that is approved by DHCD.

2209 HOUSEHOLD REGISTRATION

2209.1 In order to be eligible to participate in the household selection process, a member of the Household shall:

(a) Complete an Inclusionary Zoning Program orientation class conducted by DHCD or its designee; and

(b) Complete a registration application form with such information as DHCD deems necessary including, but not limited to, the Household size, income/MFI Level, and preference, if any, to rent or purchase.

2209.2 All Households shall initially be registered as being eligible to only rent Inclusionary Units. Households wishing to purchase an Inclusionary Unit shall complete a homeownership training program conducted by DHCD or its designee and once evidence of completion is provided to DHCD, the Household may choose to register to purchase only or to rent or purchase.

2209.3 The Inclusionary Zoning Program orientation class and homeownership training program shall each be valid for two (2) years and Households shall re-take each as needed in accordance with this § 2209 in order to remain in the Household selection process.

2209.4 Registration shall become effective on the date that DHCD:

(a) Determines that the registration has been completed in compliance with this § 2209; and

(b) Sends confirmation of such registration.

2209.5 Registration shall expire two (2) years after the registration confirmation date referred to in § 2209.4, unless renewed prior to expiration, by re-taking the orientation class and notifying DHCD of the Household's intent to renew as required.

2209.6 A Full-Time Student shall not be eligible for the registration list unless they are Dependents of Parents or Guardians whose Household would otherwise meet the requirements for the Inclusionary Zoning Program.

2209.7 An application to renew a registration shall indicate any change in any information reported in the initial application and Households shall notify DHCD of changes to Household size and income as they occur.

2209.8 Each Household shall have only one (1) active registration. If a Household maintains multiple concurrent registrations, all registrations for the individuals in the Household may be nullified.

2209.9 A Household shall not assign or transfer its registration. The member of the Household completing the registration must be named in any Inclusionary Unit deed or lease.

2210 INCLUSIONARY UNIT INITIAL NOTIFICATION

2210.1 If the Notice of Availability identifies a DHCD lottery as the chosen selection method or if the Notice of Availability identifies a marketing plan as the chosen selection method, but as of the date of the Notice of Availability no such marketing plan has been approved by DHCD, then the provisions of this § 2210 shall apply.

2210.2 Within seven (7) days after receipt of confirmation from the Owner of registration with the Housing Locator Website and verification by DHCD that the registration is done satisfactorily, DHCD shall notify registered Households meeting the Household size and Annual Income requirements of the availability of the Inclusionary Unit(s).

2210.3 To be considered in the household selection process for the Inclusionary Unit(s), Households with active registrations under § 2209 who receive the notification referred to in § 2210.2 shall confirm interest in the available Inclusionary Unit(s)

by providing DHCD within seven (7) days after the notification, or such period as identified in the notification, a notice of the Household's interest to rent or purchase the Inclusionary Unit(s) for which the Notice of Availability was filed, in such form as may be approved by DHCD.

2210.4 DHCD will place all Households meeting the income and Household size requirements and having complied with the requirements of § 2210.3 on one (1) of two (2) lists:

(a) The District List, consisting of Households with at least one (1) household member who Lives in the District of Columbia or Works in the District of Columbia, and

(b) The Miscellaneous List, consisting of Households that do not qualify to be placed on the District List.

2211 HOUSEHOLD SELECTION THROUGH DISTRICT LOTTERY

2211.1 No later than fourteen (14) days after DHCD provides the notification referred to in § 2210.2, DHCD shall hold a lottery of those Households fulfilling Household size and Annual Income requirements that indicated interest in the available Inclusionary Unit(s) by providing the required documents or information pursuant to § 2210.3.

2211.2 For each available Inclusionary Unit, DHCD shall randomly select at least four (4) Households and in most cases ten (10) Households through a lottery from the District List. The Households selected shall then be ranked in the following order:

(a) Households residing in the District, who shall then be ranked by the length of time each has been on the District List;

(b) Households not residing in the District with at least one (1) member employed in the District, who shall then be ranked by the length of time each has been on the District List;

(c) If fewer than four (4) Households on the District List meet the Household size and Annual Income standards applicable to the Inclusionary Unit, DHCD shall randomly select additional Households through a lottery from the Miscellaneous List in order to select at least four (4) Households and in most cases ten (10) Households that meet the Household size and Annual Income standards applicable for the Inclusionary Unit. The Households selected shall then be ranked by the length of time each has been on the Miscellaneous List; and

(d) If fewer than four (4) Households that meet the Household size and Annual Income standards are available on both the District List and the

Miscellaneous List, all Households that meet the Household size and Annual Income standards and are interested in the Inclusionary Unit will be given an opportunity to purchase or lease the Inclusionary Unit. The Households selected shall then be ranked by the length of time each has been on the registration list.

2211.3 If none of the Households selected through a lottery purchase or lease the Inclusionary Unit, DHCD shall continue to hold lotteries pursuant to the procedures set forth in § 2210 and this § 2211 until a Household purchases or leases the Inclusionary Unit or the Inclusionary Unit is leased or sold unless the Owner proceeds with a rental or sale of the Inclusionary Unit under § 2211.4.

2211.4 DHCD may permit, in its sole and absolute discretion, the rental or sale of the Inclusionary Unit to a Household that is not registered under § 2209 but has been determined eligible under § 2214, provided that the Owner's marketing plan has been approved by DHCD and:

(a) More than three (3) months have passed since the Notice of Availability was submitted for the Inclusionary Unit and at least one (1) lottery has been conducted pursuant to this § 2211; and

(b) No Household selected through a previous lottery is still within the qualification process for an Inclusionary Unit to be included in such marketing plan.

2211.5 With respect to each Household selected pursuant to a lottery under this § 2211, DHCD shall provide a notice under § 2212.2.

2212 DISTRICT LOTTERY – NOTIFICATION TO HOUSEHOLDS AND OWNERS

2212.1 No later than seven (7) days after a lottery is held, DHCD shall provide to the Owner a written list of the Households selected pursuant to the lottery.

2212.2 No later than seven (7) days after a lottery is held, DHCD shall provide a written notice to each of the Households selected in the lottery of their selection and shall provide to each Household the address, unit type, and maximum rent or purchase price of the Inclusionary Unit for which the lottery was held and the means by which the Household may provide to the Owner the information required by § 2212.3 or § 2212.4.

2212.3 The notice provided pursuant to § 2212.2 for a For Sale Inclusionary Unit shall inform each Household that the Household shall provide the following, as applicable, to the Owner:

(a) Within ten (10) days after the date of the notice, a Household Interest Confirmation Form, as provided by DHCD;

(b) Within thirty (30) days after the date of the notice:

(1) A certificate of completion for the Inclusionary Zoning Program orientation class, or other acceptable confirmation of completion;

(2) A Declaration of Eligibility, as described in § 2214.2;

(3) A Certification of Income, Affordability, and Housing Size, as described in § 2214.3;

(4) A certificate of completion for the homeownership training program, or other acceptable confirmation of completion;

(5) A mortgage pre-approval letter, dated within the last six (6) months from a lender for the Inclusionary Unit for which the Household was selected;

(6) Any other documents requested by DHCD; and

(c) Within sixty (60) days after the date of the notice, an executed sales contract for the For Sale Inclusionary Unit and any other documents requested by DHCD.

2212.4 The notice provided pursuant to § 2212.2 for a Rental Inclusionary Unit shall inform each Household that the Household shall provide the following, as applicable, to the Owner:

(a) Within ten (10) days after the date of the notice, a Household Interest Confirmation Form, as provided by DHCD;

(b) Within thirty (30) days after the date of the notice:

(1) A certificate of completion for the Inclusionary Zoning Program orientation class, or other acceptable confirmation of completion;

(2) A Declaration of Eligibility, as described in § 2214.2;

(3) A Certification of Income, Affordability, and Housing Size, as described in § 2214.3;

(4) Any other documents requested by DHCD; and

(c) Within sixty (60) days after the date of the notice, an executed lease for the Rental Inclusionary Unit and

(d) Any other documents requested by DHCD.

2212.5 A Household failing to meet a deadline set forth in § 2212.3 or § 2212.4 shall be immediately ineligible to purchase or rent the Inclusionary Unit(s) for which they have been selected, unless the Owner extends the deadline in writing.

2213 DISTRICT LOTTERY — MARKETING OF INCLUSIONARY UNITS TO HOUSEHOLDS SELECTED PURSUANT TO THE LOTTERY

2213.1 The Owner shall market an Inclusionary Unit to each of the Households selected under § 2212.1, including, but not limited to, showings and providing other marketing information.

2213.2 The highest ranked Household to confirm interest pursuant to § 2212.3(a) or § 2212.4(a) shall have an exclusivity period of thirty (30) days after the date of the notice provided pursuant to § 2212.2 to lease or purchase the Inclusionary Unit. During this exclusivity period, the Owner may market the Inclusionary Unit to the other Households selected in the lottery, and those other Households may submit the documents required by § 2212, but only the highest ranked Household to confirm interest as described above may lease or purchase the Inclusionary Unit, subject to § 2213.3.

2213.3 If the highest ranked Household that has confirmed interest in the Inclusionary Unit pursuant to § 2212.3(a) or § 2212.4(a) declines to lease or purchase the Inclusionary Unit prior to expiration of the exclusivity period described in § 2213.2, the Household shall provide written notice to the Owner, on a form prescribed by DHCD or otherwise as approved by the Owner and DHCD. Such notice shall terminate the exclusivity period, whereupon other Households selected pursuant to § 2212.1 that have confirmed their interest pursuant to § 2212.3(a) or § 2212.4(a) shall be given the opportunity to lease or purchase the Inclusionary Unit, subject to § 2213.4.

2213.4 Upon receipt of the written notice referred to in § 2213.3 or upon expiration of the exclusivity period referred to in § 2213.2, if the highest ranked Household that has confirmed interest in the Inclusionary Unit pursuant to § 2212.3(a) or § 2212.4(a) does not lease or purchase the Inclusionary Unit, the Households selected pursuant to § 2212.1 that have confirmed interest in the Inclusionary Unit pursuant to § 2212.3(a) or § 2212.4(a), have submitted the documents and information required by § 2212.3(b) or § 2212.4(b) and also meet the Owner's non-income based rental or sale criteria shall be given the opportunity to lease or purchase the Inclusionary Unit, subject to § 2213.5.

2213.5 If the highest ranked Household that has confirmed interest in the Inclusionary Unit does not lease or purchase the Inclusionary Unit, the Households that submitted the documents and information required by §§ 2212.3(a) and (b) or §§ 2212.4(a) and (b) within the thirty (30) day exclusivity period shall be given the opportunity to lease or purchase the Inclusionary Unit, based on their ranking in the lottery selection. No such Household will be given an exclusivity period.

2213.6 If more than one (1) Household has submitted the documents and information required by § 2212.3(b) or § 2212.4(b) on the same day, but after the thirty (30) day exclusivity period, then the Household which has been on the registration list the longest will have priority to lease or purchase the Inclusionary Unit.

2214 VERIFICATION OF HOUSEHOLD ELIGIBILITY; REQUIRED CERTIFICATIONS

2214.1 Except as set forth in § 2208.2(a), an Owner shall sell or rent an Inclusionary Unit only to a Household which:

(a) Has been certified as an Eligible Household by a Certifying Entity, as evidenced by a Certification of Income, Affordability, and Housing Size, that complies with the requirements of this § 2214, and

(b) Has executed and provided a Declaration of Eligibility that complies with the requirements of this § 2214.

2214.2 A Declaration of Eligibility required by this section shall be made on a form prescribed by DHCD and shall include a notarized statement sworn under penalty of perjury by all members of the Household who are at least eighteen (18) years of age that:

(a) The Certification of Income, Affordability, and Housing Size provided to the Owner was obtained from a Certifying Entity;

(b) The Household provided accurate and complete information to the Certifying Entity;

(c) Each member of the Household will occupy the Inclusionary Unit as his or her principal residence;

(d) No member of the Household has an ownership interest in any other housing or the member will divest such interest before closing on the purchase of, or signing the lease for, the Inclusionary Unit and present evidence to DHCD confirming divestment;

(e) If a For Sale Inclusionary Unit, at least one (1) member of the Household who is at least eighteen (18) years of age satisfactorily completed an Inclusionary Zoning Program homeownership training program approved

by DHCD and evidence of such satisfactory completion is attached to the Declaration of Eligibility;

(f) At least one (1) member of the Household who is at least eighteen (18) years of age satisfactorily completed an Inclusionary Zoning Program orientation class approved by DHCD and evidence of such satisfactory completion is attached to the Declaration of Eligibility;

(g) The Household has received a copy of the Inclusionary Development Covenant and understands its rights and obligations thereunder;

(h) If a Rental Inclusionary Unit, the Household has received a copy of the lease rider and understands its rights and obligations thereunder; and

(i) Any other representations required by DHCD as part of the form.

2214.3 A Certification of Income, Affordability, and Housing Size required by this § 2214 shall be made on a form prescribed by DHCD and signed by an authorized representative of a Certifying Entity, certifying:

(a) The Household's Annual Income;

(b) The Household's Annual Income as a percentage of MFI;

(c) The Household's size;

(d) That the Household's size meets the size requirements applicable to the Inclusionary Unit under § 2214.4 upon initial occupancy only;

(e) For a For Sale Inclusionary Unit, that the Household has been advised of the recommendation from DHCD that it should not expend more than forty-one percent (41%) and confirms that it will not expend more than fifty percent (50%) of its Annual Income on mortgage payments, Insurance, real property taxes, Utilities and condominium and homeowner association fees for the applicable Inclusionary Unit;

(f) For a Rental Inclusionary Unit, that the Household has been advised of the recommendation from DHCD that it should not expend more than thirty-eight percent (38%) and confirms that it will not expend more than fifty percent (50%) of its Annual Income on rent and Utilities; and

(g) Any other information or certifications required by DHCD.

2214.4 Unit size eligibility shall be determined based upon the following standards, regardless of the number of bathrooms or the existence of dens or other rooms that are not Bedrooms:

Unit Size (Bedroom)	Minimum Number of Persons in Unit
Studio (0)	1
1	1
2	2
3	3
4	4
5	5
6	5

2214.5 A Certifying Entity shall finalize its review of the information in § 2214.3 and notify the Household within ten (10) days after receipt of all required information and documentation.

2215 CERTIFYING ENTITY

2215.1 A Household shall obtain, and an Owner shall accept, a Certification of Income, Affordability, and Housing Size only from a Certifying Entity.

2215.2 DHCD may approve a Certifying Entity pursuant to a request for proposals process or through an application process.

2215.3 DHCD shall approve a Certifying Entity based on the entity's experience in successfully implementing activities similar to those described in § 2215.4, the capacity and experience of the entity's staff and management, and any other factors DHCD deems relevant.

2215.4 A Certifying Entity shall be responsible for:

(a) Verifying a Household's Annual Income;

(b) Verifying a Household's size;

(c) Verifying that the rent or purchase price of an Inclusionary Unit is affordable to the Household, as indicated in § 2214.3(e) or (f);

(d) Reporting data to DHCD;

(e) Compliance with relevant regulations; and

(f) Any other activities required by DHCD.

2215.5 Community based organizations under contract with DCHD shall be Certifying Entities and in addition to the responsibilities in § 2215.4, shall also counsel and train Households on the Inclusionary Zoning program.

2216 CLOSING AND LEASE SIGNING PROCEDURES

2216.1 Prior to closing, the Owner shall attach the following as an exhibit to the deed conveying a For Sale Inclusionary Unit:

(a) The Declaration(s) of Eligibility provided to the Owner by the Eligible Household purchasing the Inclusionary Unit; or

(b) Such portions of the document designated by DHCD.

2216.2 The Owner shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN INCLUSIONARY DEVELOPMENT COVENANT, DATED AS OF _____, 20__, RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER _____, ON _____ 20__, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

2216.3 Within seventeen (17) days after closing, the new Inclusionary Unit Owner shall provide DHCD with a fully signed copy of the Closing Disclosure and a copy of the new deed (including the Declaration of Eligibility).

2216.4 Prior to the signing of each lease or sales contract, the Owner shall provide a copy of the Inclusionary Development Covenant to the Eligible Household.

2216.5 A lease rider shall be attached to the lease agreement for each Rental Inclusionary Unit. The lease rider shall contain, but shall not be limited to, the following terms:

(a) The Tenant shall provide a Certification of Income, Affordability, and Housing Size in accordance with § 2214.3;

(b) The Tenant shall provide a Declaration of Eligibility in accordance with § 2214.2;

(c) The Tenant shall annually confirm eligibility for the Inclusionary Unit based on the Annual Income requirements and § 2217.6;

(d) The Tenant shall provide the information and documents required by § 2217.1 within the time period specified;

(e) The Inclusionary Unit shall be the principal residence of all Household members who occupy the Inclusionary Unit;

(f) The Tenant shall confirm receipt and acknowledgment of the Inclusionary Development Covenant; and

(g) The Tenant shall not make intentional misrepresentations to DHCD or the Certifying Entity.

2216.6 Within thirty (30) days after the signing of each lease, the Inclusionary Development Owner shall provide DHCD with a fully signed copy of each lease, including a copy of the lease rider and the Declaration of Eligibility.

2216.7 All members of the Household who are eighteen (18) years of age or older shall sign the lease and lease rider.

2216.8 Once a Household signs a lease for a Rental Inclusionary Unit or closes on the purchase of a For Sale Inclusionary Unit, that Household will be removed from the registration list. The Household may re-register pursuant to § 2209.

2217 RESPONSIBILITIES OF RENTAL INCLUSIONARY DEVELOPMENT OWNERS AND TENANTS

2217.1 No later than sixty (60) days before each anniversary of the first day of the lease, an Eligible Household leasing a Rental Inclusionary Unit shall submit to the Inclusionary Development Owner the following information and documents on or with such form as may be prescribed by DHCD:

(a) A statement as to whether the Tenant intends to renew the lease or vacate the Inclusionary Unit; and

(b) If the Tenant states that he or she intends to renew the lease:

(1) The names and ages of each person residing in the unit;

(2) A Certification of Income, Affordability, and Housing Size that meets the requirements of § 2214.3; and

(3) A Declaration of Eligibility that meets the requirements of § 2214.2.

2217.2 The Owner may, in the Owner's discretion, extend the deadline established by § 2217.1 in writing provided that the deadline shall not be extended beyond the last day of the Tenant's lease.

2217.3 If a Tenant is in violation of a lease agreement or rider, the Inclusionary Development Owner may provide to the Tenant a notice to vacate in accordance with D.C. Official Code § 42-3505.01(b), as may be amended.

2217.4 If a notice to vacate is provided pursuant to § 2217.3, the Inclusionary Development Owner may permit the Household to continue to occupy the unit at the current rent for no more than six (6) months after the Inclusionary Development Owner provides to the Tenant the notice to vacate. Acceptance of rent during this period will not constitute a waiver of the violation of the lease or another obligation of tenancy or void the notice to vacate.

2217.5 The Inclusionary Development Owner shall not require payment of rent that is greater than the maximum allowable rent determined in accordance with §§ 2207.2 and 2207.4.

2217.6 At annual recertification, if an Eligible Household's Annual Income is less than or equal to one hundred forty percent (140%) of the higher of

(a) The then-current maximum Annual Income; or

(b) The maximum Annual Income at the time of initial lease execution

for the Inclusionary Unit, the Eligible Household shall be considered income eligible and may remain in the Inclusionary Unit, continuing to pay the amount of rent associated with the MFI Level of that Inclusionary Unit.

2217.7 At annual recertification, if an Eligible Household's Annual Income is greater than one hundred forty percent (140%) of the higher of

(a) The then-current maximum Annual Income; or

(b) The maximum Annual Income at the time of initial lease execution

for the Inclusionary Unit, the Household is no longer income eligible for the original MFI Level of the Inclusionary Unit.

2217.8 If a Household is no longer income eligible for the original MFI Level of the Inclusionary Unit, as described in § 2217.7, and the Inclusionary Development has Inclusionary Units with higher MFI Levels, and if the Household would qualify for such higher MFI Level Inclusionary Unit, the existing Inclusionary Unit may be re-designated as a higher MFI Level Inclusionary Unit, allowing the Household to remain in the same Inclusionary Unit. However, the original mix of MFI Levels must be restored within the Inclusionary Development as soon as

possible, so the property manager should re-designate a new unit with the same number of Bedrooms to replace the lower MFI Level Inclusionary Unit that was re-designated when one becomes available. The property manager or Inclusionary Development Owner must notify DHCD in writing that a re-designation is necessary as soon as it is determined and identify the unit to be re-designated.

2217.9 If a Household is no longer income eligible for the original MFI Level of the Inclusionary Unit, as described in § 2217.7, and the Inclusionary Development does not have Inclusionary Units with higher MFI Levels for which the Household qualifies, the Household may remain in the Inclusionary Unit if the Household agrees to pay market rate rent. In such case, the Inclusionary Unit may be re-designated as a Market Rate Unit, allowing the Household to remain in the same unit. However, the original mix of MFI Levels must be restored within the Inclusionary Development as soon as possible, so the property manager should re-designate a new unit with the same number of Bedrooms to replace the Inclusionary Unit that was re-designated when one becomes available. The property manager or Inclusionary Development Owner must notify DHCD in writing that a re-designation is necessary as soon as it is determined and identify the unit to be re-designated.

2217.10 Annually within fifteen (15) days after the anniversary of the first lease agreement for an Inclusionary Unit in a Rental Inclusionary Development, the Inclusionary Development Owner shall submit a report to DHCD setting forth the following information for the entire Rental Inclusionary Development:

(a) The number of Rental Inclusionary Units, by Bedroom count, that are occupied;

(b) The number of Rental Inclusionary Units, by Bedroom count, that were vacated during the previous twelve (12) months;

(c) For each Rental Inclusionary Unit vacated during the previous twelve (12) months, the unit number of the unit that was vacated, the number of days the unit was vacant (or a statement that the unit is still vacant), and the date on which a Notice of Availability was provided to DHCD pursuant to § 2206, if applicable;

(d) For each occupied Rental Inclusionary Unit, the names of all occupants, whether each occupant is over or under the age of eighteen (18), the Household size, and the Household's Annual Income as of the date of the most recent Certification of Income, Affordability, and Housing Size;

(e) A sworn statement that to the best of the Inclusionary Development Owner's information and knowledge, the Annual Income of each Eligible Household occupying each Rental Inclusionary Unit complies with the income limits applicable to the Rental Inclusionary Unit;

(f) A copy of each new and revised Certification of Income, Affordability, and Housing Size provided in accordance with § 2214.3 or § 2217.1;

(g) A copy of each new and revised Declaration of Eligibility provided in accordance with § 2214.2 or § 2217.1;

(h) A copy of each lease signed in the preceding year;

(i) A certification that for each Rental Inclusionary Unit that became available over the course of the reporting year Households were selected to occupy the Rental Inclusionary Units pursuant to a lottery or the approved marketing plan; and

(j) Which, if any, units were re-designated and to which MFI level or to market rate.

2218 RESPONSIBILITIES OF INCLUSIONARY UNIT OWNERS

2218.1 Annually on the anniversary of the closing date for a For Sale Inclusionary Unit, the Inclusionary Unit Owner shall submit to DHCD a certification on such form as may be prescribed by DHCD of continued unit occupancy as the For Sale Inclusionary Unit Owner's principal residence.

2219 DETERMINATION OF MAXIMUM RESALE PRICE

2219.1 The Maximum Resale Price ("MRP") shall be equal to the greater of:

(a) The original purchase price during the first year of ownership, or (for all subsequent years) the Maximum Resale Price of the previous year, multiplied by the annual rate of change in the MFI over a ten year period starting with the first MFI published by HUD after the purchase of the Inclusionary Unit by the Inclusionary Unit Owner. The resulting formula for the new Maximum Resale Price in any given year "n" is therefore $MRP_n = \underline{MRP_{n-1} +} (MRP_{n-1} \times F_n)$ ("Formula"), where:

(1) n = is the current MFI year starting from the most recent publication of the MFI by HUD; and

(2) Fn = the rate of appreciation of the current MFI of any given year "n." Fn is calculated by determining the ten year compounded annual growth rate of the MFI; or

(b) The maximum purchase price for the same unit type from the current published Maximum Price and Purchase Schedule as of the date of the Notice of Availability.

2219.2 Upon the submission of a Notice of Availability by an Inclusionary Unit Owner to DHCD, the Maximum Resale Price may be adjusted for the value of all the Eligible Capital Improvements and Eligible Replacement and Repair Costs made to the property during that Inclusionary Unit Owner's ownership of the Inclusionary Unit to the extent they are permanent in nature and add to the market value of the property at the percentage of cost indicated:

(a) Eligible Capital Improvements, which shall be valued at one hundred percent (100%) of reasonable cost, as determined by DHCD, and

(b) Eligible Replacement and Repair Costs, which shall be valued at fifty percent (50%) of reasonable cost, as determined by DHCD.

2219.3 The Owner of a For Sale Inclusionary Unit subject to an Inclusionary Development Covenant recorded prior to the effective date of these regulations may choose to be subject to the terms of § 2219.1 effective as of

(a) The recordation date of the Inclusionary Development Covenant; or

(b) The date of submission of the Notice of Availability,

depending on which time will result in a higher Maximum Resale Price.

2219.4 Ineligible Costs shall not be considered in determining the value of Eligible Capital Improvements and Eligible Replacement and Repair Costs.

2219.5 The value of improvements may be determined by DHCD based upon documentation provided by the Inclusionary Unit Owner or, if not provided, upon a standard value established by DHCD.

2219.6 DHCD may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if DHCD finds that the improvement diminished or did not increase the fair market value of the Inclusionary Unit.

2219.7 DHCD may reduce the value of an improvement claimed by the Inclusionary Unit Owner if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the improvement.

2219.8 The Owner shall permit a representative of DHCD to inspect the Inclusionary Unit upon request to verify the existence and value of any improvements that are claimed by the Inclusionary Unit Owner.

2219.9 An allowance may be made in the Maximum Resale Price for the payment of legal fees, closing costs (including, but not limited to, title insurance and filing

fees) and real estate broker or salesperson fees associated with the sale of the Inclusionary Unit if written approval is obtained from DHCD.

2219.10 The value of personal property transferred to a purchaser in connection with the resale of a For Sale Inclusionary Unit shall not be considered part of the sales price of the For Sale Inclusionary Unit for the purposes of determining whether the sales price of the For Sale Inclusionary Unit exceeds the Maximum Resale Price.

2220 RENTAL OF A FOR SALE INCLUSIONARY UNIT

2220.1 An Inclusionary Unit Owner may temporarily lease a For Sale Inclusionary Unit in accordance with the provisions of this § 2220 if such lease is not otherwise prohibited by applicable cooperative, condominium, or homeowner association rules.

2220.2 Upon written submission of a request for a waiver of the principal occupancy requirement for a temporary absence from an Inclusionary Unit and supporting documentation, DHCD may permit an Inclusionary Unit Owner to temporarily lease a For Sale Inclusionary Unit for a period not to exceed twelve (12) months per request. DHCD shall approve or disapprove the request in its sole discretion considering the evidence before it. Requests to lease a For Sale Inclusionary Unit shall be based on a temporary need of the Owner to vacate the Inclusionary Unit, with intent to return. For example, such needs may include military service or another reason causing the Owner to temporarily leave the District metropolitan area.

2220.3 If the request or any subsequent renewal is denied by DCHD the Inclusionary Unit Owner must reoccupy the unit as their principal residence within ninety (90) days after the denial or sell the unit in accordance with § 2206 within one hundred eighty (180) days after the denial.

2220.4 An Inclusionary Unit Owner who is leasing a For Sale Inclusionary Unit in accordance with this § 2220 shall select tenant Households pursuant to § 2208.

2220.5 Inclusionary Unit Owners that are approved by DHCD to temporarily lease their For Sale Inclusionary Units, and tenants of these For Sale Inclusionary Units, shall comply with the requirements in § 2217.

2220.6 An Inclusionary Unit Owner permitted to temporarily lease a For Sale Inclusionary Unit shall provide DHCD with written notification within five (5) days when a tenant takes possession and a copy of the lease and shall provide DHCD with written notification within five (5) days when a tenant vacates the For Sale Inclusionary Unit.

2220.7 The maximum rent charged during a temporary lease of a For Sale Inclusionary Unit shall be the rent set forth in the Rent and Price Schedule in place on the beginning date of the lease.

2220.8 A condominium fee or assessment that a tenant of a For Sale Inclusionary Unit leased under this § 2220 is required to pay pursuant to the terms of his or her lease shall be considered part of the rent of the tenant when determining whether the rent charged is consistent with the Maximum Rent and Purchase Price Schedule.

2221 CONVERSION OF A RENTAL INCLUSIONARY DEVELOPMENT TO A FOR SALE INCLUSIONARY DEVELOPMENT

2221.1 No condominium or cooperative documents may be filed to convert a Rental Inclusionary Development to a condominium or cooperative until a new application for a Certificate of Inclusionary Zoning Compliance is filed by the Inclusionary Development Owner and approved by DCRA and a Certificate of Inclusionary Zoning Compliance is issued by DCRA pursuant to the provisions set forth in § 2203.

2221.2 Following the issuance of a new Certificate of Inclusionary Zoning Compliance under this § 2221, the Inclusionary Development Owner shall, if requested by DHCD, record a new or amendatory Inclusionary Development Covenant, applicable to a For Sale Inclusionary Development that complies with § 2204 prior to the conveyance of any For Sale Inclusionary Unit.

2221.3 The application for a Certificate of Inclusionary Zoning Compliance filed under this § 2221 shall comply with § 2202.4.

2221.4 All conversions of use of a Rental Inclusionary Development to a condominium or cooperative must comply with the conversion procedures established in the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code §§ 42-3401.01 *et seq*.) ("Conversion Act").

2221.5 Tenants occupying Rental Inclusionary Units converted to For Sale Inclusionary Units shall have the same rights as are provided in the Conversion Act.

2221.6 The offered sales price for a Rental Inclusionary Unit converted to a For Sale Inclusionary Unit shall not exceed the applicable maximum purchase price stated on the Price and Rent Schedule that is in effect on the date that the Tenant receives the first notice of conversion pursuant to the Conversion Act.

2221.7 If the Tenant does not purchase the Inclusionary Unit within the time provided in the Conversion Act, and the Tenant is not entitled to remain in the Inclusionary Unit pursuant to § 208 of the Conversion Act, the Inclusionary Development Owner shall furnish DHCD with a Notice of Availability pursuant to § 2206 and register the Inclusionary Unit with the Housing Locator Website.

2222 SALE BY HEIRS

2222.1 If an Inclusionary Unit Owner dies, at least one (1) heir, legatee, or other person taking title to the Inclusionary Unit by will or by operation of law shall occupy the Inclusionary Unit if the Household of such person meets the requirements of these regulations. If the Household of such person does not meet the requirements of these regulations, such person shall provide DHCD with a Notice of Availability in accordance with § 2206.

2223 FORECLOSURE

2223.1 If title to a For Sale Inclusionary Unit is transferred following foreclosure by, or deed-in-lieu of foreclosure to, a mortgagee in first position, or a mortgage in first position is assigned to the Secretary of HUD, the Inclusionary Development Covenant shall be released against the Inclusionary Unit in accordance with the provisions of the Zoning Commission's Inclusionary Zoning Regulations (11-C DCMR Chapter 10).

2224 VIOLATIONS AND OPPORTUNITY TO CURE

2224.1 Prior to exercising the authority to revoke a building permit or Certificate of Occupancy pursuant to § 1041.04 of the Inclusionary Zoning Act, DCRA shall provide to the person who is alleged to have violated the Inclusionary Zoning Act or this chapter a written notice setting forth with particularity the alleged violation and shall provide to that person at least thirty (30) days to cure the alleged violation. If the person cures the violation within the designated cure period, DCRA shall not exercise its authority to revoke a building permit or Certificate of Occupancy pursuant to § 1041.04 of the Inclusionary Zoning Act. DCRA may extend the designated cure period for good cause shown.

2224.2 DCRA shall not revoke a building permit or Certificate of Occupancy pursuant to § 1041.04 of the Inclusionary Zoning Act except for a willful, substantial violation of the Inclusionary Zoning Act or this chapter.

2225 WAIVER

2225.1 The Director of DHCD may, at his or her discretion, upon the request of an agency of the District (including DHCD) or the written request of an Owner of an Inclusionary Development or Unit, a lessee of an Inclusionary Unit, or a Household seeking to own or rent an Inclusionary Unit (the "Requester"), waive one or more of the provisions of this chapter in DHCD's sole and absolute discretion if waiver of the provision:

(a) Supports the general purposes of the Inclusionary Zoning Program as described in 11-C DCMR § 1000.1, and

(b) Would not directly or indirectly grant relief from any requirement of or permit any act prohibited by the Zoning Commission's Inclusionary Zoning Regulations or Inclusionary Zoning Act.

2299 DEFINITIONS

2299.1 When used in this chapter, the following words and phrases shall have the meanings ascribed below:

Annual Income – annual income as defined in 24 CFR § 5.609 as of the effective date of these amended regulations.

Bedroom – a room with immediate access to an exterior window and a closet that is designated as a "bedroom" or "sleeping room" on construction plans submitted with an application for a building permit for an Inclusionary Development.

Certificate of Inclusionary Zoning Compliance - a document issued by the DCRA's Office of the Zoning Administrator certifying that an Inclusionary Development meets the Inclusionary Zoning Program requirements.

Certificate of Occupancy - a document issued by the DCRA's Office of the Zoning Administrator certifying a building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

Certifying Entity – DHCD or a third party entity approved by DHCD pursuant to § 2215.

DCRA – the District Department of Consumer and Regulatory Affairs.

Dependent – an individual as defined in § 152 of the United States Internal Revenue Code (26 USC § 152).

District – the District of Columbia.

DHCD – the District Department of Housing and Community Development.

Eligible Capital Improvement – major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Inclusionary Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) removal of toxic substances, such as asbestos, lead, mold, or mildew; (vii)

insulation or upgrades to double-paned windows or glass fireplace screens; and (viii) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods.

Eligible Household – a Household with a total Annual Income adjusted for Household size equal to or less than fifty percent (50%) of the MFI, sixty percent (60%) of the MFI, eighty percent (80%) of the MFI, or other percentage of the MFI established by an order approving a Planned Unit Development pursuant to Chapter 3 of Title 11-X DCMR.

Eligible Replacement and Repair Cost – in-kind replacement of existing amenities and repairs and general maintenance that keep an Inclusionary Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (iv) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (v) replacement of window sashes; (vi) fireplace maintenance or in-kind replacement; (vii) heating system maintenance and repairs; and (viii) lighting system.

For Sale Inclusionary Development – the portion of an Inclusionary Development that includes or will include Inclusionary Units that will be sold to Households.

For Sale Inclusionary Unit – an Inclusionary Unit that will be or has been sold to a Household.

Full Time Student - a person who is enrolled in a class load that is considered full-time for day students under the standards and practices of the college or university attended by that person.

Guardian - a person who is appointed by court order and who is charged with the care, custody, and responsibility of a person under the age of eighteen (18) years.

Household – all persons who will occupy the Inclusionary Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

Housing Locator Website – a website established or designated by the District or DHCD pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; D.C. Official Code §§ 42-2131 *et seq.*).

HUD – the United States Department of Housing and Urban Development.

Inclusionary Development – a development subject to the provisions of the Inclusionary Zoning Program.

Inclusionary Development Covenant – the Inclusionary Development Covenant described in § 2204.

Inclusionary Development Owner – a person, firm, partnership, association, joint venture, corporation, other entity, or government with a property interest in land or improvements that is or will be occupied by an Inclusionary Development, but excluding Inclusionary Unit Owners.

Inclusionary Unit – a dwelling unit set aside for sale or rental as required by the Inclusionary Zoning Program.

Inclusionary Unit Owner – a Household member or members that own(s) a For Sale Inclusionary Unit.

Inclusionary Zoning Act – the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code §§ 6-1041.01 *et seq.*).

Inclusionary Zoning Program – all of the provisions of the Zoning Commission's Inclusionary Zoning Regulations, the Inclusionary Zoning Act, and this Chapter, including policies adopted by DHCD pursuant thereto.

Ineligible Costs – normal maintenance, general repair work, personal or decorative items or work, cosmetic enhancements, installations with limited useful life spans, and non-permanent fixtures not eligible for capital improvement credit as determined by DHCD. Such costs generally include: (i) cosmetic enhancements such as fireplace tiles and mantels, decorative wall coverings or hangings, window treatments (for example, blinds, shutters, and curtains), installed mirrors, shelving, and refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, and portable appliances; and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, and light bulbs.

Insurance – hazard insurance for single family For Sale Inclusionary Units and mortgage insurance for any For Sale Inclusionary Unit.

Lives in the District of Columbia - the situation where a person maintains a place of abode in the District as his or her actual, regular, and principal place of residence, as reasonably determined by DHCD or its designee.

Market Rate Unit – a unit in an Inclusionary Development that is not an Inclusionary Unit.

Maximum Resale Price – the Maximum Resale Price described in § 2219.

Median Family Income, or MFI – the median family income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by HUD, adjusted for household size without regard to any adjustments made by HUD for the purposes of the programs it administers. Adjustments of Median Family Income for household size shall be made as prescribed in § 2(1) of the Housing Production Trust Fund Act, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(1)).

MFI Level – the percentage of MFI referred to in the Inclusionary Zoning Act and/or Zoning Regulations (11-C DCMR §§ 1000 *et seq*.), for example, 50% MFI, 60% MFI or 80% MFI.

New Communities Initiative – a District program designed to revitalize severely distressed subsidized housing and redevelop neighborhoods into vibrant mixed-income communities.

Notice of Availability – the notice required to be provided to DHCD by an Owner in accordance with § 2206.

Owner – both an Inclusionary Development Owner and an Inclusionary Unit Owner.

Parent - the natural or adoptive mother or father of a person.

Rent and Price Schedule – the rent and price schedule published in the *D.C. Register* pursuant to § 103(b) of the Inclusionary Zoning Act.

Rental Inclusionary Development – the portion of an Inclusionary Development that includes, or will include, Inclusionary Units that will be leased to Households.

Rental Inclusionary Unit – an Inclusionary Unit that will be or has been leased to a Household.

Tenant – a Household member or members that occupy a Rental Inclusionary Unit.

Utilities – water, sewer, electricity, natural gas, trash, and any other fees required by the Inclusionary Development Owner, property manager, or condominium or homeowners' association in order to occupy the Inclusionary Unit, including but not limited to mandatory condominium, homeowners' association, amenity or administrative fees.

Works in District of Columbia - the situation where a person reports to work in the District, irrespective of any travel for work or telecommuting, as reasonably determined by DHCD or its designee.

EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE ON AFRICAN AFFAIRS

Commission on African Affairs

Invites you to the monthly Commission meeting that will be held on the following date:

Wednesday, January 3, 2018
6-8pm

Address: Franklin D. Reeves Center of Municipal Affairs
2000 14th Street, NW, 6th floor
Washington, DC 20001

Agenda

I. Opening – Call to Order

II. MOAA Updates and Announcements

III. Chair Announcements

IV. Public Comments

V. Adjournment (8:00pm)

Meetings are held on the first Wednesday of every month and are open to the public

For more Information, email us at oaa@dc.gov or call us at 202-727-5634

CARLOS ROSARIO PUBLIC CHARTER SCHOOL

REQUEST FOR QUOTES

Android Tablets

RFQ requested for 80 Android tablets for our Spanish GED and Citizenship programs. Minimum specifications include: Octa-core 1.8 GHz processor; 2 MP front-facing and 8 MP rear-facing; 2560x1440 video; AMOLED resolution; Wifi, Bluetooth and 4G/LTE capability; 3 GB RAM; 32 GB Internal memory; microSD expansion card slot; up to 128 GB expandable memory. Pricing must include a data plan for each tablet. Quotes due to Gwen Ellis by January 13, 2018 via email at gellis@carlosrosario.org.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PUBLIC MEETINGS

Green Building Advisory Council

The Green Building Advisory Council (GBAC), which is chaired by the Department of Energy and Environment (DOEE), meets the first Wednesday of each even numbered month throughout the year. Meetings are open to the public and are minimally attended by GBAC members and staff from District agencies to provide regular updates about how the District is adhering to the Green Building Act. In addition, the GBAC will be presented with any exemption requests and shall provide recommendation of ruling to the Director of the Department of Energy and Environment.

All meetings shall take place at the following location:

District Department of Energy & Environment
1200 First St. NE
Washington DC 20002
Arrive to the 5th floor to sign in with the receptionist and they will call someone to escort you to the meeting location, in room 718.
Conference Call: 866-738-0635; Participant Code: 7488157

Meetings will be held on the following dates and times in 2018:

February 7th, 3pm-5pm
April 4th, 3pm-5pm
June 6th, 3pm-5pm
August 1st, 3pm-5pm
October 3rd, 3pm-5pm
December 5th, 3pm-5pm

Contact:

Jay Wilson, RA, LEED AP BD+C
Green Building Program Analyst
Urban Sustainability Administration
Department of Energy & Environment
Government of the District of Columbia
1200 First Street, NE 5th Floor
Washington, DC 20002
(202) 535-2460 – Direct

FRIENDSHIP PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Global Freshman Academy at Arizonian State University in partnership with EdX

Friendship PCS intends to enter into a sole source contract with Global Freshman Academy at Arizonian State University in partnership with EdX to offer Friendship School students access to a duel enrollment program via online college courses. The decision to sole source is based on Arizonian State University in partnership with EdX's focus on removing barriers and increasing access to the first year of college for students. Global Freshman Academy is a collection of first-year courses that fulfill a specific set of general education requirements, including Mathematical Studies, English, Humanities, Arts and Design, Social-Behavioral Sciences, and Natural Sciences. Students enrolled in GFA courses will receive college academic credit after they've successfully passed their course(s), and they can take GFA courses multiple times if necessary to ensure college readiness. Since payment for academic credits are only charged once the student has passed the class(es), GFA is an excellent risk-free option for students allowing them to jump-start their first year of college. The estimated yearly cost is approximately $30,000. The contract term shall be automatically renewed for the same period unless either party, 60 days before expiration, gives notice to the other of its desire to end the agreement.

Questions can be addressed to: ProcurementInquiry@friendshipschools.org

Granite State College

Friendship PCS intends to enter into a sole source contract with **Granite State College** to offer Friendship School students access to a dual enrollment program via online college courses. Granite State College is accredited by the Commission on Institutions of Higher Education of New England Association of Schools and Colleges. The decision to sole source is based on Granite State College's ability to provide unique programs customized for Friendship Public Charter School students. Their responsive delivery model enables them to offer a greater number of courses to a more diverse group of students increasing educational opportunities for students. The estimated yearly cost is approximately $30,000. The contract term shall be automatically renewed for the same period unless either party, 60 days before expiration, gives notice to the other of its desire to end the agreement.

Questions can be addressed to: ProcurementInquiry@friendshipschools.org

HEALTH BENEFIT EXCHANGE AUTHORITY

NOTICE OF PUBLIC MEETING

Executive Board of the Health Benefit Exchange Authority

The Executive Board of the Health Benefit Exchange Authority, pursuant to the requirements of Section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-0094), hereby announces a public meeting of the Executive Board. The meeting will be held at 1225 I Street, NW, 4th Floor, Washington, DC 20005 on **Wednesday, January 10, 2018 at 5:30 pm**. The call in number is Call in line: 1-650-479-3208 access code 852 200 175. The Executive Board meeting is open to the public.

If you have any questions, please contact Debra Curtis at (202) 741-0899.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FUNDING AVAILABIITY

The Department of Health Care Finance (DHCF) announces a Notice of Funding Availability (NOFA) for grant funds under the Fiscal Year 2018 Budget Support Act of 2017, Subtitle C, Section 5032 to make grant funds available to a college of pharmacy located in the District to create and maintain a Medication-assisted Treatment Genomic Registry. The Director of DHCF has authority to issue grants under 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(4) (2012 Repl.).

For purposes of the proposed grant, a "Medication-assisted Treatment Genomic Registry" is a central location for the submission of genetic test information that health care providers can use in the provision of medication assisted treatment, clinical decision support for induction, stabilization, and maintenance treatment and genomic-guided medication therapy management for opioid addiction.

A Request for Applications (RFA) for the below opportunity will be released under a separate announcement with guidelines for submitting the application, review criteria and DHCF terms and conditions for applying for and receiving funding. The anticipated performance period for this grant is March 1st, 2018 to September 30th, 2018.

Description of Opportunity:

Medication-assisted Treatment Genomic Registry Grant: One (1) grant of $250,000 is anticipated to be awarded to a college of pharmacy located in the District to create and maintain a Medication-assisted Treatment Genomic Registry.

Eligibility Requirements:

All applicants must also be registered organization in good standing with the DC Department of Consumer and Regulatory Affairs (DCRA), Corporation Division, the Office of Tax and Revenue (OTR), the Department of Employment Services (DOES), and the Internal Revenue Service (IRS), demonstrate Clean Hands certification at the time of application and comply with all of the requirements of the Grant Administration Act as amended.

In addition, for the Medication-assisted Treatment Genomic Registry Grant, eligible applicants must be a college of pharmacy located in the District of Columbia and accredited by the Accreditation Council for Pharmacy Education.

A Request for Application (RFA) will be released after January 8, 2018. The RFA package will be available online at http://opgs.dc.gov/page/opgs-district-grants-clearinghouse and the DHCF website. Hard copies of the RFA package may be obtained at DHCF, 441 4th St.

N.W., Ste 900S, Washington, D.C. 20001, 9th floor reception desk daily from 9:00 am until 4:00 pm. All eligible applications are reviewed through a competitive process.

DHCF will hold a pre-proposal conference on Wednesday, January 17, 2018 at 12:00pm at DHCF, 441 4th St. N.W., Main Street Conference Room on the 10th Floor, Washington, D.C. 20001, Washington, D.C. 20001. Prospective applicants must provide an email address to DHCF to receive notification of amendments or clarifications to the RFA.

Completed applications must be received on or before 4:00 pm Eastern Time, February 9, 2018. Applications must be submitted in-person at DHCF, 441 4th St. N.W., Ste 900S, Washington, D.C. 20001, 9th floor reception desk. No applications will be accepted after the submission deadline.

For additional information regarding this NOFA, please contact Wanda Foster, Staff Assistant, DHCF, Health Care Reform and Innovation Administration at wanda.foster@dc.gov, or (202) 442-4623.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-151

September 21, 2017

VIA ELECTRONIC MAIL

Mr. William Matzelevich

RE: FOIA Appeal 2017-151

Dear Mr. Matzelevich:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response you received from the Department of General Services ("DGS") to a request you submitted under the DC FOIA.

Background

On August 14, 2017, you sent a three-part FOIA request to DGS for records relating to a contract. One part of your request was for a "line item summary" of the contract.

On August 14, 2017, DGS responded to your request by asking for clarification about what you meant by "line item summary." That same day you clarified what you meant, by citing to an example from another contract. On August 15, 2017, DGS communicated to you that it would contact a program manager and get back to you. DGS subsequently provided you with copies of the contract, portions of which were redacted.

You appealed DGS's response by letter dated September 6, 2017. Your appeal states that you had not yet received a "line item summary" for the contract that you requested. Additionally, your appeal contends that the portions of the contract provided to you had redactions which were not labeled with a DC FOIA exemption, as required by the D.C Code.[1]

This Office notified DGS of your appeal. DGS responded to this Office and explained that on September 12, 2017, it had provided you with copies of the contract, request for proposals, and amendments to the contract.[2] DGS's response also indicates that after communicating with you on the phone to understand what records you sought in relation to the line item information, DGS

[1] DGS's response indicates this redaction was made pursuant to D.C. Official Code § 2-534 (a)(1). Your appeal appears to challenge only the labeling and not the redaction itself; as a result, this decision will not address this issue further.
[2] A copy of DGS's response is attached.

determined that it possessed no such records. DGS's response indicates that you "understood that [DGS] had no record. . ."

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

We have interpreted your appeal as challenging the adequacy of DGS's search for the records you requested – as you cited specific examples of email attachments that you believe should have been included in DGS's production but were not. DC FOIA requires that a search be reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This

first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

Here you requested a "line item summary" relating to a specific contract. DGS's FOIA officer asserted in response to your appeal that she reached out to you to make reasonable efforts to identify the record you were requesting. *See* 1 DCMR § 402.5. Based on her conversations with you and a DGS employee with programmatic experience, she determined that no records of the type requested exist. DGS determined that no relevant record repository existed to search. We accept DGS's determinations as reasonable, and conclude that DGS's response to your request was adequate.

Creating New Records

An adequate search does not require FOIA officers to act as personal researchers on behalf of requesters. *See, e.g., Bloeser v. DOJ*, 811 F. Supp. 2d 316, 321 (D.D.C. 2011) ("FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters…"); *Lamb v. IRS*, 871 F. Supp. 301, 304 (E.D. Mich. 1994) (finding requests outside scope of FOIA when they require legal research, are unspecific, or seek answers to interrogatories).

DGS has no obligations under FOIA to create a new record. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36. "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). If DGS did not have a "line item summary" record regarding this contract at the time that you requested it, then DGS is not obligated to create the record for you.

Conclusion

Based on the foregoing, we affirm DGS's response. Your appeal is dismissed.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Johnson, DGS (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-152

September 22, 2017

VIA ELECTRONIC MAIL

Mr. Darragh Inman

RE: FOIA Appeal 2016-152

Dear Mr. Inman:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested, on behalf of your client, under the DC FOIA.

Background

On July 27, 2017, you submitted a request to MPD for "[a]ny and all additional notes, investigative reports, writings, or materials pertaining to the investigation and prosecution of the incident described [in a specified police report]." You demonstrated that you were seeking the documents on behalf of your client who was the victim of the reported incident.

On August 31, 2017, MPD indicated that your request was granted in part and denied in part. MPD asserted that it denied your request with respect to witness statements on the basis that disclosure of those statements would constitute a clearly unwarranted invasion of privacy pursuant to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C). MPD further stated that it could not release the statements of other parties without their authorization.

By letter dated September 8, 2017, you appealed MPD's denial, contending that you need the records to help prepare for a civil negligence suit. You reiterate that you are seeking statements from two witnesses and the individual who pled guilty to the crime against your client, as well as the full investigative file of the investigating officer. You assert that it is in the public interest to expedite your client's efforts to seek justice through the legal system, and that the two witnesses and the defendant will be subject to subpoena power in the forthcoming civil trial.

On September 22, 2017, MPD sent its response to your appeal to this Office.[1] Therein, MPD reasserted that responsive documents are protected from disclosure pursuant to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C). MPD noted that your appeal appeared to expand the records

[1] MPD's response is attached to this decision.

sought by your initial request. As a result, MPD stated that it would process the expanded aspects of your appeal as a new FOIA request.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Although MPD asserts that it will newly process certain aspects of your request, this determination will address whether the witnesses' and defendant's statements are exempt from disclosure under DC FOIA because releasing them would constitute an unwarranted invasion of privacy.

D.C. Official Code §§ 2-534(a)(2) ("Exemption 2") and (a)(3)(C) ("Exemption 3(C)") of the DC FOIA relate to personal privacy. Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Exemption 3(C) provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." While Exemption 2 requires that the invasion of privacy be "clearly unwarranted," the word "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption 2. See *United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Exemption 3(C) is applicable to records pertaining to investigations conducted by the MPD if the investigations focus on acts that could, if proven, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States Dep't of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well."). Since the records at issue involve statements compiled for the purpose of a criminal investigation, Exemption 3(C) applies to your request.

Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in disclosing the disciplinary files. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756. On the issue of privacy interests, the D.C. Circuit has held:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C).[2] "The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators."

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

"[A]s a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *Reporters Comm. For Freedom of Press*, 489 U.S. at 780. As a result, this Office finds that there is a substantial privacy interest in the statements of the witnesses and defendant.

The second part of a privacy analysis examines whether the individual privacy interest is outweighed by the public interest. The Supreme Court has stated that this analysis must be conducted with respect to the central purpose of FOIA, which is:

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Reporters Comm. for Freedom of Press, 489 U.S. at 772-773.

Courts have consistently held that the purpose of FOIA is to inform citizens of "what their government is up to." *Id.* "This inquiry . . . should focus not on the general public interest in the subject matter of the FOIA request, but rather on the incremental value of the specific information being withheld." *Schrecker v. United States Dep't of Justice*, 349 F.3d 657, 661 (D.C. Cir. 2003) (internal citations omitted). Information is deemed valuable under FOIA when it would permit public scrutiny of an agency's behavior or performance. *Id.* at 666.

[2] Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.

Here, you argue that it is in the public interest to expedite your client's civil suit. You further assert that the witnesses and the defendant should have diminished protection under FOIA because they will be subject to subpoena power in a forthcoming civil trial. Courts have consistently held that a private interest in connection with litigation is not relevant in determining whether disclosure is warranted under FOIA. *See Massey v. FBI*, 3 F.3d 620, 625 (2d Cir. 1993) ("[The] mere possibility that information may aid an individual in the pursuit of litigation does not give rise to a public interest."); *Joslin v. U.S. Dep't of Labor*, No. 88-1999, slip op. at 8 (10th Cir. Oct. 20, 1989) (finding no public interest in release of documents sought for use in private tort litigation).

In light of the case law discussed above, you have not articulated a public interest as contemplated by the FOIA statute in that the requested records relating to witness and defendant statements would appear to reveal little or nothing about MPD's conduct as an agency. This Office therefore finds that there is no public interest in disclosure of the documents at issue, whereas there is a cognizable privacy interest. Further, you have not provided to MPD an authorization from the witnesses or defendant to grant you permission to access to these records. As a result, MPD properly withheld the records pursuant to Exemption 3(C).

Conclusion

Based on the foregoing, we affirm MPD's decision and dismiss your appeal.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-153

September 22, 2017

VIA ELECTRONIC MAIL

Mr. Harold Christian

RE: FOIA Appeal 2017-153

Dear Mr. Christian:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that the Office of the Chief Financial Officer ("OCFO") failed to respond to your request for certain records.

After you filed your appeal, OCFO advised this Office by email on September 20, 2017, that it does not possess records that are responsive to your request.[1] OCFO copied you on this email. Since your appeal was based on OCFO's lack of response and OCFO has now responded, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to OCFO's position that no responsive records exist.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Stacie Y.L. Mills, Assistant General Counsel, OCFO (via email)

[1] A copy of OCFO's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-154

September 25, 2017

VIA ELECTRONIC MAIL

Mr. William Matzelevich

RE: FOIA Appeal 2017-154

Dear Mr. Matzelevich:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the failure of the Office of the Chief Financial Officer ("OCFO") to respond to a request you submitted under the DC FOIA.

Background

On August 6, 2017, you sent to OCFO a FOIA request for "All communications, emails and documents between the Office of the Chief Financial Officer and other DC departments to include but limited to the Department of Parks and Recreation (DPR) and the Department of General Services (DGS), ANC Council members, and DC City Council members used to develop a budget or otherwise earmark funds for the 'Hearst Park & Pool Improvement Project' (or as may have been otherwise named) since January 1, 2013 to present."

On August 28, 2017, OCFO spoke with you pursuant to 1 DCMR § 402.5 to modify your request to permit the identification and location of the records you were seeking. It appears that you did not modify your request despite OCFO's request. OCFO then invoked its right to an extension until September 11, 2017 to respond to your request.

On September 12, 2017, you filed this appeal, challenging OCFO's failure to issue a final response to your request.

This Office notified OCFO of your appeal. On September 20, 217, OCFO responded to this Office and explained that the search:

> would produce a voluminous amount of records due to the time span (4 years), indefinite number of e-mail boxes to be searched (staff of the Office of the Chief Financial Officer, Department of Parks and Recreation, Department of General Services, ANC Members, and City Council members, as well as all staff engaged in budget development and funding for the "Hearst Park and Pool Improvement Project").

The OCFO's response avers that "it is the requester's responsibility to frame requests with sufficient particularity to ensure that searches reasonably describe the desired records." From this, OCFO concluded that fulfilling your request would be "unduly burdensome" and would "require an unreasonable amount of effort to complete."

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Constructive Denial

You submitted your request to OCFO on August 6, 2017. OCFO failed to provide all responsive requested records within the 15 days prescribed by D.C. Official Code § 2-532 (c)(1). Instead, OCFO invoked its right to a 10-day extension, and told you that you would receive a final response by September 11, 2017. OCFO has yet to issue a final response.

OCFO maintains that it has not responded to your request because it is too broad to process. In accordance with DC FOIA, a request must "reasonably describe the desired record(s)." 1 DCMR § 402.4. A communication to a FOIA Officer that that does not reasonably describe a record is not considered a proper request for that record; when a FOIA officer receives such a communication, he or she is obligated to reach out to the requester to ask for supplemental information and to make "[e]very reasonable effort . . . to assist in the identification and location of requested records." 1 DCMR § 402.5. Once a requester has clarified the communication such that it "reasonably describe[s] the desired record(s)," then the request is "deemed received" by the FOIA officer and the deadline for the agency's response is set. 1 DCMR § 405.6.

Here, OCFO appears to be arguing that: (1) your request does not reasonably describe a record; (2) its August 28, 2017, communication to you was a request for additional information made pursuant to 1 DCMR § 402.5; and (3) because you did not provide additional information, the request was never technically received and the deadline was never set, such that your request was never properly filed.

This Office rejects the premise that your request is too vague to process. Your request asks for emails to and from OCFO employees about a specific topic - the Hearst Park and Pool

Improvement Project. This aspect of your request describes records that are identifiable and retrievable. It was OCFOs' responsibility to make a determination as to where the requested documents were likely to be located - a responsibility that can be met by identifying agency employees in the relevant programs and making inquiries about the nature of document creation and retention in those programs. *See* 1 DCMR § 402.5; s*ee also Truitt v. Dep't of State*, 897 F.2d 540, 545 n. 36 (D.C. Cir. 1990) (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. at 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6271)). (finding a request to not be vague when "a professional employee of the agency who [is] familiar with the subject area of the request … [could] locate the record with a reasonable amount of effort.").

Absent your direction to narrow the subject of your search, OCFO should have made an effort to identify the relevant OCFO employees who were likely to have communicated about the subject of your request and conducted an email search for responsive messages these employees[1] sent and received during the specified time period using phrases such as "Hearst Park" and "Hearst pool." From there, OCFO would have been able to identify the number of documents retrieved and could have provided you with a fee estimate for reviewing these documents. In other words, your request is not so vague as to have prevented OCFO from conducting an initial search without additional input from you.

OCFO makes arguments relating to the scope of your request and its burdensome nature. These arguments do not constitute an exemption or justification to withhold records. *Fraternal Order of Police v. District of Columbia*, 139 A.3d 853, 863 (D.C. 2016) ("there is nothing in the statute that allows a prospective determination of undue burden to void a FOIA request."). However, pursuant to DC FOIA, OCFO may avail itself of fees to recoup costs. *See* D.C Official Code § 2-532(b-3) ("No agency or public body may require advance payment of any fee unless . . . the agency or public body has determined that the fee will exceed $250."); 1 DCMR § 408.

As a result of missing the deadline set by the statute, this Office finds that OCFO constructively denied your request. D.C. Official Code § 2-532(e).

Conclusion

Based on the foregoing, we remand this matter to OCFO. Within 15 days of this decision, OCFO shall conduct a search in accordance with the guidance in this decision and provide you with a fee estimate based on the number of documents retrieved. If you agree to pay for the production, OCFO shall begin providing you with nonexempt responsive documents on a rolling basis.[2]

Your appeal is dismissed; however, you may challenge OCFO's subsequent response by separate appeal to this Office.

[1] We note that OCFO is responsible for maintaining only the records of OCFO employees and is not required to conduct a search for the emails of the employees of other agencies

[2] Please note that because of the size and scope of this request, you may be required to pre-pay for these services. *See* D.C Official Code § 2-532(b-3).

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Stacie Mills, OCFO (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-155

September 26, 2017

VIA ELECTRONIC MAIL

Mr. John T. McFarland

RE: FOIA Appeal 2017-155

Dear Mr. McFarland:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your request dated June 20, 2017, seeking records related to a DCRA employee. Upon receipt of your appeal, this Office contacted DCRA and asked for its response.

On September 19, 2017, DCRA informed us that the Office of the Chief Technology Officer completed its search, returning four responsive records.[1] DCRA further stated that it would review the responsive records and disclose non-exempt portions. Since your appeal was based on DCRA's failure to respond to your request and DCRA has asserted that its response is forthcoming, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response DCRA sends you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

[1] A copy of DCRA's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-156

September 26, 2017

VIA ELECTRONIC MAIL

Mr. John T. McFarland

RE: FOIA Appeal 2017-156

Dear Mr. McFarland:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your request under the DC FOIA.

Background

On June 20, 2017, you submitted a FOIA request for records relating to (1) an altercation, (2) an employee's personnel file, and (3) a copy of a job description. Your request also included a list of fourteen questions that you requested DCRA answer for you. DCRA did not respond to your request.

On September 12, 2017, this Office received your appeal and notified DCRA. DCRA responded on September 19, 2017.[1] In its response, DCRA asserts that withholding the records was proper pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2").[2] Additionally, DCRA explains why no job description exists as described in your request. Finally, DCRA stated that it was not obligated to answer your questions.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C.

[1] DCRA's response is attached to this decision.
[2] Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Constructive Denial

You submitted your request on June 20, 2017. DCRA failed to provide all responsive requested records within the 15 days prescribed by D.C. Official Code § 2-532 (c)(1). As a result of missing the deadline set by the statute, this Office finds that DCRA constructively denied your request. D.C. Official Code § 2-532(e). On appeal, DCRA has provided its response asserting that responsive records are withheld pursuant to Exemption 2.

Exemption 2

Under Exemption 2, determining whether disclosure of a record would constitute an unwarranted invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See*, e.g., *Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994). Summarily, this Office finds that there is a privacy interest in employee's personnel records as well as in an agency's investigation of an altercation between employees. *See* 6B DCMR § 3100.

The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. The relevant "public interest" for the purpose of DC FOIA is generally limited to furthering the statutory purpose of DC FOIA.

> This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

Beck v. Department of Justice, et al., 997 F.2d 1489 (D.C. Cir. 1993) at 1492-93.

An investigative report of an altercation between employees would not reveal anything about DCRA's performance of its statutory duties – and as such there is no public interest in such a document. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). As a result, we find that DCRA has properly withheld the requested records concerning an altercation under Exemption 2.

Conversely, not everything located in a personnel file is *de facto* without a public interest. The 6B DCMR § 3113 specifically allows for the disclosure of:

(a) Name.
(b) Present and past position titles.
(c) Present and past grades.
(d) Present and past salaries.
(e) Present and past duty stations (which includes room numbers, shop designations, or other identifying information regarding buildings or places of employment).

Additionally, past FOIA decisions have found that there is a public interest in a successful job applicant's application and resume. *See Core v. United States Postal Serv.*, 730 F.2d 946, 948 (4th Cir. 1984) ("Having balanced the privacy interests of the five successful applicants against the public's interest, we conclude that disclosure would not 'constitute a clearly unwarranted invasion of personal privacy.' Exemption 6,[3] therefore, does not bar disclosure of the information Core seeks about the successful applicants."); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1017 (D. Kan. 1996) (upholding an agency's decision to release redacted applications for successful candidates and withhold resumes and applications for unsuccessful applicants); *see also*, FOIA Appeals 2011-36, 2011-56, 2012-75, 2014-06, 2014-11, 2014-27, 2015-48, 2016-80, and 2016-81.[4]

DCRA has an obligation to review the records contained within the personnel file to see if portions of the records may be properly disclosed subject to redaction pursuant to D.C. Official Code § 2-534(b) rather than withheld in their entirety.

Creating New Records

[3] Exemption 6 is the federal equivalent of DC FOIA's Exemption 2.
[4] *See also Habeas Corpus Resource Ctr. v. DOJ*, No. 08-2649, 2008 WL 5000224, at *4 (N.D. Cal. Nov. 21, 2008); *Cowdery, Ecker & Murphy, LLC v. Dep't of Interior*, 511 F. Supp. 2d 215, 219 (D. Conn. 2007; *Samble v. U.S. Dep't of Commerce*, No. 1:92-225, slip op. at 11 (S.D. Ga. Sept. 22, 1994); *Associated Gen. Contractors, Inc. v. EPA*, 488 F. Supp. 861, 863 (D. Nev. 1980).

A portion of your request is a list of fourteen questions that you would like DCRA to answer. This part of your request amounts to an interrogatory. DCRA is not obligated by DC FOIA to answer interrogatories. *See Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); *see also* FOIA Appeal 2014-41; FOIA Appeal 2017-36. The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009).

Conclusion

Based on the foregoing, we affirm DCRA's decision in part and remand in part. Within 15 days of this decision DCRA shall review the withheld personnel file records and disclose to you nonexempt portions of those records or issue to you a new letter clarifying its justification for withholding records in their entirety. This constitutes the final decision of this Office; though you may file a separate appeal of DCRA's subsequent response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

The Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-157

September 26, 2017

VIA ELECTRONIC MAIL

Mr. John T. McFarland

RE: FOIA Appeal 2017-157

Dear Mr. McFarland:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your request dated June 27, 2017, seeking records related to a former DCRA employee. Upon receipt of your appeal, this Office contacted DCRA and asked for its response.

On September 19, 2017, DCRA informed us that the Office of the Chief Technology Officer completed its search, returning 220 responsive records.[1] DCRA further stated that it would review the responsive records and disclose non-exempt portions. Since your appeal was based on DCRA's failure to respond to your request and DCRA has asserted that its response is forthcoming, we consider your appeal to be moot. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response DCRA sends you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

[1] A copy of DCRA's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-158

September 26, 2017

VIA ELECTRONIC MAIL

John T. McFarland

RE: FOIA Appeal 2017-158

Dear Mr. McFarland:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Consumer and Regulatory Affairs ("DCRA") failed to respond to your August 1, 2017, request for records related to "Desk Audits" of a particular employee.

On September 12, 2017, this Office received your appeal, in which you assert that DCRA failed to respond your request. This Office notified DCRA of the appeal, and on September 19, 2017, DCRA provided this Office with a response.[1] Due to a change in FOIA personnel at the agency, DCRA explained that it was unclear if your request had been received or processed. DCRA further noted that it does not maintain records responsive to your request; however, the DC Department of Human Resources ("DCHR") may possess such records. As a result, DCRA transferred your request to DCHR.

Since your appeal was based on DCRA's lack of response and DCRA has since responded, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DCHR's substantive response.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Erin Roberts, FOIA Officer, DCRA (via email)

[1] A copy of DCRA's response is attached.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-159

September 26, 2017

VIA ELECTRONIC MAIL

Mr. John T. McFarland

RE: FOIA Appeal 2017-159

Dear Mr. McFarland:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the DC Department of Human Resources ("DCHR") failed to respond to your request dated June 27, 2017, seeking records related to a former employee of the Department of Consumer and Regulatory Affairs. Upon receipt of your appeal, this Office contacted DCHR and asked for its response.

On September 12, 2017, DCHR informed us that it was still waiting on the Office of the Chief Technology Officer ("OCTO") to return the results of its search. This Office contacted OCTO and encouraged OCTO to complete the search. OCTO subsequently responded that it completed its search and provided DCHR with the results in two batches during the night of September 25, 2017.

Since your appeal was based on DCHR's failure to respond to your request and DCHR was waiting for OCTO to return responsive records, we consider your appeal to be moot. Within ten business days from the date of this decision, DCHR shall review the records returned by OCTO and begin to disclose non-exempt portions to you. Your appeal is hereby dismissed; however, the dismissal shall be without prejudice. You are free to assert any challenge, by separate appeal to this Office, to the substantive response DCHR sends you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Leah N. Brown, Attorney Advisor, DCHR (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-160

September 25, 2017

VIA ELECTRONIC MAIL

Mr. Harold Christian

RE: FOIA Appeal 2017-160

Dear Mr. Christian:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that that the Office of the Chief Financial Officer ("OCFO") failed to respond to your July 22, 2017 request for certain records.

After you filed your appeal, the OCFO advised our Office that it responded to your request on September 20, 2017.[1] Since your appeal was based on the OCFO's lack of response, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response that the OCFO sent you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Stacie Y.L. Mills, General Counsel, OCFO (via email)

[1] Attached is a copy of the OCFO's correspondence to this Office.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-161

October 4, 2017

VIA ELECTRONIC MAIL

Name Withheld Upon Request

RE: FOIA Appeal 2017-161

Dear Petitioner:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Metropolitan Police Department ("MPD") improperly denied you access to records you requested under the DC FOIA.

Background

On July 10, 2017, you submitted a request to the MPD "for a list of all active police officers working for DC MPD," and "all full names and badge numbers, include any pictures or recent pictures of all, in order to properly identify them."

MPD responded by granting your request in part and denying your request in part. MPD provided to you an Excel spreadsheet with full names, ranks, and badge numbers of active MPD officers. MPD denied the portion of your request for photograph identification pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2")[1] on the basis that disclosure of photograph identification of police officers would constitute a clearly unwarranted invasion of personal privacy.

You appealed MPD's partial denial, asserting without explanation that "I have been harassed by several of the DC MPD officers, since 2009 until present and I am trying to properly identify all. Some of these officers are involved in crimes, that were inflicted upon my mother and myself, and we would like to pursue this criminally. With that being said, we have to start with properly identifying all involved." Your appeal does not challenge MPD's assertion that there is a personal privacy interest in the withheld photographs. Nor does your appeal assert a public interest in the withheld records. Instead, your appeal asserts only your personal interest in the documents.

This Office notified MPD of your appeal on September 20, 2017. MPD responded to this Office on September 28, 2017, reaffirming its position that the withheld responsive records are exempt from disclosure pursuant to Exemption 2.[2] MPD's response describes a safety risk to police

[1] Exemption 2 prevents disclosure of "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."
[2] A copy of MPD's response is attached.

officers if photograph identification is released. MPD's response cites to previous FOIA Appeal decisions, 2014-28 and 2012-26, in which photographs were withheld because their release would constitute an unwarranted invasion of personal privacy. Lastly, MPD asserts that there is no public interest, as contemplated by the statute, in the release of the withheld records.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Under Exemption 2, determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id*.

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See*, e.g., *Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994).

With regard to the records at issue, we find that individuals' names tied to photographic images of those individuals raises a cognizable privacy interest. S*ee Showing Animals Respect & Kindness v. United States DOI*, 730 F. Supp. 2d 180, 197 (D.D.C. 2010) ("The fact that it may be obvious to Plaintiff whose faces or names are redacted from these records does not mean that the subjects of those redactions have no privacy interest in avoiding disclosure. . . . This Court is mindful that in the internet age, pictures and personal information can cascade through networks to millions of people based on a single disclosure.").

The second part of the Exemption 2 analysis examines whether an individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. In the context of DC FOIA, a record is deemed to be of "public interest" if it would shed

light on an agency's conduct. *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). As the court held in *Beck*:

> This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773.

Id. at 1492-93.

On appeal you allude to a personal desire for the withheld photographic records for litigation purposes. This is not a relevant consideration. *See Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005) (finding that plaintiff's "need to obtain the information for a pending civil suit is irrelevant, as the public interest to be weighed has nothing to do with [his] personal situation"); *Carpenter v. DOJ*, 470 F.3d 434, 441 (1st Cir. 2006) (finding in a criminal trial that "There is no public interest in supplementing an individual's request for discovery.").

You have not articulated a public interest relevant to DC FOIA. It is unclear to this Office how the release of photographs of police officers would shed light on MPD's performance of its statutory duties. In the absence of a relevant countervailing public interest, we find that the photographs are protected from disclosure pursuant to Exemption 2.

MPD has withheld the responsive officer identifying photographs in their entirety. D.C. Official Code § 2-534(b) requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. Here, we do not believe that reasonable redaction is possible, and that withholding the records in their entirety was appropriate.

Conclusion

Based on the foregoing, we affirm MPD's decision. This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-162

October 10, 2017

VIA ELECTRONIC MAIL

Ms. Natasha Rodriguez

RE: FOIA Appeal 2017-162

Dear Ms. Rodriguez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the failure of the Department of Energy & Environment ("DOEE") to respond to a FOIA request you submitted for DOEE certain emails.

Upon receipt of your appeal, this Office contacted the DOEE and asked the agency to explain its failure to respond to your request. On October 2, 2017, the DOEE requested an extension to respond to the appeal.[1] The DOEE also stated that its failure to timely respond to your FOIA request was an oversight, and it intended to release responsive records to the fullest extent possible after responsive emails were returned from the Office of the Chief Technology Officer.

The DOEE has failed to provide you with records within the 15 business days prescribed by D.C. Official Code § 2-532(c)(1) and has not asserted that the records are exempt from production under DC FOIA. As a result, this Office finds that the DOEE has constructively denied your request pursuant to D.C. Official Code § 2-532(e) and is improperly withholding the records at issue.

In light of the above, we remand this matter to the DOEE. The DOEE shall provide you with all responsive documents, subject to applicable FOIA exemptions, within 10 business days of the date of this decision. You may assert any challenge, by separate appeal, to the substantive response that the DOEE sends you.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

[1] This Office granted the requested 5-day extension; however, the DOEE has not responded further to us.

Mayor's Office of Legal Counsel

cc: Norah Hazelton, Program Support Assistant, DOEE (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-163

October 10, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2017-163

Dear Mr. Brown:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response you received from the District of Columbia Housing Authority ("DCHA") to your request for records.

Background

You submitted a FOIA request to DCHA for records relating to a specific U.S. Department of Housing and Urban Development ("HUD") form. Your request also cited to a specific federal regulation related to the form.

On September 19, 2017, the DCHA's FOIA officer responded to your request. In its response, DCHA indicated that a search was conducted and that it was granting your request by providing you with a responsive document, the requested HUD form.

On September 25, 2017, you filed this appeal. This Office notified DCHA of your appeal, and DCHA provided its response on October 2, 2017. In its response, DCHA explained that it had not denied your request. DCHA's response included a signed declaration of how its search was conducted. The declaration indicates that DCHA determined that the only repository likely to contain the requested information is the VisualHOMES database. The declaration states that DCHA searched this database, using the name provided by you, and turned over all responsive forms to you. Further, DCHA indicated that it provided to you a copy of a related contract. DCHA maintains on appeal that it conducted an adequate search and that it is not withholding records from you.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public

body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of Search

The primary issue raised in your appeal is whether DCHA conducted an adequate search for the records at issue (records pertaining to a named HUD form). DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> ‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

DCHA explained in its response to this Office, through a declaration, that the only repository likely to contain records responsive to your request is the VisualHOMES database – which is described by DCHA as “a fully integrated housing management and financial accounting software module utilized by DCHA to manage its public housing, housing choice voucher program . . . and financial accounting.” DCHA’s declaration states that this is the only repository

likely to contain the information you requested. DCHA searched VisualHOMES using the name and dates provided in your request. DCHA maintains that it provided all responsive documents to you, and that no additional documents were found in the search. We accept the representations made in DCHA's declaration as true. As a result, we find that DCHA conducted an adequate search.

Conclusion

Based on the foregoing, we affirm DCHA's decision, and this appeal is hereby dismissed.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Mario Cuahutle, Associate General Counsel, DCHA (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-164

October 10, 2017

VIA ELECTRONIC MAIL

Ms. Natasha Rodriguez

RE: FOIA Appeal 2017-164

Dear Ms. Rodriguez:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of Health ("DOH") failed to adequately respond to your request for certain records.

Background

On June 29, 2017, you submitted a request to DOH seeking emails regarding the Blue Collar Cat program administered by the Humane Rescue Alliance ("HRA"). On August 2, 2017, DOH granted your request asserting that its disclosure contained all responsive emails.

Subsequently, you appealed DOH's response to this Office based on your belief that additional records should exist. You assert on appeal that the Blue Collar Cat program launched on March 15, 2017; however, DOH's disclosure included only one email from HRA dated April 7, 2017. Your further assert that DOH should disclose all relevant emails from HRA employees to the extent that HRA is performing a public function on behalf of the district.

This Office notified DOH of your appeal and it responded on October 1, 2017.[1] In its response, DOH reasserted that it disclosed all responsive emails based on the timeframe and search terms provided in your FOIA request. DOH also stated that the Blue Collar Cat program is a private initiative of the HRA; therefore, HRA's internal records on the program are outside the scope of FOIA as public function performed on behalf of DOH.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public

[1] A copy of DOH's response is attached for your reference.

body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of your appeal is that you believe DOH should possess more responsive records than it provided you because the Blue Collar Cat program launched weeks before the earliest email DOH disclosed. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> ‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

DOH described the search it conducted in response to your request. In specific, the agency identified the employees of the Animal Services Program who would have corresponded with HRA and then searched the emails of those employees using the terms identified in your request. In response to your assertion on appeal that FOIA extends to contractors performing public functions on behalf of agencies, DOH explains that the Blue Collar Cat program is not a public function performed on its behalf but rather a private initiative of the HRA. As a result, HRA’s

internal documents and correspondence regarding the program, which have not been shared with DOH, are not subject to FOIA. Due to the fact that the additional records you seek involve a private initiative of HRA not subject to FOIA, we find here that DOH made a reasonable determination as to the locations of the records you requested and conducted an adequate search of these locations for the public records in its possession.

Conclusion

Based on the foregoing, we affirm DOH' response to your request, insofar as the searches it conducted were adequate.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-165

October 4, 2017

VIA ELECTRONIC MAIL

Mr. Michael Dalton

RE: FOIA Appeal 2017-165

Dear Mr. Dalton:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the Department of General Services ("DGS") failed to adequately respond to your request for certain records.

Background

On August 8, 2017, you submitted a request to DGS seeking certified payroll records and wage determinations for 47 contractors involved with various projects in the District, which you identified in your request. On August 31 and September 8, 2017, you withdrew your request for records for 2 of the 47 contractors. DGS responded to your request on September 14, 2017, indicating that it provided you with records on September 13, 2017, pertaining to one of the contractors you identified. DGS further stated that "[d]uring our comprehensive search for the remaining records that would be responsive to your request, we were unable to locate or identify responsive records."

Subsequently, you appealed DGS' response to this Office on the grounds that the certified payroll records you are requesting are required by law to be submitted to DGS. The implication in your appeal is that because the law requires DGS to maintain the records you are seeking, the agency's partial response to your request was inadequate.

This Office notified DGS of your appeal and it responded on October 3, 2017.[1] In its response, DGS indicated that upon receipt of your request, a program analyst in DGS' Contracts and Procurement Division searched its files for responsive records. DGS determined that one of your requests was a duplicate and another referenced a project administered by the Office of the Deputy Mayor for Planning and Economic Development. Of the remaining 45 projects, 5 are on the electronic payroll system of the Department of Employment Services, to which DGS was able to gain access; however, a search revealed that only 2 of the 5 contractors submitted records. Of the two contractors that submitted records, you had previously withdrawn your request for records pertaining to one; as a result, DGS provided you with records for the remaining contractor.

[1] A copy of DGS' response is attached for your reference.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of your appeal is that you believe DGS should possess more responsive records than it provided you because the District is required by federal law to maintain certain payroll records. DGS asserts that it conducted two searches (one initially in response to your request, and one after you submitted your appeal) and determined that of the 44 records at issue,[2] DGS possesses only records pertaining to a project that Progress Environmental LLC completed at Roosevelt High School. DGS provided you with these records on September 13, 2017. As a result, the issue we consider on appeal is whether DGS conducted an adequate search.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those

[2] We say 44 because you withdrew 2 of your requests and DGS concluded that one of your requests was a duplicate.

locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your request, a program analyst in DGS' Contracts and Procurement Division identified the relevant hard copy files and electronic databases where records responsive to your request would be found if they existed. DGS reviewed your request and determined that one request was a duplicate and one pertained to a project administered by the Office of the Deputy Mayor for Planning and Economic Development.[3] By the time the search was conducted, you had withdrawn your request for 2 sets of documents. Thus, the program analyst searched hard copy and electronic files for the remaining 43 contractors. The search resulted in the retrieval of records for only one of the contractors you identified: Progress Environmental LLC, which performed a modernization at Roosevelt High School. DGS' Contracts and Procurement Division conducted a second search of hard copy and electronic records after you submitted the instant appeal to the Mayor and determined that the agency does not have any additional certified payroll records.

We understand your argument that the records you are seeking should exist pursuant to federal statutory requirements; however, the test under FOIA is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. We find here that DGS made a reasonable determination as to the locations of the records you requested and conducted two adequate searches of these locations.

Conclusion

Based on the foregoing, we affirm DGS' response to your request, insofar as the searches it conducted were adequate.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Black Johnson, Program Support Specialist, DGS (via email)

[3] We interpret this assertion to mean that DGS does not have access to records associated with this project.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-166

October 3, 2017

VIA ELECTRONIC MAIL

Mr. Shuntay Brown

RE: FOIA Appeal 2017-166

Dear Mr. Brown:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the District of Columbia Water and Sewer Authority ("DC Water") improperly denied your request for certain records.

Background

On March 17, 2017, you submitted a request to DC Water seeking the date that DC Water and the landlord at a particular property replaced the lead service pipe and the cost and type of pipe that was removed and replaced. DC Water denied your request on May 23, 2017, stating that in order to receive the records you requested, you must provide proper authorization from the owner of the subject property.

You appealed DC Water's denial to this Office on the grounds that it was improper. This Office notified DC Water of your appeal, and it responded on October 2, 2017.[1] In its response, DC Water indicated that it reconsidered its initial denial on the basis of privacy concerns and conducted a search for the records you requested. The results of the search were attested to in a declaration submitted by Michael J. Walsh, the database manager for the Lead Service Replacement Program at DC Water. Mr. Walsh stated that he searched DC Water database records pertaining to lead service line replacement but found no records associated with the property you identified. He further explained that property owners are not required to report replacement of their water service lines to DC Water; therefore, it is possible that the water service line at the subject property has been replaced without notification being provided to DC Water.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who

[1] A copy of DC Water's response is attached for your reference.

represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

You initially appealed to this Office on the grounds that DC Water improperly denied your records request. Upon receipt of your appeal, however, the agency reconsidered its denial and conducted a search for the documents you requested. DC Water concluded that no records exist that are responsive to your request. As a result, we consider whether DC Water conducted an adequate search.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step includes determining the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.* Generalized and conclusory allegations cannot suffice to establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

In response to your appeal, DC Water identified the relevant locations where records responsive to your request would be found if they existed: electronic databases under the purview of the Lead Service Replacement Program, which is a unit within the Department of Engineering and Technical Services at DC Water. Michael J. Walsh, the database manager for the Lead Service Replacement Program, asserted that he conducted a search of DC Water's databases and determined that DC Water has no records that show that a water service line has been replaced at the property you specified. He further indicated that because property owners are not required to report replacement of their water service lines to DC Water, it is possible that the water service line at the property has been replaced without DC Water's knowledge.

Based on the declaration that Mr. Walsh provided to this Office, we find that DC Water made a reasonable determination as to the locations of the records you requested and conducted an adequate search of these locations.

Conclusion

Based on the foregoing, we affirm DC Water's final response to your request, insofar as the searches it conducted were adequate.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria A. Fleming, FOIA Officer and Senior Paralegal, DC Water (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-167

October 12, 2017

VIA ELECTRONIC MAIL

Ms. Maryll Kersting

RE: FOIA Appeal 2017-167

Dear Ms. Kersting:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response you received from the Department of General Services ("DGS") to a request you submitted under the DC FOIA.

Background

On August 17, 2017, you submitted a request to DGS, on behalf of your client, for records relating to "RFP DCAM-17-NC-0007." On September 8, 2017, DGS granted your request in part, providing you with an award memorandum and other documents. Portions of the documents were redacted pursuant to D.C. Official Code § 2-534(a)(1) ("Exemption 1") and D.C. Official Code § 2-534(a)(4) ("Exemption 4").

You appealed DGS's response by letter dated September 22, 2017. Your appeal requests that DGS be ordered to release an unredacted copy of the award memorandum. The award memorandum is an internal DGS document that was prepared by a contract specialist and sent to the chief contracting officer stating a choice for which bidder shall be awarded a contract. Primarily, you challenge the redactions made in the released award memorandum. Your appeal argues that unlike the pricing, which you concede was properly redacted, the scoring in the award memorandum is not commercial information as contemplated by Exemption 1[1] and that the award memorandum is not "pre-decisional" such that it is not properly covered by Exemption 4.

This Office notified DGS of your appeal, and DGS responded[2] by reaffirming its position that redactions were properly invoked pursuant to Exemptions 1 and 4. DGS also indicated that the documents are now subject to a protective order issued on October 10, 2017 by the Contract Appeals Board ("CAB").

[1] Because we find adequate grounds for withholding under Exemption 4, this decision will not address the applicability of Exemption 1.
[2] DGS's response is attached.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemption 4

Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums and letters which would not be available by law to a party other than an agency in litigation with the agency[.]" This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Privileges in the civil discovery context include the deliberative process privilege. *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011).

Here, DGS has invoked Exemption 4 and has asserted arguments related to the deliberative process with respect to redacted portions of the award memorandum. Similarly, your appeal makes arguments concerning the deliberative process – that the award memorandum amounts to a final decision, therefore portions of it cannot be withheld as "predecisional" under the deliberative process standard. It is not clear that your proffered deliberative process argument about the "pre-decisional" nature of the award memorandum is a correct statement of law within the context of a government contract subject to a bid protest. *See Shermco Indus., Inc. v. Sec'y of Air Force*, 613 F.2d 1314, 1317 (5th Cir. 1980) ("We feel that the District Court misunderstood the bid protest procedure when it characterized the award as a final decision. The October 14th notice to Shermco was of a proposed award to Tayko; it was not a final decision. The District Court's statement that there was no need for secrecy because the award would be made either to Tayko or to Shermco is contrary to GAO protest procedure. It is amply clear from the record and from oral argument that there is a possibility that if the protest were to succeed either before the GAO, the SBA or some other forum, the bidding could be reopened."). The contract that is the subject of your FOIA request is currently under a bid protest, which, if successful, could result in a different contract award, which suggests that the award memorandum is still predecisional.

However, this Office need not reach the merits of whether the deliberative process privilege protects the redacted portions of the award memorandum. Instead, this Office finds that the

challenged portions of the redactions[3] are more closely protected by a different Exemption 4 privilege, contemplated by the drafters of the original federal Freedom of Information Act ("federal FOIA") and articulated by the Supreme Court in *Fed. Open Mkt. Comm. of Fed. Res. Sys. v. Merrill*:

> Congress amended the provision that ultimately became Exemption 5[4] to provide for nondisclosure of materials that "would not be available by law to a party . . . in litigation with the agency." The House Report, echoing the Report on the original Senate bill, S. Rep. No. 1219, 88th Cong., 2d Sess., 6-7, 13-14 (1964), explained that one purpose of the revised Exemption 5 was to protect internal agency deliberations and thereby ensure "full and frank exchange of opinions" within an agency. H. R. Rep. No. 1497, *supra* n. 15, at 10. It then added, significantly:
>
> > "Moreover, a Government agency cannot always operate effectively if it is required to disclose documents or information which it has received or generated *before it completes the process of awarding a contract* or issuing an order, decision or regulation. This clause is intended to exempt from disclosure this and other information and records wherever necessary without, at the same time, permitting indiscriminate administrative secrecy" (emphasis added). *Ibid*.
>
> In light of the complaints registered by the agencies about premature disclosure of information relating to Government contracts, we think it is reasonable to infer that the House Report, in referring to "information . . . generated [in] the process of awarding a contract," specifically contemplated a limited privilege for confidential commercial information pertaining to such contracts.
>
> . . . . The theory behind a privilege for confidential commercial information generated in the process of awarding a contract, however, is not that the flow of advice may be hampered, but that the Government will be placed at a competitive disadvantage or that the consummation of the contract may be endangered. Consequently, the rationale for protecting such information expires as soon as the contract is awarded or the offer withdrawn.

443 U.S. 340, 357-60 (1979). *See also NRDC, Inc. v. United States Dep't of Interior*, 36 F. Supp. 3d 384, 413 (S.D.N.Y. 2014) ("The Court therefore holds that the confidential commercial information privilege under Exemption 5 does not, as a matter of law, automatically and always terminate once a contract is awarded. Instead, the Court holds that, in rare cases, the Government's legitimate commercial interests may require the protection of information even after a contract has been awarded.")

[3] Your appeal "concedes that the offeror's pricing information may be subject to Exemption 1." What remains at issue in this appeal are the redactions of the award memorandum that are not of pricing.

[4] Exemption 5 of the federal FOIA is the equivalent of Exemption 4 of the DC FOIA.

Having reviewed the redacted material *in camera*, we conclude that the challenged redacted portions of the award memorandum are commercial in nature and were "generated in the process of awarding a contract." The redacted information pertains to DGS's evaluation of bids submitted by your client and your client's competitors.

The release of the withheld information at this time could interfere with the integrity of the still ongoing contracting process and could place the government "at a competitive disadvantage." As a result, the type of information that was withheld by DGS appears to fall squarely within the Exemption 4 privilege, protecting from disclosure confidential commercial information generated in a government contracting process, which the Supreme Court articulated in *Fed. Open Mkt. Comm. of Fed. Res. Sys. v. Merrill*, 443 U.S. 340, 357-60 (1979).

Furthermore, the award memorandum is currently subject to a protective order issued by the CAB.[5] This further bolsters DGS's position that the withheld documents are exempt under Exemption 4, as the documents appear to be of the type that are "normally privileged in the civil discovery context." *See Agility Pub. Warehousing Co. K.S.C. v. NSA*, 113 F. Supp. 3d 313, 335 (D.D.C. 2015)("the proper test for determining whether an agency improperly withholds records [subject to a court order] is whether the [order], like an injunction, prohibits the agency from disclosing the records."). We therefore find that the redactions DGS made to the award memorandum at issue were proper under Exemption 4.

Conclusion

Based on the foregoing, we affirm DGS's decision, and your appeal is hereby dismissed. This constitutes the final decision of this Office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Black Johnson, FOIA Officer, DGS (via email)

[5] See attached order.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-168

October 11, 2017

VIA ELECTRONIC MAIL

Ms. Malaika Lewis

RE: FOIA Appeal 2017-168

Dear Ms. Lewis:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on the grounds that the District of Columbia Water and Sewer Authority ("DC Water") improperly denied your request for certain records.

Background

On August 29, 2017, you submitted a request to DC Water seeking records pertaining to sewer issues associated with a particular property in the District. DC Water denied your request on September 18, 2017, stating that records responsive to your request are exempt from disclosure in accordance with D.C. Official Code § 2-534(a)(2) and that DC Water is not authorized to disclose such records without written consent and proper identification from the owner of the subject property.

You appealed DC Water's denial to this Office on the grounds that it was improper. In specific, you aruge that you are a tenant of the property about which you requested records, and that any personally identifiable information contained in the records could be redacted from the remaining responsive information. This Office notified DC Water of your appeal, and it responded on October 4, 2017.[1] In its response, DC Water indicated that it reconsidered its initial denial on the basis of privacy concerns and conducted a search for the records you requested. DC Water provided you with all responsive documents[2] on September 27, 2017 and October 3, 2017, and waived fees associated with your request.

Your appeal was based on DC Water's denial of your request in its entirety, and DC Water has since responded by producing responsive documents. As a result, we consider your appeal to be moot, and it is dismissed. The dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the substantive response you received from DC Water.

[1] A copy of DC Water's response is attached for your reference.
[2] Portions of the documents were redacted.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria A. Fleming, FOIA Officer and Senior Paralegal, DC Water (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2017-169, 2017-170, 2017-171, 2017-172, 2017-173, 2017-174, 2017-175, 2017-176, 2017-177, 2017-178, 2017-179, 2017-180, 2017-181, 2017-182, and 2017-183

October 12, 2017

VIA ELECTRONIC MAIL

Ms. Rose Santos
FOIA Group, Inc.

RE: FOIA Appeals 2017-169, 2017-170, 2017-171, 2017-172, 2017-173, 2017-174, 2017-175, 2017-176, 2017-177, 2017-178, 2017-179, 2017-180, 2017-181, 2017-182, and 2017-183

Dear Ms. Santos:

This letter responds to 15 administrative appeals you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA").[1] Your appeals pertain to FOIA requests submitted to the Office of Contracting and Procurement ("OCP"); however, none of your appeals states any basis for why you are appealing. Thirteen of your appeals state only "Request Created" as the appeal description and the remaining two appeals reiterate the records sought by their underlying requests.

On September 28, 2017, the same day your appeals were received, this Office emailed you asking you to indicate the reason for your appeals. Also on September 28, OCP submitted a consolidated response to your appeals requesting that your appeals be stayed or dismissed for failure to state a basis for each appeal pursuant to 1 DCMR § 412.4(a). The following day, on September 29, this Office forwarded to you OCP's consolidated response and invited you to provide a response, identifying the reasons for your appeals.

After reviewing your appeals and their corresponding requests, the reasons for your appeals remain unclear. To date, you have not responded to this Office's invitations to state the bases of your appeals. As submitted, your appeals do not satisfy the requirements of 1 DCMR § 412.4.

Based on the foregoing, your attempted appeals are dismissed as improperly filed. The dismissals shall be without prejudice. You are free to re-submit the appeals to this Office with all of the information required by 1 DCMR § 412.4(a).

[1] Initially, the appeals were improperly filed with an incorrect agency on FOIAXpress; however, this Office transferred the appeals as a courtesy.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: D. Ryan Koslosky, Associate General Counsel, OCP (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeals: 2017-184

October 13, 2017

VIA ELECTRONIC MAIL

Mr. William Matzelevich

RE: FOIA Appeal 2017-184

Dear Mr. Matzelevich:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you challenge the response you received from the Department of General Services ("DGS") to a request you submitted under the DC FOIA.

Background

On August 6, 2017, DGS received a five-part FOIA request you submitted for records relating to a survey associated with the "Hearst Park & Pool Project."

On September 20, 2017, DGS informed you that the search it had conducted, using search terms you identified, returned 29,906 emails and would cost $13,916 to review. You indicated that you would withdraw your request and would not pay the $13,916. The same day, DGS sent you a close-out letter that indicated that you could file this appeal.

You appealed DGS's response by letter dated September 28, 2017. You state that DGS has not conducted a reasonable search likely to produce the information that you have requested, and that you withdrew your request because of the high cost estimate. You argue that this appeal is similar to FOIA Appeal 2017-147, in which we found that DGS improperly limited the scope of its request to specific email inboxes that it made you identify. You argue that the search terms that DGS solicited from you and used to conduct its search here similarly indicate that the search was inadequate.

This Office notified DGS of your appeal, and DGS responded by asserting that its search was reasonable.[1] DGS states that "it is not the role or responsibility of the agency [to] tell the requester what to search for, [to] guess at what the requester is seeking or to limit the search request." DGS claims that the large number of documents returned by the search does not indicate that the search was inadequate, but instead that "it simply means that there were tens of thousands of documents responsive to the requested search." DGS further argues that the cost of the review is not at issue in this appeal.

[1] A copy of DGS's response is attached.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Adequacy of the Search

Your appeal challenges the adequacy of DGS's search for the records you requested. DC FOIA requires that a search be reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep't of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make a reasonable determination as to the locations of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* Second, the agency must affirm that the relevant locations were in fact searched. *Id.*

In a previous decision, FOIA Appeal 2017-147, we determined that DGS had not satisfied the first element of conducting a reasonable search because it failed to determine which record repositories were likely to contain responsive documents (i.e. which email accounts should be searched). We explained there that DGS had improperly shifted the burden to you by refusing to conduct a search until you identified the government employees associated with the records you sought. We concluded that your request as submitted was not overly broad or vague, and that DC FOIA does not require a requester to identify the names of agency employees in order to request their email communications. *See* FOIA Appeal 2017-47. *See Fraternal Order of Police v. District of Columbia*, 139 A.3d 853, 863 (D.C. 2016) ("[T]here is nothing in the statute that allows a prospective determination of undue burden to void a FOIA request."). Here, DGS did the same thing, in that it conducted a search only after you identified employees and then searched only the inboxes that you identified instead of making an independent determination of where responsive documents were likely to be located. [2]

Additionally, the matter here is a similar request about a related subject matter. In the same manner that DGS required you to identify employee inboxes in FOIA Appeal 2017-147, it also asked you to create search terms before it conducted a search here. You complied and provided a list of terms; however, that list of terms did not constitute your request. Your request was described in the letter that you sent to DGS on August 6, 2017. DGS used the searched terms that you provided upon DGS's solicitation without the use of Boolean operators, (i.e., "and," "or," "not"). As a result, the search of 8 employee inboxes returned 29,906 emails.

It seems likely that the voluminous number of emails that this search returned is the result of a large number of false positives that are unrelated to your original August 6, 2017 request. For example, it appears from the way that the search was conducted that every single email in the 8 identified employee inboxes for the search period that contained the word "survey" or "dccouncil.us[3]" would be flagged as responsive – even if the email had nothing to do with the Hearst Pool project that your original request concerned. As a result, we do not accept DGS's statement that the voluminous number of records "simply means that there were tens of thousands of documents responsive to the requested search."

DGS claims that it requested search terms from you pursuant to 1 DCMR § 402.5. However, the purpose of 1 DCMR § 402.5 is to narrow voluminous search results to assist in finding responsive documents. Here, it appears that the use of 1 DCMR § 402.5 in fact greatly broadened the search such that it resulted in a voluminous number of documents, the great majority of which are unlikely to be responsive to your August 6, 2017 request. DGS has asked you for $13,916 before it will sort out these false positives. In response to this appeal, DGS claims that "it is not the role or responsibility of the agency [to] tell the requester what to search for, [to] guess at what the requester is seeking or to limit the search request." But that is exactly what

[2] As in FOIA Appeal 2017-147, DGS must make an independent determination of which employees' inboxes are likely to contain responsive documents, and may not rely solely on your input.

[3] DGS's response to this appeal indicates that the search included the "From, To, CC" fields, which suggests that every email from a "dccouncil.us" domain to one of the searched email inboxes would have returned as responsive, regardless of subject matter.

DGS did here. Instead of taking your August 6, 2017 request at face value – limited to an identified survey at an identified park by an identified architect – DGS instead required you to provide additional search terms which produced a voluminous number of records. Your request here adequately described documents you were seeking; it was DGS's role to find them.

While your request was broad in the type of documents that it sought (i.e., "all communications") between DGS and various entities, the request was limited to a particular subject matter. By not conducting a search equally focused in subject matter, and by shifting the burden to you to determine the search terms, DGS did not fulfill its responsibilities to search the repositories likely to contain responsive material. Each part of your original request was related to Hearst Park. We find that, by not in turn limiting the email search to Hearst Park through appropriate Boolean operators reasonably calculated to avoid returning a large number of nonresponsive documents, DGS did not adequately search the repositories likely to contain responsive records.

Conclusion

Based on the foregoing, we remand this matter to DGS. Within 10 business days, DGS shall submit to the Office of the Chief Technology Officer ("OCTO") new search requests in accordance with the guidance in this decision. DGS may use the terms it used to conduct the previous search, but, importantly, for terms that are likely to retrieve voluminous results (e.g., "survey," "dccouncil," and "Cheh"[4]), DGS should specify that these words be searched in conjunction with "Hearst."[5] In fact, it may be prudent to search all terms in conjunction with the word "Hearst." When DGS receives search results from OCTO, it should contact you with a fee estimate and, upon your agreement, review and produce the records on a rolling basis.

Your appeal is hereby dismissed, but you are free to file a separate appeal of DGS's subsequent response.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Johnson, DGS (via email)

[4] The term "Cheh" is likely to retrieve voluminous messages because Hearst Park is located in the ward she represents on the Council of the District of Columbia and because she is chairperson of the Committee on Transportation of the Environment, which has oversight of DGS.

[5] For example, one of the searches would be for all emails in the given time period with the terms "survey AND Hearst."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PARKS AND RECREATION

REQUEST FOR APPLICATIONS FOR 2018 COMMUNITY GRANTS

Run or Walk Around the District

DC Department of Parks and Recreation (DPR) will provide competitive grants for a community run/walk series in each DC Ward. DPR parks are valued green spaces in which District residents can engage in fitness and community-building activities. To encourage District residents to come out to parks and increase activity levels, DPR provides programming such as exercise classes, bicycling, and foot races, there continues to be a high demand for these types of programs.

One successful community fitness program in the District is the weekly Parkrun event series at Fletcher's Cove, a federally-owned park in Ward 3, which offers residents free 5K community runs every Saturday morning. Over 1,000 people have participated in the Parkrun series since it started in January 2016. To incentivize this type of programming across the District, DPR is providing $40,000 in grant funding to award competitive grants, in an amount not to exceed $5,000 each, to organizations that host a community run or walk event series. Grants will be distributed in different Wards to organize a run or walk event series; funds can be spent on outreach, advertising, use permits, and equipment associated with the event series.

Walking and walkability can help bridge community divides and overcome existing disparities and promote health. To keep walking and walkability a priority in neighborhoods and communities DPR wants to support a strong, connected group of local advocates and dedicated organizations focused on health and wellness. This grant program aims to support and grow a network of advocates and organizations and to strengthen communities' sustainability. Funded projects will increase walking and benefits of walkability in communities, work to grow the walking movement by engaging people and organizations new to the efforts, and take steps towards creating a culture of inclusive health.

Partnerships with DPR for *Run or Walk Around the District* can highlight walkable communities leading to improved safety and health for community members of all ages, abilities, genders, and backgrounds. Organizations in the District with experience in launching run/walk events are preferred. Use of DPR parks, fitness paths, and trails is highly encouraged, see website for locations: https://dpr.dc.gov/node/1238961. A scoring rubric is included in the grant application form.

Examples of previous events are highly recommended such as run/walk courses utilized, security plans, street closure requests, and city partnerships utilized to ensure success of the events. Run/Walk Series must be held within grant period: February 2018 through September 2018.

To apply for a grant award, complete application available at:
https://dpr.dc.gov/page/partnerships-and-development-division

Contact DPR Partnerships and Development Office with questions at LaSchelle.Owens@dc.gov Applications are due through email submission by **Monday, January 29th, 2018 by 5pm** to LaSchelle.Owens@dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

TT00-5, IN THE MATTER OF VERIZON WASHINGTON DC, INC.'S PUBLIC OCCUPANCY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 201

1. The Public Service Commission of the District of Columbia (Commission) pursuant to Section 34-802 of the District of Columbia Code and in accordance with Section 2-505 of the District of Columbia Code,[1] hereby gives notice of its intent to act upon the Rights-of-Way (ROW) Use Fee Compliance Filing for 2017 of Verizon Washington, DC Inc. (Verizon or the Company)[2] in the above-captioned matter in not less than 30 days after the date of publication of this Notice of Proposed Tariff (NOPT) in the *D.C. Register*.

2. On August 9, 2017, Verizon filed its ROW Compliance Filing for 2017, in accordance with D.C. Code § 10-1141.06.[3] The ROW Compliance Filing describes the process Verizon uses to recover from its customers the District of Columbia Public ROW fees it pays to the District of Columbia Government. Moreover, Verizon's ROW Compliance Filing contains the most recent calculations and updated rates for the Company's ROW surcharges, in accordance with the following tariff page:[4]

GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 201
Section 1A
2nd Revised Page 2

3. In the ROW Compliance Filing, Verizon compares the current ROW surcharges and the updated ROW surcharges for the ROW Surcharge Rider.[5] Specifically, the ROW Compliance Filing indicates that the ROW Surcharge Rider will increase by $2.64, from $5.66 to the updated rate of $8.30, for Non-Centrex lines and increase by $0.33, from $0.71 to the updated rate of $1.04 for Centrex lines.[6] According to Verizon, the increase is the result of: 1) a net under recovery of payments during the period from August 2015 to July 2017;[7] and 2) the

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1 D.C. Code § 2-505 (2001 Ed.) and D.C. Code § 34-802 (2001 Ed.).

2 *TT00-5*, *In the Matter of Verizon Washington, DC Inc.'s Public Occupancy Surcharge General Regulations Tariff, P.S.C.-D.C. No. 201 (TT00-5)*, Letter to Brinda Westbrook-Sedgwick, Commission Secretary, from Philip J. Wood, Vice President for State Government Affairs – Mid-Atlantic Region, RE: Case No. TT00-5, In the Matter of Verizon Washington, DC Inc.'s Public Occupancy Surcharge General Regulations Tariff, P.S.C. – D.C. No. 201 (ROW Compliance Filing), filed August 9, 2017.

3 *See* D.C. Code, § 10-1141.06 (2001 Ed.).

4 *TT00-5*, ROW Compliance Filing at 2.

5 *TT00-5*, ROW Compliance Filing at 2.

6 *TT00-5*, ROW Compliance Filing at 2.

7 *TT00-5*, ROW Compliance Filing at 2.

forecast loss from August to December 2017.[8] Also, the projected cost recovery is based on the line loss experienced in the most recent quarter.[9] Verizon requests that the Commission approve the filing so Verizon can implement the new rate on January 1, 2018.[10]

4. The Company has a statutory right to implement its filed surcharges. However, if the Commission discovers any inaccuracies in the calculation of the proposed surcharge, Verizon could be subject to reconciliation of the surcharges. The General Regulations Tariff and the proposed revisions are on file with the Commission and may be reviewed at the Office of the Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday or on the Commission's website at www.dcpsc.org. Once at the website, open the "eDocket System" tab, click on "Search Current Dockets," click on "Advanced Search" and input "Telephone Tariffs-TT" in the "Case Type" Box and "00-5" in the "Case Number" box. Copies of the tariff are also available upon request, at a per-page reproduction cost.

5. All persons interested in commenting on the proposed tariff may submit written comments not later than thirty (30) days after publication of this notice in the *D.C. Register* with Brinda Westbrook-Sedgwick, Commission Secretary, at the above address or by email at psc-commissionsecretary@dc.gov. Comments may also be filed by clicking on the following link: http://edocket.dcpsc.org/comments/submitpubliccomments.asp. After the comment period has expired, the Commission will take final action on the ROW Compliance Filing. Persons with questions concerning this NOPT should call (202) 626-5150.

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8 *TT00-5*, ROW Compliance Filing at 2.

9 *TT00-5*, ROW Compliance Filing at 2. Currently, D.C. Code § 10-1141.06 permits recovery of the ROW fees only from customers receiving regulated switched-circuit wireline services (which excludes unregulated services such as FiOS broadband internet and digital voice). Consequently, the entire ROW surcharge fee will be distributed over a shrinking number of regulated switched-circuit wireline customers and their individual cost for the fee will go up.

10 *TT00-5*, ROW Compliance Filing at 2.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

THIRD PUBLIC NOTICE

FORMAL CASE NO. 1144, IN THE MATTER OF THE POTOMAC ELECTRIC POWER COMPANY'S NOTICE TO CONSTRUCT TWO 230kV UNDERGROUND CIRCUITS FROM THE TAKOMA SUBSTATION TO THE REBUILT HARVARD SUBSTATION AND FROM THE REBUILT HARVARD SUBSTATION TO THE REBUILT CHAMPLAIN SUBSTATION (CAPITAL GRID PROJECT)

1. On May 10, 2017, the Potomac Electric Power Company ("Pepco") filed the first of two (2) Notices of Construction ("NOC") for its Capital Grid Project.[1] Specifically, under this NOC, Pepco proposes to construct two 230kV underground transmission lines from the Takoma Substation to the rebuilt Harvard Substation and from the rebuilt Harvard Substation to the rebuilt Champlain Substation and to upgrade aging infrastructure. Pepco also proposes to engage in demolition, site preparation, and substation construction for the rebuilt Harvard and Champlain Substations.[2]

2. On May 24, 2017, the Commission *sua sponte* opened an investigation into the reasonableness, safety and need for the underground transmission lines and substations work proposed in Pepco's NOC for its Capital Grid Project.[3] On June 2, 2017, a Public Notice was published in the D.C. Register inviting interested persons to provide comments and reply comments on the reasonableness, safety and need for the underground transmission lines and the rebuilding of the Harvard and Champlain Substations proposed in Pepco's NOC no later than 90 days and 120 days, respectively after the publication of the Public Notice in the *D.C. Register*.[4]

3. On September 7, 2017, due to the complexity of Pepco's NOC application, by Order No. 19085, the Commission extended the initial and reply comment periods on

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[1] *Formal Case No. 1144, In the Matter of the Potomac Electric Power Company's Notice to Construct Two 230kV Underground Circuits from the Takoma Substation to the Rebuilt Harvard Substation and From the Rebuilt Harvard Substation to the Rebuilt Champlain Substation (Capital Grid Project) ("Formal Case No. 1144")* ("Pepco's NOC") filed May 10, 2017. Pursuant to 15 DCMR § 2111.1 (2004), "An electric corporation which plans to construct inside the District of Columbia an underground transmission line in excess of sixty-nine thousand (69,000) volts, or substation connected to such line, shall file formal notice with the Commission six (6) months prior to the construction."

[2] NOC at 2.

[3] *Formal Case No. 1144*, Commission Public Notice, rel. May 24, 2017.

[4] 64 *D.C. Reg.* 005282-005283 (2017).

Pepco's NOC for an additional ninety (90) days.[5] Thus, on September 22, 2017, a Second Public Notice was published in the *D.C. Register* inviting interested persons to provide comments and reply comments on the reasonableness, safety and need for the underground transmission lines and the rebuilding of the Harvard and Champlain Substations proposed in Pepco's NOC.[6] Specifically, initial comments on Pepco's NOC application were due November 29, 2017 with reply comments due January 2, 2018.[7]

4. On December 18, 2017, Pepco filed a Motion for Enlargement of Time to File Reply Comments requesting that the Commission provide all commenters an additional month to respond to comments until February 1, 2018.[8] The Commission now *sua sponte* extends the reply comment period deadline from January 2, 2018 to February 1, 2018. Reply Comments may be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005. This Third Notice supersedes the previous reply comment period published in the *D.C. Register* on September 22, 2017, Notice.[9]

5. Copies of the NOC may be obtained by visiting the Commission's website at www.dcpsc.org. Once at the website, open the "eDocket" tab, click on "Search database" and input "FC 1144" as the case number and "1" as the item number. Copies of the Application may also be purchased, at cost, by contacting the Commission Secretary at (202) 626-5150 or PSC-CommissionSecretary@dc.gov. Persons with questions concerning this Notice should call 202-626-5150.

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5 *Formal Case No. 1144,* Order No. 19085 rel. September 7, 2017.

6 64 *D.C. Reg.* 009436-009437 (2017).

7 64 *D.C. Reg.* 009436-009437 (2017).

8 *Formal Case No. 1144,* Motion for Enlargement of Time to File Reply Comments, filed December 18, 2017 ("Pepco's Motion").

9 64 *D.C. Reg.* 009436-009437 (2017).

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Architectural and General Contracting Services

Two Rivers Public Charter School is soliciting proposals from qualified firms to provide general contracting services and architectural services for a $1.6 million school expansion project. For a copy of the RFP, please email Kate Dydak at Kdydak@programmanagers.com.

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Middle School Enrichment Programming

Two Rivers Public Charter School is soliciting proposals from qualified firms to provide programming for middle school students. For a copy of the RFP, please email Sarah Richardson at procurement@tworiverspcs.org.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2018 MEETING SCHEDULE

Audit Committee

The regular quarterly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Audit Committee Meetings are held in open session on the fourth Tuesday or Thursday during January, April, July and October. The following are dates and times for the regular quarterly meetings to be held in 2018. All meetings are held in the Board Room (4th floor) at 5000 Overlook Avenue, SW, Washington, and D.C. 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, January 25, 2018	9:30 a.m.
Thursday, April 26, 2018	9:30 a.m.
Tuesday, July 24, 2018	9:30 a.m.
(Board recess in August)	
Thursday, October 25, 2018	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2018 MEETING SCHEDULE

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) are held in open session on the first Thursday of each month at 9:30 a.m. The following are dates and times for the regular monthly meetings to be held in 2018. All meetings are held in the Board Room (4th floor) at 5000 Overlook Avenue, SW, Washington, and D.C. 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW, will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, January 4, 2018	9:30 a.m.
Thursday, February 1, 2018	9:30 a.m.
Thursday, March 1, 2018	9:30 a.m.
Thursday, April 5, 2018	9:30 a.m.
Thursday, May 3, 2018	9:30 a.m.
Thursday, June 7, 2018	9:30 a.m.
Wednesday, July 5, 2018	9:30 a.m.
(Board recess in August)	
Thursday, September 6, 2018	9:30 a.m.
Thursday, October 4, 2018	9:30 a.m.
Thursday, November 1, 2018	9:30 a.m.
Thursday, December 6, 2018	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, January 4, 2018 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	**Call to Order**	Board Chairman
2.	**Roll Call**	Board Secretary
3.	**Approval of December 7, 2017 Meeting Minutes**	Board Chairman
4.	**Committee Reports**	Committee Chairperson
5.	**General Manager's Report**	General Manager
6.	**Action Items** Joint-Use Non Joint-Use	Board Chairman
7.	**Other Business**	Board Chairman
8.	**Adjournment**	Board Chairman

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2018 MEETING SCHEDULE

D.C. Retail Water and Sewer Rates Committee

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Retail Water and Sewer Rates Committee Meetings are held in open session on the fourth Tuesday of each month, or as indicated below. The following are dates and times for the regular monthly meetings to be held in 2018. All meetings are held in the Board Room (4th floor) at 5000 Overlook Avenue, SW, Washington, and D.C. 20032 unless otherwise indicated. A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Tuesday, January 23, 2018	9:30 a.m.
Tuesday, February 20, 2018	9:30 a.m.
Tuesday, March 27, 2018	9:30 a.m.
Tuesday, April 24, 2018	9:30 a.m.
Tuesday, May 22, 2018	9:30 a.m.
Tuesday, June 26, 2018	9:30 a.m.
Tuesday, July 24, 2018	9:30 a.m.
(Board recess in August)	
Tuesday, September 25, 2018	9:30 a.m.
Tuesday, October 23, 2018	9:30 a.m.
Tuesday, November 13, 2018	9:30 a.m.
Tuesday, December 18, 2018	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2018 MEETING SCHEDULE

Environmental Quality & Operations Committee

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Environmental Quality & Operations Committee Meetings are held in open session on the third Thursday of each month. The following are dates and times for the regular monthly meetings to be held in 2018. All meetings are held in the Board Room (4th floor) at 5000 Overlook Avenue, SW, Washington, and D.C. 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, January 18, 2018	9:30 a.m.
Thursday, February 15, 2018	9:30 a.m.
Thursday, March 15, 2018	9:30 a.m.
Thursday, April 19, 2018	9:30 a.m.
Thursday, May 17, 2018	9:30 a.m.
Thursday, June 21, 2018	9:30 a.m.
Thursday, July 19, 2018	9:30 a.m.
(Board recess in August)	
Thursday, September 20, 2018	9:30 a.m.
Thursday, October 18, 2018	9:30 a.m.
Thursday, November 15, 2018	9:30 a.m.
Thursday, December 20, 2018	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2018 MEETING SCHEDULE

Finance and Budget Committee

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Finance and Budget Committee Meetings are held in open session on the fourth Tuesday or Thursday of each month, or as indicated below. The following are dates and times for the regular monthly meetings to be held in 2018. All meetings are held in the Board Room (4th floor) at 5000 Overlook Avenue, SW, Washington, and D.C. 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Tuesday, January 23, 2018	11:00 a.m.
Thursday, February 22, 2018	9:30 a.m.
Thursday, March 22, 2018	11:00 a.m.
Thursday, April 26, 2018	11:00 a.m.
Thursday, May 24, 2018	11:00 a.m.
Thursday, June 28, 2018	11:00 a.m.
Thursday, July 26, 2018	11:00 a.m.
(Board recess in August)	
Thursday, September 27, 2018	11:00 a.m.
Thursday, October 25, 2018	11:00 a.m.
Tuesday, November 13, 2018	11:00 a.m.
Tuesday, December 18, 2018	11:00 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2018 MEETING SCHEDULE

Governance Committee

The regular bi-monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Governance Committee Meetings are held in open session on the second Wednesday every other month. The following are dates and times for the regular monthly meetings to be held in 2018. All meetings are held in the Board Room (4th floor) at 5000 Overlook Avenue, SW, Washington, and D.C. 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Wednesday, March 7, 2018	9:00 a.m.
Wednesday, May 9, 2018	9:00 a.m.
Wednesday, July 11, 2018	9:00 a.m.
(Board recess in August)	
Wednesday, September 12, 2018	9:00 a.m.
Wednesday, November 7, 2018	9:00 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2018 MEETING SCHEDULE

Human Resources and Labor Relations Committee

The regular bi-monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Human Resources and Labor Relations Committee Meetings are held in open session on the second Wednesday every other month. The following are dates and times for the regular monthly meetings to be held in 2018. All meetings are held in the Board Room (4th floor) at 5000 Overlook Avenue, SW, Washington, and D.C. 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Wednesday, January 10, 2018	11:00 a.m.
Wednesday, March 7, 2018	11:00 a.m.
Wednesday, May 9, 2018	11:00 a.m.
Wednesday, July 11, 2018	11:00 a.m.
(Board recess in August)	
Wednesday, September 12, 2018	11:00 a.m.
Wednesday, November 7, 2018	11:00 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, January 10, 2018 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	Union Presidents	
4.	Other Business	
5.	Executive Session	Committee Chairperson
6.	Adjournment	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 13991-B of Curt Hansen, pursuant to 11 DCMR Subtitle Y § 704[1], for a modification of significance to revise BZA Order No. 13991, to permit the addition of an accessory fast food establishment to an existing retail grocery store, to expand the retail use to the basement, to change the operating hours, to increase the number of employees from two to seven, and to increase the number of seats from zero to eighteen in the RF-1 Zone at premises 522 ½ K Street N.E. (Square 830, Lot 56).

The original application (No. 13991) was pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from drug store-food products, first floor and basement for storage, to grocery and delicatessen, first floor and basement for storage, in an R-4 District at premises 522 ½ K Street, N.E. (Square 830, Lot 56).

HEARING DATES (Case No. 13991):	July 20 and September 14, 1983
DECISION DATE (Case No. 13991):	October 5, 1983
FINAL ORDER ISSUANCE DATE (Case No. 13991):	November 9, 1983
MODIFICATION HEARING DATES:	September 20 and October 18, 2017[2]
MODIFICATON DECISION DATE:	October 18, 2017

CORRECTED[3] SUMMARY ORDER ON REQUEST FOR MODIFICATION OF SIGNIFICANCE

BACKGROUND

On October 5, 1983, in Application No. 13991, the Board of Zoning Adjustment ("Board" or "BZA") approved a request by Kwang B and In A Jeon, the then owner of the building located at 522 K Street, N.E. and also at the time the proprietor of the retail business located at that address, for a special exception under Paragraph 7106.11 in the 1958 Zoning Regulations to allow a

[1] The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the "1958 Zoning Regulations") but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the "2016 Regulations"). Also, all of the zone district names have been changed in the 2016 Zoning Regulations. Other than the description of the original application and its caption, the other references in this Order to provisions contained in Title 11 DCMR are to the 2016 Regulations. The repeal of the 1958 Regulations and change of zone district name has no effect on the validity of the Board's decision in Application No. 13991 or the validity of this order.

[2] The hearing was originally scheduled for September 20, 2017; however, on September 6, 2107, the Board granted the request of the ANC to postpone the hearing (Exhibit 23) and postponed the hearing to October 18, 2017.

[3] This Order corrects Order No. 13991-A to change the reference to the Saturday hours of operation in Condition No. 4 to accurately reflect the decision of the Board. This corrected order accurately reflects that the Saturday hours of operation begin at 7:00 AM instead of 9:00 AM as stated in Order No. 13991-A. (See Condition No. 4 in this Order.) There are no other changes to the Order.

change from a nonconforming use of drug store-food products, first floor and basement for storage, to another nonconforming use of grocery and delicatessen (sandwiches and hot food) on the first floor and storage in the basement. The Board issued Order No. 13991 on November 9, 1983, approving the special exception requested.

As noted by the Office of Planning (Exhibit 28), Finding No. 10 in Order No. 13991 specified that the applicant at the time had proposed to limit the business' operations, as follows:

1. Hours of operation to be limited to 8:00 am to 8:00 pm Monday to Saturday and 8:00 am to 6:00 pm on Sundays;

2. The number of employees would remain at two;

3. Service would be carryout only;

4. There would be no tables or chairs for on-site sit down service.

(Order No. 13991, Finding No. 10, pg. 2.)

The approval in Case No. 13991 was subject to two enumerated conditions, namely:

1. Exterior signage shall be limited to one non-illuminated sign, located at the K Street entrance.

2. Two garbage cans shall be placed on the subject site, and all parts of the lot shall be kept free of litter and debris.

(Exhibit 3.)

According to the current owner who is the applicant in the modification request herein (the "Applicant"), this 100-year-old building has had commercial uses on the first floor and in the basement for at least 70 years. In the 1940s, the first floor and basement were used as a pharmacy and convenience store. By the 1970s, the store was being operated as a convenience store.

In 1983, the then building owner, Kwang B. Jeon and his spouse, In A. Jeon, applied to this Board for a special exception to change the use from a nonconforming use for drug store-food products to one for grocery store and delicatessen. That application was granted in October 1983 and Order No. 13991 was issued on November 9, 1983.

Subsequent to the Board's 1983 approval, the ownership of the market changed but the uses continued. The Applicant and current owner of the building indicated that, based on the Board's

1983 order, the building was renovated to incorporate a small commercial kitchen with a wood/gas fired brick oven for pizza and a coffee bar. The market also continues to sell groceries.

According to the Applicant, shortly after Application No. 13991 was granted, Kwang Jeon, who had been operating the store, sold the store, but not the building, to the Kim family, who operated the store as a convenience store with a deli counter, selling hot and cold sandwiches and soup. It is from this approval that the Applicant is seeking a modification.

In the early 1990s, the Applicant, Curt Hansen, acquired the property from Kwang Jeon, but continued to rent the store to the Kims who continued to operate it. The Kims then sold the business to Khalid Ibnoujala, who continued to operate the business as a convenience store though 2014. Subsequently, the Applicant and Mr. Ibnoujala planned a joint venture, wherein the Applicant would renovate the store and still produce hot food, but this time in a wood fired stove. The Applicant noted that prior to beginning the renovations, he met with District officials, including zoning, to confirm that the renovations and intended use were compliant with the existing Certificate of Occupancy.

The approval in Case No. 13991 allowed the then owner to cook and prepare food in the market. As noted above, the market continued to operate under that ownership from 1983 to 2015. In 2015, the market that had been trading as the ABC Market closed for renovations and re-opened under a new name, Old City MAO, LLC, trading as Old City Market and Oven. Old City Market and Oven opened for business in November 2016 and has been in continuous operation since that date. The Applicant stated that prior to Old City Market and Oven's opening in November 2016, a District zoning inspector came and inspected the premises regarding all aspects of the store, and as a result, a Certificate of Occupancy was issued.

The Applicant indicated that prior to the latest renovations, the operator of the business used the first floor of the building for retail sales and the basement level contained a bathroom and storage rooms. After the market closed for renovations, the basement was renovated and the pre-existing bathrooms were completely gutted and renovated to be accessible for persons with disabilities. The modification application requests expansion of the retail use to the basement.

The Applicant also noted that the building has two bays that are original to the building. During the time Mr. Ibnoujala operated the store, he used the 6th Street bay as a point of sale space and sat behind a plywood and Plexiglas wall. The K Street bay held a freezer. After the Applicant completed the renovations, the windows were restored in the bays and a nine-inch counter installed just below each picture window. The Applicant indicated that the intended purpose of the counters was to allow patrons to have a space to stand and drink their coffee while waiting for their food to be prepared. The Applicant set up three small tables with seating downstairs. Also, four stools were brought in so patrons could sit at the bay windows.

After installing the seating described above, the Applicant was informed by the Zoning Administrator's office that the eight chairs and four stools were not permitted under the current

Certificate of Occupancy and that the Applicant would need to apply for a modification of significance to the approval in Order No. 13991 in order to add seating and provide any other changes to how the store was operated. The Applicant removed the chairs and stools and applied for this modification of significance.

MOTION FOR MODIFICATION OF SIGNIFICANCE

On June 13, 2017, Curt Hansen, the current owner of the property, (the "Applicant"), submitted a request for a Modification of Significance to the approval granted by the Board in Order No. 13991. (Exhibit 1-9.) The Applicant is seeking a modification to Order No. 13991 to:

1. Add an accessory fast food use to an existing retail grocery store/deli;

2. Expand the retail grocery use to the basement; and

3. Modify the conditions of Order No. 13991 to:

    a. Change the hours of operation;

    b. Increase the number of employees from two to seven; and

    c. Increase the number of seats from zero to 18.

The modification application was accompanied by a memorandum from the Zoning Administrator ("ZA"), dated May 10, 2017, in which the ZA referred the Applicant to the Board for a Modification of Significance for the following revisions:

1. Addition of accessory Fast Food Establishment to Retail Grocery Store/Deli;

2. Expansion of the retail use to the basement (*identified as storage facilities under Paragraph 4 of the Findings of Fact*)[4];

3. Change the operating hours from 8:00 am to 8:00 pm Monday through Saturday and 8:00 am to 6:00 pm on Sundays (*Paragraph 10 of the Findings of Fact*) to 9:00 am to 9:00 pm Monday through Saturday and 9:00 am to 6:00 pm on Sundays;

4. Increase the number of employees form two (*Paragraph 10 of the Findings of Fact*) to seven; and

5. Increase the number of seats from 0 seats (*Paragraph 10 of the Findings of Fact*) to 18 seats total (10 seats in the basement, and eight seats on the first floor).

[4] The Findings of Fact referenced by the ZA are to Order No. 13991.

(Exhibit 4.)

The Applicant filed submissions and testified as to how the proposed modification of significance meets the burden of proof for the additional relief requested. (Exhibit 5.)

The Merits of the Request for Modification of Significance

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence[5] requires a public hearing and is a modification of significance. The Applicant's request complies with 11 DCMR Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

In the current case, the Applicant, based on the ZA's referral, submitted an application for a modification of significance to revise BZA Order No. 13991, to permit the addition of an accessory fast food establishment to an existing retail grocery store, to expand the retail use to the basement, to change the operating hours, to increase the number of employees from two to seven, and to increase the number of seats from zero to eighteen in the RF-1 Zone. As the ZA referral required the Applicant to seek a modification of significance and that was how the application was stated, it met the definition of a modification of significance and a public hearing was held.

Pursuant to Subtitle Y § 704.6, a public hearing on a request for a modification of significance shall be focused on the relevant evidentiary issues requested for modification and any condition impacted by the requested modification. Pursuant to Subtitle Y § 704.7, the scope of a hearing conducted pursuant to Subtitle Y § 704.1 is limited to the impact of the modification on the subject of the original application, and does not permit the Board to revisit its original decision. Pursuant to Subtitle Y § 704.8, a decision on a request for modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application. Finally, pursuant to Subtitle Y § 704.9, the filing of any modification request under this section does not act to toll the expiration of the underlying order and the grant of any such modification does not extend the validity of any such order.

Notice. Pursuant to Subtitle Y §§ 704.4, and 704.5, all requests for modifications of significance must be served by the moving party on all parties in the original proceeding at the same time that the request is filed with the Board. The Applicant served the Office of Planning ("OP") and the affected Advisory Neighborhood Commission ("ANC"), ANC 6C. (Exhibit 5.)

Also, pursuant to Subtitle Y § 400.4, the Office of Zoning provides notice upon its acceptance on behalf of the Board of an application requiring a public hearing to the Applicant, the affected ANC, the affected Single Member District ANC Commissioner, in this case ANC 6C06, OP, the

[5] See, Subtitle Y §§ 703.3 and 703.4.

District Department of Transportation ("DDOT"), and the Councilmember for the ward within which the property is located. Pursuant to Subtitle Y § 402.1, the Board also provides notice of the public hearing to the applicant, the affected ANC, the affected Single Member District ANC Commissioner, all owners of property within 200 feet of the subject property, any leaseholders on the subject property, OP and all other appropriate government agencies, and the Councilmember for the ward within which the property is located.

Proper and timely notice of the application was provided to ANC 6C, the only other party to Application No. 13991, the ANC Commissioner for Single Member District 6C06, OP, DDOT, the Ward Councilmember for the Property, and the Council Chairman and the At Large Councilmembers. Also, notice of the public hearing was provided to the Applicant, ANC 6C, all owners of property within 200 feet of the subject property, and the Ward Councilmember. (Exhibits 10-21.)

Reports. ANC 6C originally filed a motion to postpone the hearing, which was granted on September 6, 2017. (Exhibit 23.) Subsequently, ANC 6C submitted a report dated October 16, 2017, in support of the application for a modification. The ANC report indicated that at a regularly scheduled, properly noticed public meeting on October 11, 2017, at which a quorum was present, the ANC voted 6:0 to support the application subject to conditions. The ANC noted in its report that its "chief concern is to ensure that this business – whether under the ownership of the applicant or any successor – retains its principal use as a grocery store, with the proposed fast-food use remaining 'clearly and subordinate to' that principal use." As to the conditions, the ANC noted that:

1. ANC 6C supports the request for 18 indoor seats so long as they are not served by wait staff. They expressed concern that adding an equal number of outdoor seats would cause the fast-food use to be so significant an operation so that it would no longer be secondary to the principal grocery use. Thus, they support authorization for up to six additional seats outside, subject to DDOT/Public Space approval.

2. The ANC supports expanding the hours of operation to 7:00 am to 9:00 pm Monday – Saturday and 7:00 am to 6:00 pm Sunday.

3. ANC 6C supports allowing delivery service during the full hours of operation, subject to limitation, as recommended by the Office of Planning, that all deliveries be made by bicycle or on foot.

4. ANC 6C supports the application's request, as proposed, to expand the retail use to the basement and the increase in the number of employees.

(Exhibit 31.)

ANC Commissioners Edelman and Eckenwiler testified in support and provided further discussion of the ANC's proffered conditions.

OP submitted a timely report. The report, dated October 6, 2017, recommended approval of the requested modification with nine conditions. (Exhibit 28.) The Board accepted seven of the nine conditions.

DDOT submitted a report stating that it had no objection to the granting of the request with one condition. (Exhibit 27.)

A petition of support (Exhibits 8 and 9) as well as five letters of support from neighbors for the application were submitted to the record. (Exhibits 25, 30, 32, and 33.)

Burden of Proof. As directed by 11 DCMR Subtitle X § 901.2 and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of significance to revise BZA Order No. 13991, to permit the addition of an accessory fast food establishment to an existing retail grocery store, to expand the retail use to the basement, to change the operating hours, to increase the number of employees from two to seven, and to increase the number of seats from zero to eighteen in the RF-1 Zone at premises 522 ½ K Street N.E.. With its application, the Applicant submitted the required documents in conjunction with the application, including a statement demonstrating how the application meets the burden of proof for the Modification of Significance. (Exhibit 5.) The Applicant also provided testimony as to how the application meets the burden of proof.

The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board also concludes that in seeking a modification of significance to Case No. 13991, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 704.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant the request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of significance of the Board's approval in Application No. 13991-A is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7 AND TO THE FOLLOWING CONDITIONS:**

1. Exterior signage shall be limited to one non-illuminated sign, located at the K Street entrance.
2. At least two garbage receptacles shall be placed on the subject site, and all parts of the lot shall be kept free of litter and debris. Commercial trash pick-up shall be a minimum of two times per week.

3. There shall be a maximum of seven full-time employees.
4. Hours of operation shall be limited to 7:00 AM to 9:00 PM, Monday to Friday; **7**:00 AM to 9:00 PM, Saturdays; and 7:00 AM to 6:00 PM on Sundays.
5. Deliveries to the market shall be between the hours of 9:00 AM and 5:00 PM.
6. Seating is limited to 18 seats, anywhere in the building.
7. If seating is allowed in the public space, it will be in addition to the seating allowed in Condition 6.

In all other respects, Order No. 13991 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON OCTOBER 5, 1983: 5-0
(Maybelle T. Bennett, Carrie Thornhill, William F. McIntosh, Douglas J. Patton, and Charles R. Norris to GRANT.)

VOTE ON MODIFICATION OF SIGNIFICANCE ON OCTOBER 18, 2017: 4-0-1
(Frederick L. Hill, Anthony J. Hood, Lesylleé M. White, and Carlton E. Hart to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 13, 2017

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19618 of Gillette Wing, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 601.1(c), to permit a one-family dwelling unit in an existing structure on an alley lot in the RF-3 Zone at premises 19 4th Street Rear, N.E. (Square 816, Lot 18).

HEARING DATE: December 6, 2017 and December 13, 2017[1]
DECISION DATE: December 13, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC submitted a report dated December 12, 2017 and provided testimony at the hearing recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 8, 2017, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 40.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 36.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 35.)

The Metropolitan Police Department filed a letter in support of the application. (Exhibit 39.)

[1] The hearing for this application was administratively rescheduled from November 15, 2017 to December 6, 2017. (Exhibit 14.) The hearing was postponed to December 13, 2017 at the Applicant's request. (Exhibit 28.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the uses on alley lots requirements of Subtitle U § 601.1(c), to permit a one-family dwelling unit in an existing structure on an alley lot in the RF-3 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 601.1(c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 33A - APPLICANT'S PREHEARING STATEMENT: TAB A (ARCHITECTURAL PLANS) - AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall have minor flexibility to modify the design of the façades of the building, including window penetrations and related changes, as necessary for approval by the Historic Preservation Review Board.

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 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.

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19619 of Matt Medvene, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5203.3 from the roof top architectural elements requirements of Subtitle E § 206.1, to construct a third story addition, and convert a one-family dwelling to a flat in the RF-1 Zone at premises 765 Girard Street N.W. (Square 2886, Lot 288).

HEARING DATE: December 13, 2017
DECISION DATE: December 13, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated July 7, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 4.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report resolution indicated that at a regularly scheduled, properly noticed public meeting on October 5, 2017, at which a quorum was present, the ANC voted 11-0-0 to support the application. (Exhibit 15.)

The Office of Planning ("OP") submitted a timely report in support of the application with minor revisions. OP indicated that these revisions are reflected in the Applicant's revised plans. (Exhibit 39.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 38.)

A letter of opposition from the resident at 759 Girard Street, N.W. and one from the resident at 765 Girard Street, N.W. were submitted to the record. (Exhibits 36 and 40.) In addition, testimony was provided by Brenda Johnson and Errington Bethel in opposition to the application.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle E § 5203.3 from the roof top architectural elements requirements of Subtitle E § 206.1, to construct a third story addition, and convert a one-family dwelling to a flat in the RF-1 Zone. The only parties to the case were the Applicant and the

ANC. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle E §§ 5203.3 and 206.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 3, AS REVISED BY EXHIBIT 37.**

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 18, 2017

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19633 of VI 3629 T Street, LLC, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear addition requirements of Subtitle D § 1206.4, to construct a three-story rear addition to an existing one-family dwelling in the R-20 Zone at premises 3629 T Street N.W. (Square 1296, Lot 804).

HEARING DATE: December 6, 2017[2]
DECISION DATE: December 13, 2017

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 13 (original) and 46A (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The ANC submitted a report, which indicated that at a properly noticed public meeting on October 2, 2017, at which there was a quorum, the ANC voted 7-0-0 to provide a resolution in which the ANC voiced no objections and stated that it would not be participating in the proceeding before the Board, but instead asked the Board to consider whether there will be a negative impact on light and air of the house to the east and whether the proposed third story windows will have a negative impact on the adjacent neighbors' privacy. (Exhibit 17.) The Board considered the ANC's concerns as part of its discussion of the burden of proof.

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 43.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 39.)

[1] The original request cited Subtitle D § 306.4 instead of Subtitle D § 1206.4. (Exhibit 13.) Both provisions contain the same rear addition requirement, but Subtitle D § 1206.4 applies specifically to the R-20 Zone. The Applicant updated the Self-Certification to reflect the change in provision cited (Exhibit 46A) and the caption has been amended accordingly.

[2] This case was administratively postponed from the public hearing of November 15, 2017 to that of December 6, 2017. (Exhibit 18.)

A letter of support for the application from the adjacent property owner at 3627 T Street, N.W., was submitted to the record. (Exhibit 16.) That neighbor also testified in support of the application at the hearing.

Thirty-four letters in opposition to the application from neighbors to the subject property. (Exhibits 38, 44, 48-80.) Six neighbors testified in opposition to the application at the hearing.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle D § 5201 from the rear addition requirements of Subtitle D § 1206.4, to construct a three-story rear addition to an existing one-family dwelling in the R-20 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle D §§ 5201 and 1206.4, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 41A.**

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 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.

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19640 of Basilica of the National Shrine of the Immaculate Conception, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 710.3(a)(4) from the parking lot location requirements of Subtitle C § 710, to continue the existing parking lot use in the RA-1 Zone at premises 300 Michigan Avenue N.E. (Parcel 121/22).

HEARING DATE: December 13, 2017
DECISION DATE: December 13, 2017

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated September 20, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 4.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5A, which is automatically a party to this application. The ANC submitted a timely report recommending approval of the application. The ANC's report and resolution indicated that at a regularly scheduled, properly noticed public meeting on October 25, 2017, at which a quorum was present, the ANC voted 7-0-0 to support the application. (Exhibit 33.)

The Office of Planning ("OP") submitted a timely report, dated December 1, 2017, in support of the application and indicated that it is not opposed to the Applicant's request that there be no further term limits. (Exhibit 32.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application subject to the condition that the Applicant meet the landscaping requirement in Subtitle C § 715. (Exhibit 30.) The Board made this a condition of this Order.

One letter of support for the application was submitted to the record. (Exhibit 28.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle C § 710.3(a)(4) from the parking lot location requirements of Subtitle C § 710, to continue the existing parking lot use in the RA-1 Zone. The only parties to the case were the Applicant and the ANC. No parties appeared at the public

hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle C § 710.3(a)(4), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLAN AT EXHIBIT 8 AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall meet the landscaping requirement of 11 DCMR Subtitle C § 715.

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 18, 2017

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

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

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

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19641 of Robert and Kathryn McPhail, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 601.1(c) from the alley lot use permissions of Subtitle U, Chapter 6, to permit the use of an existing two-story alley lot building as a one-family dwelling in the R-20 Zone at premises 3208 Volta Place, N.W. (Rear), (Square 1255, Lot 210).

HEARING DATE: December 13, 2017
DECISION DATE: December 13, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 11.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 30, 2017, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 30.)

The Office of Planning ("OP") submitted a timely report dated November 22, 2017 recommending approval of the application. (Exhibit 31.) Noting that no written comments had been received from other agencies to date, OP requested that the Applicants continue to work with the agencies, particularly the Fire and Emergency Medical Service Department, to receive their written responses regarding the proposed use of the site. Counsel for the Applicants submitted into the record evidence of their outreach efforts (see Exhibits 34A1-34A3). The Board was satisfied that the Applicants had reached out to the agencies and that no objections had been received.
The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 33.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicants to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the alley lot use requirements of Subtitle U § 601.1(c), to permit the use of an existing two-story alley lot building as a one-family dwelling in the R-20 Zone. The only parties to the case were the ANC and the Applicants. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicants have met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 601.1(c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED.**

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 19, 2017

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19642 of Samuel Akingbade, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the side yard requirements of Subtitle D § 307.4, to construct a new semi-detached, one-family dwelling in the R-2 Zone at premises 725 49th Street N.E. (Square 5179, Lot 78).

HEARING DATE: December 13, 2017
DECISION DATE: December 13, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibits 8 (original) and 27 (revised).) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 7C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application. The ANC did not submit a report. The Applicant testified that he made a presentation to the ANC and they had no objection, but did not vote on the application.

The Office of Planning ("OP") submitted a timely report, dated December 1, 2017, in support of the application. (Exhibit 29.) The District Department of Transportation ("DDOT") submitted a timely report, dated November 29, 2017, expressing no objection to the approval of the application. (Exhibit 28.)

Two letters of support for the application were submitted to the record. (Exhibits 31 and 32.)

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X §

[1] The Applicant originally requested a variance for lot area and lot width dimensions (Exhibit 8), but withdrew that request and replaced it with one for a side yard variance (Exhibit 27), based on the comments of the Office of Planning. The caption has been amended accordingly.

1002.1, for an area variance from the side yard requirements of Subtitle D § 307.4, to construct a new semi-detached, one-family dwelling in the R-2 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle D § 307.4, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6.** [2]

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 18, 2017

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE

[2] The Applicant agreed to comply with the Board's request to use brick on the side of the structure built on the property line, even though this was not made a condition of the Board's approval of the application.

APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19643 of William Calomiris, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard setback requirements of Subtitle D § 5004.1, to permit an existing accessory structure in the R-15 Zone at premises 3112 New Mexico Avenue N.W. (Square 1625, Lot 24).

HEARING DATE: December 13, 2017
DECISION DATE: December 13, 2017

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 8.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 6, 2017, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 39.)

The Office of Planning ("OP") submitted a timely report, dated December 1, 2017, in support of the application. (Exhibit 35.) The District Department of Transportation ("DDOT") submitted a timely report, dated November 29, 2017, expressing no objection to the approval of the application. (Exhibit 33.)

A letter of support for the application was submitted by the resident of 3118 New Mexico Avenue. (Exhibit 26.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle D § 5201 from the rear yard setback requirements of Subtitle D § 5004.1, to permit an existing accessory structure in the R-15 Zone. No parties

appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle D §§ 5201 and 5004.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 4.**

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

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 19, 2017

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

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

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 17-26
(MIRV Holdings, LLC – Map Amendment @ Parcel 121/31)
December 14, 2017

THIS CASE IS OF INTEREST TO ANCs 5A and 5E

On December 8, 2017, the Office of Zoning received an application MIRV Holdings, LLC (the "Applicant") for approval of a map amendment for the above-referenced property.

The property that is the subject of this application consists of Parcel 121/31 in northeast Washington, D.C. (Ward 5), on property that is bound by Irving Street, N.E. (north), Michigan Avenue, N.E. (east), residential and commercial uses (south), and the North Capitol Street cloverleaf traffic interchange (west). The property is currently unzoned.* The Applicant is proposing a map amendment to rezone the property to the MU-5-B zone.

> The MU-5 zones are intended to: permit medium-density, compact mixed-use development with an emphasis on residential use; 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 on arterial streets, in uptown and regional centers, and at rapid transit stops. The MU-5-B zone allows a maximum height of 75 feet; maximum lot occupancy of 80%; maximum density of 3.5 floor area ratio ("FAR") (4.2 FAR for IZ and 1.5 FAR for non-residential).

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

* The property is owned by the United States Government, which is why it is unzoned, and it is under the jurisdictional authority of the District of Columbia. The property is currently the subject of an approved planned unit development ("PUD") and related PUD map amendment to the C-3-A Zone District through Z.C. Cases 08-33A-08-33G, but the PUD and related map amendment will expire on December 31, 2018.