



District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 22-281, Health Care Provider Facility Expansion Program Establishment Act of 2018
- D.C. Council schedules a public hearing on Bill 22-669, Department of Buildings Establishment Act of 2018
- D.C. Council reconvenes a public oversight roundtable on the “Future of School Reform in the District of Columbia”
- Board of Ethics and Government Accountability publishes an advisory opinion on the Local Hatch Act as the act relates to partisan political candidate “meet and greets” hosted by District government and commission employees
- D.C. Public Schools updates regulations for maintaining and returning employees and students after diagnosis of a communicable disease
- Department of Small and Local Business Development updates the application deadlines for the 2018 Ward 8 Equitable Food Incubator Grant and the 2018 Ward 8 Grocery Grant
- Office of Tax and Revenue clarifies requirements for real property tax refunds

DISTRICT OF COLUMBIA REGISTER

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CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. ACTS

A22-277 Disability Services Reform Amendment Act of 2018 [B22-154]002823 - 002846

A22-278 Fair Elections Amendment Act of 2018 [B22-192]002847 - 002860

A22-279 Workforce Development System Transparency Amendment Act of 2018 [B22-401]002861 - 002867

A22-280 Adult Career Pathways Task Force Expansion Amendment Act of 2018 [B22-554]002868 - 002869

A22-281 Health Care Provider Facility Expansion Program Establishment Act of 2018 [B22-176].....002870 - 002873

A22-282 School Health Innovations Grant Program Amendment Act of 2018 [B22-232]002874 - 002877

RESOLUTIONS

Res 22-421 Master Development Plan Recognition Congressional Review Emergency Declaration Resolution of 2018 002878

Res 22-439 Spanish Education Development Center Revenue Bonds Project Approval Resolution of 2018.....002879 - 002887

Res 22-440 Contract No. CFOPD-11-C-040, Electronic Benefits Transfer Services Approval Resolution of 2018 002888

Res 22-455 Mental Health Information Disclosure Emergency Declaration Resolution of 2018..... 002889

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

Notice of Intent to Act on New Legislation -
 Bills B22-746 and B22-747 and Proposed Resolutions PR22-805 through PR22-809002890 - 002891

COUNCIL HEARINGS

Notice of Public Hearings -
 B22-669 Department of Buildings Establishment Act of 2018..... 002892

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

COUNCIL HEARINGS CONT'D

Notice of Public Hearings - cont'd

Fiscal Year 2019 Proposed Budget and Financial Plan,
Fiscal Year 2019 Budget Support Act of 2018,
Fiscal Year 2019 Local Budget Act of 2018,
Fiscal Year 2019 Federal Budget Act of 2018,
and Committee Mark-up Schedule, 3/20/2018.....002893 - 002901

Notice of Public Oversight Roundtable -

The Future of School Reform in the District of Columbia
(Reconvening) 002902

Notice of Public Roundtables -

PR 22-745 Zoning Commission for the District of Columbia
Anthony Hood Confirmation..... 002903

Washington Convention and Sports Authority Board of Directors
Confirmation Resolutions of 2018

PR 22-798 Linda Greenan 002904

PR 22-799 George T. Simpson..... 002904

PR 22-800 Julio Jay Haddock Ortiz 002904

OTHER COUNCIL ACTIONS

Notice of Grant Budget Modification -

GBM 22-75 FY 2018 Grant Budget Modifications as of
March 2, 2018 002905

Notice of Reprogramming Request -

22-111 Request to reprogram \$1,750,000 of Fiscal Year
2018 Local funds budget authority from the
Department of Youth Rehabilitation Services
(DYRS) to the District of Columbia Office on
Aging (DCOA) 002906

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -

Abunai Poke Restaurant - ANC 2B - New 002907

Anxo Cidery & Tasting Room - ANC 4D - Substantial Changes - CORRECTION 002908

Anxo Cidery & Tasting Room - ANC 4D - Substantial Changes - RESCIND 002909

Class A Renewals for March 23, 2018.....002910 - 002932

Culture Coffee Too LLC - ANC 4B - New..... 002933

Levy @ DC United - ANC 6D - Transfer to a New Location..... 002934

Luke's Lobster - ANC 2B - New - CORRECTION 002935

Muki's Market & Deli - ANC 7E - New..... 002936

Oath Pizza - ANC 6D - New 002937

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PUBLIC HEARINGS CONT'D

Energy and Environment, Department of -
 Notice of Public Hearing - Air Quality Permit for
 The Louis DC Residential LLC - (Draft Permit No. 6843)
 - April 30, 2018002938

Zoning Adjustment, Board of - May 2, 2018 - Public Hearings
 19718 Revie Dow, LLC - ANC 6E002939 - 002941
 19741 M2EDGEWOOD, LLC - ANC 5E.....002939 - 002941

Zoning Commission - Case -
 13-16A Forest City SEFC, LLC002942 - 002944

FINAL RULEMAKING

Public Schools, DC - Amend 5 DCMR (Education),
 Subtitle E (Original Title 5),
 Ch. 10 (General Personnel Policies),
 Sec. 1023 (Communicable Diseases Contracted by
 Employees), to update requirements for maintaining
 and returning employees to school, after being
 diagnosed with a communicable disease..... 002945 - 002949

Public Schools, DC - Amend 5 DCMR (Education),
 Subtitle E (Original Title 5),
 Ch. 24 (Student Rights and Responsibilities),
 to transfer Sec. 2414 (Communicable Diseases
 Contracted by Students) to Subtitle B DCMR
 (District of Columbia Public Schools),
 Ch. 24 (Student Rights and Responsibilities),
 to update requirements for maintaining and
 returning students to school, after being
 diagnosed with a communicable disease.....002950

Retirement Board, DC - Amend 7 DCMR
 (Employment Benefits),
 Ch. 15 (District of Columbia Retirement Board), to add
 Sections 1510 - 1524, to include provisions governing
 the election of Board Trustees to represent active and
 retired teachers, police officers, and firefighters002951 - 002971

Tax and Revenue, Office of - Amend 9 DCMR
 (Taxation and Assessments),
 Ch. 3 (Real Property Taxes),
 Sec. 313 (Payment of Real Property Tax),
 to define rules for authorizing real property tax
 refunds and for applying payments when
 delinquencies exist.....002972 - 002973

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PROPOSED RULEMAKING

Behavioral Health, Department of - Amend 16 DCMR (Consumers, Commercial Practices, and Civil Infractions), Ch. 35 (Department of Mental Health (DMH) Infractions), Sec. 3501(Mental Health Community Residence Facility Infractions), to revise the existing infraction regulation for Mental Health Community Residence Facilities..... 002974 - 002978

Public Service Commission - RM3-2014-01 - Utility Consumer Bill of Rights to Amend 15 DCMR (Public Utilities and Cable Television), Ch. 3 (Consumer Rights and Responsibilities), Sections 308, 309, 310, 321, 325, 326, 327, and Sec. 399 (Definitions), to clarify requirements for Energy Suppliers; Third Proposed Rulemaking to incorporate changes from the Proposed Rulemakings published on June 30, 2017 at 64 DCR 6128 and December 22, 2017 at 64 DCR 13113.....002979 - 002995

Public Service Commission - RM41-2017-01, to Amend 15 DCMR (Public Utilities and Cable Television), Ch. 41 (The District of Columbia Standard Offer Service Rules), Sec. 4105 (Establishment and Re-Establishment of Standard Offer Service: Customer Switching Restrictions), to make Standard Offer Service rules consistent with the Commission’s Consumer Bill of Rights; Second Proposed Rulemaking to incorporate changes from the Proposed Rulemaking Published on June 30, 2017 at 64 DCR 6128.....002996 - 002997

Zoning Commission, DC - Z.C. Case No. 08-06O to amend 11 DCMR (Zoning Regulations of 2016), Subtitle U (Use Permissions), Ch. 8 (Use Permissions Production, Distribution and Repair (PDR) Zones), Sec. 802 (Special Exception Uses (PDR)), to Permit Large Format Retail as a Special Exception Use in the PDR Zones 002998 - 003003

Zoning Commission, DC - Z.C. Case No. 17-12 to amend 11 DCMR (Zoning Regulations of 2016), Subtitle K (Special Purpose Zones), Ch. 2 (Southeast Federal Center Zones), Subtitle Z (Zoning Commission Rules of Practice and Procedure), Ch. 4 (Pre-Hearing and Hearing Procedures: Contested Cases), to make text related map amendments to the Height and Density rules in the Southeast Federal Center Zones003004 - 003012

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY AND PROPOSED RULEMAKING

Health Care Finance, Department of - Amend 29 DCMR
(Public Welfare), Ch. 27 (Medicaid Reimbursement for
Fee for Service Pharmacies), Sections 2701, 2702, 2703,
2706, 2708, 2709, 2710, 2711, and Sec. 2799 (Definitions),
to update Medicaid reimbursement requirements for covered
outpatient drugs from fee for service pharmacies; Second
Emergency and Proposed Rulemaking to amend Emergency
and Proposed Rulemaking published on May 5, 2017 at
64 DCR 4262.....003013 - 003027

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

2018-032 Appointment – Interim Director, Department of
Employment Services (Unique Morris-Hughes) 003028

2018-033 Appointment – Director, Mayor's Office of
Legal Counsel (Ronald Ross)..... 003029

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

Achievement Prep Public Charter School -
Notice of Intent to Enter a Sole Source Contract -
Curriculum Provision and Professional Development Services..... 003030

Administrative Hearings, Office of -
Commission on Selection and Tenure of Administrative Law Judges -
Notice of Public Meeting - March 26, 2018..... 003031

Alcoholic Beverage Regulation Administration -
ABC Board's Calendar - March 28, 2018003032 - 003033
ABC Board's Cancellation Agenda - March 28, 2018 003034
ABC Board's Investigative Agenda - March 28, 2018.....003035 - 003036
ABC Board's Licensing Agenda - March 28, 2018.....003037 - 003039

Asian and Pacific Islander Affairs, Office on -
Commission on Asian and Pacific Islander Affairs
Meeting - March 21, 2018 (Meeting Agenda)003040 - 003041

Behavioral Health, Department of -
Behavioral Health Planning Council - Notice of Public
Meeting - March 30, 2018..... 003042

Consumer and Regulatory Affairs, Department of
Vacant Building Enforcement - 1220 Irving Street NW
Square 2850, Lot 0117 003043

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Criminal Code Reform Commission, DC -
 Advisory Group Meeting - April 4, 2018.....003044

Elections, Board of -
 Certification of Filling ANC/SMD Vacancies in
 2A08 - James Harnett.....003045
 3D07 - Taylor Berlin.....003045

Energy and Environment, Department of -
 Intent to Issue Air Quality Permit -
 #7193 Roubin & Janeiro, Inc. -
 4901 Shepherd Parkway SW.....003046 - 003047

Notice of Public Comment Period and Public Hearing -
 State Implementation Plan Air Quality Revisions - April 23, 2018.....003048 - 003049

Ethics and Government Accountability, Board of -
 Advisory Opinion – Unredacted - 1687-001 – Local
 Hatch Act (“Meet and Greets”).....003050 - 003054

Ingenuity Prep Public Charter School -
 Invitation for Bid - Food Service Management Services.....003055

Not-For-Profit Hospital Corporation -
 Board of Directors Public Meeting - March 28, 2018.....003056

Planning and Economic Development, Office of the Deputy Mayor for -
 Notice of Meeting - Interagency Working Group on
 Autonomous Vehicles - March 29, 2018003057

Public Employee Relations Board - Opinions - See Page

Public Service Commission -
 Notice of Proposed Tariff - Formal Case No. 1140 -
 Investigation Into the Establishment of a Purchase
 of Receivables Program for Natural Gas Suppliers
 and their Customers in the District of Columbia -
 (Firm Delivery Service Gas Supplier Agreement –
 Rate Schedule No. 5).....003058 - 003059

Sentencing Commission, DC -
 Notice of Public Meeting - March 20, 2018.....003060

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Small and Local Business Development, Department of -
 Notice of Funding Availability -
 2018 Ward 8 Equitable Food Incubator Grant -
 (Revised - Updates the Application Deadline).....003061 - 003062

 2018 Ward 8 Grocery Grant -
 (Revised - Updates the Application Deadline).....003063 - 003064

Two Rivers Public Charter School -
 Notice of Intent to Enter a Sole Source Contract -
 Principal Leadership Training..... 003065

Washington Convention and Sports Authority (t/a Events DC) -
 Notice of Emergency Meeting - March 15, 2018..... 003066

Washington Leadership Academy Public Charter School -
 Request for Proposals -
 WLA XQ Super School Design & Implementation Strategy..... 003067
 WLA XQ Super School Virtual Reality Content 003067

Water and Sewer Authority, DC -
 Board of Directors - Notice of Public
 Meeting - April 5, 2018..... 003068

 DC Retail Water and Sewer Rates Committee -
 Notice of Public Meeting - March 27, 2018..... 003069

Zoning Adjustment, Board of - Cases -
 19153 Independence Avenue Investments
 LLC - ANC 6B - Order.....003070 - 003076

19415-A Verizon Wireless, Motion for Modification
 of Consequence - ANC 6D - Order.....003077 - 003079

19638 BB&H Joint Venture - ANC 3F - Order003080 - 003084

19693 128 17th Street LLC - ANC 6A - Order003085 - 003087

19701 Amy and Fernando Wright - ANC 6B - Order003088 - 003090

19702 Kate and Matthew Gallery - ANC 6B - Order003091 - 003093

19704 Milestone East Capitol 4, LLC - ANC 7F - Order.....003094 - 003097

19704-A Application No. 19704 of Milestone East Capitol 4, LLC -
 ANC 7F - Corrected Order003098 - 003102

Zoning Commission - Cases -
 05-28Q Parkside Residential, LLC - Order..... 003103 - 003167

05-28R & Parkside Residential, LLC - Order..... 003168 - 003228

05-28S

05-28T SCCI Parkside One, LLC - Order003229 - 003283

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D

BOARDS, COMMISSIONS, AND AGENCIES CONT'D

Public Employee Relations Board - Opinions -

- 1649 PERB Case No. 16-S-03, Candi Peterson, v. Elizabeth A. Davis, president, and Washington Teachers' Union, Local 6, AFL-CIO003284 - 003301

- 1650 PERB Case No. 16-N-03, American Federation of Government Employees Local 3721, v. District of Columbia Fire and Emergency Medical Services Department (Motion for Reconsideration)003302 - 003305

- 1651 PERB Case Nos. 17-U-26, 18-U-04, & 18-U-06, Fraternal Order of Police/ Metropolitan Police Department Labor Committee, v. Metropolitan Police Department003306 - 003313

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-277

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 12, 2018

To amend the Department on Disability Services Establishment Act of 2006 to require the Department on Disability Services to establish a process for the resolution of formal complaints, including formal complaints filed with a provider, establish a peer support pilot program to assist people with intellectual disabilities throughout the formal complaint process, and publish an annual report regarding the peer support pilot program, to require that a formal complaint filed with the Department on Disability Services receive a prompt review by the Director or the Director's designee, to require the Department on Disability Services to refer formal complaints to an external reviewer in accordance with rules issued by the Department on Disability Services, to authorize any person aggrieved by an action of the Department on Disability Services relating to a formal complaint to appeal the action of the Department on Disability Services to the Office of Administrative Hearings, to provide that if a person files a formal complaint with the Department on Disability Services that is substantially similar to a case that the person previously initiated in the Superior Court of the District of Columbia or the Office of Administrative Hearings, the Department on Disability Services shall deny the formal complaint, and to require the Mayor to issue rules, which shall be subject to Council review, to implement provisions relating to formal complaints; to amend the Office of Administrative Hearings Establishment Act of 2001 to expand the jurisdiction of the Office of Administrative Hearings to include appeals of formal complaints filed with the Department on Disability Services; to amend the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978 to repeal provisions relating to admissions, to prohibit new commitments other than commitments of persons found incompetent in a criminal case, to provide that decisions of the Superior Court of the District of Columbia ordering commitment of a person with an intellectual disability, other than a decision of the court ordering commitment of a person found incompetent in a criminal case, that was issued before the effective date of this act shall be reviewed in a court hearing annually, and to provide that a commitment entered into before the effective date of this act, other than a commitment of a person found incompetent in a criminal case, shall be terminated unless the person committed, or a person close to the committed person, provides informed consent to continue the commitment; to amend Title 21 of the District of Columbia Official Code to authorize the Department on Disability Services to petition the Superior Court of the District of Columbia to remove a limited guardian or a general

ENROLLED ORIGINAL

guardian, and to make conforming amendments; to amend the Nursing Home and Community Residence Facility Residents' Protections Act of 1985 to repeal an unnecessary provision; to allow a supported person and a supporter to enter into a supported decision-making agreement that authorizes a supporter to provide supported decision-making, be present during the supported decision-making process, when requested by the supported person, or, in the presence of the supported person, assist the supported person in obtaining information that is relevant to a given life decision and communicating the supported person's decisions to others, to require a person or a District agency who receives a supported-decision making agreement to give certain notices to the supporter and to rely on the supported decision-making agreement, to provide that neither a person nor a District agency shall be subject to criminal or civil liability, nor shall a person be considered to have engaged in professional misconduct, for an act or omission done in good faith and in reasonable reliance on a supported decision-making agreement, to require a District employee or a caregiver, who is aware of the existence of a supported decision-making agreement and has a reasonable belief that the supported person is an adult in need of protected services, to report the alleged abuse, neglect, or exploitation, and to require the Mayor to issue rules to implement provisions relating to supported decision-making agreements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Disability Services Reform Amendment Act of 2018".

TITLE I. FORMAL COMPLAINTS RELATING TO THE DEPARTMENT ON DISABILITY SERVICES

Sec. 101. The Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 7-761.02) is amended by adding new paragraphs (5A) and (5B) to read as follows:

"(5A) "External reviewer" means a person, selected by the Director to provide review and resolution of formal complaints, who has:

"(A) Extensive experience in alternative dispute resolution;

"(B) Experience working with people with intellectual disabilities; and

"(C) An understanding of DDS.

"(5B)(A) "Formal complaint" means a statement by a person of his or her dissatisfaction with DDS or a provider, including the denial of any services and supports under this act or other applicable law.

"(B) For the purposes of this paragraph, the term "provider" shall have the same meaning as provided in section 113(f)."

(b) Section 109 (D.C. Official Code § 7-761.09) is amended by adding a new subsection (a-2) to read as follows:

ENROLLED ORIGINAL

“(a-2)(1) Within 45 days after the effective date of the Disability Services Reform Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of section 113.

“(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 45-day period of review, the proposed rules shall be deemed approved.”.

(c) A new section 113 is added to read as follows:

“Sec. 113. Formal complaints.

“(a) The Department shall:

“(1) Establish a process for the resolution of formal complaints, including formal complaints filed with a provider, which shall include, at a minimum:

“(A) The opportunity for any person, or a third party with the person’s consent, to file a formal complaint with DDS or a provider;

“(B) Assistance for a person who needs help filing his or her formal complaint, orally or in writing;

“(C) The right of a person to be assisted by a family member, friend, attorney, or any other representative throughout the formal complaint process;

“(D) Definite time frames for each stage of the formal complaint resolution process;

“(E) A requirement that services and supports continue without limitation, reduction, or termination pending the resolution of a formal complaint regarding those services or supports;

“(F) Requirements for education and assistance to persons, provider staff, and third parties about individual rights and the formal complaint process;

“(G) An explanation of the appeal process available if the person is dissatisfied with the outcome of the formal complaint process; and

“(H) Prohibitions on retaliatory actions such as reprisal, restraint, interference, coercion, or discrimination by DDS or a provider against a person who files a formal complaint;

“(2) Establish a peer support pilot program to assist people with intellectual disabilities throughout the formal complaint process; and

“(3) Publish an annual report regarding the peer support pilot program described in paragraph (2) of this subsection, which shall include recommendations regarding how to improve the peer support pilot program.

“(b)(1) Any formal complaint filed with DDS shall receive a prompt review by the Director, or the Director’s designee, who shall refer the formal complaint to an external reviewer in accordance with rules issued pursuant to section 109(a-2).

ENROLLED ORIGINAL

“(2) If a formal complaint is referred to an external reviewer, the external reviewer shall:

“(A) Facilitate informal resolution of the formal complaint; or

“(B) If such informal resolution is not possible, determine:

“(i) Whether the Director should sustain or deny the formal complaint; and

“(ii) If the external reviewer determines that the Director should sustain the formal complaint, how DDS should remedy any problems raised in the formal complaint.

“(3) After completing a timely examination of a formal complaint, the external reviewer shall submit a written report to the Director and the person who filed the formal complaint describing the outcome of the external review process.

“(c) Nothing in this section shall be construed to restrict or limit the rights, procedures, and remedies available under federal or District law protecting the rights of persons receiving services through DDS or a provider.

“(d) Any person aggrieved by an action of DDS taken pursuant to this section may appeal the action of DDS to the Office of Administrative Hearings pursuant to section 6(a) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.02(a)).

“(e) If a person files a formal complaint with DDS pursuant to this section that is substantially similar to a case that the person previously initiated in the Superior Court of the District of Columbia or the Office of Administrative Hearings, DDS shall deny the formal complaint.

“(f) For the purposes of this section, the term “provider” means an entity that is responsible for providing residential or day services to people supported by the Developmental Disabilities Administration of DDS.”.

Sec. 102. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by adding a new subsection (b-15) to read as follows:

“(b-15) This act shall apply to all adjudicated cases involving a formal complaint filed pursuant to section 113 of the Department on Disability Services Establishment Act of 2006, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154).”.

TITLE II. ENDING ADMISSIONS AND NEW COMMITMENTS BY PETITION OF PARENT OR GUARDIAN

Sec. 201. The Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1301.01 *et seq.*), is amended as follows:

(a) Section 102(b) (D.C. Official Code § 7-1301.02(b)) is amended as follows:

ENROLLED ORIGINAL

(1) Paragraph (1) is amended by striking the word “individual” and inserting the word “person” in its place.

(2) Paragraph (4) is amended by striking the word “Individuals” and inserting the word “Persons” in its place.

(b) Section 103 (D.C. Official Code § 7-1301.03) is amended as follows:

(1) Paragraph (1) is repealed.

(2) Paragraph (1A) is redesignated as paragraph (1B).

(3) Paragraph (1B) is redesignated as paragraph (1C).

(4) A new paragraph (1A) is added to read as follows:

“(1A) “Adult” means a person who is at least 18 years of age.”.

(5) Paragraph (2A) is amended as follows:

(A) Subparagraph (B) is amended by striking the word “customer’s” and inserting the word “person’s” in its place.

(B) Subparagraph (C) is amended by striking the word “customer” and inserting the word “person” in its place.

(C) Subparagraph (E) is amended by striking the word “customer’s” and inserting the word “person’s” in its place.

(6) Paragraph (2B)(B) is amended by striking the word “customer” and inserting the word “person” in its place.

(7) Paragraph (2C) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(8) Paragraph (3) is amended by striking the word “customers” and inserting the word “residents” in its place.

(9) A new paragraph (3A) is added to read as follows:

“(3A) “Close friend” means any adult who has exhibited significant care and concern for the person and has maintained regular contact with the person so as to be familiar with the person’s activities, health, and religious and moral beliefs.”.

(10) Paragraph (4) is amended to read as follows:

“(4) “Commitment” means the process whereby a person becomes a ward of the District through Court proceedings under this act.”.

(11) Paragraph (8B) is repealed.

(12) Paragraph (9) is repealed.

(13) Paragraph (14A) is amended by striking the word “individuals” and inserting the word “persons” in its place.

(14) Paragraph (14C) is amended as follows:

(A) Strike the word “Individual” and insert the word “Person” in its place.

(B) Strike the phrase “an individual” and insert the phrase “a person” in its place.

(15) Paragraph (16) is amended as follows:

(A) Strike the phrase “an individual’s” and insert the phrase “a person’s” in its place.

ENROLLED ORIGINAL

(B) Strike the phrase “an individual” and insert the phrase “a person” in its place.

(16) A new paragraph (21A) is added to read as follows:

“(21A) "Religious superior" means a bishop or a member of a religious order who, under the approved constitution, laws, statutes, bylaws, or rules of the religious order or community, exercises authority over the particular community or unit of the religious order to which the member of the religious order or community belongs.”.

(17) Paragraph (23) is repealed.

(18) Paragraph (24) is repealed.

(19) Paragraph (24C) is amended by striking the word “customer” both times it appears and inserting the word “person” in its place.

(20) Paragraph (26) is amended by striking the phrase “an individual” and inserting the phrase “a person” in its place.

(c) Title III is amended as follows:

(1) The title heading is amended to read as follows:

“TITLE III. COMMITMENTS”.

(2) Section 301 (D.C. Official Code § 7-1303.01) is amended as follows:

(A) Subsection (a) is repealed.

(B) Subsection (b) is amended as follows:

(i) Strike the phrase “an individual” and insert the phrase “a person” in its place.

(ii) Strike the word “individual’s” and insert the word “person’s” in its place.

(3) Section 302 (D.C. Official Code § 7-1303.02) is repealed.

(4) Section 303 (D.C. Official Code § 7-1303.03) is repealed.

(5) Section 304 (D.C. Official Code § 7-1303.04) is amended as follows:

(A) Subsection (a) is repealed.

(B) A new subsection (a-1) is added to read as follows:

“(a-1)(1) Except as provided in subsection (b-1) of this section, no person shall be newly committed under this act on or after the effective date of the Disability Services Reform Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154).

“(2) For a person committed by written petition of a parent or guardian before the effective date of the Disability Services Reform Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154), the continued commitment of the person shall be governed by section 411(a).”.

(C) Subsection (b) is repealed.

(D) Subsection (b-1) is amended as follows:

(i) Strike the phrase “an individual” and insert the phrase “a person” in its place.

ENROLLED ORIGINAL

(ii) Strike the phrase “the individual” and insert the phrase “the person” in its place.

(6) Section 305 (D.C. Official Code § 7-1303.05) is repealed.

(7) Section 306 (D.C. Official Code § 7-1303.06) is repealed.

(8) Section 307 (D.C. Official Code § 7-1303.07) is repealed.

(9) Section 308 (D.C. Official Code § 7-1303.08) is repealed.

(10) Section 309(b) (D.C. Official Code § 7-1303.09(b)) is repealed.

(11) Section 310 (D.C. Official Code § 7-1303.10) is repealed.

(12) Section 311 (D.C. Official Code § 7-1303.11) is repealed.

(13) Section 312 (D.C. Official Code § 7-1303.12) is amended by striking the phrase “committed to a facility” and inserting the word “committed” in its place.

(14) Section 312a (D.C. Official Code § 7-1303.12a) is amended as follows:

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

(i) Strike the phrase “an individual” and insert the phrase “a person” in its place.

(ii) Strike the phrase “the individual” and insert the phrase “the person” in its place.

(B) Subsection (b) is repealed.

(C) Subsection (c) is amended as follows:

(i) Strike the phrase “the individual” both times it appears and insert the phrase “the person” in its place.

(ii) Strike the word “individual’s” and insert the word “person’s” in its place.

(D) Subsection (d) is amended as follows:

(i) Strike the phrase “the individual” wherever it appears and insert the phrase “the person” in its place.

(ii) Strike the word “individual’s” both times it appears and insert the word “person’s” in its place.

(15) Section 313 (D.C. Official Code § 7-1303.13) is amended as follows:

(A) Strike the phrase “an individual” and insert the phrase “a person” in its place.

(B) Strike the word “individual’s” and insert the word “person’s” in its place.

(16) Section 314 (D.C. Official Code § 7-1303.14) is repealed.

(17) Section 401 (D.C. Official Code § 7-1304.01) is amended to read as follows:

“Sec. 401. Proceedings for the commitment of a person found incompetent in a criminal case shall be commenced by the filing of a written petition by the District with the Court in a manner and form prescribed by the Court. A copy of the petition shall be served on the person, the person’s counsel, and the person’s guardian, if any.”

(18) Section 402 (D.C. Official Code § 7-1304.02) is amended to read as follows:

ENROLLED ORIGINAL

“Sec. 402. Persons who have been committed, or whose commitment is sought pursuant to section 304(b-1), have the right to be represented by counsel, retained or appointed by the Court, in any proceeding held before the Court in accordance with this act, and they shall be informed by the Court of this right. The Court shall appoint counsel to represent the person. Whenever possible, counsel shall be appointed who has had experience in the intellectual disability area. Counsel appointed to represent persons who are unable to pay for such counsel shall be awarded compensation by the Court for his or her services in an amount determined by the Court to be fair and reasonable.”.

(19) Section 403 (D.C. Official Code § 7-1304.03) is amended as follows:

(A) Subsection (b)(1) is amended by striking the phrase “individual or respondent” and inserting the word “person” in its place.

(B) Subsection (c) is amended as follows:

(i) The lead-in language is amended by striking the phrase “shall be developed by the same persons who conduct the comprehensive evaluation (except where the comprehensive evaluation has been performed by persons not geographically accessible to the District) working jointly with the person who is the subject of the plan, and such person’s parent or guardian who petitioned for the commitment. In cases where the comprehensive evaluation has been performed by persons not geographically accessible to the District, the Court shall designate other appropriate and professionally qualified persons to develop the plan. The plan shall” and inserting the word “shall” in its place.

(ii) Paragraph (6) is amended by striking the phrase “, including criteria for discharge and a projected date for discharge if commitment is recommended by the plan.” and inserting a period in its place.

(C) Subsection (d) is amended as follows:

(i) Strike the phrase “individual or respondent” and insert the word “person” in its place.

(ii) Strike the phrase “counsel, and to the parent or guardian if the petition was filed under section 304 or section 306” and insert the word “counsel” in its place.

(iii) Strike the phrase “shall be provided to the respondent” and insert the phrase “shall be provided to the person” in its place.

(20) Section 404 (D.C. Official Code § 7-1304.04) is repealed.

(21) Section 405(a) (D.C. Official Code § 7-1304.05(a)) is repealed.

(22) Section 406 (D.C. Official Code § 7-1304.06) is amended as follows:

(A) Strike the phrase “Individuals whose admission has been questioned or respondents” and insert the phrase “Persons who have been committed, or whose commitment is sought pursuant to section 304(b-1),” in its place.

(B) Strike the phrase “of the respondent” and insert the phrase “of the person” in its place.

(C) Strike the phrase “that the respondent” both times it appears and insert the phrase “that the person” in its place.

(23) Section 406a (D.C. Official Code § 7-1304.06a) is amended as follows:

ENROLLED ORIGINAL

(A) Subsection (a) is amended by striking the phrase “an individual” and inserting the phrase “a person” in its place.

(B) Subsection (c) is amended by striking the word “individual” wherever it appears and inserting the word “person” in its place.

(C) Subsection (d) is amended as follows:

(i) Strike the word “individual” wherever it appears and insert the word “person” in its place.

(ii) Strike the word “individual’s” wherever it appears and insert the word “person’s” in its place.

(24) Section 407 (D.C. Official Code § 7-1304.07) is amended as follows:

(A) Subsection (a) is repealed.

(B) Subsection (b) is amended by striking the word “respondent” and inserting the phrase “person whose commitment is sought” in its place.

(25) Section 409 (D.C. Official Code § 7-1304.09) is repealed.

(26) Section 411 (D.C. Official Code § 7-1304.11) is amended as follows:

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

“(a)(1) Any decision of the Court ordering commitment of a person with an intellectual disability, other than a decision of the Court ordering commitment of a person found incompetent in a criminal case to DDS pursuant to section 406a, that was issued before the effective date of the Disability Services Reform Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-154), shall be reviewed in a Court hearing annually. The commitment shall be terminated unless there is a finding of the following:

“(A) The Court determines that the person with an intellectual disability has benefited from the habilitation;

“(B) DDS demonstrates that continued residential rehabilitation is necessary for the habilitation program;

“(C) The person with an intellectual disability is a resident of the District;

“(D) The Court determines beyond a reasonable doubt that:

“(i) Based on a comprehensive evaluation of the person performed within one year before the hearing, the person has at least a moderate intellectual disability and requires habilitation; and

“(ii) DDS is capable of providing the required habilitation; and

“(E) The person with an intellectual disability, or an individual authorized pursuant to paragraph (2) of this subsection, provides informed consent to continue the person’s commitment.

“(2) If a person with an intellectual disability does not have capacity to give informed consent to continue the person’s commitment, the following individuals, in the order of priority set forth below, shall be authorized to consent on behalf of the person with an intellectual disability to the continued commitment of the person with an intellectual disability pursuant to paragraph (1)(E) of this subsection:

“(A) A court-appointed general guardian or limited guardian of the person

ENROLLED ORIGINAL

with an intellectual disability whose scope of appointment includes the authority to consent to the continued commitment of the person;

“(B) A court-appointed conservator whose scope of appointment includes the authority to consent to the continued commitment of the person;

“(C) The spouse or domestic partner of the person;

“(D) An adult child of the person;

“(E) A parent of the person;

“(F) An adult sibling of the person;

“(G) A religious superior of the person, if the person is a member of a religious order, or a diocesan priest;

“(H) A close friend of the person;

“(I) The nearest-living, adult relative of the person; or

“(J) A guardian *ad litem* appointed by the Mental Health and Habilitation Branch of the Court for the sole purpose of consenting to the continued commitment of the person.

“(3) A decision by an individual authorized pursuant to paragraph (2) of this subsection to consent to the continued commitment of a person pursuant to paragraph (1)(E) of this subsection shall be based on the expressed wishes of the person or, if the wishes of the person are unknown and cannot be ascertained, on a good faith belief as to the best interests of the person.

“(4) If no individual in a prior category of individuals listed in paragraph (2) of this subsection is reasonably available, mentally capable, and willing to act, authority to consent to the continued commitment of a person shall rest with the next reasonably available, mentally capable, and willing individual on the priority list.

“(5) Any individual listed in paragraph (2) of this subsection shall have legal standing to challenge in the Court any decision made by an individual of higher priority listed in paragraph (2) of this subsection.

“(6) The order of priority established in paragraph (2) of this subsection creates a presumption that may be rebutted if an individual of lower priority is found to have better knowledge of the wishes of the person, or, if the wishes of the patient are unknown and cannot be ascertained, is better able to demonstrate a good-faith belief as to the interests of the person.

“(7) Nothing in this section shall be construed to change DDS’s responsibility to provide services and supports pursuant to section 105(1) of the Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.05(1)).

“(8) For the purposes of this subsection, a prior court decision to commit a person shall not be determinative of whether the person has capacity to give informed consent to continue the person’s commitment pursuant to paragraph (1)(E) of this subsection.”

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

(i) Strike the phrase “an individual” and insert the phrase “a person” in its place.

ENROLLED ORIGINAL

(ii) Strike the phrase “the individual” and insert the phrase “the person” in its place.

(iii) Strike the phrase “The individual” and insert the phrase “The person” in its place.

(C) Subsection (b) is amended by striking the phrase “an individual” and inserting the phrase “a person” in its place.

(27) Section 413 (D.C. Official Code § 7-1304.13) is amended as follows:

(A) Subsection (a) is amended by striking the phrase “Persons with an intellectual disability who admit themselves to a facility under section 302, and persons with an intellectual disability whose commitment is sought under section 304 or section 306,” and inserting the phrase “Persons with an intellectual disability who have been committed, and persons whose commitment is sought under section 304(b-1),” in its place.

(B) Subsection (b) is amended by striking the phrase “Upon receipt of the petition for commitment or notification of admission as provided in section 302, section 304 and section 306 of this act, the” and inserting the word “The” in its place.

(C) Subsection (h) is amended by striking the phrase “for individuals” and inserting the phrase “for persons” in its place.

(28) Section 501 (D.C. Official Code § 7-1305.01) is amended as follows:

(A) Subsection (b) is amended as follows:

(i) Strike the word “individual” and insert the word “person” in its place.

(ii) Strike the word “individual’s” wherever it appears and insert the word “person’s” in its place.

(B) Subsection (c) is amended by striking the word “individual” and inserting the word “person” in its place.

(C) Subsection (d) is amended by striking the phrase “an individual” and inserting the phrase “a person” in its place.

(29) Section 502 (D.C. Official Code § 7-1305.02) is amended as follows:

(A) Strike the word “Individuals” wherever it appears and insert word “Persons” in its place.

(B) Strike the phrase “the individual” and insert the phrase “the person” in its place.

(C) Strike the word “individual’s” and insert the word “person’s” in its place.

(D) Strike the phrase “an individual” and insert the phrase “a person” in its place.

(30) Section 503 (D.C. Official Code § 7-1305.03) is amended as follows:

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

(i) Strike the word “Individuals” and insert the word “Persons” in its place.

ENROLLED ORIGINAL

(ii) Strike the word "individuals" and insert the word "persons" in its place.

(B) Subsection (b) is amended as follows:

(i) Strike the phrase "an individual" and insert the phrase "a person" in its place.

(ii) Strike the phrase "the individual" and insert the phrase "the person" in its place.

(iii) Strike the phrase "the individual's" wherever it appears and insert the phrase "the person's" in its place.

(31) Section 504 (D.C. Official Code § 7-1305.04) is amended as follows:

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

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

"(1) Before each person's commitment under this act, the person shall receive, pursuant to section 403, a comprehensive evaluation or screening and an individual habilitation plan."

(ii) Paragraph (2)(A) is amended by striking the phrase "the individual" and inserting the phrase "the person" in its place.

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

(I) Strike the phrase "the individual shall" and insert the phrase "the person shall" in its place.

(II) Strike the word "individual's" and insert the word "person's" in its place.

(III) Strike the phrase "the individual:" and insert the phrase "the person:" in its place.

(iv) Paragraph (4) is amended by striking the word "individual's" and inserting the word "person's" in its place.

(B) Subsection (b) is amended as follows:

(i) Strike the phrase "section 403, or within 30 days of admission pursuant to section 302, the facility, the facility's sponsoring agency, or" and insert the phrase "section 403," in its place.

(ii) Strike the phrase "an individual's" both times it appears and insert the phrase "a person's" in its place.

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

"(c) To the extent of funds appropriated for the purposes of this act, each person shall receive habilitation, care, or both consistent with the recommendations included in the person's individual habilitation plan. The Department on Disability Services shall set standards for habilitation and care provided to such persons, consistent with standards set by the Council on Quality and Leadership, including staff-person and professional-person ratios."

(32) Section 505 (D.C. Official Code § 7-1305.05) is amended as follows:

(A) Subsection (a) is amended by striking the word "individual" wherever it appears and inserting the word "person" in its place.

ENROLLED ORIGINAL

(B) Subsection (b) is amended as follows:

(i) Strike the word "individual's" and insert the word "person's" in its place.

(ii) Strike the phrase "The individual" both times it appears and insert the phrase "The person" in its place.

(iii) Strike the phrase "An individual" and insert the phrase "A person" in its place.

(C) Subsection (c) is amended as follows:

(i) Strike the word "individual" and insert the word "person" in its place.

(ii) Strike the word "Individuals" and insert the word "Persons" in its place.

(D) Subsection (d) is amended as follows:

(i) Strike the word "individual" and insert the word "person" in its place.

(ii) Strike the word "individual's" and insert the word "person's" in its place.

(E) Subsection (e) is amended by striking the word "individual" and inserting the word "person" in its place.

(F) Subsection (f) is amended by striking the word "individual" and inserting the word "person" in its place.

(G) Subsection (g) is amended by striking the word "individual" and insert the word "person" in its place.

(H) Subsection (h) is amended as follows:

(i) Strike the word "individuals" and insert the word "persons" in its place.

(ii) Strike the word "individual" and insert the word "person" in its place.

(iii) Strike the word "individual's" and insert the word "person's" in its place.

(33) Section 506a (D.C. Official Code § 7-1305.06a) is amended as follows:

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

(i) Strike the word "individual" both times it appears and insert the word "person" in its place.

(ii) Strike the word "individual's" and insert the word "person's" in its place.

(B) Subsection (b) is amended as follows:

(i) Strike the phrase "the individual" both times it appears and insert the phrase "the person" in its place.

(ii) Strike the word "individual's" both times it appears and insert the word "person's" in its place.

ENROLLED ORIGINAL

(C) Subsection (c) is amended as follows:

(i) The lead-in language is amended by striking the word “individual” and inserting the word “person” in its place.

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

(I) Strike the word “individual” and insert the word “person” in its place.

(II) Strike the word “individual’s” and insert the word

“person’s” in its place.

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

(I) Strike the phrase “an individual” and insert the phrase “a person” in its place.

(II) Strike the phrase “the individual” and insert the phrase

“the person” in its place.

(III) Strike the word “individual’s” and insert the word

“person’s” in its place.

(34) Section 506b (D.C. Official Code § 7-1305.06b) is amended as follows:

(A) Subsection (a) is amended by striking the word “individuals” and inserting the word “persons” in its place.

(B) Subsection (b) is amended by striking the phrase “the individual” and inserting the phrase “the person” in its place.

(C) Subsection (c) is amended as follows:

(i) Strike the word “individual” wherever it appears and insert the word “person” in its place.

(ii) Strike the word “individual’s” and insert the word “person’s” in its place.

(D) Subsection (d) is amended by striking the word “individual” and inserting the word “person” in its place.

(E) Subsection (e) is amended by striking the word “individual’s” both times it appears and inserting the word “person’s” in its place.

(F) Subsection (f) is amended as follows:

(i) Strike the phrase “For individuals” and insert the phrase “For persons” in its place.

(ii) Strike the phrase “the individual” and insert the phrase “the persons” in its place.

(G) Subsection (g) is amended as follows:

(i) Strike the word “individuals” and insert the word “persons” in its place.

(ii) Strike the word “individual” both times it appears and insert the word “person” in its place.

(iii) Strike the word “individual’s” and insert the word “person’s” in its place.

ENROLLED ORIGINAL

(H) Subsection (h) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(35) Section 506c (D.C. Official Code § 7-1305.06c) is amended as follows:

(A) Subsection (a) is amended by striking the word “individuals” and inserting the word “persons” in its place.

(B) Subsection (b) is amended by striking the word “individual” and inserting the word “person” in its place.

(C) Subsection (c) is amended by striking the word “individuals” and inserting the word “persons” in its place.

(D) Subsection (d) is amended as follows:

(i) Paragraph (1) is amended by striking the word “individuals” and inserting the word “persons” in its place.

(ii) Paragraph (2) is amended by striking the word “individuals” both times it appears and inserting the word “persons” in its place.

(iii) Paragraph (3) is amended by striking the word “individual” and inserting the word “person” in its place.

(E) Subsection (e) is amended by striking the word “individual” both times it appears and inserting the word “person” in its place.

(F) Subsection (f) is amended as follows:

(i) Strike the word “individual’s” both times it appears and insert the word “person’s” in its place.

(ii) Strike the word “individual” and insert the word “person” in its place.

(G) Subsection (g) is amended by striking the phrase “an individual” and inserting the phrase “a person” in its place.

(H) Subsection (h) is amended as follows:

(i) The lead-in language is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(ii) Paragraph (1) is amended by striking the word “individual” and inserting the word “person” in its place.

(iii) Paragraph (2) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(iv) Paragraph (3) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(v) Paragraph (4) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(vi) Paragraph (5) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(vii) Paragraph (6) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(36) Section 507a (D.C. Official Code § 7-1305.07a) is amended as follows:

ENROLLED ORIGINAL

(A) Subsection (a) is amended by striking the word “individual” both times it appears and inserting the word “person” in its place.

(B) Subsection (b) is amended as follows:

(i) The lead-in language is amended by striking the word “individuals” and inserting the word “persons” in its place.

(ii) Paragraph (2) is amended by striking the word “individuals” both times it appears and inserting the word “persons” in its place.

(37) Section 508 (D.C. Official Code § 7-1305.08) is amended by striking the word “individual” and inserting the word “person” in its place.

(38) Section 509 (D.C. Official Code § 7-1305.09) is amended as follows:

(A) Strike the word “Individuals” and insert the word “Persons” in its place.

(B) Strike the word “individual” both times it appears and insert the word “person” in its place.

(C) Strike the word “individual’s” and insert the word “person’s” in its place.

(39) Section 510 (D.C. Official Code § 7-1305.10) is amended as follows:

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

(i) Strike the phrase “any individual” and insert the phrase “any person” in its place.

(ii) Strike the phrase “an individual” and insert the phrase “a person” in its place.

(iii) Strike the word “individual’s” and insert the word “person’s” in its place.

(B) Subsection (b) is amended by striking the phrase “An individual” and inserting the phrase “A person” in its place.

(C) Subsection (c) is amended by striking the word “individual” and inserting the word “person” in its place.

(D) Subsection (d) is amended by striking the phrase “an individual” and inserting the phrase “a person” in its place.

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

(i) Strike the word “individual” and insert the word “person” in its place.

(ii) Strike the word “individual’s” and insert the word “person’s” in its place.

(F) Subsection (f) is amended as follows:

(i) Strike the phrase “An individual’s” and insert the phrase “A person’s” in its place.

(ii) Strike the phrase “an individual’s” and insert the phrase “a person’s” in its place.

(40) Section 511 (D.C. Official Code § 7-1305.11) is amended as follows:

ENROLLED ORIGINAL

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

(i) Strike the word “individual” and insert the word “person” in its place.

(ii) Strike the word “individuals” and insert the word “persons” in its place.

(B) Subsection (b) is amended by striking the word “individual” and inserting the word “person” in its place.

(C) Subsection (c) is amended by striking the word “individual” and inserting the word “person” in its place.

(41) Section 512 (D.C. Official Code § 7-1305.12) is amended as follows:

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

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

(I) Strike the word “individual” wherever it appears and insert the word “person” in its place.

(II) Strike the phrase “an individual’s” and insert the phrase “a person’s” in its place.

(III) Strike the phrase “the individual’s” wherever it appears and insert the phrase “the person’s” in its place.

(ii) Paragraph (1) is amended striking the word “individual’s” and inserting the word “person’s” in its place.

(iii) Paragraph (2) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(iv) Paragraph (3) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(v) Paragraph (4) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(vi) Paragraph (6) is amended by striking the word “individual’s” and inserting the word “person’s” in its place.

(vii) Paragraph (9) is amended by striking the phrase “an individual” and inserting the phrase “a person” in its place.

(viii) Paragraph (10) is amended by striking the word “individual’s” both times it appears and inserting the word “person’s” in its place.

(ix) Paragraph (11) is amended by striking the word “individual’s” both times it appears and inserting the word “person’s” in its place.

(x) Paragraph (13) is amended as follows:

(i) Strike the word “individual” and insert the word “person” in its place.

(ii) Strike the word “individual’s” and insert the word “person’s” in its place.

(B) Subsection (b) is amended by striking the phrase “an individual’s” and inserting the phrase “a person’s” in its place.

ENROLLED ORIGINAL

(42) Section 513 (D.C. Official Code § 7-1305.13) is amended as follows:

(A) Subsection (b) amended as follows:

(i) Strike the phrase “Any individual” and insert the phrase “Any person” in its place.

(ii) Strike the phrase “said individual” and insert the phrase “said person” in its place.

(iii) Strike the word “individual’s” and insert the word “person’s” in its place.

(B) Subsection (d) is amended by striking the word “individual” and inserting the word “person” in its place.

(43) Section 515 (D.C. Official Code § 7-1305.15) is amended as follows:

(A) Strike the phrase “an individual” both times it appears and insert the phrase “a person” in its place.

(B) Strike the phrase “the individual” wherever it appears and insert the phrase “the person” in its place.

(C) Strike the phrase “committed individual” and insert the phrase “committed person” in its place.

Sec. 202. Title 21 of the District of Columbia Official Code is amended as follows:

(a) Section 21-2047.01(4) is amended by striking the phrase “or Chapter 13 of Title 7;” and inserting a semicolon in its place.

(b) Section 21-2049(a)(3) is amended by striking the phrase “On petition of the ward or any interested person” and inserting the phrase “On petition of the ward, the Department on Disability Services (“Department”) if the ward is receiving services from the Department, or any interested person” in its place.

(c) Section 21-2210(h) is amended by striking the phrase “for those persons committed or admitted to receive habilitation” and inserting the phrase “for those persons committed to receive habilitation” in its place.

Sec. 203. Section 312 of the Nursing Home and Community Residence Facility Residents’ Protections Act of 1985, effective April 18, 1986 (D.C. Law 6-108; D.C. Official Code § 44-1003.12), is repealed.

TITLE III. SUPPORTED DECISION-MAKING AGREEMENTS

Sec. 301. Definitions.

For the purposes of this title, the term:

(1) “Adult” means a person who is at least 18 years of age.

(2) “Adult in need of protective services” shall have the same meaning as provided in section 2(2) of the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code § 7-1901(2)).

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(3) "Caregiver" shall have the same meaning as provided in section 2(4) of the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code § 7-1901(4)).

(4) "Covered education agreement" means a supported decision-making agreement that is entered into for the sole purpose of providing supported decision-making related to the supported person's education and:

(A) The Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*); or

(B) Section 504 of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 394; 29 U.S.C. § 794).

(5) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of a person.

(6) "Educational records" includes educational records under the Family Educational Rights and Privacy Act of 1974, approved August 21, 1974 (88 Stat. 571; 20 U.S.C. § 1232g).

(7) "Information that is relevant to a life decision" includes medical records, psychological records, financial records, educational records, and treatment records.

(8) "Life decisions" includes decisions related to:

(A) Where and with whom an adult with a disability wants to live;

(B) What services, supports, and medical care the adult with a disability wants to receive; and

(C) Where the adult with a disability wants to work.

(9) "Medical records" includes protected health information under the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936).

(10) "Relative" means a parent, other ancestor, brother, sister, uncle, aunt, or one who has been lawful custodian of an adult with a disability at some prior time.

(11) "Supported decision-making" means a process of supporting and accommodating an adult with a disability in order to:

(A) Assist the adult with a disability in understanding the options, responsibilities, and consequences of life decisions; and

(B) Enable the adult with a disability to make life decisions, without impeding the self-determination of the adult with a disability or making decisions for the adult with a disability.

(12) "Supported decision-making agreement" means an agreement between a supported person and a supporter entered into pursuant to this title.

(13) "Supported person" means an adult with a disability who has entered into a supported decision-making agreement with a supporter.

(14) "Supporter" means an adult who has entered into a supported decision-making agreement with a supported person.

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Sec. 302. Executing a supported decision-making agreement.

(a) The following individuals, except if the individual is the supported person's relative, may not be a supporter:

(1) An individual who provides physical, mental, or behavioral healthcare services or disability services to the supported person, or the owner or operator of the entity providing the healthcare services or disability services to the supported person; or

(2) An individual who works for a government agency that is financially responsible for the supported person's care.

(b)(1) An individual shall not be a supporter if:

(A) There is or has been a finding by a government agency that the individual:

(i) Abused, neglected, or exploited the supported person; or
(ii) Inflicted harm upon a child, elderly individual, or person with a disability; or

(B) The individual is or has been convicted of any of the following criminal offenses, or their equivalent in any other state or territory, within 7 years before entering the supported decision-making agreement:

(i) Any sexual offense prohibited in Title II of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002 *et seq.*), where the victim was a child, elderly individual, or person with a disability;

(ii) Aggravated assault, as described in section 806a of An Act To establish a code of law for the District of Columbia, effective August 20, 1994 (D.C. Law 10-151; D.C. Official Code § 22-404.01), where the victim was a child, elderly individual, or person with a disability;

(iii) Fraud, as described in section 121 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3221);

(iv) Theft in the first degree, as that term is used in section 112(a) of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3212(a));

(v) Forgery, as described in section 141 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3241); or

(vi) Extortion, as described in section 151 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3251).

(2) Paragraph (1) of this subsection shall not apply to a covered education agreement.

(c) A supported decision-making agreement must be signed by the adult with a disability and the supporter in the presence of 2 adult witnesses or a notary public.

ENROLLED ORIGINAL

(d) Except for a covered education agreement, a supported decision-making agreement shall be in substantially the following form:

“SUPPORTED DECISION-MAKING AGREEMENT

“Appointment of Supporter

“I, (name of supported person), make this agreement of my own free will.

“I agree to designate the following person as my supporter:

“Name:

“Address:

“Phone Number:

“E-mail Address:

“My supporter may help me with making everyday life decisions relating to the following:

“Y/N applying for and maintaining supports and services including District government assistance

“Y/N obtaining food, clothing, and shelter

“Y/N taking care of my physical health

“Y/N taking care of my mental/behavioral health

“Y/N managing my financial affairs

“Y/N managing real property transactions

“Any other duties as listed below:

“
“
“

“NOTHING IN THIS DOCUMENT GIVES MY SUPPORTER PERMISSION TO “MAKE DECISIONS FOR ME.

“Nothing in this document prevents my supporter from also serving as a power of attorney or as a healthcare decision-maker.

“To help me with decisions, my supporter may:

“Y/N Help me obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;

“Y/N When requested by me, be present to help me make my own decisions;

“Y/N Help me understand my options so that I can make an informed decision; and

“Y/N Help me communicate my decision to appropriate persons.

“Releases

“Y/N A release allowing my supporter to see and obtain protected health information under the Health Insurance Portability and Accountability Act of 1996 is attached.

“Y/N A release allowing my supporter to see and obtain educational records under the Family Educational Rights and Privacy Act of 1974 is attached.

“Effective Date of Supported Decision-Making Agreement

ENROLLED ORIGINAL

“This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

“Signed this _____ day of _____, 20__

“Consent and Attestation of Supporter

“I, (name of supporter), consent to act as a supporter under this agreement and affirm that

“1. I have not been found to have abused, neglected, or exploited (name of supported person) by a government agency;

“2. I have not been found to have inflicted harm upon a child, elderly individual, or person with a disability by a government agency;

“3. In the last 7 years, I have not been convicted of any sexual offense where the victim was a child, elderly individual, or person with a disability;

“4. In the last 7 years, I have not be convicted of aggravated assault where the victim was a child, elderly individual, or person with a disability; and

“5. In the last 7 years, I have not been convicted of fraud, theft in the first degree, forgery, or extortion.

“Signature of Supporter

Printed Name of Supporter

“Signature of Supported Person

“I, (name of supported person), consent to have (name of supporter) act as my supporter under this agreement.

“My signature

Printed Name of Supported Person

“Signature of Two Witnesses

“Signature of Witness

Printed Name of Witness (1)

“Signature of Witness

Printed Name of Witness (2)

“This document was acknowledged before me on this _____ day of (insert month and year) by (name of person supported) and (name of supporter).

“Signature of Notary Public and notary seal, if any.

“Printed Name of Notary Public

“My commission expires:

“WARNING: PROTECTION FOR PERSON SUPPORTED

“IF A PERSON WHO RECIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT NAMED AS A SUPPORTED PERSON IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON MAY REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE CITYWIDE CALL CENTER AT 311, METROPOLITAN POLICE DEPARTMENT AT 911, ADULT PROTECTIVE SERVICES AT (202) 541-3950.”.

(e) A supported decision-making agreement may be terminated at any time by the supported person or the supporter.

ENROLLED ORIGINAL

Sec. 303. Supported decision-making agreements.

(a) An adult with a disability may voluntarily enter into one or more supported decision-making agreements under which the adult with a disability may authorize a supporter to do any of the following:

- (1) Provide supported decision-making;
- (2) Be present during the supported decision-making process, when requested by the supported person; or
- (3) In the presence of the supported person, assist the supported person in:
 - (A) Obtaining information that is relevant to a given life decision from any person; provided, that the supporter shall keep any information obtained under this paragraph confidential; or
 - (B) Communicating the supported person's decisions to others.

(b) A supporter acting pursuant to a supported decision-making agreement may exercise only the authority expressly granted to the supporter in the supported decision-making agreement.

(c)(1) If a law or regulation requires a person or a District agency to give notice to a supported person, and the person or District agency that is required to give the notice has received a supported decision-making agreement from the supported person, the person or District agency shall also provide the supporter with a copy of the notice required by law or regulation to be given to the supported person, unless the person or District agency has substantial cause to believe that the supported person is an adult in need of protective services.

(2) If a law or regulation requires a person or District agency to give notice to a supported person that contains information protected by federal or District law, such as medical records or educational records, paragraph (1) of this subsection shall not apply unless the supported decision-making agreement contains a release authorizing the supporter to obtain the protected information.

(d) A person or a District agency who receives a supported decision-making agreement shall rely on the agreement, unless the person or District agency has substantial cause to believe that the supported person is an adult in need of protective services.

(e) Neither a person nor a District agency shall be subject to criminal or civil liability, nor shall a person be considered to have engaged in professional misconduct, for an act or omission done in good faith and in reasonable reliance on a supported decision-making agreement.

(f) If a District employee or a caregiver, who is aware of the existence of a supported decision-making agreement, has a reasonable belief that the supported person is an adult in need of protective services, the District employee or caregiver shall report the alleged abuse, neglect, or exploitation to the Citywide Call Center at 311, Metropolitan Police Department at 911, Adult Protective Services at (202) 541-3950, or a District agency where the supported person receives services.

ENROLLED ORIGINAL

Sec. 304. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title.

TITLE IV. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

Sec. 401. Applicability.

Title II shall apply 90 days after the effective date of this act.

Sec. 402. 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. 403. 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
March 12, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-278

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 12, 2018

To amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to establish a Fair Elections Program to provide for publicly funded political campaigns.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fair Elections Amendment Act of 2018".

Sec. 2. The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 1-1161.01) is amended as follows:

(1) Paragraph (3A) is redesignated as paragraph (3B).

(2) A new paragraph (3A) is added to read as follows:

“(3A) “Base amount” means the amounts a participating candidate is eligible to receive as lump-sum payments under section 332d.”.

(3) A new paragraph (6A) is added to read as follows:

“(6A) “Candidate seeking certification” means a candidate for a covered office who:

“(A) Has complied with section 312; and

“(B) Indicated on the registration statement that the candidate will seek certification as a participating candidate under section 332c.”.

(4) A new paragraph (9A) is added to read as follows:

“(9A) “Contested election” means an election for a seat for a covered office for which there are at least 2 candidates, at least one of whom is a participating candidate.”.

(5) New paragraphs (10C) and (10D) are added to read as follows:

“(10C) “Covered office” means the office of Mayor, Attorney General, Chairman of the Council, member of the Council, and member of the State Board of Education.

“(10D) “Debate” means the public, moderated, reciprocal discussion of issues conducted by the Director of Campaign Finance pursuant to section 332g.”.

(6) A new paragraph (16A) is added to read as follows:

“(16A) “Election cycle” means:

ENROLLED ORIGINAL

“(A) The period beginning on the day after the date of the most recent general election for a seat for a covered office and ending on the date of the next general election for that seat for the covered office; or

“(B) In the case of a special election for a seat for a covered office, the period beginning on the day the special election is called and ending on the date of the special election for that seat for the covered office.”

(7) New paragraphs (22A), (22B), and (22C) are added to read as follows:

“(22A) “Fair elections committee” means a political committee that only accepts contributions from:

“(A) Individuals who are District residents, which shall not exceed \$250 per individual per calendar year; or

“(B) A membership organization, if the contributions consist of membership dues paid by individuals who are District residents that do not exceed:

“(i) The amount of membership dues actually paid per member per calendar year; and

“(ii) \$250 per member per calendar year.

“(22B) “Fair Elections Fund” means the fund established by section 332i.

“(22C) “Fair Elections Program” means the program to provide for publicly funded campaigns, established by section 332a.”

(8) A new paragraph (28C) is added to read as follows:

“(28C) “Individual” means a natural person.”

(9) Paragraph (33A) is redesignated as paragraph (33B).

(10) A new paragraph (33A) is added to read as follows:

“(33A) “Matching payments” means payments provided to a participating candidate for qualified small-dollar contributions under section 332e.”

(11) A new paragraph (33C) is added to read as follows:

“(33C) “Membership organization” means an organization that:

“(A) Is tax-exempt under section 501(c) of the Internal Revenue Code;

“(B) Is comprised of members who are individuals, whether or not the organization also has affiliated organizations; provided, that all of the members are required as a condition of membership to pay dues at least annually in amounts predetermined by the membership organization;

“(C) Expressly solicits individuals to become members and expressly acknowledges acceptance of membership; and

“(D) Is neither a political committee nor otherwise organized for the principal purpose of promoting or opposing the nomination or election of a person to local, state, or federal public office.”

(12) A new paragraph (40A) is added to read as follows:

“(40A) “Participating candidate” means a candidate for a seat for a covered office who is certified under section 332c.”

(13) New paragraphs (47A) and (47B) are added to read as follows:

“(47A) “Qualified small-dollar contribution” means a deposit of money that:

ENROLLED ORIGINAL

“(A) Is made for the purpose of financing the nomination or election of a candidate or any operations of a political committee;

“(B) Meets the requirements of section 332b; and

“(C) Is contributed by a small-dollar contributor to a candidate seeking certification or a participating candidate.

“(47B) “Qualifying period” means:

“(A) For a candidate running in a primary election, the period beginning on the day after the most recent general election for the seat for the covered office that the candidate is seeking and ending on the last day to file nominating petitions for the primary election for the seat for the covered office sought;

“(B) For a candidate not running in a primary election, the period beginning on the day after the most recent general election for the seat for the covered office that the candidate is seeking and ending on the last day to file nominating petitions for the general election for the seat for the covered office sought; or

“(C) For a candidate running in a special election, the period beginning on the day the special election is called and ending on the last day to file nominating petitions for the covered office sought.”.

(14) A new paragraph (49A) is added to read as follows:

“(49A) “Small-dollar contributor” means an individual who:

“(A) Is a District resident; and

“(B) Contributes a qualified small-dollar contribution to a candidate seeking certification or a participating candidate.”.

(15) A new paragraph (53) is added to read as follows:

“(53) “Uncontested election” means an election for a seat for a covered office for which there is only one participating candidate.”.

(b) Title III is amended as follows:

(1) Section 304 (D.C. Official Code § 1-1163.04) is amended as follows:

(A) Paragraph (8) is amended by striking the phrase “; and” and inserting a semicolon in its place.

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

“(8A) Administer the Fair Elections Program established by section 332a; and”.

(2) Section 309 (D.C. Official Code § 1-1163.09) is amended as follows:

(A) A new subsection (b-1) is added to read as follows:

“(b-1)(1) In addition to the reports required by subsection (a) of this section, the Director of Campaign Finance shall, by rulemaking, establish a schedule for candidates seeking certification and participating candidates to submit reports of qualified small-dollar contributions and contributions from non-District resident individuals that include the information required by section 332b(b).

“(2) The schedule established under paragraph (1) of this subsection shall include, at a minimum, 3 dates within the 60-day period immediately preceding a primary, special, or general election, as applicable to the participating candidate.”.

ENROLLED ORIGINAL

(B) Subsection (c) is amended by striking the phrase “Each report” and inserting the phrase “The reports to be filed under subsection (a) of this section” in its place.

(C) Subsection (d) is amended by striking the phrase “subsection (a) of this section” and inserting the phrase “subsections (a) and (b-1) of this section” in its place.

(3) Section 310a (D.C. Official Code § 1-1163.10a) is amended by striking the word “Within” and inserting the phrase “Except as provided in section 332h, within” in its place.

(4) Section 312(a) (D.C. Official Code § 1-1163.12(a)) is amended by striking the period and inserting the phrase “. The registration statement shall indicate whether the individual intends to seek certification as a participating candidate.” in its place.

(5) A new subtitle C-i is added to read as follows:

“SUBTITLE C-i. FAIR ELECTIONS PROGRAM.

“Sec. 332a. Establishment of the Fair Elections Program.

“There is established within the Office of Campaign Finance a Fair Elections Program to provide for publicly funded political campaigns.

“Sec. 332b. Fair Elections Program contribution limitations and requirements.

“(a) Neither a candidate seeking certification nor a participating candidate may accept a qualified small-dollar contribution or a contribution from a non-District resident individual, that, when aggregated with all other qualified small-dollar contributions received from that small-dollar contributor or contributions received from that non-District resident individual, exceeds, per election cycle:

“(1) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for Mayor, \$200;

“(2) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for Chairman of the Council or Attorney General, \$200;

“(3) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for member of the Council elected at-large, \$100;

“(4) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for member of the Council elected from a ward or for member of the State Board of Education elected at-large, \$50; and

“(5) In the case of a qualified small-dollar contribution or contribution from a non-District resident individual in support of a candidate for member of the State Board of Education elected from a ward, \$20.

“(b) Each qualified small-dollar contribution and contribution from a non-District resident individual shall be acknowledged by a physical or digital receipt to the contributor, with a copy to be retained by the candidate. The receipt shall include:

“(1) The contributor’s digital or physical signature, printed name, home address, telephone number, occupation and principal place of business, if any, and the name of the candidate to whom the contribution is made; and

“(2) A written and signed oath or affirmation declaring that the contributor:

ENROLLED ORIGINAL

“(A) Is making the contribution in the contributor’s own name and from the contributor’s own funds;

“(B) Is making the contribution voluntarily and has not received anything of value in return for the contribution;

“(C) In the case of a small-dollar contributor, is a District resident;

“(D) In the case of a contribution from a non-District resident individual, is a non-District resident individual; and

“(E) Understands that a false statement is a violation of law.

“(c) A candidate seeking certification and a participating candidate may accept qualified small-dollar contributions and contributions from non-District resident individuals made by means of personal check, credit card, cash, or electronic payment account; provided, that contributions in the form of cash cannot, in the aggregate, exceed \$100 per small-dollar contributor or non-District resident individual per seat per covered office per election cycle.

“Sec. 332c. Certification as a participating candidate.

“(a) To be certified by the Director of Campaign Finance as a participating candidate for a seat for a covered office in an election cycle, a candidate shall, during the qualifying period:

“(1) Obtain the following:

“(A) For a candidate for Mayor, qualified small-dollar contributions from at least 1,000 small-dollar contributors, which, in the aggregate, total \$40,000 or more;

“(B) For a candidate for Attorney General, qualified small-dollar contributions from at least 500 small-dollar contributors, which, in the aggregate, total \$20,000 or more;

“(C) For a candidate for Chairman of the Council, qualified small-dollar contributions from at least 300 small-dollar contributors, which, in the aggregate, total \$15,000 or more;

“(D) For a candidate for member of the Council elected at-large, qualified small-dollar contributions from at least 250 small-dollar contributors, which, in the aggregate, total \$12,000 or more;

“(E) For a candidate for member of the Council elected from a ward or member of the State Board of Education elected at-large, qualified small-dollar contributions from at least 150 small-dollar contributors, which, in the aggregate, total \$5,000 or more; or

“(F) For a candidate for member of the State Board of Education elected from a ward, qualified small-dollar contributions from at least 50 small-dollar contributors, which, in the aggregate, total \$1,000 or more; and

“(2) File, with the Director of Campaign Finance, an affidavit signed by the candidate and the treasurer of the candidate’s principal campaign committee declaring that the candidate:

“(A) Has complied with and, if certified, will continue to comply with the Fair Elections Program’s requirements;

“(B) If certified, will only run in that election cycle as a participating candidate;

ENROLLED ORIGINAL

“(C) If certified, will only run during that election cycle for the seat for the covered office for which the candidate is seeking certification, including in both the primary and general elections, as applicable;

“(D) Has otherwise qualified, or will take steps to qualify, for ballot access in accordance with the procedures required by the Elections Board pursuant to section 8 of the Election Code, such as by filing a declaration of candidacy under 3 DCMR § 601 and a nominating petition containing the required number of valid signatures under 3 DCMR § 1605;

“(E) Is current with respect to any fines or penalties owed for a violation of this act; and

“(F) Has responded and will respond to all inquiries of the Elections Board and the Director of Campaign Finance in a timely manner.

“(b) No later than 5 days after a candidate complies with subsection (a) of this section, the Director of Campaign Finance shall determine whether the candidate meets the requirements for certification described in subsection (a) of this section as a participating candidate, and:

“(1) If the requirements are met, certify the candidate as a participating candidate; or

“(2) If the requirements are not met, provide an opportunity to:

“(A) Cure any deficiencies in the filing; and

“(B) Appeal the determination within 5 business days.

“(c) The Director of Campaign Finance shall revoke a certification made under subsection (b) of this section if a participating candidate:

“(1) Fails to qualify for ballot access pursuant to section 8 of the Election Code;

“(2) Does not continue to run as a participating candidate in that election cycle;

“(3) Does not run for the seat for the covered office for which the candidate was certified during that election cycle, including in both the primary and general elections, as applicable;

“(4) Terminates his or her candidacy; or

“(5) Fails to comply with the Fair Elections Program’s requirements.

“(d) If a certification is revoked under subsection (c) of this section, the Director of Campaign Finance shall provide the candidate with the opportunity to appeal the revocation within 5 business days.

“(e) If a certification is revoked under subsection (c) of this section, the participating candidate whose certification has been revoked shall remit to the Fair Elections Fund the remaining funds in the participating candidate’s campaign accounts pursuant to section 332h.

“Sec. 332d. Base amount payments.

“(a)(1)(A) Within 5 business days after a participating candidate is certified under section 332c(b), the participating candidate shall receive half of the base amount described in paragraph (2) of this subsection.

“(B) Within 5 business days after the participating candidate qualifies for the ballot, the participating candidate shall receive the other half of the base amount described in paragraph (2) of this subsection.

“(2) The base amount shall be:

ENROLLED ORIGINAL

- “(A) \$160,000 for the office of Mayor;
- “(B) \$40,000 for the office of Attorney General;
- “(C) \$40,000 for the office of Chairman of the Council;
- “(D) \$40,000 for the office of Councilmember elected at-large and from a

ward; and

“(E) \$10,000 for the office of State Board of Education elected at-large and from a ward.

“(b)(1) In an uncontested election, the participating candidate shall:

“(A) Not receive the base amount described in subsection (a) of this section, except as provided in paragraph (3) of this subsection; and

“(B) Be eligible to receive matching payments for qualified small-dollar contributions pursuant to section 332e.

“(2) If an uncontested election becomes a contested election after a participating candidate is certified under section 332c(b), the participating candidate shall receive, no later than 5 business days after the uncontested election becomes a contested election:

“(A) The first half of the base amount, if the participating candidate has not qualified for the ballot; or

“(B) Both halves of the base amount, if the participating candidate has qualified for the ballot.

“(3)(A) If a contested election becomes an uncontested election after the participating candidate has received the first, but not the second, half of the base amount, the participating candidate may retain any unspent base amount funds to repay:

“(i) Any authorized expenditures or the proper debts that were incurred in connection with the participating candidate’s campaign; and

“(ii) Personal funds of the participating candidate or the participating candidate’s immediate family contributed under section 332f(a)(6).

“(B) If a contested election becomes an uncontested election, a participating candidate who has not yet qualified for the ballot shall not receive the second half of the base amount upon ballot qualification.

“(c) Funds shall be distributed to participating candidates under this section through the use of an electronic funds transfer or a debit card.

“Sec. 332e. Matching payments for qualified small-dollar contributions.

“(a) Qualified-small-dollar contributions received in an election cycle before a candidate is certified as a participating candidate pursuant to section 332c(b) shall not be matched until the candidate is certified.

“(b) After the candidate is certified, the participating candidate shall receive matching payments from the Fair Elections Fund for the qualified small-dollar contributions that the participating candidate received in that election cycle before the participating candidate was certified and those qualified small-dollar contributions received after the participating candidate was certified, in an amount equal to 500% of the amount of the qualified small-dollar contributions, subject to subsection (d) of this section.

“(c) Contributions from non-District resident individuals shall not be matched.

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“(d) The maximum amount participating candidates may receive under this section shall be:

“(1) For candidates for Mayor and Chairman of the Council, 110% of the average expenditures of the winning candidates for that covered office, respectively, in the prior 4 election cycles (not including special elections);

“(2) For candidates for Attorney General, 110% of the average expenditures of the winning candidates for that covered office in all prior election cycles, until such time as 4 election cycles for that covered office have been held, after which time, 110% of the average expenditures of the winning candidates for that covered office in the prior 4 election cycles (not including special elections); and

“(3) For candidates for member of the Council elected at-large or by ward, and for candidates for member of the State Board of Education elected at-large or by ward, 110% of the average expenditures of all winning candidates for that covered office, respectively, in the prior 2 election cycles (not including special elections).

“(e) Payments under this section shall be made no later than 5 business days after the receipt of a report made under section 309(a) and (b-1).

“(f) The Director of Campaign Finance shall provide a written explanation with respect to any denial of any payment under this section and shall provide an opportunity to appeal the denial within 5 business days.

“(g) Funds shall be distributed to participating candidates under this section through the use of an electronic funds transfer or a debit card.

“Sec. 332f. Limitations on contributions and expenditures.

“(a) Except as provided in subsection (c) of this section, a candidate seeking certification and a participating candidate shall not receive or expend any contribution in that election cycle other than:

“(1) Qualified small-dollar contributions;

“(2) Contributions from non-District resident individuals that comply with the limitations in section 332b(a);

“(3) Contributions from Fair Elections Committees that do not exceed \$1,500 per Fair Elections Committee per election cycle; provided, that Fair Elections Committees established, financed, maintained, or controlled by substantially the same group of individuals shall be treated as a single Fair Elections Committee and their contributions aggregated;

“(4) Base amount payments under section 332d;

“(5) Matching payments under section 332e; and

“(6) Personal funds of the candidate or the candidate’s immediate family in the form of a contribution or loan that does not exceed, in the aggregate:

“(A) For a candidate for Mayor, \$5,000; or

“(B) For a candidate for Attorney General, Chairman of the Council, member of the Council elected at-large or by ward, or member of the State Board of Education elected at-large or by ward, \$2,500.

“(b) The amounts described in subsection (a)(6) of this section shall be adjusted by the Director of Campaign Finance each election cycle by the percentage increase in the Consumer

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Price Index for the Washington-Baltimore Metropolitan Statistical Area for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, or any successor index, for the prior calendar year.

“(c)(1) A candidate seeking certification who accepted a contribution from sources other than those described in subsection (a) of this section before the date the candidate is certified may not participate in the Fair Elections Program, unless within 10 days after certification, the participating candidate:

“(A) Returns the unexpended contribution to the contributor;

“(B) Remits the unexpended contribution to the Fair Elections Fund; or

“(C) If the contribution has been expended, and:

“(i) The election is a contested election, subtracts the total amount of the expended contributions from the base amount to which the candidate would be eligible under section 332d; or

“(ii) The election is an uncontested election, subtracts the total amount of the expended contributions from the matching payments to which the candidate would be eligible under section 332e.

“(2) If the candidate expended contributions from sources other than those described in subsection (a) of this section in excess of the base amount to which the candidate would be eligible under section 332d, the candidate may not participate in the Fair Elections Program.

“(d) A participating candidate shall not make expenditures for the following:

“(1) Legal expenses not directly related to acts taken under this act or the Elections Code;

“(2) Payment of any penalty or fine imposed pursuant to federal or District law;

“(3) Compensation to the participating candidate or a member of the participating candidate’s immediate family, except for reimbursement of out-of-pocket expenses incurred for campaign purposes;

“(4) Clothing and other items or services related to the participating candidate’s personal appearance;

“(5) Contributions, loans, or transfers to another candidate’s political committee or a political action committee;

“(6) Gifts, which, for the purposes of this paragraph, shall not include printed campaign materials such as signs, brochures, buttons, or clothing; and

“(7) Any other purpose that the Elections Board establishes through rules issued pursuant to section 332k.

“Sec. 332g. Debate requirement.

“(a) The Director of Campaign Finance shall conduct at least one debate for each contested primary, special, and general election in an election cycle for the covered offices of Mayor, Attorney General, Chairman of the Council, member of the Council elected at-large, and member of the State Board of Education elected at-large.

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“(b)(1) For a contested primary election for a covered office listed in subsection (a) of this section, all partisan participating candidates in that primary election shall participate in the debate.

“(2) For a contested special election or general election for a covered office listed in subsection (a) of this section, all participating candidates shall participate in the debate.

“(3) If there is no other participating candidate, or other candidate who is not a participating candidate who is willing to participate in a debate under this section, for a covered office, then the requirements of subsection (a) of this section shall be waived for that covered office.

“Sec. 332h. Remitting funds and turning over equipment to the Office of Campaign Finance.

“(a)(1) No later than 60 days after a primary election in an election cycle for which a losing participating candidate was on the ballot, the losing participating candidate shall remit to the Director of Campaign Finance, for deposit in the Fair Elections Fund, the remaining funds in the participating candidate’s campaign accounts. The losing participating candidate shall also turn over any equipment purchased by the campaign to the Office of Campaign Finance.

“(2) No later than 60 days after a special or general election in an election cycle for which a participating candidate was on the ballot, the participating candidate shall remit to the Director of Campaign Finance, for deposit in the Fair Elections Fund, the remaining funds in the participating candidate’s campaign accounts. The losing participating candidate shall also turn over any equipment purchased by the campaign to the Office of Campaign Finance.

“(b)(1) No later than 60 days after a participating candidate’s certification is revoked pursuant to section 332c(c), the participating candidate shall remit to the Director of Campaign Finance, for deposit in the Fair Elections Fund, the remaining funds in the participating candidate’s campaign accounts. The participating candidate whose certification has been revoked pursuant to section 332c(c) shall also turn over any equipment purchased by the campaign to the Office of Campaign Finance.

“(2) If a participating candidate’s certification is revoked pursuant to section 332c(c)(2), (3), or, due to fraudulent activities, (5), the participating candidate shall be personally liable for any expended base amount or matching payments.

“(c) Notwithstanding subsections (a) and (b) of this section, a participating candidate may withhold funds from the amount required to be remitted for an additional 180 days after the 60-day periods in subsections (a) and (b) of this section if the participating candidate submits documentation of the funds to the Director of Campaign Finance no later than the last day of the 60-day period. The withheld funds shall only be used for the following purposes:

“(1) To repay any authorized expenditures or retire the proper debts that were incurred in connection with the participating candidate’s campaign; and

“(2) To repay personal funds of the participating candidate or the participating candidate’s immediate family contributed under section 332f(a)(6).

“(d) The Office of Campaign Finance shall accept any equipment given to it by participating candidates.

ENROLLED ORIGINAL

“(e) For the purposes of this section, the term “equipment” means any furniture or electronic or battery-powered equipment purchased by a participating candidate’s campaign that costs at least \$50.

“Sec. 332i. Fair Elections Fund.

“(a) There is established as a special fund the Fair Elections Fund (“Fund”), which shall be administered by the Director of Campaign Finance in accordance with subsection (c) of this section.

“(b) Revenue from the following sources shall be deposited in the Fund:

“(1) Annual appropriations for the Fair Elections Program;

“(2) Funds remitted by a participating candidate pursuant to section 332h; and

“(3) Revenue from fines levied for violations of the Fair Elections Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-192).

“(c) Money in the Fund shall only be used for the purpose of providing public financing for political campaigns of participating candidates and administering the Fair Elections Program.

“(d)(1) The money deposited into the Fund 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 Fund shall be continually available without regard to fiscal year limitation.

“(e)(1) In time for inclusion in the Mayor’s budget and financial plan each year, and at other times as the Director of Campaign Finance deems necessary, the Director of Campaign Finance shall submit an estimate of the amount of public funds that will be necessary to provide for the following:

“(A) Administration of the Fair Elections Program;

“(B) Elections in the next year in which elections are scheduled;

“(C) Special elections to fill vacancies that may occur before that year;

and

“(D) A reserve for contingencies.

“(2) The estimates shall be submitted in a manner and at such times as to ensure that appropriations are allocated in full by the beginning of the fiscal year before the year in which elections are scheduled and to allow additional amounts to be appropriated if necessary.

“Sec. 332j. Reporting by the Director of Campaign Finance.

“The Director of Campaign Finance shall publish on the Office of Campaign Finance’s website and submit a report to the Mayor and the Council no later than 9 months after the end of each election cycle. The report shall include, at a minimum, the following:

“(1) For that election cycle:

“(A) The names of all candidates, including:

“(i) Whether, and if applicable, when the candidate was certified as a participating candidate; and

“(ii) Whether, and if applicable, when and why a participating candidate’s certification was revoked;

ENROLLED ORIGINAL

“(B) The number of, aggregate total value of, and date on which qualified small-dollar contributions were submitted by the participating candidate for certification;

“(C) The total base amount payments and matching payments provided to each participating candidate;

“(D) Listed by participating candidate, a description of each qualified-small-dollar contribution received, including:

“(i) The amount of each qualified-small-dollar contribution;

“(ii) The small-dollar contributor’s name, home address, occupation, and principal place of business, if any; and

“(iii) The date on which the qualified small-dollar contribution was received;

“(E) Listed by non-participating candidate, the total number of qualified small-dollar contributions received by that candidate;

“(F) Listed by participating candidate, a description of each expenditure, including:

“(i) The amount of the expenditure;

“(ii) The purpose for the expenditure; and

“(iii) The date on which the expenditure was made;

“(G) Listed by participating candidate, a description of any funds remitted to the Fair Elections Fund;

“(H) Listed by participating candidate, the total amount of personal funds of the participating candidate or the participating candidate’s immediate family contributed to the participating candidate; and

“(I) A review and evaluation of the effect of the Fair Elections Program on District elections and campaigns, including the Fair Elections Program’s effect on:

“(i) The sources and amounts of non-qualified small-dollar contributions;

“(ii) Campaign expenditures; and

“(iii) Participation of candidates and small-dollar contributors in the Fair Elections Program.

“(2) A review of national best practices relating to the public financing of campaigns and recommendations for changes or enhancements to the Fair Elections Program, including proposed adjustments to:

“(A) The qualified small-dollar contribution limits;

“(B) The number of qualified small-dollar contributions required to be certified as a participating candidate;

“(C) The base amounts;

“(D) The matching payments match ratio; and

“(E) The personal funds of a participating candidate or a participating candidate’s immediate family that may be contributed to the participating candidate.

“Sec. 332k. 2020 election cycle report by the District of Columbia Auditor.

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“No later than December 31, 2021, the District of Columbia Auditor shall prepare and submit to the Mayor and Council a report on the Fair Elections Program’s performance during the 2020 election cycle. The report shall include:

“(1) An evaluation of the Fair Elections Program’s performance in meeting the requirements of the Fair Elections Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-192);

“(2) A financial audit of the Fair Elections Program’s spending during the 2020 election cycle; and

“(3) Recommendations for improving the Fair Elections Program.

“Sec. 332l. Rules.

“(a) The Elections Board, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of the Fair Elections Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-192), including:

“(1) Procedures for verifying and auditing qualified small-dollar contributions; and

“(2) Rules relating to:

“(A) The storage, use, or disposition of equipment returned to the Office of Campaign Finance under section 332h, which may permit disposition of equipment directly to one or more unaffiliated nonprofit organizations or public schools operating in the District;

“(B) The removal or deletion of data in equipment returned to the Office of Campaign Finance; and

“(C) The discarding of unusable equipment returned to the Office of Campaign Finance.

“(2) For the purposes of this section, the term “equipment” shall have the same meaning as provided in section 332h(e).”

(6) Section 333 (D.C. Official Code § 1-1163.33) is amended by adding a new subsection (l) to read as follows:

“(l) The provisions of subsections (a), (b), (d), (e)(2), and (j)(2) of this section shall not apply to the Fair Elections Program established by section 332a.”

(7) Section 336(a) (D.C. Official Code § 1-1163.36(a)) is amended by striking the phrase “No resources” and inserting the phrase “Except as provided in the Fair Elections Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-192), no resources” in its place.

Sec. 3. Applicability.

(a) This act shall apply upon the latest of:

(1) The date of inclusion of its fiscal effect in an approved budget and financial plan; or

(2) November 7, 2018.

(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.

ENROLLED ORIGINAL

(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. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as 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
March 12, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-279

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 12, 2018

To require the Workforce Investment Council to develop and update annually a Workforce Development System Expenditure Guide outlining all District government spending on workforce development and adult education across agencies, including programs and activities, funding, providers, and performance outcomes, and to require agencies that manage, administer, oversee, or fund workforce development or adult education programs to share such information with the Workforce Investment Council; and to amend the Workforce Investment Implementation Act of 2000 to include collecting and compiling information for the Workforce Development Expenditure Guide in the duties of the Workforce Investment Council.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Workforce Development System Transparency Amendment Act of 2018”.

TITLE I – CREATION OF A WORKFORCE DEVELOPMENT EXPENDITURE GUIDE.

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) “Adult education program” means a program, other than a program that is part of the conventional kindergarten through grade 12 educational system funded by the Uniform Per Student Funding Formula, that offers services or instruction below the college level for adults who:

- (A) Lack mastery of basic educational skills;
- (B) Do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education; or
- (C) Have limited ability in speaking, reading, writing, or understanding the English language.

(2) “Course of training” means the totality of services within a workforce development or adult education program designed to assist participants in obtaining a particular skill, scope of knowledge, or credential.

(3) “Funding vehicle” includes grants, contracts, and human care agreements.

(4) “Guide” means the Workforce Development Expenditure Guide.

ENROLLED ORIGINAL

(5) "Occupation" means the broad occupation code and associated title assigned to a particular category of work in the most recent edition of the Standard Occupational Classification Manual published by the U.S. Bureau of Labor Statistics.

(6) "Participant" means a person who participates or participated in a program, as defined by program rules established by the program's administering or funding agency.

(7) "Personally identifiable information" means information that can be used to distinguish or trace an individual's identity, such as the individual's name, social security number, or biometric records, alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth or mother's maiden name.

(8) "Program" means each activity, sub-activity, pilot program, or project, including those funded through memoranda of understanding between agencies, that is managed, administered, overseen, or funded by a District agency. Where a District agency provides a service, a program is the most discrete unit of services in which an individual can participate. Where a provider receives District funding to provide a service, a program is the most discrete level at which a provider can apply for such funding.

(9) "Provider" means an organization that provides any service as part of a workforce development or adult education program with funding obtained from a District agency, including federal funding managed, administered, or overseen by a District agency.

(10) "Public charter school program" means a program provided by a District public charter school with funds from the Uniform Per Student Funding Formula.

(11) "Sector" means the category of the occupation for which an individual trained or prepared and includes the high-demand sectors identified by the Workforce Investment Council.

(12) "Service" includes post-secondary education, credential preparation, workforce training, work-readiness or job-readiness training, workforce preparation, occupational skills training, subsidized work experience, unsubsidized work experience, job search and job placement, case management, and assistance to employers regarding hiring or training.

(13) "Target population" means the individuals that a program is designed to serve, identified by reference to shared demographic characteristics such as age range, gender, or race, or status as English-language-learners, hard-to-serve individuals, individuals with a physical disability, or individuals with an intellectual or developmental disability.

(14) "WIC" means the Workforce Investment Council.

(15) "Workforce development program" means a program that provides any service that supports and increases the capacity of individuals to enter and remain a part of the labor market, excluding programs that are:

(A) Part of the conventional kindergarten through grade 12 educational system and funded by the Uniform Per Student Funding Formula;

(B) Four-year college degree programs or post bachelor's degree programs; or

ENROLLED ORIGINAL

(C) Federally or locally funded scholarships for post-secondary, degree-granting, or credit-based programs.

Sec. 102. Workforce Development System Expenditure Guide.

(a) The WIC shall develop a Workforce Development System Expenditure Guide.

(b)(1) By February 1, 2019, and annually by February 1 thereafter, the WIC shall transmit the guide to the Council and post it online.

(2)(A) The WIC shall make the guide available in the form of a manipulable, non-image-based, digital spreadsheet to any interested party within 2 business days of receiving a request for the guide in such format.

(B) The WIC may present the guide publicly in other formats.

(C) The guide shall be organized primarily by programs, which shall be grouped by the agency that provides the largest portion of funding.

(c)(1) The guide shall present the information required pursuant to subsections (d) through (f) of this section for workforce development and adult education programs that the District manages, administers, oversees, or funds, in whole or in part, including programs funded with federal dollars.

(2) The first version of the guide, due February 1, 2019, and all subsequent versions of the guide, shall include information required by subsections (d) through (f) of this section for all workforce development and adult education programs managed, administered, overseen, or funded by the:

- (A) Department of Disability Services;
- (B) Department of Employment Services;
- (C) Department of Human Resources;
- (D) Department of Human Services;
- (E) Deputy Mayor for Greater Economic Opportunity;
- (F) Office of the State Superintendent of Education; and
- (G) WIC.

(3) The second version of the guide, due February 1, 2020, and all subsequent versions of the guide shall include information required by subsections (d) through (f) of this section for all workforce development and adult education programs managed, administered, overseen, or funded by the:

- (A) Child and Family Services Agency;
- (B) Department of Behavioral Health;
- (C) Department of Corrections;
- (D) Department of Energy and Environment;
- (E) Department of Public Works;
- (F) Department of Transportation;
- (G) Department of Youth Rehabilitation Services;
- (H) Deputy Mayor for Education;
- (I) District of Columbia Public Schools;

ENROLLED ORIGINAL

- (J) The Executive Office of the Mayor;
- (K) Office of Cable Television, Film, Music, and Entertainment;
- (L) Office of Latino Affairs;
- (M) University of the District of Columbia Community College; and
- (N) Any other District agency that manages, administers, oversees, or

funds workforce development or adult education programs.

(4) All versions of the guide shall include information on public charter school programs that is equivalent to the information delineated in subsections (d) through (f) of this section and that is publicly available. This information may include public information available from the Public Charter School Board, Office of the State Superintendent of Education, or Deputy Mayor for Education.

(d) For each program, the guide shall include the following information for the most recently completed program year:

- (1) The name of the program;
- (2) The name of the administering agency and the name of the funding agency, if different;
- (3) The division or program and activity names and numerical codes used to designate the program in the agency budget and financial plan prepared by the Chief Financial Officer;
- (4) A brief description of the program, which may include target populations, program length, educational or other eligibility requirements, or other information;
- (5) Information about funding sources and program costs, including:
 - (A) Amount of funding by revenue type (e.g., federal, local, or special purpose revenue);
 - (B) Federal grant name, if applicable;
 - (C) Funding vehicle type for programs that utilize providers;
 - (D) Portion of funding utilized for wage subsidies, if applicable; and
 - (E) Cost per participant;
- (6) List of services provided, and, for each service, whether it is delivered by providers or directly by a District agency;
- (7) Names of courses of training, where applicable;
- (8) The sectors and occupations for which the program is designed to prepare participants, where applicable;
- (9) Number of participants;
- (10) A percentage breakdown of total participants by race and gender;
- (11) Performance metrics, targets, and outcomes consistent with the requirements of subsections (f) and (g) of this section;
- (12) Information on the use of electronic data matching to determine outcomes data, as described in subsection (g)(1) of this section, such as the outcomes metrics for which data matching was used, the extent of use, and other methods of data collection that were utilized; and

ENROLLED ORIGINAL

(13) For each provider, in programs that utilize providers:

- (A) Provider name;
- (B) Names of courses of training provided, where applicable;
- (C) Total number of participants;
- (D) Number of participants per course of training;
- (E) List of services offered, delineated by each course of training, where

applicable;

(F) Sector and occupation for which each course of training is designed to prepare participants;

(G) Amount of workforce development or adult education program funding received from District agencies, including federal funding administered by District agencies, which shall include:

- (i) Total funding; and
- (ii) Funding for each course of training, if applicable;

(H) The initial educational functioning level of program participants, if available; and

(I) Performance metrics, targets, and outcomes as required pursuant to subsections (f) and (g) of this section.

(e) The guide may include any other information to provide context for performance outcomes of programs or providers.

(f)(1) The guides submitted by February 1, 2019, and February 1, 2020, shall provide numerical performance outcomes targets, where available, performance outcomes, and data components for all performance metrics that the District or providers track according to law, program policy, or practice as of the effective date of this act.

(2) The guide submitted by February 1, 2021, and annually thereafter, shall report, for all workforce development and adult education programs covered by subsections (c)(2) and (3) of this section:

(A) The participant completion rate, as defined by the program, and the definition of completion used;

(B) Any numerical performance outcomes targets adopted by the agency or set in accordance with local or federal law; and

(C) The same performance outcome measures required by section 116(b)(2) of the Workforce Innovation and Opportunity Act, approved July 22, 2014 (128 Stat. 1471; 29 U.S.C. § 3141(b)(2)), and related regulations and sub-regulatory guidance published by the U.S. Department of Labor, excluding measures of effectiveness at serving employers.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, for public charter school programs, the guide shall report outcomes as they appear in publicly available materials.

(g)(1)(A) At the discretion of the agency that administers or manages the program, the primary means of collecting outcomes data shall be by electronically matching program records with unemployment insurance wage records and other appropriate information, such as data from

ENROLLED ORIGINAL

the National Student Clearinghouse, data from the Federal Employment Data Exchange System, and records available from other states.

(B) Information may be collected by other means, such as direct contact with past participants.

(2) Upon request from the WIC or a District agency that administers or manages a workforce development or adult education program, and pursuant to a legally executed memorandum of understanding or other legal instrument, the Department of Employment Services (“DOES”) shall electronically match and provide to the WIC, or such District agency, employment and earnings outcomes data referred to by subsection (f)(2)(C) of this section, utilizing data from the unemployment insurance wage records or other data to which DOES has primary or exclusive access.

Sec. 103. Requirement to share information.

District agencies that manage, administer, oversee, or fund workforce development or adult education programs covered pursuant to section 102(c) shall transmit to the WIC the information necessary to create the guide no later than 60 days after receiving a request from the WIC for such information; provided, that:

(1) An agency shall not be required to disclose information specifically protected from disclosure to another agency pursuant to District or federal law;

(2) An agency shall not be required to transmit individual-level or personally identifiable information without a legally executed memorandum of understanding or similar legal instrument;

(3) All agencies shall comply with all relevant privacy laws and no personally identifiable information shall be publicly released or made publicly available; and

(4) The Public Charter School Board shall not be required to transmit the information required by this title, although the WIC may request such information from the Public Charter School Board.

TITLE II – DUTIES OF THE WORKFORCE INVESTMENT COUNCIL.

Sec. 201. Section 4(f) of the Workforce Investment Implementation Act of 2000, effective July 18, 2000 (D.C. Law 13-150; D.C. Official Code § 32-1603(f)), is amended as follows:

(a) Paragraph (5) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(b) Paragraph (6) is amended by striking the period and inserting the phrase “; and” in its place.

(c) A new paragraph (7) is added to read as follows:

“(7) Collect and compile the information required to develop the Workforce Development System Expenditure Guide pursuant to Title I of the Workforce Development System Transparency Amendment Act of 2018, passed on 2nd reading on February 6, 2018 (Enrolled version of Bill 22-401).”.

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TITLE III – APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE.

Sec. 301. 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. 302. 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. 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), 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
March 12, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-280

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 15, 2018

To amend the Confirmation Act of 1978 to require Council approval of mayoral nominees to the Adult Career Pathways Task Force; and to amend the Adult Literacy Task Force Act of 2014 to include business community representatives on the Adult Career Pathways Task Force.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Adult Career Pathways Task Force Expansion Amendment Act of 2018”.

Sec. 2. Section 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(f)), is amended as follows:

(a) Paragraph (55) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(b) Paragraph (56) is amended by striking the period and inserting the phrase “; and” in its place.

(c) A new paragraph (57) is added to read as follows:

“(57) The Adult Career Pathways Task Force, established by the Adult Literacy Task Force Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 32-1661.”.

Sec. 3. Section 2122(c) of the Adult Literacy Task Force Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 32-1661(c)), is amended as follows:

(a) The lead-in language is amended by striking the number “14” and inserting the number “17” in its place.

(b) Paragraph (11) is amended as follows:

(1) The lead-in language is amended by striking the word “Three” and inserting the word “Six” in its place.

(2) Subparagraph (B) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(3) Subparagraph (C) is amended by striking the phrase “provider.” and inserting the phrase “provider; and” in its place.

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(4) A new subparagraph (D) is added to read as follows:

“(D) Three representatives of the District business community that the Workforce Investment Council determines are from in-demand industry sectors, as defined by section 3(23) of the Workforce Innovation and Opportunity Act, approved July 22, 2014 (128 Stat. 1433; 29 U.S.C. § 3102(23)).”.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

UNSIGNED

Mayor
District of Columbia

March 8, 2018

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-281

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 15, 2018

To establish the Community Health Care Provider Expansion Program to provide grants to a nonprofit community development financial institution to make loans to health care providers to construct, reconstruct, renovate, rehabilitate, refurbish, expand, upgrade, and equip facilities maintained by the health care providers.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Health Care Provider Facility Expansion Program Establishment Act of 2018”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Community development financial institution” shall have the same meaning as provided in section 103(5) of the Riegle Community Development and Regulatory Improvement Act of 1994, approved September 23, 1994 (108 Stat. 2163; 12 U.S.C. § 4702(5)).

(2) “Department” means the Department of Health Care Finance.

(3) “Fund” means the Community Health Care Provider Expansion Revolving Fund established by section 4.

(4) “Health care provider” means a physician, clinic, hospital, or neighborhood health center, licensed by the District, that is responsible for providing primary care and coordinating referrals, when necessary, to other health care providers.

(5) “Program” means the Community Health Care Provider Expansion Program established by section 3.

Sec. 3. Community Health Care Provider Expansion Program.

There is established the Community Health Care Provider Expansion Program to provide grants to a nonprofit community development financial institution for the purpose of making loans to selected health care providers. The loans shall be for the purpose of covering costs associated with the construction, reconstruction, renovation, rehabilitation, refurbishing, expansion, and upgrade of facilities maintained by the health care providers and the purchase of equipment used at the facilities.

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Sec. 4. Community Health Care Facility Expansion Revolving Fund.

(a) There is established as a special fund the Community Health Care Facility Expansion Revolving Fund ("Fund"), which shall be administered by the Department in accordance with subsection (c) of this section.

(b) Revenues from the following sources shall be deposited into the Fund:

(1) Debt service funds transferred from the grant administrator pursuant to section 5(b)(8); and

(2) Annual appropriations.

(c) Money in the Fund shall be used to support the purposes of the Program.

(d)(1) The money deposited into the Fund 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 Fund shall be continually available without regard to fiscal year limitation.

Sec. 5. Grant administrator.

(a) Pursuant to the Grant Administration Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), the Department shall select a nonprofit community development financial institution as the grant administrator for the purpose of making loans to health care providers to further the purposes of the Program. The selected grant administrator shall:

(1) Be certified by the U.S. Treasury Community Development Financial Institutions Fund pursuant to section 107 of the Riegle Community Development and Regulatory Improvement Act of 1994, approved September 23, 1994 (108 Stat. 2172; 12 U.S.C. § 4706); and

(2) Have experience financing projects in the health care sector.

(b) The Department shall enter into an agreement with the grant administrator that shall include the following provisions:

(1) That the grant administrator shall be responsible for the receipt, management, and expenditure of grant funds;

(2) That the grant administrator shall maintain books and records pertaining to all monies received and disbursed pursuant to this section and the agreement;

(3) That the grant funds shall be utilized for the purpose of making loans to health care providers to provide the health care providers with improved access to affordable capital to expand and improve their ability to provide preventive or primary care;

(4) That loan recipients shall be chosen by the grant administrator through an application process approved by the Department;

(5) That allowable uses of the loans shall include:

(A) Costs attributable to the proposed construction, reconstruction, renovation, rehabilitation, refurbishing, expansion, upgrading, and equipping of a health care provider's facility and associated professional costs, including furniture, fixtures, equipment, health information technology, acquisition, predevelopment due diligence, operating expenses, and working capital;

ENROLLED ORIGINAL

- (B) Reserves for credit enhancement, including loan guarantees;
- (C) Loan loss and debt service reserves and subordinated loans; and
- (D) Facility financing, including loans for predevelopment, acquisition

and construction, permanent financing, and bridge loans;

(6) That the health care providers shall obtain appropriate recognition provided by the National Committee for Quality Assurance to acknowledge practice as a patient medical home, if eligible;

(7) That all loans will be below prime rate, as determined by the Department;

(8) That all moneys received by the grant administrator as debt service shall be transferred to the Chief Financial Officer for deposit into the Fund pursuant to this act.

(9) That the grant administrator shall report quarterly on transactions involving the use of grant funds in a form and manner specified by the Department, including:

- (A) All monies received by the grant administrator from all sources;
- (B) Disbursements, loans or credit enhancements made using grant funds;

and

(C) The grant funds balance on hand at of the end each month within a given quarter;

(10) That only the reasonable expenses of the administrator, as determined by the Department, incurred in the establishment and administration of the grant funds, including the retention of professionals and consultants, if any, may be paid or reimbursed using the grant funds;

(11) That the grant funds shall be held in trust and used for the purposes set forth in this act; and

(12) That the grant administrator shall require the loan recipients to submit data on a quarterly basis that includes:

- (A) The number of individuals served at the facility for which grant funds were expended; and
- (B) Other data as determined by the Department.

Sec. 6. Health care provider facilities location requirements.

A health care provider shall be eligible to receive loans under this act if the health care provider intends to improve existing facilities operated by the health care provider in Wards 7 or Ward 8 or intends to establish new facilities in Ward 7 or Ward 8.

Sec. 7. Loan documentation.

(a) Loans using grant funds shall be made pursuant to a written loan agreement between the grant administrator and the health care providers and shall specify the terms of the loan, including repayment of principal and interest to the grant administrator.

(b) The loan agreement shall be in a form and contain content as determined by the Department. The loan agreement may include other written documentation as determined by the Department.

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Sec. 8. 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. 9. 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. 10. 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

UNSIGNED

Mayor
District of Columbia

March 12, 2018

ENROLLED ORIGINAL

AN ACT
D.C. ACT 22-282

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 15, 2018

To establish the School Health Innovations Grant program to award grants to operators of health care clinics that partner with District of Columbia public schools and public charter schools to give students, and the communities that surround the schools, opportunities to access behavioral health care services; and to amend the Early Childhood and School-based Behavioral Health Infrastructure Act of 2012 to extend the deadline for the Task Force on School Mental Health to provide a report to the Council and the Mayor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “School Health Innovations Grant Program Amendment Act of 2018”.

TITLE I. CREATION OF A SCHOOL HEALTH INNOVATIONS GRANT PROGRAM

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) “D.C. School” means a District of Columbia public school or public charter school.

(2) “Department” means the Department of Health Care Finance.

(3) “Health care provider” means a physician, clinic, hospital, or neighborhood health center, licensed by the District of Columbia, that provides services that address an individual’s overall social, emotional, and psychological well-being and development.

(4) “Program” means the School Health Innovations Grant Program established by section 102.

(5) “Social services provider” means an organization that provides individuals with assistance in accessing services to address social determinants of health, including employment, education, nutrition assistance, or other needs.

Sec. 102. School Health Innovations Grant Program.

(a) There is established the School Health Innovations Grant Program to expand access to comprehensive behavioral health care services by providing grants to health care providers that partner with District of Columbia public schools and public charter schools to give students, and

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the communities that surround the schools, opportunities to access behavioral health care services, including through the incorporation of remote computer access.

(b) The Department shall administer the Program and shall award innovation grants of up to \$400,000 each, to up to 8 health care providers that participate in the Program.

(c) Each health care provider that participates in the Program shall partner with a D.C. School and establish a school-based health care clinic within the D.C. School that offers the following:

- (1) Screenings for behavioral health and social determinants of health needs;
- (2) Referrals to health care and social services providers;
- (3) Community health care navigation services; and
- (4) On-demand access to health care provider services via real time computer

access.

(d) The school-based clinic shall coordinate student care with the students' parents and the students' primary care providers regarding follow-up care, including care plans and plans for continued care made by the participating health care provider and for in-person appointments with social service providers.

(e) A health care provider that receives a grant under the Program and the partnering D.C. School may agree to extend the services of the school-based clinic to include a community-based clinic that provides services to D.C. School employees, family members of the students, and the local neighborhood community that surrounds the D.C. School. If the grant recipient and the partnering D.C. School elect to establish a community-based clinic, the clinic shall be available to the residents of the surrounding community only after regular school hours of the D.C. School and shall be staffed with health professionals capable of providing patient centered primary health care.

Sec. 103. Application process.

To participate in the Program, a health care provider shall file an application with the Department on a form to be prescribed by the Department. The application prescribed by the Department shall require the following information:

(1) A memorandum of understanding executed between the health care provider and the principal of the participating D.C. School;

(2) The health care provider's plans to:

(A) Operate the school-based clinic, including clinical staff and other health services to be offered;

(B) Promote health literacy;

(C) Coordinate care with parents and the students' primary care providers regarding any follow-up care including, treatment plans, plans for continued care made by the health care provider, or for in-person appointments with social services providers;

(D) Obtain consent from parents to allow student participation;

(E) Engage parents to ensure utilization of the school-based clinic;

(F) Engage school administrators in integrating existing health-related

ENROLLED ORIGINAL

services offered by the school;

(G) Obtain reimbursement for the health care services provided; and

(H) Engage the surrounding community;

(3) Funds needed to implement the health care provider's plans listed in paragraph (2) of this section;

(4) Projected number of schools to which the health care provider could extend the proposed model, and the incremental cost estimates for each additional school, if applicable; and

(5) Other information as determined by the Department.

Sec. 104. Evaluation of health care clinic operations.

Health care providers participating in the Program shall electronically track and submit to the Department on a semiannual basis the following information for the purposes of evaluation of the health care clinic and determining the scalability of the health care clinic's model:

(1) Number of student referrals made to health care providers and social services providers;

(2) Number of student screenings completed for behavioral health and social services needs;

(3) Number of students connected to behavioral health services and social services;

(4) Gross revenue received from health insurance plans, Medicaid, and other reimbursements;

(5) An evaluation of the most efficient manner to run the school-based clinic, and community-based clinic, if applicable, including alternative staff composition; and

(6) The identification of other schools to which the school-based clinic model could be expanded, including the incremental and total cost of the expansion.

Sec. 105. Ownership of health records.

The health care provider shall own all the medical records associated with the operation of a school-based clinic, and community-based clinic, if applicable, and shall maintain the medical records in accordance with District and federal law.

TITLE II. TASK FORCE ON SCHOOL MENTAL HEALTH

Sec. 201. Section 203(b)(4) 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)(4)), is amended by striking the phrase "By February 9, 2018" and inserting the phrase "No later than March 31, 2018" in its place.

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TITLE III. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

Sec. 301. Applicability.

(a) Title I of 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. 302. 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. 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), 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

UNSIGNED

Mayor
District of Columbia

March 12, 2018

ENROLLED ORIGINAL

A RESOLUTION

22-421

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 6, 2018

To declare the existence of an emergency, due to congressional review, with respect to the need to recognize 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 An Act To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Master Development Plan Recognition Congressional Review Emergency Declaration Resolution of 2018”.

Sec. 2. (a) On December 19, 2017, the Council passed the Master Development Plan Recognition Emergency Act of 2017, effective December 20, 2017 (D.C. Act 22-206; 64 DCR 13408) (“Emergency Act”), to ensure that several District-supported development projects are considered to be part of approved master development agreements so that they may continue to qualify for federal tax preference.

(b) On January 9, 2018, the Council passed a temporary version of the Emergency Act, the Master Development Plan Recognition Temporary Act of 2018, enacted on January 31, 2018 (D.C. Act 22-245; 65 DCR 1372) (“Temporary Act”), which has been transmitted to Congress for the mandatory 30-day review period.

(c) The Emergency Act will expire on March 20, 2018. However, the congressional-review period for the Temporary Act is not expected to conclude until April 10, 2018. Therefore, a congressional review emergency act is necessary to prevent a gap in the law.

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 Master Development Plan Recognition Congressional Review Emergency Act of 2018 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-439

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 6, 2018

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$4,820,000 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 the Spanish Education Development Center 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 “Spanish Education Development Center Revenue Bonds Project Approval Resolution of 2018”.

Sec. 2. Definitions.

For the purposes of this resolution, the term:

(1) “Authorized Delegate” means the Mayor or the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have subdelegated any of the Mayor’s functions under this resolution pursuant to section 422(6) of the Home Rule Act.

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

(3) “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 resolution.

(4) “Borrower” means the owner of the assets financed, refinanced, or reimbursed with proceeds from the Bonds, which shall be the Spanish Education Development Center, a nonprofit corporation organized under the laws of the District of Columbia, which is exempt from federal income taxes under 26 U.S.C § 501(a) as an organization described in 26 U.S.C. § 501(c)(3) and organized under the laws of the District and which is liable for the repayment of the Bonds.

(5) “Chairman” means the Chairman of the Council of the District of Columbia.

ENROLLED ORIGINAL

(6) "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 to make the Loan, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

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

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

(9) "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.*).

(10) "Issuance Costs" means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the Bonds and the making of the Loan, including, but not limited to, underwriting, legal, accounting, rating agency, and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the Bonds and the making of the Loan, together with financing fees, costs, and expenses, including program fees and administrative fees charged by the District, fees paid to financial institutions and insurance companies, initial letter of credit fees (if any), and compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District.

(11) "Loan" means the District's lending of proceeds from the sale, in one or more series, of the Bonds to the Borrower.

(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Project" means the financing, refinancing, or reimbursing of all or a portion of the Borrower's costs of:

(A) The acquisition of an existing building located at 4110 Kansas Avenue, N.W., in Washington, D.C. (Lot 0806, Square 2911), constituting approximately 24,000 square feet of above-grade improvements with the associated land comprising approximately 8,592 square feet ("Facility");

(B) The purchase of certain equipment and furnishings, together with other property, real and personal, functionally related and subordinate to the Facility;

(C) Funding certain expenditures associated with the financing of the Facility, to the extent permissible, including, credit enhancement costs, liquidity costs, debt service reserve fund, or working capital; and

(D) Paying costs of issuance and other related costs, to the extent permissible.

ENROLLED ORIGINAL

Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may, by resolution, authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse costs, and to assist in the financing, refinancing, or reimbursing of, the costs of undertakings in certain areas designated in section 490 and may affect the financing, refinancing, or reimbursement by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series pursuant to a plan of finance, in an aggregate principal amount not to exceed \$4,820,000, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

(3) The Facility is located in the District and will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District.

(4) The Project is an undertaking in the area of facilities used to house and equip operations related to the study, development, application or production of innovative commercial or industrial technologies and social services, within the meaning of section 490 of the Home Rule Act.

(5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

Sec. 4. Bond authorization.

(a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing the costs of the Project by:

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$4,820,000; and

(2) The making of the Loan.

(b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the issuance, sale, and delivery of each series of the Bonds, the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements

ENROLLED ORIGINAL

with the District, and maintaining official records of each bond transaction, and assisting in the redemption, repurchase, and remarketing of the Bonds.

Sec. 5. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this resolution 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 to the Project and used to accomplish the purposes of the Home Rule Act and this resolution;
- (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 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, 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 of the District of Columbia's manual or facsimile signature. The

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Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the Bonds.

(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 to be selected by the Borrower subject to the approval of 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.

Sec. 6. Sale 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 interest 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 sale of the Bonds.

(c) The Mayor is authorized to deliver the 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.

Sec. 7. Payment and security.

(a) The principal of, premium, if any, and interest on, the Bonds 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 Loan, income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners, other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

(b) 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

ENROLLED ORIGINAL

the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the Bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

Sec. 8. 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 and to make the Loan to the Borrower. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

(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 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. 9. Authorized delegation of authority.

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this resolution.

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, 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.

ENROLLED ORIGINAL

(c) Nothing contained in the Bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than those listed for that purpose in section 7.

(d) The District shall have no liability for the payment of any Issuance Costs or for any transaction or event to be effected by the Financing Documents.

(e) All covenants, obligations, and agreements of the District contained in this resolution, the Bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

(f) No person, including, but not limited to, the Borrower and 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 or any of its elected or appointed officials, officers, employees, or agents to either perform any covenant, undertaking, or obligation under this resolution, 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(f), 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, sale, or delivery of the Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this resolution, 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.

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.

ENROLLED ORIGINAL

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. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue the Bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations, the interest on which is excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds.

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing costs of the Project, does not provide any assurance that the Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall not rely upon the District with respect to these matters.

Sec. 15. Expiration.

If any Bonds are not issued, sold, and delivered to the original purchaser within 3 years of the date of this resolution, the authorization provided in this resolution with respect to the issuance, sale, and delivery of the Bonds shall expire.

Sec. 16. Severability.

If any particular provision of this resolution or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this resolution is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuing of the Bonds, and the validity of the Bonds shall not be adversely affected.

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2635; 26 U.S.C. §

ENROLLED ORIGINAL

147(f)), as amended, and section 490(k) of the Home Rule Act, for the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds. This resolution approving the issuance of the Bonds for the Project has been adopted by the Council after a public hearing held at least 14 days after publication of notice in a newspaper of general circulation in the District.

Sec. 18. Transmittal.

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

Sec. 19. 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. 20. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-440

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 6, 2018

To approve the second multiyear option of Contract No. CFOPD-11-C-040 with eFunds Corporation to provide electronic benefits transfer services to the Office of the Chief Financial Officer on behalf of the Office of Finance and Treasury.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CFOPD-11-C-040, Electronic Benefits Transfer Services Approval Resolution of 2018".

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 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 the second multiyear option of Contract No. CFOPD-11-C-040 with eFunds Corporation to provide electronic benefits transfer services to the Office of the Chief Financial Officer on behalf of the Office of Finance and Treasury, from April 14, 2018, through July 13, 2019, in an amount not to exceed \$2,553,794.59.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Office of the Chief Financial Officer.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

22-455

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 6, 2018

To declare the existence of an emergency with respect to the need to amend the District of Columbia Mental Health Information Act of 1978 to permit the disclosure of mental health information by a third-party payor to a health care provider in certain enumerated instances, to require a health care provider to notify clients whether its third-party payor's privacy practices permit the disclosure of mental health information, and to allow clients to prevent the disclosure of mental information by a third-party payor upon request.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Mental Health Information Disclosure Emergency Declaration Resolution of 2018".

Sec. 2. (a) This emergency legislation will ensure that necessary data from third-party payors is included in the District of Columbia Health Information Exchange. Without the ability to share third-party payor information, both the Department of Health Care Finance ("DHCF") and private payors will be unable to redisclose claims data to identify when patients have accessed mental health services or continue to require health care services.

(b) The absence of this information can lead to improper treatment, prescription or dispensation of contraindicated medication, or a failure to address social factors that impact physical and behavioral health conditions.

(c) As the exchange of health information is critical to the delivery of health care services, this emergency legislation would facilitate the successful implementation of health information forums such as MyHealthGPS and DHCF's Patient Profile, by permitting third-party payors to disclose mental health information to health care providers in connection with the diagnosis, evaluation, treatment, case management, conduct of quality assessment and improvement activities, or rehabilitation of a health or mental disorder or diseases when and to the extent necessary to facilitate the delivery of health or professional services to patients.

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 Mental Health Information Disclosure Emergency Amendment Act of 2018 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****BILLS**

B22-746 Outlaw Way Designation Act of 2018

Intro. 3-15-18 by Councilmember Allen and referred to the Committee of the Whole

B22-747 Bruce Robey Way Designation Act of 2018

Intro. 3-15-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PROPOSED RESOLUTIONS

PR22-805 Commission on Fashion Arts and Events Le'Greg O. Harrison Confirmation Resolution of 2018

Intro. 3-14-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

- PR22-806 Commission on Fashion Arts and Events Kristopher Johnson-Hoyle
Confirmation Resolution of 2018
- Intro. 3-14-18 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Business and Economic Development
-
- PR22-807 Commission on Fashion Arts and Events Lanaysha B. Jackson Confirmation
Resolution of 2018
- Intro. 3-14-18 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Business and Economic Development
-
- PR22-808 Board of Pharmacy Chikita Sanders Confirmation Resolution of 2018
- Intro. 3-14-18 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Health
-
- PR22-809 Washington Metropolitan Area Transit Authority Union Station Funding
Agreement Approval Resolution of 2018
- Intro. 3-15-18 by Chairman Mendelson at the request of the Mayor and
Retained by the Council with comments from the Committee of the Whole
-

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING**

on

Bill 22-669, Department of Buildings Establishment Act of 2018

on

**Thursday, April 19, 2018
2:00 p.m., Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of Whole on Bill 22-669, the “Department of Buildings Establishment Act of 2018.” The hearing will be held on Thursday, April 19, 2018 at 2:00 p.m. in Hearing Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of Bill 22-669 is to establish the Department of Buildings (DOB) as a new subordinate agency within the Executive branch. The bill outlines the organizational structure and functions of the new agency. The Department of Buildings will be responsible for the administration and enforcement of construction compliance, rental housing safety, and residential property maintenance activities. The bill also requires the City Administrator to produce an Implementation and Transition Plan to the Council, which would detail the Executive’s plans for implementation of this bill and includes other reporting requirements for DOB. Lastly, the bill redesignates the Department of Consumer and Regulatory Affairs as the Department of Licensing and Consumer Protection (DLCP) to reflect the reduced responsibilities of that agency.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Randi Powell, Legislative Policy Advisor at (202) 724-8092, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, **April 17, 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 April 18, 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 Thursday, May 3, 2018.

**COUNCIL OF THE DISTRICT OF COLUMBIA
 NOTICE OF PUBLIC HEARINGS
 FISCAL YEAR 2019 PROPOSED BUDGET AND FINANCIAL PLAN,
 FISCAL YEAR 2019 BUDGET SUPPORT ACT OF 2018,
 FISCAL YEAR 2019 LOCAL BUDGET ACT OF 2018
 FISCAL YEAR 2019 FEDERAL BUDGET ACT OF 2018, AND
 COMMITTEE MARK-UP SCHEDULE
 3/20/2018**

SUMMARY

March 21, 2018	Mayor Transmits the Fiscal Year 2019 Proposed Budget and Financial Plan
March 23, 2018	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2019 Proposed Budget and Financial Plan
March 26, 2018 to April 26, 2018	Committee Public Hearings on the "Fiscal Year 2019 Local Budget Act of 2018." (The Committees may also simultaneously receive testimony on the sections of the Fiscal Year 2019 Budget Support Act that affect the agencies under each Committee's purview)
April 27, 2018	Committee of the Whole Public Hearing on the "Fiscal Year 2019 Local Budget Act of 2018", "Fiscal Year 2019 Federal Budget Act of 2018" and "Fiscal Year 2019 Budget Support Act of 2018."
May 2-4, 2018	Committee Mark-ups and Reporting on Agency Budgets for Fiscal Year 2019
May 8, 2018	Budget Work Session 10:00 a.m.
May 15, 2018	Committee of the Whole and Council consideration of the "Fiscal Year 2019 Local Budget Act of 2018", "Fiscal Year 2019 Federal Portion Budget Request Act of 2018" and the "Fiscal Year 2019 Budget Support Act of 2018"
May 29, 2018	Council consideration of the "Fiscal Year 2019 Local Budget Act of 2018" and the "Fiscal Year 2019 Federal Portion Budget Request Act of 2018"

The Council of the District of Columbia hereby gives notice of its intention to hold public hearings on the FY 2019 Proposed Budget and Financial Plan, the "Fiscal Year 2019 Local Budget Act of 2018", "Fiscal Year 2019 Federal Portion Budget Request Act of 2018" and the "Fiscal Year 2019 Budget Support Act of 2018". The hearings will begin Monday, March 26, 2018 and conclude on Thursday, April 26, 2018 and will take place in the Council Chamber (Room 500), Room 412, Room 120, or Room 123 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

The Committee mark-ups will begin Wednesday, May 2, 2018 and conclude on Friday, May 4, 2018 and will take place in the Council Chamber (Room 500) of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to the corresponding committee office. If a written statement cannot be provided prior to the day of the hearing, please have at least 15 copies of your written statement available on the day of the hearing for immediate distribution to the Council. The hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget oversight hearings and mark-up schedule please contact the committee of interest.

ADDENDUM OF CHANGES TO THE PUBLIC HEARING SCHEDULE

<u>New Date</u>	<u>Original Date</u>	<u>Hearing</u>
March 28, 2018		Mayor's Office of African Affairs (Government Operations - Room 123; 10:00a.m.)
March 29, 2018	April 11, 2018	State Board of Education, Office of the Ombudsman, and Office of the Student Advocate (Education - Room 123; 10:00a.m.)
April 11, 2018	March 29, 2018	Deputy Mayor for Education and DC Public Charter School Board (Education - Room 120; 10:00a.m.)
April 13, 2018		Housing Production Trust Fund - Public Witnesses Only (Housing & Community Development - Room 500; 11:00a.m.)
April 20, 2018	March 29, 2018	District of Columbia Housing Authority (Housing & Community Development - Room 412; 11:00a.m.)
April 24, 2018	March 28, 2018	Office of Veterans' Affairs (Government Operations - Room 123; 10:00a.m.)
April 24, 2018		Office of Lesbian, Gay, Bisexual, Transgender & Questioning Affairs (Government Operations - Room 123; 10:00a.m.)

PUBLIC HEARING SCHEDULE

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

FRIDAY, MARCH 23, 2018; COUNCIL CHAMBER (Room 500)	
Time	Subject
10:00 a.m. - End	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2019 Proposed Budget and Financial Plan

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

MONDAY, MARCH 26, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:30 a.m. - End	Metropolitan Washington Council of Governments Office of Zoning Office of Planning

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, MARCH 26, 2018; Room 412	
Time	Agency
11:00 a.m. - End	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

TUESDAY, MARCH 27, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Council of the District of Columbia District of Columbia Auditor New Columbia Statehood Commission Contract Appeals Board Office of Contracting and Procurement District of Columbia Retirement Board/Funds District Retiree Health Contribution

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

TUESDAY, MARCH 27, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Deputy Mayor for Health and Human Services Not-For-Profit Hospital Corporation Not-For-Profit Hospital Board

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

TUESDAY, MARCH 27, 2018; Room 123	
Time	Agency
11:00 a.m. - End	Department of Energy and the Environment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

WEDNESDAY, MARCH 28, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Disability Services Office of Disability Rights

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, MARCH 28, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairman Brandon Todd

WEDNESDAY, MARCH 28, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Office of Asian and Pacific Islander Affairs
	Office of Latino Affairs
	Office of African American Affairs
	Office of African Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6663.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

WEDNESDAY, MARCH 28, 2018; Room 120	
Time	Agency
10:00 a.m. - End	University of the District of Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, MARCH 29, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
9:30 a.m. - End	Deputy Mayor for Public Safety and Justice
	Office of Neighborhood Safety and Engagement
	Metropolitan Police Department
	Criminal Justice Coordinating Council
	Office of Police Complaints

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

THURSDAY, MARCH 29, 2018; Room 412	
Time	Agency
11:00 a.m. - End	Mayor's Office on Returning Citizen Affairs
	Office of the Advisory Neighborhood Commissions

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, MARCH 29, 2018; Room 123	
Time	Agency
10:00 a.m. - End	State Board of Education
	Office of the Ombudsman
	Office of the Student Advocate

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

THURSDAY, MARCH 29, 2018; Room 120	
Time	Agency
9:30 a.m. - 5:00 p.m.	Office of Budget and Planning
	Department of Consumer and Regulatory Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may email: cow@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

MONDAY, APRIL 9, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

MONDAY, APRIL 9, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

WEDNESDAY, APRIL 11, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Events DC
	Destination DC
	Commission on the Arts and Humanities

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

WEDNESDAY, APRIL 11, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Department of Small and Local Business Development
	Department of Insurance, Securities and Banking
	Department of For-Hire Vehicles

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autrey (cautrey@dccouncil.us) or by calling 202-724-8053.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

WEDNESDAY, APRIL 11, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Office of Labor Relations and Collective Bargaining
	Department of Human Resources
	Office of Risk Management

Persons wishing to testify about the performance of any of the foregoing agencies may contact: labor@dccouncil.us or by calling 202-724-7772.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, APRIL 11, 2018; Room 120	
Time	Agency
10:00 a.m. - End	Deputy Mayor for Education
	District of Columbia Public Charter School Board

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

THURSDAY, APRIL 12, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, APRIL 12, 2018; Room 412	
Time	Agency
9:30 a.m. - End	Fire and Emergency Medical Services Department
	Office of Unified Communications
	Homeland Security and Emergency Management Agency

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

THURSDAY, APRIL 12, 2018; Room 123	
Time	Agency
11:00 a.m. - End	Department of Motor Vehicles
	Department of Parks and Recreation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

FRIDAY, APRIL 13, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Department of Housing and Community Development (Public Witnesses Only)
	Housing Production Trust Fund (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

FRIDAY, APRIL 13, 2018; Room 123	
Time	Agency
10:30 a.m. - 5:00 p.m.	Office of the Attorney General
	Office of Victim Services and Justice Grants
	Board Ethics and Government Accountability
	District of Columbia Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairman Brandon Todd

FRIDAY, APRIL 13, 2018; Room 120	
Time	Agency
10:00 a.m. - End	Office of Administrative Hearings
	Office of the Inspector General

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6663.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

TUESDAY, APRIL 17, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
1:30 p.m. - End	Department of Housing and Community Development (Government Witnesses Only)
	Housing Production Trust Fund (Government Witnesses Only)
	Housing Finance Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

WEDNESDAY, APRIL 18, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Employment Services (Public Witnesses Only)
	Workforce Investment Council (Public Witnesses Only)
	Deputy Mayor for Greater Economic Opportunity (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: labor@dccouncil.us or by calling 202-724-7772.

COMMITTEE ON FINANCE & REVENUE

Chairperson Jack Evans

WEDNESDAY, APRIL 18, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Office of the Chief Financial Officer
	DC Lottery
	Real Property Tax Appeals Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy (sloy@dccouncil.us) or by calling 202-724-8058.

COMMITTEE ON HUMAN SERVICES

Chairperson Brianne Nadeau

WEDNESDAY, APRIL 18, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Child and Family Services Agency
	Department of Youth Rehabilitation Services

Persons wishing to testify about the performance of any of the foregoing agencies may email: humanservices@dccouncil.us or by calling 202-724-8170.

COMMITTEE ON EDUCATION

Chairperson David Grosso

WEDNESDAY, APRIL 18, 2018; Room 120	
Time	Agency
10:00 a.m. - End	District of Columbia Public Library

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON EDUCATION

Chairperson David Grosso

THURSDAY, APRIL 19, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

THURSDAY, APRIL 19, 2018; Room 412	
Time	Agency
10:00 a.m. - End	District of Columbia Health Benefit Exchange Authority Department of Health Care Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

THURSDAY, APRIL 19, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Public Service Commission Office of People's Counsel

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autrey (cautrey@dccouncil.us) or by calling 202-724-8053.

COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY

Chairperson Charles Allen

THURSDAY, APRIL 19, 2018; Room 120	
Time	Agency
9:30 a.m. - End	District of Columbia National Guard Office of Human Rights Department of Corrections Corrections Information Council Department of Forensic Sciences Office of the Chief Medical Examiner

Persons wishing to testify about the performance of any of the foregoing agencies may email: judiciary@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

Chairperson Mary Cheh

FRIDAY, APRIL 20, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin (abenjamin@dccouncil.us) or by calling 202-724-8062.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

FRIDAY, APRIL 20, 2018; Room 412	
Time	Agency
11:00 a.m. - End	District of Columbia Housing Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

FRIDAY, APRIL 20, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Department of Employment Services (Government Witnesses Only) Workforce Investment Council (Government Witnesses Only) Deputy Mayor for Greater Economic Opportunity (Government Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: labor@dccouncil.us or by calling 202-724-7772.

COMMITTEE ON HEALTH

Chairperson Vincent Gray

MONDAY, APRIL 23, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron (mcameron@dccouncil.us) or by calling 202-654-6179.

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Chairperson Kenyan McDuffie

TUESDAY, APRIL 24, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Office of Cable Television, Film, Music and Entertainment Alcoholic Beverage Regulation Administration Deputy Mayor for Planning and Economic Development

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Chanell Autry (cautry@dccouncil.us) or by calling 202-724-8053.

COMMITTEE ON EDUCATION

Chairperson David Grosso

TUESDAY, APRIL 24, 2018; Room 412	
Time	Agency
10:00 a.m. - End	Office of the State Superintendent

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.do/educationhearings> or by calling 202-724-8061.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairperson Brandon Todd

TUESDAY, APRIL 24, 2018; Room 123	
Time	Agency
11:00 a.m. - End	Office of the Chief Technology Officer
	Office of Veterans' Affairs
	Office of Lesbian, Gay, Bisexual, Transgender & Questioning Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6663.

COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

Chairperson Anita Bonds

WEDNESDAY, APRIL 25, 2018; Room 412	
Time	Agency
11:00 a.m. - End	District of Columbia Office on Aging
	Office of the Tenant Advocate

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel (omontiel@dccouncil.us) or by calling 202-724-8198.

COMMITTEE ON GOVERNMENT OPERATIONS

Chairman Brandon Todd

THURSDAY, APRIL 26, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
11:00 a.m. - End	Executive Office of the Mayor
	Office of the City Administrator
	Office of the Senior Advisor
	Mayor's Office of Legal Counsel
	Secretary of the District of Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may email: governmentoperations@dccouncil.us or by calling 202-724-6663.

COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Chairperson Elissa Silverman

THURSDAY, APRIL 26, 2018; Room 123	
Time	Agency
10:00 a.m. - End	Office of Employee Appeals
	Public Employees Relations Board

Persons wishing to testify about the performance of any of the foregoing agencies may contact: labor@dccouncil.us or by calling 202-724-7772.

COMMITTEE OF THE WHOLE

Chairman Phil Mendelson

FRIDAY, APRIL 27, 2018; COUNCIL CHAMBER (Room 500)	
Time	Agency
10:00 a.m. - End	Committee of the Whole Hearing on the "Fiscal Year 2019 Local Budget Act of 2018," "Fiscal Year 2019 Federal Portion Budget Request Act of 2018" and the "Fiscal Year 2019 Budget Support Act of 2018"

COMMITTEE MARK-UP SCHEDULE

WEDNESDAY, MAY 2, 2018; COUNCIL CHAMBER (Room 500)

Time	Committee
2:00 p.m. - 4:00 p.m.	Committee on Labor and Workforce Development
4:00 p.m. - 6:00 p.m.	Committee on Housing and Neighborhood Revitalization

THURSDAY, MAY 3, 2018; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 11:00 a.m.	Committee on Government Operations
11:00 a.m. - 12:00 pm.	Committee on Finance and Revenue
12:00 p.m. - 2:00 p.m.	Committee on Business and Economic Development
2:00 p.m. - 4:00 p.m.	Committee on Human Services
4:00 p.m. - 6:00 p.m.	Committee on Health

FRIDAY, MAY 4, 2018; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Committee on Transportation and the Environment
12:00 p.m. - 2:00 p.m.	Committee on Education
2:00 p.m. - 4:00 p.m.	Committee on the Judiciary
4:00 p.m. - 6:00 p.m.	Committee of the Whole

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

**COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES THE RECONVENING OF THE PUBLIC OVERSIGHT ROUNDTABLE**

on

The Future of School Reform in the District of Columbia

on

**Wednesday, May 16, 2018
4:00 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember David Grosso announces the reconvening of the public roundtable of the Committee on Education on The Future of School Reform in the District of Columbia. The oversight roundtable was initially held on Monday, March 19, 2018 in Hearing Room 412 of the John A. Wilson Building and recessed that same day.

The purpose of this roundtable is to focus specifically on improvements to the D.C. Public Education Reform Amendment Act and other cross-sector issues. It will be an opportunity for the public to review the following: mechanisms for greater Council and public oversight and engagement, a more transparent school budget system, analyzing teacher and student evaluations, cross-sector issues, and highlighting ways to put a greater distance between politics and the education of our youth.

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 pm on May 14, 2018. Persons wishing to testify are encouraged to bring 10 copies of their written testimony

This is the second of a series of roundtables that will be scheduled during both daytime and evening hours to get the full engagement of the public. 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 Ashley Strange, astrange@dccouncil.us, or by post to the Committee on Education, Council of the District of Columbia, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will remain open for an extended time and will close at a date to be determined later.

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE
On

PR 22-745, Zoning Commission for the District of Columbia Anthony Hood Confirmation

on

Monday, March 26, 2018
1:00 p.m., (or immediately following the preceding hearing)
Council Chamber (Room 500), John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public roundtable before the Committee of the Whole on **PR 22-745**, the “Zoning Commission for the District of Columbia Anthony Hood Confirmation.” The roundtable will be held at **1:00 p.m. (or immediately following the preceding hearing)** on **Monday, March 26, 2018** in **Council Chamber (Room 500)** of the John A. Wilson Building.

The purpose of this public roundtable is to provide the public an opportunity to comment on the Mayor’s nomination of Anthony Hood for reappointment to the Zoning Commission for a term to end February 3, 2022. The Zoning Commission is an independent, quasi-judicial and quasi-legislative body that has exclusive jurisdiction over matters concerning zoning in the District of Columbia. The Zoning Commission is responsible for the zoning regulations (11 DCMR) and it reviews all cases relating to the zoning map and text. These cases include planned unit developments (PUDS) and campus plans of colleges and universities. The Zoning Commission is also responsible for implementing the land use element of the Comprehensive Plan, a plan which is proposed by the Mayor and adopted by the Council.

Those who wish to testify are asked to email the Committee of the Whole at cw@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, March 23, 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 March 23, 2018 the testimony will be distributed to Councilmembers before the roundtable. 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>. Roundtable materials, including a draft witness list, can be accessed 24 hours in advance of the roundtable at <http://www.chairmanmendelson.com/circulation>.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on April 9, 2018.

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

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

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

ANNOUNCES A PUBLIC ROUNDTABLE ON:

- PR 22-798, the “Washington Convention and Sports Authority Board of Directors Linda Greenan Confirmation Resolution of 2018”**
- PR 22-799, the “Washington Convention and Sports Authority Board of Directors George T. Simpson Confirmation Resolution of 2018”**
- PR 22-800, the “Washington Convention and Sports Authority Board of Directors Julio Jay Haddock Ortiz Confirmation Resolution of 2018”**

Wednesday, April 11, 2018

9:30 a.m.

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

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, April 11, 2018 at 9:30 a.m. in Room 500, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 22-798, the “Washington Convention and Sports Authority Board of Directors Linda Greenan Confirmation Resolution of 2018” would reappoint Ms. Linda Greenan as a public member with expertise in municipal finance of the Washington Convention and Sports Authority Board of Directors, for a term to end May 16, 2022.

PR 22-799, the “Washington Convention and Sports Authority Board of Directors George T. Simpson Confirmation Resolution of 2018” would appoint Mr. George T. Simpson as a public member with expertise in business finance of the Washington Convention and Sports Authority Board of Directors, for a term to end May 16, 2020.

PR 22-800, the “Washington Convention and Sports Authority Board of Directors Julio Jay Haddock Ortiz Confirmation Resolution of 2018” would reappoint Mr. Julio Jay Haddock Ortiz as a public member with expertise in tourism to the Washington Convention and Sports Authority Board of Directors, for a term to end May 16, 2022.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 9:30 a.m. on Tuesday, April 10, 2018. Witnesses should bring 15 copies of their written testimony to the roundtable. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modifications

Pursuant to the Consolidated Appropriations Act of 2017, approved May 5, 2017 (P.L. 115-31), the Council of the District of Columbia gives notice that the Mayor has transmitted the following Grant Budget Modification (GBM).

A GBM 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 GBM 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 the GBMs are available in the Legislative Services Division, Room 10.
Telephone: 724-8050

GBM 22-75: FY 2018 Grant Budget Modifications as of March 2, 2018

RECEIVED: 14 day review begins March 16, 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. 22-111 Request to reprogram \$1,750,000 of Fiscal Year 2018 Local funds budget authority from the Department of Youth Rehabilitation Services (DYRS) to the District of Columbia Office on Aging (DCOA) was filed in the Office of the Secretary on March 15, 2018. This reprogramming is needed to support ongoing operations for the safe at Home program, to aid seniors and persons with disabilities to live safely in their homes.

RECEIVED: 14 day review begins March 16, 2018

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: March 23, 2018
Protest Petition Deadline: May 7, 2018
Roll Call Hearing Date: May 21, 2018
Protest Hearing Date: July 18, 2018

License No.: ABRA-109347
Licensee: Abunai Poke, LLC
Trade Name: Abunai Poke Restaurant
License Class: Retailer's Class "D" Restaurant
Address: 1920 L Street, N.W., Ste. 120
Contact: Charlene Harada: (808) 492-8436

WARD 2

ANC 2B

SMD 2B06

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 May 21, 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 July 18, 2018 at 1:30 p.m.

NATURE OF OPERATION

New Class "D" Restaurant serving a Hawaiian dish called Poke. Total Occupancy Load of 15 with seating for 15.

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

Sunday 11:00 am to 6:00 pm, Monday through Friday 10:30 am to 8:00 pm, Saturday 11:00 am to 6:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date: March 16, 2018
 Protest Petition Deadline: April 30, 2018
 Roll Call Hearing Date: May 14, 2018

License No.: ABRA-102866
 Licensee: Basque Bar, LLC
 Trade Name: Anxo Cidery & Tasting Room
 License Class: Retailer's Class "C" Tavern
 Address: 711 Kennedy Street, N.W.
 Contact: Rachel Fitz: (410) 375-1630

WARD 4

ANC 4D

SMD 4D01

Notice is hereby given that this licensee has requested Substantial Changes to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on May 14, 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.

****NATURE OF SUBSTANTIAL CHANGES**

Licensee is requesting to expand into the existing property, to increase the occupancy from 42 seats to 61 seats, with a new Total Occupancy Load of 80. Licensee is requesting to add a Sidewalk Café with 10-15 seats. Licensee is requesting to add an Entertainment Endorsement to include live entertainment indoors and outdoors, with Dancing, and Cover Charge.

CURRENT HOURS OF OPERATION INSIDE PREMISES

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

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES

Sunday through Thursday 8 am – 2 am, and Friday & Saturday 8 am – 3 am

PROPOSED HOURS OF OPERATION (SIDEWALK CAFÉ)

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

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/AND CONSUMPTION (SIDEWALK CAFÉ)

Sunday – Thursday 8 am – 2 am, and Friday – Saturday 8 am – 3 am

PROPOSED HOURS OF LIVE ENTERTAINMENT (INDOORS)

Sunday – Saturday 10 am – 2am

PROPOSED HOURS OF LIVE ENTERTAINMENT (OUTDOOR SUMMER GARDEN/SIDEWALK CAFÉ)

Sunday – Saturday 10 am – 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**RESCIND

Placard Posting Date: March 16, 2018
Protest Petition Deadline: April 30, 2018
Roll Call Hearing Date: May 14, 2018

License No.: ABRA-102866
Licensee: Basque Bar, LLC
Trade Name: Anxo Cidery & Tasting Room
License Class: Retailer's Class "C" Tavern
Address: 711 Kennedy Street, N.W.
Contact: Rachel Fitz: (410) 375-1630

WARD 4 ANC 4D SMD 4D01

Notice is hereby given that this licensee has requested Substantial Changes to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing date on May 14, 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.

NATURE OF SUBSTANTIAL CHANGES

Licensee is requesting to expand into the existing property, to increase the occupancy from 42 seats to 61 seats, with a new Total Occupancy Load of 80. Licensee is requesting to add a Sidewalk Café with 10-15 seats. Licensee is requesting to add an Entertainment Endorsement to include live entertainment indoors and outdoors, with Dancing, and Cover Charge. **Licensee is requesting to add a Brew Pub Endorsement.

CURRENT HOURS OF OPERATION INSIDE PREMISES

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

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES

Sunday through Thursday 8 am – 2 am, and Friday & Saturday 8 am – 3 am

PROPOSED HOURS OF OPERATION (SIDEWALK CAFÉ)

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

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/AND CONSUMPTION (SIDEWALK CAFÉ)

Sunday – Thursday 8 am – 2 am, and Friday – Saturday 8 am – 3 am

PROPOSED HOURS OF LIVE ENTERTAINMENT (INDOORS)

Sunday – Saturday 10 am – 2am

PROPOSED HOURS OF LIVE ENTERTAINMENT (OUTDOOR SUMMER GARDEN/SIDEWALK CAFÉ)

Sunday – Saturday 10 am – 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-082076

License Class/Type: A / Retail - Liquor Store

Applicant: Uncha, Inc.

Trade Name: Weltman's Liquors

ANC: 7F01

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

3938 MINNESOTA AVE NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-076197

License Class/Type: A Retail - Liquor Store

Applicant: Lim Enterprises, Corp

Trade Name: Press Liquors

ANC: 2C01

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

525 14th ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-106999

License Class/Type: A / Retail - Liquor Store

Applicant: Splash Liquor and Groceries, Inc

Trade Name: Splash Liquor and Groceries

ANC: 4C10

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

213 UPSHUR ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 am - 12 am	7 am - 12 am
Monday:	7 am - 12 am	7 am - 12 am
Tuesday:	7 am - 12 am	7 am - 12 am
Wednesday:	7 am - 12 am	7 am - 12 am
Thursday:	7 am - 12 am	7 am - 12 am
Friday:	7 am - 12am	7 am - 12 am
Saturday:	7 am - 12 am	7 am - 12 am

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-060231

License Class/Type: A / Retail - Liquor Store

Applicant: O'Connors Liquor Incorporated

Trade Name: O'Connor's Liquors

ANC: 7B01

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

2900 MINNESOTA AVE SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-095032

License Class/Type: A / Retail - Liquor Store

Applicant: Alazar Inc.

Trade Name: Edgewood International Wine and Spirits

ANC: 5E02

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

2303 4TH ST NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-095751

License Class/Type: A / Retail - Liquor Store

Applicant: Daniman L.L.C.

Trade Name: Lee's Liquor

ANC: 7B03

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

2339 PENNSYLVANIA AVE SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	8 am - 9:30 pm	8 am - 9:30 pm
Monday:	7 am - 10 pm	7 am - 10 pm
Tuesday:	7 am - 10 pm	7 am - 10 pm
Wednesday:	7 am - 10 pm	7 am - 10 pm
Thursday:	7 am - 12 am	7 am - 12 am
Friday:	7 am - 12 am	7 am - 12 am
Saturday:	7 am - 12 am	7 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-072429

License Class/Type: A / Retail - Liquor Store

Applicant: Khang's Liquor, Inc.

Trade Name: AB Liquors

ANC: 1C04

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

1803 COLUMBIA RD NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-097707

License Class/Type: A / Retail - Liquor Store

Applicant: NAI SATURN EASTERN LLC

Trade Name: Safeway

ANC: 6B06

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

415 14TH ST SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	5 am - 12 am	7 am - 12 am
Monday:	5 am - 12 am	7 am - 12 am
Tuesday:	5 am - 12 am	7 am - 12 am
Wednesday:	5 am - 12 am	7 am - 12 am
Thursday:	5 am - 12 am	7 am - 12 am
Friday:	5 am - 12 am	7 am - 12 am
Saturday:	5 am - 12 am	7 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-083221

License Class/Type: A / Retail - Liquor Store

Applicant: Suburban Liquors Inc.

Trade Name: Suburban Liquors

ANC: 7D06

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

4347 HUNT PL NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-087970

License Class/Type: A / Retail - Liquor Store

Applicant: Limited Release, LLC

Trade Name: Batch 13

ANC: 2F01

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

1724 14TH ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-078964

License Class/Type: A / Retail - Liquor Store

Applicant: Continental Wine & Liquor, LLC

Trade Name: Continental Wine & Liquor

ANC: 2F05

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

1100 VERMONT AVE NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-104027

License Class/Type: A / Retail - Liquor Store

Applicant: Sangdo, Inc.

Trade Name: Daily 14 Mart

ANC: 2F05

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

1135 14TH ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-102733

License Class/Type: A / Retail - Liquor Store

Applicant: Cordial Wharf, LLC

Trade Name: Cordial Craft Wine, Beer & Spirits

ANC: 6D04

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

35 Sutton SQ SW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 am - 12 am	8 am - 12 am
Monday:	7 am - 12 am	8 am - 12 am
Tuesday:	7 am - 12 am	8 am - 12 am
Wednesday:	7 am - 12 am	8 am - 12 am
Thursday:	7 am - 12 am	8 am - 12 am
Friday:	7 am - 12 am	8 am - 12 am
Saturday:	7 am - 12 am	8 am - 12 am

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-086593

License Class/Type: A / Retail - Liquor Store

Applicant: JCC, Inc.

Trade Name: Meade Wine & Liquors

ANC: 8D07

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

3919 South Capitol ST SW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-088122

License Class/Type: A / Retail - Liquor Store

Applicant: HR Enterprises Inc

Trade Name: Wheeler Liquors

ANC: 8E06

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

4137 WHEELER RD SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-084123

License Class/Type: A / Retail - Liquor Store

Applicant: 12 & G Spirits, LLC

Trade Name: Imperial Wine & Spirits

ANC: 2C01

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

620 12TH ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-102372

License Class/Type: A / Retail - Liquor Store

Applicant: Ever Yang Inc.

Trade Name: Sunny's Liquor

ANC: 8A06

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

2400 MARTIN LUTHER KING JR AVE SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-103161

License Class/Type: A / Retail - Liquor Store

Applicant: Wine Root, Inc.

Trade Name: New Congressional Liquor

ANC: 6B01

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

404 1ST ST SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-097197

License Class/Type: A / Retail - Liquor Store

Applicant: I M Shin Enterprises, Inc.

Trade Name: Market Of Columbia Plaza

ANC: 2A05

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

516 23RD ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	11 am - 8 pm	11 am - 8 pm
Monday:	7 am - 11 pm	9 am - 11 pm
Tuesday:	7 am - 11 pm	9 am - 11 pm
Wednesday:	7 am - 11 pm	9 am - 11 pm
Thursday:	7 am - 11 pm	9 am - 11 pm
Friday:	7 am - 11 pm	9 am - 11 pm
Saturday:	9 am - 11 pm	9 am - 11 pm

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-106557

License Class/Type: A / Retail - Liquor Store

Applicant: Bilen, LLC

Trade Name: Minnesota Liquor

ANC: 8A01

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

2237 MINNESOTA AVE SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 am - 12 am	7 am - 12 am
Monday:	7 am - 12 am	7 am - 12 am
Tuesday:	7 am - 12 am	7 am - 12 am
Wednesday:	7 am - 12 am	7 am - 12 am
Thursday:	7 am - 12 am	7 am - 12 am
Friday:	7 am - 12 am	7 am - 12 am
Saturday:	7 am - 12 am	7 am - 12 am

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-108850

License Class/Type: A / Retail - Liquor Store

Applicant: Sky Globe, Inc.

Trade Name: Grand Liquors

ANC: 6A08

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

409 A 15TH ST NE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-021266

License Class/Type: A / Retail - Liquor Store

Applicant: Ganducci, Inc.

Trade Name: Martin's Wine & Spirits

ANC: 1C01

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

1919 FLORIDA AVE NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

ENDORSEMENT(S): Tasting

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
3/23/2018

Notice is hereby given that:

License Number: ABRA-072334

License Class/Type: A / Retail - Liquor Store

Applicant: MMGZ Incorporated

Trade Name: Benmoll Liquors

ANC: 2B08

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

1700 U ST NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
5/7/2018

A HEARING WILL BE HELD ON:
5/21/2018

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

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

FOR FURTHER INFORMATION CALL: (202) 442-4423

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

Placard Posting Date: March 23, 2018
Protest Petition Deadline: May 7, 2018
Roll Call Hearing Date: May 21, 2018
Protest Hearing Date: July 18, 2018

License No.: ABRA-109311
Licensee: Culture Coffee Too LLC
Trade Name: Culture Coffee Too LLC
License Class: Retailer's Class "C" Restaurant
Address: 300 Riggs Road, N.E.
Contact: Veronica Cooper: 301-518-6637

WARD 4

ANC 4B

SMD 4B09

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 May 21, 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 **July 18, 2018 at 4:30 pm**.

NATURE OF OPERATION

New Restaurant with 34 seats and a Total Occupancy Load of 63, serving coffee, tea, and sandwiches. Live Entertainment with Cover Charge. Sidewalk Café with 16 seats.

HOURS OF OPERATION INSIDE PREMISES AND FOR SIDEWALK CAFE

Sunday through Saturday 6 am – 12 am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISES AND FOR SIDEWALK CAFE

Sunday through Saturday 8 am – 12 am

HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES AND FOR SIDEWALK CAFE

Sunday through Saturday 8 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: March 23, 2018
Protest Petition Deadline: May 7, 2018
Roll Call Hearing Date: May 21, 2018

License No.: ABRA-060462
Licensee: Levy Premium Foodservice Limited Partnership
Trade Name: Levy @ DC United
License Class: Retailer's Class Arena "CX"
Address: 100 Potomac Avenue, S.W.
Contact: Angela Thomas: (202) 344-4785

WARD 6

ANC 6D

SMD 6D05

Notice is hereby given that this licensee has requested to transfer the license to a new location with Substantial Changes 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 May 21, 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.

NATURE OF OPERATION/SUBSTANTIAL CHANGES

Licensee requests to transfer license from 601 F Street, N.W., to a new location at 100 Potomac Avenue, S.W. Establishment is a sports stadium with a class CX Arena license that will also offer live entertainment. The stadium has seating for 24,000 patrons. Applicant is also requesting the following Substantial Changes to the license: to add a Summer Garden endorsement with a total capacity of 10,000 seats, and to change the hours of operation and alcoholic beverage sales and consumption.

CURRENT HOURS OF OPERATION

Sunday through Saturday 8:00 am to 2:00 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday 10:00 am to 2:00 am, Monday through Saturday 8:00 am to 2:00 am

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

Sunday through Saturday 8:00 am to 2:00 am

PROPOSED HOURS OF LIVE ENTERTAINMENT INSIDE AND FOR SUMMER GARDEN

Sunday through Saturday 8:00 am to 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date: March 2, 2018
Protest Petition Deadline: April 17, 2018
Roll Call Hearing Date: April 30, 2018
Protest Hearing Date: June 27, 2018

License No.: ABRA-108322
Licensee: Lukes Lobster XXIX, LLC
Trade Name: Luke's Lobster
License Class: Retailer's Class "C" Restaurant
Address: 800 17th Street, N.W.
Contact: Benjamin Conniff: (646) 559 - 4644

WARD 2

ANC 2B

SMD 2B06

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 April 30, 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 **June 27, 2018 at 1:30 p.m.**

NATURE OF OPERATION

New **Class "C" Restaurant serving lobster, crab, shrimp, and soups. Total Occupancy Load of 49 and seating for 33 inside. Summer Garden with 16 seats.

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

Sunday through Saturday 11:00 am to 11:00 pm

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

Sunday through Saturday 11:00 am to 11:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: March 23, 2018
Protest Petition Deadline: May 7, 2018
Roll Call Hearing Date: May 21, 2018
Protest Hearing Date: July 18, 2018

License No.: ABRA-109165
Licensee: Muki's Market & Deli, Inc.
Trade Name: Muki's Market & Deli
License Class: Class "B" Beer and Wine Retailer
Address: 4403 Bowen Road, S.E.
Contact: Chrissie Chang: (703) 992-3994

WARD 7

ANC 7E

SMD 7E02

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 May 21, 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 **July 18, 2018 at 1:30 p.m.**

NATURE OF OPERATION

New Class "B" retailer selling beer and wine.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES

Sunday 11:00 am to 5:00 pm, Monday through Friday 10:00 am to 9:00 pm, and Saturday 10:00 am to 7:00 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: March 23, 2018
Protest Petition Deadline: May 7, 2018
Roll Call Hearing Date: May 21, 2018
Protest Hearing Date: July 18, 2018

License No.: ABRA-109339
Licensee: Oath Capital Riverfront, LLC
Trade Name: Oath Pizza
License Class: Retailer's Class "D" Restaurant
Address: 110 M Street, S.E.
Contact: Stephen J. O'Brien, Esq.: (202) 625-7700

WARD 6

ANC 6D

SMD 6D07

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 May 21, 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 **July 18, 2018 at 4:30 p.m.**

NATURE OF OPERATION

New Class "D" casual pizza Restaurant offering occasional Live Entertainment and alcoholic beverages. Total Occupancy Load of 49 with seating for 38 patrons and a Sidewalk Café with 20 seats.

HOURS OF OPERATION/ ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES AND FOR SIDEWALK CAFÉ

Sunday through Saturday 10:00 am to 2:00 am

HOURS OF LIVE ENTERTAINMENT INDOORS ONLY

Sunday through Saturday 10:00 am to 2:00 am

DEPARTMENT OF ENERGY AND ENVIRONMENT**NOTICE OF PUBLIC HEARING****Air Quality Permit for The Louis DC Residential LLC**

Notice is hereby given that, pursuant to 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, is announcing its intention to hold a public hearing on the subject of a draft air quality permit (No. 6843) proposed for issuance to The Louis DC Residential LLC, to operate one (1) 300 kWe emergency generator set powered by a 463 hp diesel-fired engine at 1920 14th Street NW, Washington DC 20009.

Public comment was previously taken from October 6, 2017 through November 6, 2017. During that comment period a request for a public hearing was submitted. DOEE is granting this public hearing request and is scheduling a public hearing on this matter

Information on the draft permit and the original public comment period can be found at: <https://doee.dc.gov/node/1279526>.

The public hearing at which interested parties may present comments to be included in the record will be held as follows:

Public Hearing: Monday, April 30, 2018

HEARING DATE: Monday, April 30, 2018
TIME: 5:00 pm
PLACE: Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington DC 20002

NoMa-Gallaudet University (Red Line) Metro Stop

All persons present at the hearing who wish to be heard may testify in person. All presentations shall be limited to five minutes. Persons are urged to submit paper or electronic copies of any written statements.

All relevant comments will be considered before taking final action on the permit application.

For more information, please contact Stephen S. Ours at (202) 535-1747.

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, MAY 2, 2018
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

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

TIME: 9:30 A.M.

WARD SIX

19718 **Application of Revie Dow, LLC**, pursuant to 11 DCMR Subtitle X,
ANC 6E Chapter 10, for an area variance from the lot area requirements of Subtitle
E § 201.4, to add two units to an existing four-unit apartment house in the
RF-1 Zone at premises 1800 5th Street N.W. (Square 475, Lot 46).

WARD FIVE

19741 **Application of M2EDGEWOOD, LLC**, pursuant to 11 DCMR Subtitle
ANC 5E X, Chapter 9, for a special exception under Subtitle E § 206.2 from the
upper floor addition requirements of Subtitle E § 206.1(a), to construct a
one-story upper floor addition to an existing two-story, four-unit apartment
house in the RF-1 Zone at premises 223 Adams Street N.E. (Square 3560,
Lot 10).

PLEASE NOTE:

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

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the

BZA PUBLIC HEARING NOTICE

MAY 2, 2018

PAGE NO. 2

general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning’s website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

Do you need assistance to participate?

Amharic

ለመከተል ዕርዳታ ያስፈልግዎታል?

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0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件

Zelalem.Hill@dc.gov。这些是免费提供的服务。

French

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

Korean

참여하시는데 도움이 필요하세요?

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

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

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

BZA PUBLIC HEARING NOTICE

MAY 2, 2018

PAGE NO. 3

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

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

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, May 3, 2018, @ 6:30 p.m.**
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 13-16A (Forest City SEFC, LLC – SEFC-1 Zone and SEFC-3 Zone Design Review @ Square 743, Lot 94, Square 744, Lot 806, and Square 827, Lot 1)

THIS CASE IS OF INTEREST TO ANC 6D

On February 27, 2018 the Office of Zoning received an application from Forest City SEFC, LLC (“Applicant”). The Applicant is requesting review for the continued use of the existing temporary parking lots on the parcels commonly known as “Parcel F,” “Parcel H/I,” and “Parcel Q” of The Yards (respectively, Square 743, Lot 94; Square 744, Lot 806; and Square 827, Lot 1; collectively, the “Property”) for periods of five additional years from April 11, 2019, the expiration date of Z.C. Order No. 13-16. Parcels F and H/I are within the SEFC-1 zone, and Parcel Q is within the SEFC-3 zone.

The Property consists of approximately 291,752 square feet of land area. Parcel F and Parcel H/I are located immediately across 1st Street, SE from Nationals Ballpark (“the Ballpark”), and Parcel Q is located at the southeastern corner of the intersection of Water Street, SE and 4th Street, S.E. The Property is currently improved with temporary parking lots that serve the Ballpark, as well as office, retail, and related uses in and around The Yards. The parking lots on the Property currently contain 794 total spaces (Parcel F: 201 spaces; Parcels H/I: 394 spaces; and Parcel Q: 199 spaces).

The Applicant proposes to continue the existing temporary surface parking lots on the Property and seeks approval of such continued use for periods of five additional years from the expiration of the existing orders authorizing the current use of the lots.

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

How to participate as a witness.

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

How to participate as a party.

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

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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

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

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

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

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

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to

zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

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

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

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

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

DISTRICT OF COLUMBIA PUBLIC SCHOOLS**NOTICE OF FINAL RULEMAKING**

The Chancellor of the District of Columbia Public Schools (DCPS), pursuant to Section 103 of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172(c) (2012 Repl.)), and Mayor's Order 2007-186, dated August 10, 2007, hereby gives notice of the intent to amend Section 1023 (Communicable Diseases Contracted by Employees) of Chapter 10 (General Personnel Policies) of Title 5 (Education), Subtitle E (Original Title 5) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the final rulemaking is to update existing Communicable Diseases Contracted by Employees regulations to align with Department of Health regulations - Communicable Diseases Contracted by Students, Final Rulemaking published at 61 DCR 12274 (November 28, 2014). The rulemaking revises the requirements for maintaining employees at schools and other duty locations and returning them to work after having been diagnosed with a communicable disease.

A Notice of Proposed Rulemaking was published at 64 DCR 11728 on November 10, 2017 for a thirty (30) day public comment period. The comment period expired on December 10, 2017. No comments were received and no changes have been made in the Final Rulemaking. The rules were deemed approved by the Council of the District of Columbia December 23, 2017, pursuant to Section 103(c)(2) of the Act (D.C. Official Code § 38-172(c)(2)).

Chapter 10, GENERAL PERSONNEL POLICIES, of Title 5-E DCMR, ORIGINAL TITLE 5, is amended as follows:

Section 1023, COMMUNICABLE DISEASES CONTRACTED BY EMPLOYEES, is deleted and replaced in its entirety to read as follows:

1023 COMMUNICABLE DISEASES CONTRACTED BY EMPLOYEES

1023.1 An employee with one of the following communicable diseases shall be excluded from their duty location and permitted to return to work under the following conditions:

- (a) Varicella ("Chickenpox"): An employee diagnosed with chickenpox, even if previously vaccinated, may return to work after lesions have crusted and upon submission of a licensed practitioner's note giving medical clearance to return to work;
- (b) Conjunctivitis ("Pink Eye"):
 - (1) An employee diagnosed with viral conjunctivitis may return to work after any redness and discharge have disappeared;

- (2) An employee diagnosed with bacterial conjunctivitis may return to work twenty-four (24) hours after commencing antibiotic treatment if a licensed practitioner provides a note attesting to the diagnosis, the onset of treatment, and that the employee is cleared to return to work; or
 - (3) An employee diagnosed with allergic conjunctivitis may return to work upon submitting a licensed practitioner's note stating the diagnosis;
- (c) Acute Diarrhea:
- (1) An employee with infectious diarrhea (*e.g.*, Salmonella, Shigella, *E. coli*) may return to work when diarrhea ends or upon submitting a health care provider's note providing medical clearance to return to work; or
 - (2) An employee with non-infectious diarrhea (*e.g.*, inflammatory bowel disease, food allergy, reaction to medication) may return to work when diarrhea ends and with instruction to thoroughly wash hands with soap and water after using the toilet and before handling food;
- (d) An employee with a clinical syndrome such as meningitis or pneumonia resulting from Haemophilus influenza type B (Hib) may return to work twenty-four (24) hours after completing [antibiotic] treatment and submitting a licensed practitioner's note attesting to the diagnosis and completion of treatment;
- (e) Hepatitis:
- (1) An employee with Hepatitis A may return to work one (1) week after onset of illness or jaundice and upon submitting a licensed practitioner's note providing medical clearance to return to work;
 - (2) An employee with Hepatitis B or C may return to work upon submitting a licensed practitioner's note providing medical clearance to return to work;
- (f) Impetigo (bacterial infection of the skin): An employee diagnosed with Impetigo may return to work twenty-four (24) hours after beginning antibiotic therapy, provided all lesions are covered, and upon submitting a licensed practitioner's note stating that the employee is undergoing treatment;
- (g) Measles: An employee diagnosed with Measles may return to work four

- (4) days after the appearance of rash and upon submitting a licensed practitioner's note providing medical clearance to return to work;
- (h) Meningitis: An employee diagnosed with Meningitis may return to work upon submission of a licensed practitioner's note providing medical clearance to return to work;
 - (i) Methicillin-resistant *Staphylococcus aureus* (MRSA): An employee diagnosed with MRSA may return to work provided that all wound drainage ("pus") is covered and contained;
 - (j) Mumps: An employee diagnosed with Mumps may return to work five (5) days after the onset of swelling and upon submitting a licensed practitioner's note providing medical clearance to return to work;
 - (k) Pediculosis (infestation of live head lice): An employee diagnosed with Pediculosis may remain at work that day; however the employee should commence treatment at the conclusion of the work day. The employee may return to work upon submitting a written statement attesting to the fact that the employee is undergoing treatment. An employee with only Nits (eggs) shall not be excluded from work but shall monitor themselves for re-infestation and seek treatment accordingly;
 - (l) Pertussis ("Whooping Cough"): An employee diagnosed with Pertussis may return to work three (3) weeks after the onset of symptoms, if untreated, or five (5) days after starting antibiotic therapy and submitting a licensed practitioner's note attesting to the start of such therapy;
 - (m) Pinworms: An employee diagnosed with Pinworms may return to work twenty-four (24) hours after the first treatment and upon submitting a licensed practitioner's note stating that the employee is under treatment;
 - (n) Ringworm: An employee diagnosed with Ringworm may return to work upon submitting a licensed practitioner's note stating that the employee is under treatment;
 - (o) Rubella (German Measles): An employee diagnosed with Rubella may return to work seven (7) days after the appearance of the rash;
 - (p) Scabies ("Itch Mite"): An employee diagnosed with Scabies may return to work upon submission of a licensed practitioner's note indicating that the employee's treatment with a prescription lotion is complete;
 - (q) Strep infection (scarlet fever, strep throat): An employee diagnosed with Strep infection may return to work twenty-four (24) hours after beginning antibiotic treatment, provided the employee is without fever for twenty-

four (24) hours, and upon submission of a licensed practitioner's note affirming the start of treatment and the employee's fitness for duty; and

(r) Tuberculosis:

(1) An employee diagnosed with active Tuberculosis may return to work upon providing written recommendation to return to work from the Tuberculosis Control Program of the Department of Health; and

(2) An employee diagnosed with latent Tuberculosis may return to work after initiating treatment and upon submission of a licensed practitioner's note giving medical clearance to return to work.

1023.2 A determination of whether, and/or under what circumstances, a food service employee, or an employee of a food service contractor, with amebiasis, campylobacteriosis, giardiasis, hepatitis A, salmonellosis, shigellosis, typhoid fever or other food-borne illnesses, shall be able to work shall be made on a case-by-case basis by the Director of the Department of Health.

1023.3 As necessary, the Department of Health shall be consulted regarding whether an employee infected with any other communicable disease shall be permitted to return to work in a capacity that involves contact with students or other employees.

1023.4 Any infected employee determined to be fit to return to work shall be treated in the same manner as any other employee, except that any restrictions or limitations in regard to the employee's performance of his or her duties, recommended by medical personnel, shall be implemented.

1023.5 Personnel policies and procedures regarding fitness-for-duty examinations, the granting of leave, and termination shall apply to any employee with a communicable disease.

1023.6 The Chancellor or an appropriate designee shall ensure that all employees School System personnel are provided with information concerning communicable diseases. This information shall include instruction in measures designed to prevent the spread of communicable diseases.

1023.7 Any information or record regarding an employee with a communicable disease is confidential and access to such information is to be limited to only personnel who are legally required to be informed of the employee's communicable disease. Disclosure of any information to individuals outside of DCPS may not to be made without the express written consent of the employee; however, suspected or confirmed cases of the following communicable diseases shall be reported within two (2) hours to the Director of the Department of Health: measles,

meningococcal meningitis, mumps, pertussis, rubella, tuberculosis, hepatitis A, and other food-borne illnesses (*e.g.*, food poisoning).

1023.8 For purposes of this section, “communicable disease” shall be defined in accordance with 22-B DCMR § 201.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS**NOTICE OF FINAL RULEMAKING**

The Chancellor of the District of Columbia Public Schools (DCPS), pursuant to Section 103 of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172(c) (2012 Repl.)), and Mayor's Order 2007-186, dated August 10, 2007, hereby gives notice of the intent to repeal Section 2414 (Communicable Diseases Contracted By Students) of Chapter 24 (Student Rights and Responsibilities) of Title 5 (Education), Subtitle E (Original Title 5), of the District of Columbia Municipal Regulations (DCMR), and replace it with a new Section 2414 (Communicable Diseases Contracted by Students) of Chapter 24 (Student Rights and Responsibilities) of Title 5 (Education), Subtitle B (District of Columbia Public Schools) of the DCMR.

The purpose of the rulemaking is to update existing Communicable Diseases Contracted by Students regulations to align with Department of Health regulations - Communicable Diseases Contracted by Students, Final Rulemaking published at 61 DCR 12274 (November 28, 2014). The rulemaking revises the requirements for maintaining students in school and returning them to school after having been diagnosed with a communicable disease.

A Notice of Proposed Rulemaking was published at 64 DCR 11728 on November 10, 2017 for a thirty (30) day public comment period. The comment period expired on December 10, 2017. No comments were received and no changes have been made in the Final Rulemaking. The rules were deemed approved by the Council of the District of Columbia December 23, 2017, pursuant to Section 103(c)(2) of the Act (D.C. Official Code § 38-172(c)(2)).

Chapter 24, STUDENT RIGHTS AND RESPONSIBILITIES, of Title 5-E DCMR, ORIGINAL TITLE 5, is amended as follows:

Section 2414, COMMUNICABLE DISEASES CONTRACTED BY STUDENTS, is repealed in its entirety.

Chapter 24, STUDENT RIGHTS AND RESPONSIBILITIES, of Title 5-B DCMR, DISTRICT OF COLUMBIA PUBLIC SCHOOLS, is amended as follows:

A new Section 2414 is established to read as follows:

2414 COMMUNICABLE DISEASES CONTRACTED BY STUDENTS

2414.1 The regulations found in Title 22, Subtitle B, Chapter 2, Section 209 of the of the District of Columbia Municipal Regulations shall be the rules and procedures followed by the District of Columbia Public Schools regarding all matters concerning communicable diseases contracted by students.

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF FINAL RULEMAKING

The District of Columbia Retirement Board (“DCRB” or the “Board”), pursuant to the authority set forth in § 121(e) of the District of Columbia Retirement Reform Act (“Reform Act”), approved November 17, 1979 (Pub. L. 96-122, 93 Stat. 866; D.C. Official Code § 1-711(e) (2016 Repl.)), hereby gives notice of the adoption of final rulemaking to include the following additions to the Board Rules under Chapter 15 (District of Columbia Retirement Board) of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (“DCMR”).

The purpose of the final rules is to extend Chapter 15 to include provisions governing the election of Board Trustees to represent active and retired teachers, police officers, and firefighters. The Board approved the proposed rules on September 26, 2017.

The Board stated its intent to publish the proposed rules as final in the Notice of Proposed Rulemaking published in the *District of Columbia Register* on February 9, 2018 at 65 DCR 01455. No comments were received and no substantive changes were made to the proposed rulemaking. These rules will become final upon publication of this notice in the *District of Columbia Register* and will amend rules in Chapter 15 of Title 7 DCMR.

Chapter 15, DISTRICT OF COLUMBIA RETIREMENT BOARD, of Title 7 DCMR, EMPLOYEMENT BENEFITS, is amended as follows:

To add the following sections to Chapter 15 to read as follows:

1510 DEFINITIONS

- 1510.1 “Board” or “Board of Trustees” means the District of Columbia Retirement Board established by Section 121(a) of the Act (D.C. Official Code § 1-711(b)(1)(A)).
- 1510.2 “Chairman” means the chairman or chairperson, or his or her designee, of the District of Columbia Retirement Board (“DCRB”).
- 1510.3 “Day” means a calendar day unless expressly stated otherwise. Any day on which a submission is due or other action occurs must be a day on which the District of Columbia Government is open for regularly scheduled business.
- 1510.4 “Election cycle” means the timeframe during which an election of a trustee or trustees is conducted. Except in the event of a special election, or where extenuating circumstances result in a delay, an election cycle shall begin on August 1st of any year in which a qualified voter position is eligible for election to the Board.
- 1510.5 “Election official” means the person or entity appointed by the Board to undertake the activities outlined in these Rules. The election official must be independent, experienced and qualified to conduct elections and may be any one, or

combination, of the following:

- (a) an officer or employee of the Board;
- (b) an officer, employee, or agency of District of Columbia Government; or
- (c) an individual, partnership, firm, or corporation.

A qualified voter of any category may not be an election official. An election official will be considered qualified and experienced if the election official has successfully performed independent electoral services of, at least, a similar like, kind and volume as the services described in these Rules.

1510.6 “Eligible candidate” means a qualified voter who has submitted valid Statements of Candidacy and Qualification and meets all of the criteria to be eligible for election to the Board as defined under these Rules.

1510.7 “Executive Director” means the Executive Director, or his or her designee, of the District of Columbia Retirement Board.

1510.8 “Qualified voter” means an active or retired member of the Retirement Plans as reflected in the records of the applicable personnel office, payroll office, or DCRB, as the benefits administrator of the Retirement Plans, at the start of an election cycle.

A qualified voter must be:

- (a) An “active firefighter” who is a sworn member or officer of the District of Columbia Fire and Emergency Medical Services Department (“FEMS”);
- (b) A “retired firefighter” who has retired from FEMS under the provisions of the District of Columbia Police Officers and Firefighters’ Retirement Plan (“Police Officers & Firefighters’ Plan”);
- (c) An “active police officer” who is a sworn member or officer of the District of Columbia Metropolitan Police Department (“MPD”);
- (d) A “retired police officer” who has retired from MPD under the provisions of the Police Officers & Firefighters’ Plan;
- (e) An “active teacher” who is an employee of District of Columbia Public Schools (“DCPS”) in a salary class position ET 1-15 or an employee of a District of Columbia public charter school who is an active member of the District of Columbia Teachers’ Retirement Plan (“Teachers’ Plan”); or
- (f) A “retired teacher” who has retired from DCPS or a District of Columbia public charter school under the provisions of the Teachers’ Plan.

- 1510.9 “Reform Act” means the District of Columbia Retirement Reform Act, Pub. Law 96-122, Nov. 17, 1979, as amended (codified in D.C. Official Code §§ 1-701 et seq.).
- 1510.10 “Replacement Plan Act” means the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998 (D.C. Official Code §§ 1-901.01 et seq.).
- 1510.11 “Retirement Plans” means the following:
- (a) District of Columbia Police Officers and Firefighters’ Retirement Plan (“Police Officers & Firefighters’ Plan”), which includes the benefits established under the Replacement Plan Act that applies to service accrued after June 30, 1997 (D.C. Official Code §§ 5-701 et seq.) and the benefits in place under Title XI of the Balanced Budget Act of 1997, Pub. Law 105-33, Aug. 5, 1997 (codified in D.C. Official Code §§ 1-801.01 et seq.), that apply to service accrued on or before June 30, 1997 (former D.C. Official Code §§ 4-601 et seq.).
 - (b) District of Columbia Teachers’ Retirement Plan (“Teachers’ Plan”), which includes the benefits established under the Replacement Plan Act that applies to service accrued after June 30, 1997 (D.C. Official Code §§ 38-2021.01 et seq.) and the benefits in place under Title XI of the Balanced Budget Act of 1997, Pub. Law 105-33, Aug. 5, 1997 (codified in D.C. Official Code §§ 1-801.01 et seq.) that apply to service accrued on or before June 30, 1997 (former D.C. Official Code §§ 31-1221 et seq.).

1511 ELECTION OF TRUSTEES

- 1511.1 In accordance with the Reform Act, the Board of Trustees is responsible for and shall conduct elections to allow qualified voters to elect:
- (a) One (1) active member representative and one (1) retired member representative from FEMS;
 - (b) One (1) active member representative and one (1) retired member representative from MPD;
 - (c) One (1) active member representative and one (1) retired member representative from DCPS.
- 1511.2 The Board is authorized to act as the election official or to enter into an agreement with an election official to delegate certain functions and responsibilities vested in the Board by the Reform Act. The election official shall adhere to these Rules without partiality toward any candidate.

- 1511.3 The election official shall be the primary point of contact for all matters pertaining to a Board election during an election cycle. To avoid the appearance of a conflict of interest or partiality, the Board and Board staff shall refrain from communicating with qualified voters, including prospective or eligible candidates, on matters related to a Board election during an election cycle and shall direct any inquiries or concerns to the attention of the election official immediately.
- 1511.4 The election official shall prepare a schedule for conducting the election of a trustee or trustees during each election cycle. The election schedule shall include:
- (a) The date on which Statement of Candidacy forms shall be made available to qualified voters by the election official;
 - (b) The date on which completed Statement of Candidacy forms must be submitted to the election official by qualified voters;
 - (c) The date on which the election official will distribute ballots to qualified voters;
 - (d) The last date on which the completed ballots must be received by the election official from qualified voters; and
 - (e) The date on which the election results are to be presented to the Board for certification.
- 1511.5 Timing.
- (a) The election schedule shall:
 - (1) Allow for no fewer than twenty (20) days for qualified voters to complete and submit a Statement of Candidacy form;
 - (2) Provide for notification to nominated qualified voters of their eligibility or ineligibility to stand for election no later than ten (10) days after the due date for submission of Statement of Candidacy forms has passed and the forms have been validated;
 - (3) Allow qualified voters no less than thirty (30) days to complete and submit election ballots; and
 - (4) Allow eligible candidates no fewer than seven (7) days to request a recount of the election ballots after the publication of the certified election results in accordance with Section 1523 of these Rules.
- 1511.6 Method of Delivery.
- (a) Election materials, which include any related schedules and notices, shall be provided in a manner that is contemplated to reach the greatest number

of qualified voters, including, but not limited to, mail, electronic mail, and publication on the Board's website or other Board communication portal, provided that the method of distribution allows qualified voters a reasonable time to comply with the dates included in the election schedule for an election cycle.

- (b) The method or methods used to distribute election materials shall clearly and prominently state:
- (1) That the communication is made on behalf of the Board;
 - (2) The category of qualified voter to which the communication is addressed; and
 - (3) That the communication contains election materials.

1511.7 Any substantive amendment to election materials, which impacts any date included in the election schedule for an election cycle, must be made available to qualified voters as soon as administratively possible in the same manner provided for in Section 1511.6 of these Rules.

1511.8 The election official shall provide election materials to qualified voters. The Board shall make available to the election official a list of qualified voters. The list shall be comprised of qualified voters included in the payroll or pension roll paid within thirty (30) days, but no more than sixty (60) days, prior to the distribution of election notices.

1511.9 Election materials may also be made available by the election official upon request from a qualified voter.

1512 ELECTION NOTICE

1512.1 During any election cycle, the election official must notify all qualified voters of the impending election of a trustee or trustees within the timeframe provided in the election schedule.

1512.2 The election notice shall include:

- (a) A copy of the election schedule;
- (b) A Statement of Candidacy form (or location where such a form may be accessed), which includes:
 - (1) The category of qualified voter slated for trustee election;
 - (2) An explanation of the qualifications, duties, responsibilities, and

compensation of Board trustees;

- (3) A blank section for input of a prospective candidate’s name (written how he or she would like his or her name to be listed on the ballot), address, and contact information. By providing an email address, the prospective candidate consents to receiving official communication by email to the email address provided;
- (4) Instructions for the submission and completion of the Qualifications Statement;
- (5) An oath, signed and dated by the prospective candidate, attesting that the candidate meets the qualifications for holding the office sought and, if elected, he or she understands and agrees to comply with the duties and responsibilities of Board trustees;
- (6) A declaration, signed and dated by the prospective candidate, affirming that all of the information included in and with the Statement of Candidacy form, is true and correct to the best knowledge and belief of the prospective candidate; and
- (7) Instructions for filling out and submitting the Statement of Candidacy form, including the date, time, location, and method(s) of submission.

- (c) A reference to where qualified voters may access these Rules in their entirety; and
- (d) Any other information the election official considers necessary for qualified voters to fully understand the purpose and procedures of the election.

1512.3 The election notices shall be distributed to qualified voters in a manner consistent with Section 1511.6 of these Rules.

1513 ELIGIBILITY OF CANDIDATES

1513.1 A prospective candidate must be nominated by a qualified voter in the category in which the prospective candidate is seeking election to be eligible for election. A qualified voter in the category for which the trustee election is being held may nominate himself or herself for election.

1513.2 To qualify as an eligible candidate for election to the Board and have his or her name printed on a ballot, a prospective candidate must:

- (a) be a qualified voter in the category in which the prospective candidate is seeking election;

- (b) qualify to serve as a fiduciary to the District of Columbia Police Officers and Fire Fighters' and the Teachers' Retirement Funds (the "Funds") pursuant to D.C. Code §1-744(a);
- (c) file with the election official a valid Statement of Candidacy form in accordance with Section 1514 of these Rules; and
- (d) not be an "elected official" or be a candidate for the office of an elected official in the District of Columbia, as defined in D.C. Code §1001.02(13).

1514 VALIDATION OF STATEMENTS OF CANDIDACY

1514.1 A Statement of Candidacy shall be considered valid if it satisfies all of the following conditions:

- (a) the Statement of Candidacy is received by the election official on or before the date and time designated by the election official;
- (b) the Statement of Candidacy is on a form provided or authorized by the Board and all sections have been completed in legible font or print;
- (c) the Statement of Candidacy is filed by a person who is a qualified voter in the category for which the trustee election is being held;
- (d) the Statement of Candidacy is accompanied by a valid Qualifications Statement; and
- (e) the Statement of Candidacy contains a signed oath and declaration.

1514.2 A Qualifications Statement shall be considered valid if it satisfies all of the following conditions:

- (a) The Qualifications Statement shall be submitted with the Statement of Candidacy form pursuant to Section 1512.2(b)(4) of these Rules; either typed or printed on the Statement of Candidacy form or on a separate blank sheet of paper.
- (b) The Qualifications Statement shall identify the eligible candidate and the qualified voter category for which the candidate is seeking election. The statement may also state the candidate's qualifications and experience, and outline his or her plans and goals if elected.
 - (1) A Qualifications Statement shall not include an endorsement of any kind.
- (c) The Qualifications Statement shall not exceed two hundred and fifty (250)

words in length. For purposes of this section, the following rules shall apply to the counting of words in a Qualifications Statement:

- (1) Punctuation is not counted;
- (2) Each word shall be counted as one (1) word, except as specified in this subsection;
- (3) All geographical names shall be considered as one (1) word; for example, "District of Columbia" shall be counted as one (1) word;
- (4) Each abbreviation of a word, phrase, or expression shall be counted as one (1) word;
- (5) Hyphenated words that appear in any generally available dictionary shall be considered as one (1) word. Each part of all other hyphenated words shall be counted as a separate word;
- (6) Dates consisting of a combination of words and digits shall be counted as two (2) words; for example, "December 31, 2017" shall be counted as two (2) words. Dates consisting of only a combination of digits shall be counted as one (1) word; for example, "12/31/2017" shall be counted as one (1) word; and
- (7) Any number consisting of a digit or digits shall be considered one (1) word. For example, any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one (1) word whereas "one hundred" shall be counted as two (2) words. The number one hundred "100" expressed in digits shall be counted as one (1) word.

1514.3 The election official shall exclude from print on the ballot or other election materials any portion of a Qualifications Statement that exceeds the maximum word limitation, is interpreted to be an endorsement, or that includes a statement that is false or misleading. The election official may, but is not required to, allow a candidate the opportunity to correct a false or misleading statement included within a Qualifications Statement.

1514.4 The election official may, but is not required to, provide acknowledgement of receipt of a prospective candidate's Statement of Candidacy.

1514.5 Upon receipt of Statement of Candidacy forms, the election official shall determine whether the statements are valid. The election official shall document how the eligibility or ineligibility of each candidate was determined and provide a report, including each candidate's Statement of Candidacy form, to the Executive Director no later than three (3) days after the date Statements of Candidacy are due to the election official.

- 1514.6 The determination by the election official of the validity of Statements of Candidacy, including Qualifications Statements, shall be final and only subject to further administrative review at the discretion of the Executive Director. A determination of eligibility or ineligibility shall be based solely on information contained in the Statements of Candidacy and upon information contained in other public records and documents available to the election official. The Executive Director may reverse a determination of eligibility at any point prior to the certification of election results based upon evidence that was not known to the election official at the time of the initial determination of eligibility or upon evidence of a change in circumstances.
- 1514.7 The election official shall provide notification to a prospective candidate of his or her ineligibility to stand for election no later than ten (10) days after the due date for the submission of Statement of Candidacy forms has passed and the statements have been validated.
- (a) A prospective candidate who is ineligible for election because his or her Statement of Candidacy is rejected for reasons other than those outlined in Sections 1513.2 and 1514.1(a) of these Rules, may submit one (1) new or amended Statement of Candidacy, which must be received by the election official no later than five (5) days after the date his or her notice of deficiency was mailed.
- 1514.8 Once all eligible candidates have been identified, a notification of eligibility, including a copy of the eligible candidate's Qualifications Statement, shall be provided to each eligible candidate no fewer than seven (7) days prior to the scheduled date of the drawing of lots to determine ballot position. The notification of eligibility shall include:
- (a) The time, date, and location for drawing lots; and
- (b) Notification of the eligible candidate's sole opportunity to proofread and correct any transcription errors, such as spelling and grammatical errors, which may be included in the eligible candidate's Qualifications Statement, with instructions on how to make any such corrections.
- 1514.9 A candidate may withdraw his or her candidacy only by written notice to the election official. A candidate is presumed to have withdrawn from the election if he or she fails to submit a new or amended Statement of Candidacy, upon request, pursuant to Section 1514.7(a) of these Rules. A withdrawal shall be irrevocable only for the election cycle in which it occurs. The election official shall inform the Executive Director of any withdrawals. Where a withdrawal impacts the accuracy of information included on the ballots, after ballots have been printed or made available to qualified voters, the election official shall provide notice to all qualified voters within the impacted qualified voter category as soon as administratively possible in accordance with Section 1511.6 of these Rules.

- 1514.10 If the election official determines that there are no prospective candidates eligible to stand for election, the election official shall:
- (a) Terminate the election for which no candidate is eligible to be placed on the ballot;
 - (b) Promptly prepare a new election schedule in substantial conformity with Section 1511.4 of these Rules;
 - (c) Proceed, if applicable, with any other election of trustees with more than one eligible candidate; and
 - (d) Conduct an election for the impacted qualified voter category in accordance with the new election schedule.

A new election schedule required under this section may result in a delay in the start date of an elected trustee's term.

1514.11 Uncontested Election – One Eligible Candidate in a Category

- (a) If an election official certifies that only one (1) eligible candidate exists in a qualified voter category, the election official shall:
 - (1) Declare an uncontested election and discontinue the election process for the qualified voter category; and
 - (2) Distribute a notice informing impacted qualified voters that they will not receive an election ballot due to an uncontested election and that the results of the uncontested election shall be certified with the election results of the other qualified voter categories included in the election cycle, in accordance with Section 1522 of these Rules.
- (b) If an election cycle does not include another qualified voter category for election, the Board shall proceed with certifying the results of the uncontested election in accordance with Section 1522 of these Rules.

1515 CAMPAIGNING

1515.1 A candidate must behave in an ethical and professional manner when engaged in any activities related to his or her candidacy.

1515.2 A candidate may not campaign or otherwise advance his or her candidacy for election in any way prior to receiving notice from the election official that he or she is eligible for election.

1515.3 No staff, officer, or trustee of the Board shall campaign on behalf of, or endorse,

any candidate in preference to any other candidate. Nor shall any staff, officer, or trustee of the Board use their official authority or influence to interfere with or affect the result of any election.

- 1515.4 A candidate may not engage in any unfair campaign practice, including, but not limited to: libeling or slandering another candidate; maliciously disrupting another candidate's campaign; making verbally or in writing, actual or potentially defamatory or discriminatory remarks or comments; or otherwise violate any provisions of Section 1515 of these Rules.
- 1515.5 A candidate may not, in connection with his or her candidacy, make or repeat any statement that is untruthful, deceptive, or misleading, or that omits material information that renders a statement untruthful or misleading.
- 1515.6 A candidate may not imply that the way a qualified voter votes will result in any reward or retaliation of any funding, benefit or opportunity under the Retirement Plans.
- 1515.7 A candidate may not use any Board or District government resources for campaign purposes, including any such resources that are exclusively available to the candidate in his or her capacity as a trustee, officer, appointee or representative of the Board.
- 1515.8 Each candidate is responsible for activity that another undertakes on his or her behalf, as if the candidate is undertaking the activity himself or herself, unless the candidate sincerely and affirmatively discourages such activity publicly.
- 1515.9 A candidate may organize and/or attend an event for the purpose of allowing qualified voters to "meet & greet" the candidate in accordance with Section 1515 of these Rules.
- 1515.10 A candidate may create a website or use other forms of social media to promote his or her candidacy in accordance with this Section. Upon its creation or use for campaign purposes, the candidate must notify the election official and provide the election official with a link to the website or social media page.

1516 DRAWING OF LOTS FOR BALLOT ORDER

- 1516.1 In each election cycle, for each qualified voter category, the election official shall determine, by drawing lots, the order of eligible candidate names on the ballots.
- 1516.2 Drawing lots shall be conducted by the election official in the following manner:
- (a) The name of each eligible candidate shall be typed or written on separate slips of paper and placed in a container in a manner such that the names on the slips of paper shall be hidden from the view of the individual drawing.

- (b) The election official shall draw from the container one slip of paper at a time until all names have been drawn.
- (c) The eligible candidate whose name is pulled first from the container shall have his or her name appear first on the ballot. The eligible candidate whose name is pulled second shall have his or her name placed second on the ballot. This order shall continue until all eligible candidate ballot positions have been determined.
- (d) In the event of the withdrawal or disqualification of an eligible candidate prior to the printing of the ballots, the position of each eligible candidate that appears beneath the name of the former candidate shall be raised to the next higher position. The election official shall make reasonable efforts to remove or strike from the ballots the name of an eligible candidate who has withdrawn or been disqualified after the ballots have been printed.

1516.3 Upon approval by the Executive Director, where appropriate and available, the election official may utilize an electronic method which closely resembles the in-person lottery outlined in this section, provided that the election official attests, in writing, that the method used is confidential, secure, reliable and results in a randomized order of eligible candidates on the ballots.

1516.4 An eligible candidate, or his or her designated authorized representative, may view the drawing of lots. An eligible candidate must notify the election official of their intent to view the drawing of lots, in writing, no later than twenty-four (24) hours prior to the scheduled date of the drawing of lots.

1517 BALLOT CONTENT AND FORM

1517.1 The election official shall provide official ballots to qualified voters for the purpose of selecting an eligible candidate preference in an election. The Board shall make available to the election official a list of qualified voters. The list shall be comprised of qualified voters included in the payroll or pension roll paid within thirty (30) days, but no more than sixty (60) days, prior to the distribution official ballots.

1517.2 Ballots shall be distributed or made available to each qualified voter no fewer than thirty (30) days before the date balloting shall be completed.

1517.3 Official ballots shall include the following information:

- (a) Instructions for completing and submitting ballots drafted specifically for any form or method of balloting being used;
- (b) The category of qualified voter from which the person is eligible to elect a representative; and

- (c) The name and Qualifications Statement of each eligible candidate. Qualifications Statements need not be printed on, but must be included with, the ballots. Names of eligible candidates shall appear on the ballot:
 - (1) in the same form as each eligible candidate's name appears on his or her Statement of Candidacy form. No titles, ranks, prefixes, or degrees associated with a name shall appear on the ballot; and
 - (2) in the order determined by the drawing of lots conducted in accordance with Section 1516 of these Rules.

1517.4 A qualified voter may contact the election official to request the issuance of a replacement ballot. The election official shall maintain a record identifying the voter to ensure that the issuance of a replacement ballot does not result in unauthorized or duplicate balloting. When a qualified voter requests a replacement ballot within fewer than five (5) days before the date balloting is scheduled to be completed, the qualified voter shall only have the option of submitting an electronic or telephone ballot.

1517.5 An individual who did not receive a ballot due to his/her name not being included on the list of qualified voters at the time such list was provided to the election official, may contact the election official to request the issuance of a provisional ballot. The election official shall maintain a record identifying the voter to ensure that the issuance of a provisional ballot does not result in unauthorized or duplicate balloting. When an individual requests a provisional ballot within fewer than five (5) days before the date balloting is scheduled to be completed, the individual shall only have the option of submitting an electronic or telephone ballot.

- (a) The Executive Director shall have an individual verified as a qualified voter in the applicable qualified voter category prior to the completion of ballot counting. The election official shall not count as valid any provisional ballot submitted by an individual who has not been verified to be a qualified voter in the applicable qualified voter category.

1517.6 The election official shall not issue more than three (3) ballots, one (1) original and two (2) replacements, to any qualified voter during an election cycle. At the time the election official issues a replacement ballot, the election official shall inform the qualified voter of the qualified voter's limited remaining replacement ballots.

1517.7 Completed ballots shall be received by the election official on or before the date and time designated on the ballot.

1517.8 The Executive Director shall authorize the election official to use a balloting system that consists of paper ballots, telephonic ballots, electronic ballots, or any combination thereof, provided that the election official shall conduct the balloting in a manner that is consistent with the principles and objectives enumerated in these Rules. The election official shall take every reasonable precaution to safeguard the authenticity and secrecy of the balloting system and process, as well as

individual ballots.

- 1517.9 The election official shall distribute or make available an official ballot for each qualified voter category that shall be separate and distinct from the ballot for any other qualified voter category in an election cycle. Each ballot shall contain a unique control number and be readily identifiable from the ballot for any other qualified voter category. The election official shall maintain a record identifying the unique control number for each ballot.
- 1517.10 A ballot shall have a selection method immediately next to the name of each eligible candidate included on the ballot where a qualified voter must indicate his or her choice with a single mark.
- 1517.11 If applicable, paper ballots shall be returned to the election official in pre-addressed, postage paid return envelopes, preprinted with the unique control number included on the ballot.

1518 VALIDITY OF BALLOTS AND VOTES

- 1518.1 Only official ballots shall be validated and counted. Improper ballots or votes shall be deemed invalid and not counted. Improper ballots or votes shall include, but are not limited to:
- (a) Any ballot which is received by the election official after the date and time determined by the election official for return of ballots, except for those ballots postmarked prior to the deadline but delayed in the mail and received prior to the date in which ballot counting begins;
 - (b) Any ballot which is not an original, replacement, or provisional ballot issued by the election official to a qualified voter;
 - (c) Any ballot cast in which the qualified voter fails to mark a choice;
 - (d) Any ballot which is signed, initialed, or otherwise marked in a manner which serves to reveal the identity of the qualified voter;
 - (e) Any ballot on which the qualified voter has filled in the voting positions for more than one eligible candidate name included on the ballot (extraneous marks or other matter on a ballot which do not lead to confusion as to the intention of the qualified voter, may be disregarded and the ballot considered valid);
 - (f) Any ballot on which a qualified voter has written in the name of a person other than an eligible candidate whose name is pre-printed on the ballot; and

(g) Any paper ballot which is not returned within a pre-addressed, postage paid return envelope with a unique control number corresponding with the unique control number included on the ballot (except for any ballot submitted by an authorized electronic means).

1518.2 No qualified voter shall cast more than one ballot, in any form, in an election or vote in a category other than the category in which he or she is a qualified voter. Duplicate or unauthorized ballots or votes shall be deemed improper and not counted.

1518.3 Nothing contained in Section 1518.1 of these Rules shall be construed as invalidating any ballot solely because of a voter's failure to follow the instructions for filling out an official ballot provided pursuant to Section 1517.3(a) of these Rules. If a voter draws an arrow pointing to an eligible candidate's name, circles an eligible candidate's name or the voting box next to an eligible candidate's name, places a check, asterisk, or other mark in such a manner that clearly indicates his or her intended choice, the ballot shall be considered valid and shall be counted as a vote for such eligible candidate.

1518.4 The election official shall make determinations of the validity of ballots or votes. The determination of the election official in charge as to the validity of any ballot or vote shall be final and only subject to further administrative review at the discretion of the Executive Director.

1518.5 Any ballot counter or authorized watcher who is uncertain whether a ballot or vote is valid shall refer the ballot to the election official in charge for a determination.

1518.6 No ballot counter shall mark on any ballot. The election official in charge may only mark a ballot to denote that the ballot has been determined to be invalid. The election official in charge shall initial the ballot below his or her marking. A ballot determined to be invalid shall remain in the custody of the election official in charge and stored in a secure location, separate from ballots deemed valid.

1519 BALLOTING SYSTEM STANDARDS AND TESTING

1519.1 The election official shall allow the Executive Director the opportunity to review and approve proofs of final election materials, including official ballots, prior to their printing or distribution to qualified voters.

1519.2 The election official shall use a balloting system that a qualified voter can quickly and easily use to cast a ballot for the eligible candidate of the qualified voter's choice. The balloting system shall be capable of:

(a) Creating an accurate record of every ballot and vote cast;

(b) Generating a final report of the election, as well as interim reports, as necessary;

- (c) Identifying errors, including system errors, which impact qualified voters' ability to cast ballots or which impact the overall validity of the election;
 - (d) Allowing secured voting in absolutely secrecy; and
 - (e) Providing a confirmation of the vote cast by a qualified voter, except in the case of paper balloting.
- 1519.3 The election official shall allow the Executive Director to conduct testing of any telephonic or electronic balloting system before the use of such system for an election.
- 1519.4 The testing shall ensure that the balloting system:
- (a) Contains correct ballot information, including the names and Qualifications Statements of all eligible candidates;
 - (b) Records votes accurately, consistently and securely; and
 - (c) Is free of any evidence of malfunction.
- 1519.5 The balloting system configuration tested and approved during the testing period shall be the same configuration used during the balloting period.
- 1519.6 The election official shall immediately correct any errors or deficiencies identified in or with the balloting system during the testing or balloting period.

1520 BALLOT COUNTING

- 1520.1 The election official shall designate an election official in charge who shall be responsible for the direct supervision and oversight of the ballot counting process. The election official shall also designate ballot counters authorized to count and tally ballots. No person who is a qualified voter may be a ballot counter for the category in which he or she is eligible to vote.
- 1520.2 The election official shall strive to count the ballots and complete its official voting record for the Board within three (3) days after the date that balloting is completed, but no later than seven (7) days after such date.
- 1520.3 The election official shall maintain returned ballots by secure means and shall use appropriate safeguards to ensure that the security of each ballot is preserved.
- 1520.4 When paper ballots are counted by hand, the election official in charge shall have full authority to maintain order in the designated ballot counting location.
- 1520.5 The only persons permitted to be present in a designated ballot counting location while ballots are being counted shall be the election official in charge, ballot

counters, designated representatives of the Board, police officers requested by the Board and authorized watchers.

- 1520.6 The election official shall count the number of valid ballots cast for each eligible candidate in each qualified voter category by every form or method of balloting used in an election.
- 1520.7 The eligible candidate receiving the highest number of votes in each qualified voter category included in an election shall be declared the winner for that category.
- 1520.8 Following the tally of all ballots, the election official shall provide the Board with an official voting record for each category of qualified voter. The record shall identify for each qualified voter category:
- (a) The method or methods of balloting used;
 - (b) The number of ballots cast and counted for each eligible candidate;
 - (c) The total number of ballots issued;
 - (d) The total number of replacement and provisional ballots issued;
 - (e) The total number of ballots issued, but not cast;
 - (f) The total number of ballots cast and counted;
 - (g) The total number of ballots cast in each method of balloting, if more than one method is used;
 - (h) The total number of blank ballots returned;
 - (i) The total number of ballots returned and invalidated or voided;
 - (j) Any claims of discrepancy or error in the counting of the ballots made during the balloting process; and
 - (k) The results of the election.
- 1520.9 The election official in charge shall attest that the ballots and balloting procedures used in the election conform with the requirements set forth in Sections 1517, 1518, 1519, and 1520 of these Rules.
- 1520.10 The election official shall securely maintain and provide ballots and other election materials to DCRB at a place and time, and in a manner, determined by DCRB for recordkeeping and storage purposes. Election materials developed during, or in support of, an election cycle shall be the property of DCRB.
- 1520.11 The Board may declare the results of any election in any qualified voter category void and conduct a new election for that category, where the Board determines the

winner to be ineligible for service on the Board due to:

- (a) fraud, bribery, intimidation, or interference with voting in that category;
- (b) tampering with ballots in that category;
- (c) violation of the campaigning rules included in Section 1515 of these Rules;
or
- (d) any other mistake or defect serious enough to vitiate the election in that category as a fair expression of the will of the voters voting therein.

A new election conducted under this Section may result in a delay in the start date of an elected trustee's term.

1521 AUTHORIZED WATCHERS

- 1521.1 When paper ballots are counted by hand, an eligible candidate shall be notified of his or her right to be present to observe the counting of ballots in person as an authorized watcher, or to designate another to act as an authorized watcher to attend the ballot counting on his or her behalf.
- (a) Eligible candidates shall be notified of the time, date, and location of the counting of ballots no fewer than five (5) days before the date of ballot counting.
 - (b) An eligible candidate must notify the election official, in writing, of their intent to be, or designate, an authorized watcher no later than twenty-four (24) hours prior to the scheduled date of the ballot counting.
- 1521.2 An authorized watcher shall be required to show a valid form of photo identification to enter the ballot counting location.
- 1521.3 Each authorized watcher shall be issued a badge with space for the watcher's name and, if a designee of an eligible candidate, the name of the eligible candidate represented by the authorized watcher.
- 1521.4 Badges shall be worn in plain view by the authorized watcher at all times, when he or she is inside the ballot counting location while ballot counting is being conducted.
- 1521.5 An authorized watcher shall comply with any measures put in place by the election official in charge to maintain order in the ballot counting place and shall conform to the provisions of Section 1521 of these Rules.
- 1521.6 No authorized watcher shall, at any time during the ballot counting process, do any

of the following:

- (a) touch any official record or ballot;
- (b) obstruct or interfere with the progress of the counting; or
- (c) talk to any ballot counter while the count is under way, except to request that a ballot be referred to the election official in charge for a determination as to its validity.

1521.7 If an authorized watcher has any questions, or claims any discrepancy or error in the counting of the vote, the authorized watcher shall direct the question or complaint to the election official in charge.

1521.8 Any authorized watcher who, in the judgment of the election official in charge, has failed to comply with any of the requirements contained in Section 1521 of these Rules, failed to obey any reasonable order of the election official in charge, or acted in a disorderly manner, shall be warned to cease and desist such conduct. If the authorized watcher fails to cease and desist such conduct, the election official in charge may order such authorized watcher to leave the ballot counting location. In such event, the authorized watcher's credentials shall be deemed cancelled, and he or she shall leave the ballot counting location immediately. The election official in charge may request a member of the Metropolitan Police Department to evict the authorized watcher or otherwise enforce his or her lawful orders.

1522 CERTIFICATION OF ELECTION RESULTS

1522.1 The Board shall certify the results of each election and publish the results in the District of Columbia Register and on the Board's website.

1522.2 The election results shall be deemed final and not subject to further administrative review thirty (30) days after publication in the District of Columbia Register of the certified election results, or any amendment to the certified election results required after a petition for recount, which resulted in a change to an election winner.

1522.3 Following certification of the results of the election, the Board shall retain and store in a secure and locked storage location, all election materials used during the election cycle where they shall remain for at least thirty (30) days after the certified election results have been published in the District of Columbia Register.

1523 RECOUNTS AND RESOLVING TIE VOTES

1523.1 An eligible candidate in any election may, within seven (7) days after the Board certifies the election results and publishes those results in the District of Columbia Register, petition the Board, in writing, for a recount of the ballots cast in that election. Such petition shall explicitly state the justification for a ballot recount.

- 1523.2 Upon receipt of a recount petition, the Board shall direct the election official to conduct a recount, at no cost to any eligible candidate, if the certified election results show a margin of victory for an eligible candidate that is less than one percent (1%) of the total votes cast or fifty (50) votes, whichever is less, for the qualified voter category.
- 1523.3 Upon receipt of a recount petition that does not meet the criteria set forth in Section 1523.2, the Board shall direct the election official to prepare an estimate of the time and cost to perform the recount, which shall be provided to the petitioner in writing.
- 1523.4 If the petitioner chooses to proceed with a recount, the petitioner shall deposit with the Board the estimated cost of the recount within seven (7) days of receipt of the estimate of the time and cost of the recount.
- 1523.5 Deposits shall be paid by certified check or money order made payable to the "District of Columbia Retirement Board." No cash deposit will be accepted.
- 1523.6 At the conclusion of any recount, a report of the recount results shall be presented to the Board and posted on the Board's website.
- 1523.7 If a recount, for which a deposit was made to the Board to cover estimated costs changes the results of the election, the entire amount deposited by the petitioner shall be refunded.
- 1523.8 If the result of the election is not changed, the petitioner is liable for the actual cost of the recount, minus the deposit already made. If the actual cost of the recount is less than the deposit made, the difference shall be refunded to the petitioner.
- 1523.9 There shall only be one (1) recount per election in a qualified voter category. The results of a recount are final and not subject to further administrative review.
- 1523.10 The Board shall not publish an amended certification of election results in the District of Columbia Register, unless the outcome of an election has changed as a result of a recount.
- 1523.11 In the event of a tie vote for a winner of an election, the election official shall conduct an automatic recount, at no cost to any eligible candidate. If the recount confirms the tie vote, the election official shall determine, by drawing lots, the resolution of the tie vote and winner of the election.
- 1523.12 After a recount confirms the tie vote, a notification of the drawing of lots for the resolution of a tie vote, shall be provided to each eligible candidate no fewer than three (3) days prior to the scheduled date of the drawing of lots. The notification shall include the time, date, and location of the drawing of lots.
- 1523.13 An eligible candidate, or his or her designated authorized representative, may view the drawing of lots for the resolution of a tie vote. An eligible candidate must notify the election official of his or her intent to view the drawing of lots, in writing, no later than twenty-four (24) hours prior to the scheduled date of the drawing of

lots.

1523.14 Drawing of lots for the resolution of a tie vote shall be conducted by the election official in the following manner:

- (a) The name of each of the tied eligible candidates shall be typed or written on separate slips of paper and placed in a container in a manner such that the names on the slips of paper shall be hidden from the view of the individual drawing.
- (b) The election official shall draw from the container one slip of paper.
- (c) The eligible candidate whose name is pulled first from the container shall be deemed the winner of the election.

1524 SPECIAL ELECTION FOR VACANCY OF TRUSTEE POSITION DURING TERM

1524.1 In the event of death, resignation, or removal of a Board trustee before completion of his or her term, where the remainder of the term is greater than six (6) months, the Board shall authorize the election official to conduct a special election to elect a successor trustee to serve for the remainder of the trustee's term. The election shall be conducted in substantial conformity with the procedures set forth in these Rules.

OFFICE OF TAX AND REVENUE**NOTICE OF FINAL RULEMAKING**

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code §§ 47-874 and 47-1010 (2015 Repl.), Section 22 of the Business Improvement Districts Act of 1996, approved May 29, 1996 (D.C. Official Code § 2-1215.22 (2016 Repl.)), Section 311 of the District of Columbia Public Space Rental Act of 1968, approved October 17, 1968 (82 Stat. 1156, D.C. Official Code § 10-1103.10 (2013 Repl. and 2017 Supp.)), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2016 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of this final action to amend Chapter 3 (Real Property Taxes) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR), by revising Section 313 related to real property tax refunds and application of payments.

The amendments to Section 313 define when a refund of a real property tax payment is authorized and the extent thereof, and they also define how payments are applied when delinquencies exist. Such amendments also allow for limited refunds in hardship cases, similar to the taxpayer protection in the Internal Revenue Code, 26 U.S.C. § 6343. The payment application rule is consistent with the provisions of D.C. Official Code § 47-1331(c).

A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 9, 2018, 65 DCR 001476. No comments were received concerning the proposed rulemaking. This final rulemaking is identical to the published text of the proposed rulemaking. This final rulemaking shall become effective upon publication of this notice in the *D.C. Register*.

Chapter 3, REAL PROPERTY TAXES, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

Section 313, PAYMENT OF REAL PROPERTY TAX, is amended as follows:

Subsections 313.1, 313.2, 313.4 and 313.5 are amended to read as follows:

313.1 Real property taxes are levied as of the beginning of every real property tax year. A payment of a tax year's real property tax made anytime during that tax year constitutes payment to be applied against such tax levy for the entire tax year, provided that any prior tax year's liability is first satisfied. Consequently, a payment applied to the current tax year or an earlier open period is not refundable, except to the extent that such payment exceeds all of the real property's outstanding tax liabilities, including its liability for the entire, current tax year's real property tax.

313.2 Notwithstanding Subsection 1 of this section, a payment of real property tax may, at the discretion of the DCFO, be refunded if the payment thereof is a result of a

substantial error that would cause an injustice to the property owner; provided, that no refund shall be allowed to the extent that such refund shall create a delinquency for any half tax year or full tax year.

...

313.4 [Repealed]

313.5 Payments of taxes or other charges levied or imposed under Chapters 8 or 10 of Title 47 (including possessory interest taxes), Business Improvement District (BID) taxes, or vault rents where the property or taxpayer is delinquent as to such tax, rent or charge, shall be applied to such delinquencies based on the date that each arose, beginning with the oldest such delinquency and ending with the current liability, until the payment is exhausted. The payment shall be applied to each such delinquency or liability in the following order: costs, penalties, interest, and the original amount of the tax, rent, or other charge.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Behavioral Health (DBH), as the successor-in-interest to the Department of Mental Health, pursuant to the authority set forth in Sections 5113, 5117(10) and (13), and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.06(10) and (13), and 7-1141.07 (2017 Supp.)), and sections 104(8) and 114(5)(A) of the Mental Health Service Delivery Reform Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code §§ 7-1131.04(8) and 7-1131.14(5)(A) (2012 Repl.)) (the “Act”), hereby gives notice of the intent to amend Chapter 35 (Department of Mental Health (DMH) Infractions) to Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*, and after Council review and approval, as specified in section 114(5)(B) of the Act (D.C. Official Code § 7-1131.14(5)(B)).

This Notice of Proposed Rulemaking revises the existing infraction regulation for Mental Health Community Residence Facilities (MHCRFs) to conform to the new MHCRF licensing regulation in Chapter 38 of Title 22A of the DCMR, which will be effective April 1, 2018. In order to maintain accountability of this provider network and ensure resident health and safety, the Department needs to maintain the right to issue Notices of Infractions and fines for regulatory violations. The proposed regulation consolidates the current four (4) classes of infractions into three (3) classes, and reorders and renumbers the infractions to conform to the new Chapter 38 requirements.

Chapter 35, DEPARTMENT OF MENTAL HEALTH (DMH) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is renamed Department of Behavioral Health (DBH) Infractions, and Section 3501 of Chapter 35 is amended to read as follows:

**3501 MENTAL HEALTH COMMUNITY RESIDENCE FACILITY
INFRACTIONS**

- 3501.1 Violation of the following provisions shall be a Class 1 infraction:
 - (a) 22-A DCMR § 3801.1 (operating a MHCRF without proper licensure);
 - (b) 22-A DCMR § 3803.1 through § 3803.5 (failure to grant Department or designee right of entry or access to facility records and personnel);
 - (c) 22-A DCMR §§ 3811.3 and 3811.4 (failure to correct deficiencies as directed by the Department);
 - (d) 22-A DCMR § 3826.8 (failure to operate effective pest control program, application of pesticides or traps on resident bedding);

- (e) 22-A DCMR §§ 3829.1 through 3829.7 (failure to comply with plumbing and water supply requirements);
- (f) 22-A DCMR § 3831.2 (placement of sleeping facilities near furnace, space heater, water heater or gas meter);
- (g) 22-A DCMR §§ 3833.1 through 3833.19 (failure to comply with fire safety requirements);
- (h) 22-A DCMR §§ 3834.1 through 3834.32 (failure to comply with dietary services requirements);
- (i) 22-A DCMR §§ 3835.1 through 3835.5 (failure to comply with therapeutic diet requirements);
- (j) 22-A DCMR §§ 3838.1 through 3838.9 (failure to comply with resident finances requirements);
- (k) 22-A DCMR §§ 3839.1 through 3839.10 (failure to comply with medication requirements);
- (l) 22-A DCMR §§ 3845.1 through 3845.4 (failure to comply with restraint and seclusion prohibitions);
- (m) 22-A DCMR §§ 3852.1 through 3852.5 (failure to comply with staffing requirements);
- (n) 22-A DCMR §§ 3853.1 through 3853.2 (failure to comply with operator and residence director responsibilities); and
- (o) 22-A DCMR §§ 3861.1 through 3861.15 (failure to comply with transfer, discharge and relocation requirements).

3501.2 Violation of the following provisions shall be a Class 2 infraction:

- (a) 22-A DCMR §§ 3810.1 and 3810.2 (failure to comply with applicable law or inspections);
- (b) 22-A DCMR §§ 3810.3 and 3810.4 (failure to submit Major Unusual Incident report);
- (c) 22-A DCMR §§ 3810.5 and 3810.7 (failure to correct deficiencies or comply with statement of deficiency process);

- (d) 22-A DCMR §§ 3810.9 and 3810.10 (failure to remove staff member subject to abuse or neglect complaint);
- (e) 22-A DCMR § 3810.12 (failure to maintain records);
- (f) 22-A DCMR §§ 3810.14 through 3810.16 (failure to comply with emergency move requirements);
- (g) 22-A DCMR §§ 3822.1 through 3822.7 (failure to comply with insurance requirements);
- (h) 22-A DCMR §§ 3823.1 through 3823.34 (failure to comply with resident's rights and responsibilities requirements);
- (i) 22-A DCMR §§ 3825.1 through 3825.10 (failure to comply with general eligibility and admission requirements);
- (j) 22-A DCMR §§ 3826.1 through 3826.25, not including 3826.8 (failure to comply with environmental requirements)
- (k) 22-A DCMR §§ 3827.1 through 3827.4 (failure to comply with structural and maintenance requirements);
- (l) 22-A DCMR §§ 3828.1 through 3828.5 (failure to comply with lighting and ventilation requirements);
- (m) 22-A DCMR §§ 3830.1 through 3830.6 (failure to comply with heating and cooling requirements);
- (n) 22-A DCMR §§ 3831.1, 3831.3 through 3831.7 (failure to comply with bedroom requirements);
- (o) 22-A DCMR §§ 3832.1 through 3832.5 (failure to comply with bathing and toilet facilities requirements);
- (p) 22-A DCMR §§ 3836.1 through 3836.9 (failure to comply with housekeeping and laundry services);
- (q) 22-A DCMR §§ 3837.1 through 3837.8 (failure to comply with personal property of residents requirements);
- (r) 22-A DCMR §§ 3840.1 through 3840.8 (failure to comply with medical services requirements);
- (s) 22-A DCMR §§ 3841.1 through 3841.5 (failure to comply with resident activities requirements);

- (t) 22-A DCMR §§ 3842.1 through 3842.2 (failure to assist residents to receive mental health services);
- (u) 22-A DCMR §§ 3843.1 through 3843.5 (failure to coordinate with core services agencies);
- (v) 22-A DCMR §§ 3844.1 through 3844.4 (failure to comply with individual recovery plan requirements);
- (w) 22-A DCMR §§ 3846.1 through 3846.6 (failure to comply with resident's records requirements);
- (x) 22-A DCMR §§ 3847.1 through 3847.3 (failure to comply with confidentiality of records requirements);
- (y) 22-A DCMR §§ 3848.1 through 3848.6 (failure to comply with major unusual incident reporting requirements);
- (z) 22-A DCMR §§ 3850.1 through 3850.14 (failure to comply with minimum qualifications for persons working in MHCRF requirements);
- (aa) 22-A DCMR §§ 3851.1 through 3851.2 (failure to comply with qualifications applicable to operators and residence directors);
- (bb) 22-A DCMR §§ 3854.1 through 3854.5 (failure to comply with personnel records requirements);
- (cc) 22-A DCMR §§ 3855.1 through 3855.7 (failure to comply with financial records requirements);
- (dd) 22-A DCMR §§ 3857.1 through 3857.8 (failure to comply with supported residence requirements);
- (ee) 22-A DCMR §§ 3858.1 through 3858.14 (failure to comply with supported rehabilitative residence requirements);
- (ff) 22-A DCMR §§ 3859.1 through 3859.13 (failure to comply with intensive residence requirements); and
- (gg) 22-A DCMR §§ 3860.1 through 3860.10 (failure to comply with transitional residential beds requirements).

3501.3

Violation of the following provisions shall be a Class 3 infraction:

- (a) 22-A DCMR §§ 3824.1 through 3824.4 (failure to comply with residency contract requirements); and
- (b) 22-A DCMR §§ 3849.1 through 3849.5 (failure to comply with resident status procedure requirements).

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Ms. Atiya Frame-Shamblee, Esq., Deputy Director of Accountability, Department of Behavioral Health at 64 New York Avenue, NE, 3rd Floor, Washington, D.C. 20002-4347. Interested persons may also send comments electronically to Atiya.Frame@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the Department of Behavioral Health's website at www.dbh.dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF THIRD PROPOSED RULEMAKINGRULEMAKING 3-2014-01 – UTILITY CONSUMER BILL OF RIGHTS

1. The Public Service Commission of the District of Columbia (“Commission”), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2012 Repl.), hereby gives notice of its intent to adopt the following amendments to Chapter 3 (Consumer Rights and Responsibilities) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (“DCMR”), commonly referred to as the “Consumer Bill of Rights” (“CBOR”). The Commission shall take final rulemaking action not less than 30 days after publication of this notice in the *D.C. Register*. The proposed rules clarify various requirements for Energy Suppliers.

2. The Commission published two previous NOPRs on June 30, 2017¹ and December 22, 2017² amending certain rules in the CBOR. This Third NOPR supersedes the previous NOPRs. The following sections were revised in response to parties’ comments and Commission internal review: 1) §308.3; 2) §308.4; 3) §325.3; 4) §327.15(d); 5) §327.18; 6) §327.29; 7) §327.30; 8) §327.31; 9) §327.35; 10) §327.36; and 11) §399.1.

Chapter 3, CONSUMER RIGHTS AND RESPONSIBILITIES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 308, USE OF CUSTOMER’S INFORMATION, is amended as follows:

- 308.1 An Applicant or a Customer need not disclose his or her Social Security number to the Utility, Energy Supplier, or Telecommunications Service Provider to obtain or maintain service. Upon requesting a Customer’s Social Security account number, the Utility, Energy Supplier, or Telecommunications Service Provider shall inform the Customer that the provision of the number is voluntary and will not affect the provision of service to that Customer
- 308.3 Unless a Customer consents in writing or through electronic means such as Third-Party Verification, recorded voice or electronic signature, the Utility, Energy Supplier or Telecommunications Service Provider may not disclose or use information that is about the Customer or the Customer’s use of service except to the Commission and in accordance with its Privacy Policy. The Utility, Energy Supplier, or Telecommunications Service Provider shall reasonably protect the confidentiality of customer information.

¹ 64 *D.C. Register* 006128 – 006144 (June 30, 2017).

² 64 *D.C. Register* 013113 – 013129 (December 22, 2017).

308.4 The restrictions in §§308.2 and 308.3 above do not apply to lawful disclosures for bill collection, credit rating reports, provision of service, legitimate business activities, to assist Customers who have had, or may have, their service involuntarily disconnected, or as otherwise authorized by law. It shall be the responsibility of the Utility, Energy Supplier or Telecommunications Service Provider to obtain and maintain the written or electronic consent, referred to in Subsections 308.2 and 308.3 above, to disclose or use information about the Customer or the Customer's use of service. A Customer's information shall be made available to the Commission upon request.

Section 309, PRIVACY PROTECTION POLICY, is amended as follows:

309.1 Each Utility, Energy Supplier or Telecommunications Service Provider shall institute a Privacy Protection Policy to protect against the unauthorized disclosure or use of information about a Customer or a Customer's use of service. A copy of that Policy shall be made available once a year, including any updates or changes, through electronic means or a hardcopy to the Customer and to the Commission and posted in a prominent place on each company's website.

Section 310, GROUNDS FOR DISCONNECTION, is amended as follows:

310.3 Disconnection of natural gas or electric utility service for non-payment of bills, failure to post a cash Security Deposit, or failure to comply with the terms of a DPA where natural gas or electricity is used as the primary source of heating or cooling the residence is prohibited:

- (a) For the Electric Utility, during the day preceding and the day of a forecast when the National Weather Service forecast for the District of Columbia is ninety-five (95°) degrees Fahrenheit or above or thirty-two (32°) degrees Fahrenheit or below during any time of a day as based on National Weather Service (NWS) actual temperature forecasts and National Weather Service (NWS) wind chill factor and heat index temperature forecasts; or
- (b) For the Natural Gas Utility, during the day preceding and the day of a forecast when the National Weather Service forecast for the District of Columbia is thirty-two (32°) degrees Fahrenheit or below during any time of a day as based on National Weather Service (NWS) actual temperature forecasts and National Weather Service (NWS) wind chill factor and heat index temperature forecasts.

Section 321, PUBLICATION OF CONSUMER PAMPHLET, is amended as follows:

321.1 Each Utility, Energy Supplier, and Telecommunications Service Provider shall prepare a consumer pamphlet in English and Spanish in layman's terms summarizing the rights and responsibilities of Customers in accordance with these and other applicable rules. Prior to distribution, the Utility, Energy Supplier, or

Telecommunication Service Provider shall provide the Commission and OPC with a copy of the consumer pamphlet. OPC shall submit any comments on the consumer pamphlet to the Commission and to the Utility, Energy Supplier, and Telecommunication Service Provider within ten (10) business days. If the Commission does not reject or otherwise act on the pamphlet within thirty (30) days of its filing, the consumer pamphlet shall be deemed approved.

Section 325, FORMAL HEARING PROCEDURES, is amended as follows:

- 325.3 If a review of the Formal Complaint by the Hearing Officer determines that the Complainant is solely requesting monetary damages or compensatory relief, or if the Complaint alleges matters or legal grounds otherwise not within the Commission's jurisdiction, the Hearing Officer shall issue an order dismissing the case with prejudice for failure to state a claim upon which relief may be granted and for lack of jurisdiction by the Commission.
- 325.4 The Commission shall provide notice of the hearing by personal service, by first-class mail or other technological means, as authorized by the Commission, to the Customer and the Customer's Designated Representative and to the Utility, Energy Supplier or Telecommunications Service Provider. Service shall be made by first-class mail postage prepaid at least fourteen (14) days prior to the hearing date unless the parties agree on a shorter time. The notice shall also state that in the event that the Complainant fails to attend a scheduled hearing without evidence of good cause, the hearing officer may dismiss the Complaint with prejudice. The hearing officer may reschedule any hearing to a date or time agreed upon by the parties or, upon notice and for good cause shown, at the request of any party.
- 325.5 A party requesting a second continuance will be required to provide good cause for the continuance. If the party is the Complainant and he or she does not provide good cause, as determined by the hearing officer, the Complaint may be dismissed, with prejudice. If the party is a Utility, Energy Supplier or Telecommunications Service Provider and it fails to provide good cause, the matter may be heard, without continuance. The hearing officer may, at his or her discretion, postpone or adjourn a hearing for reasonable cause. If a hearing is continued, adequate notice shall be provided to the parties.
- 325.6 In the event the Complainant fails to attend any scheduled hearing without good cause, the hearing officer may dismiss the Complaint with prejudice.
- 325.7 In the event a Utility, Energy Supplier or Telecommunications Service Provider fails to attend a scheduled hearing without good cause, the hearing officer may hear evidence and render a decision.
- 325.8 Upon a reasonable request from each other, the parties shall, within the timeframe prescribed in Chapter 1 of Title 15, provide all information they have that is relevant to the matters at issue in the Complaint including relevant documents,

Account data, files and the names of witnesses. Nothing herein shall preclude a party from filing a request or motion to compel responses to information requests.

- 325.9 Parties may examine any relevant records of the Commission. However, information deemed to be confidential may be reviewed in a manner that is consistent with the Commission's Rules of Practice and Procedure.
- 325.10 On any issue or procedure where Chapter 3 of Title 15 is silent, the hearing officer may at his or her discretion utilize Chapter 1 of Title 15 regulations as appropriate.
- 325.11 Parties may represent themselves or be represented by counsel, conservator, legal guardian or someone with power of attorney. If a Complainant proceeds *pro se*, the hearing officer may construe the pleadings liberally. If it appears to the hearing officer that a party appearing without an attorney should be represented by an attorney, the hearing officer shall suggest that the party secure counsel or contact the Office of the People's Counsel concerning representation and allow a reasonable time to secure such representation.
- 325.12 Parties shall have the right to present evidence, call witnesses, and present written and oral argument.
- 325.13 Witnesses shall testify under oath, and the parties shall have the right to examine and cross-examine all witnesses.
- 325.14 The hearing officer may, in his or her discretion, limit any line of questioning, testimony and the time for argument.
- 325.15 Unless otherwise ordered by the hearing officer, the Complainant's witnesses shall testify first, followed by the Utility's, Energy Supplier's or Telecommunications Service Provider's witnesses. A reasonable opportunity will be afforded all parties to present rebuttal evidence.
- 325.16 The hearing officer may elicit testimony from any witness regarding the issue(s) in dispute.
- 325.17 The hearing officer has the obligation, especially when a Complainant is not represented by counsel, to ensure that all material facts are developed to the fullest extent consistent with his or her responsibility to preside impartially throughout the proceeding.
- 325.18 The formal rules of evidence shall not apply, but the hearing officer shall exclude irrelevant or unduly repetitious evidence.
- 325.19 Parties may stipulate to any facts, and such stipulation shall be put into evidence.

325.20 All proceedings shall be recorded or transcribed by a certified court reporter. The transcriptions shall be made available promptly to any party upon request, at the party's expense.

Section 326, DECISION AND APPEALS, is amended as follows:

326.2 (c) Complaints requesting monetary damages as the sole form of relief shall be dismissed with prejudice by the hearing officer for failure to state a claim upon which relief may be granted and for lack of jurisdiction by the Commission.

Section 327, CUSTOMER PROTECTION STANDARDS APPLICABLE TO ENERGY SUPPLIERS, is amended to read as follows:

327 CUSTOMER PROTECTION STANDARDS APPLICABLE TO ENERGY SUPPLIERS

327.1 This section sets forth billing, Deposit, Enrollment, Termination of Contract, supplier switching, advertising and minimum Contract standards that apply to Energy Suppliers, Marketers, Aggregators, and Consolidators licensed to provide competitive electric and gas services by the Public Service Commission of the District of Columbia. If a Customer has a Complaint about an alleged violation of this section, the Complaint procedures in § 320 of these regulations shall apply.

327.2 An Energy Supplier may not engage in a marketing, advertising, Solicitation or trade practice that is unlawful, misleading, or deceptive as set forth in D.C. Code §28-3904.

327.3 An Energy Supplier shall not engage in Cramming.

327.4 An Energy Supplier shall not engage in Slamming.

327.5 Any prohibition regarding the disclosure of Account status and Customer information should not preclude Energy Suppliers from obtaining or providing Account status and Customer information for acquisition or sale of a book of business as long as the review of such information during a proposed acquisition or sale is subject to confidentiality agreements.

327.6 Energy Suppliers must maintain documentation to substantiate any advertisement of energy supply that contains specific environmental claims. Such documentation shall be made available, upon request, through a hard copy or other technological means.

327.7 Any Solicitation of energy supply that contains any specific offering to a residential Customer must at a minimum include the following in writing:

- (a) The Energy Supplier's name, address, telephone number, and web site address, if applicable;
- (b) The Energy Supplier's District of Columbia license number in a clear and conspicuous manner;
- (c) The price offered for natural gas supply or electricity supply should be fixed or variable in nature. An explanation of a variable rate should indicate that:
 - (1) A variable price may be based on market conditions; and
 - (2) A variable rate may result in higher or lower costs over the initial introductory rate;
- (d) A statement that the advertised price is only for the specified natural gas supply or electricity supply and does not include any additional tax, Utility Distribution Service Charge, or other Utility fee or Charge;
- (e) Any minimum Contract duration necessary to obtain an advertised price;
- (f) A statement of minimum use requirements, if any; and
- (g) If the advertisement offers several services and does not break out individual prices for the services, the following disclaimer must accompany the advertisement: "Disclaimer: This offer includes several services at a single price. You should compare this price to the total of the prices you currently pay for each of the individual services."

327.8 An electricity supply or natural gas supply Contract with a Customer shall, at a minimum, contain the following material terms and conditions:

- (a) A list and description of the Contract services;
- (b) A statement of minimum use requirements, if any;
- (c) A description of any time of use restrictions, including the time of day or season;
- (d) A price description of each service, including all fixed and variable costs;
- (e) A notice that the Contract does not include Utility Charges;
- (f) A billing procedure description;

- (g) In the case of consolidated billing, a notice that the Customer acknowledges that Customer billing and payment information may be provided to the Energy Supplier;
- (h) A statement of Contract duration, including initial time period and any rollover provision;
- (i) A Deposit requirement, if any, including: the amount of the Deposit; a description of when and under what circumstances the Deposit shall be returned; a description of how the Deposit may be used; and a description of how the Deposit shall be protected;
- (j) A description of any fee or Charge and the circumstances under which a Customer may incur a fee or Charge;
- (k) A statement that the customer may rescind the contract within three (3) business days from the start of the Rescission Period;
- (l) A statement that the Energy Supplier may terminate the Contract early including the circumstances under which early cancellation by the Energy Supplier may occur; the manner in which the Energy Supplier shall notify the Customer of the early cancellation of the Contract; the duration of the notice period before early cancellation; remedies available to the Customer if early cancellation occurs;
- (m) A statement that the Customer may terminate the Contract early including the circumstances under which early cancellation by the Customer may occur; the manner in which the Customer shall notify the Energy Supplier of the early cancellation of the Contract; the duration of the notice period before early cancellation; and remedies available to the Energy Supplier if early cancellation occurs; and the amount of any early cancellation fee;
- (n) A statement describing Contract renewal procedures, if any;
- (o) A dispute resolution procedure;
- (p) The Commission's telephone number and website address; and
- (q) The Office of the People's Counsel's telephone number and website address.

327.9

If an Energy Supplier receives a request from a Customer not to receive any Solicitations from that solicitor, the Energy Supplier shall no longer contact the Customer. If an Energy Supplier receives a request from a Customer not to receive a particular type of Solicitation from that solicitor, which includes, but is not limited to, in-person Solicitation, telephone Solicitation, electronic

Solicitation or any form of mail or post card by the solicitor, the Energy Supplier shall not use that type of solicitation with that Customer in the future.

- 327.10 Nothing in these regulations shall affect the applicability of any Federal or District telephone Solicitation and consumer protection laws and regulations including, but not limited to, the fines and penalties thereunder for violation of such laws and regulations. Any Energy Supplier soliciting customers by telephone shall comply with all applicable District and federal laws, including the Telephone Consumer Protection Act of 1991 (15 U.S.C. §. 6151 *et seq.*) and the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 (15 U.S.C § 6101 *et seq.*).
- 327.11 There are three (3) principal ways in which a residential Customer may enter into a Contract with an Energy Supplier:
- (a) Through a recorded verbal consent via telephone solicitation;
 - (b) Electronic contract; or
 - (c) Written contract.
- 327.12 An Energy Supplier may not use “negative option contracts,” in which Contracts are created if the Customer takes no action. Therefore, an Energy Supplier may not enter into a Contract with a Customer if the Customer simply refrains from action. Contract renewals are not negative option contracts.
- 327.13 If a Customer wishes to enter into a Contract with an Energy Supplier, the Energy Supplier may request from the Customer the following information, by telephone, in writing, or Internet or other technological means:
- (a) The customer’s name;
 - (b) Billing address;
 - (c) Service address;
 - (d) Electronic mail address;
 - (e) Telephone number;
 - (f) Utility Account and any other number designated by the utility as necessary to process an enrollment;
 - (g) Employment information; and
 - (h) Usage information.

- 327.14 An Energy Supplier may ask for additional information beyond that specified in Subsection 327.13 only after first informing the Customer of his or her right not to provide such information.
- 327.15 An Energy Supplier shall advise a Customer that he/she has the right to rescind the Contract agreement within a three (3) business day period and that the Rescission Period begins on one of the following dates:
- (a) When the Customer signs the Contract;
 - (b) When a positive Third-Party Verification or electronic recording has been made;
 - (c) When the Customer transmits the electronic acceptance of the Contract electronically; or
 - (d) When the Completed Written Contract is deposited in the U.S. Mail.
- 327.16 FOR A TELEPHONE SOLICITATION: Telephone Solicitations shall be made only between the hours of 9 a.m. and 9 p.m. If a residential Customer is solicited to enter into a contract by telephone, whether the Energy Supplier or its authorized agent first contacts the Customer or the Customer calls the Energy Supplier or its authorized agent in response to a direct mail solicitation, the Energy Supplier or its authorized representative shall:
- a) Begin the conversation by accurately stating the following
 - 1. His or her name;
 - 2. The name of the business or organization calling;
 - 3. The nature of the call, i.e. a Solicitation;
 - 4. A brief description of the subject-matter being solicited; and
 - 5. An offer to the Customer to hear the full Solicitation.
 - b) Describe the rates, terms, and conditions of the Contract:
 - c) Arrange to have the Customer's intent to contract with the Energy Supplier independently verified. To verify a residential Customer's intent to Contract with an Energy Supplier by telephone, an Energy Supplier must utilize either:
 - 1. An Independent Third-Party telephone verification; or
 - 2. An automated, computerized system; or

3. An electronic recording of the entire conversation between the Customer and the Energy Supplier which the Energy Supplier shall maintain for three (3) years.

327.17 All verifications performed pursuant to Section 327.16 shall be required to ask the Customer the following questions:

- (a) “Are you the Customer of record?”;
- (b) “Did you agree to switch your natural gas supply service or electric supply service to [New Supplier]?”; and
- (c) “Is [Customer’s address] your correct address?” or “Is [Customer’s Utility Account number] your correct Utility Account number?”

327.18 Once the Customer’s choice of Energy Supplier is verified by an Independent Third-Party Verifier or an electronic recording is made, the Energy Supplier shall, within five (5) business days from the day the Customer agreed telephonically to Contract with the Energy Supplier, provide to the Customer via U.S. Mail or electronic mail a copy of the Completed Written Contract.

327.19 Once a positive verification has been obtained or an electronic recording has been made, and a written contract has been sent to the customer, and after the Rescission Period has expired, the Energy Supplier shall transmit the Enrollment transaction to the Natural Gas or the Electric Utility, whichever is appropriate.

327.20 FOR AN INTERNET SOLICITATION: The Energy Supplier may post on its website an electronic version of its solicitation for the supply of natural gas or electricity. The electronic solicitation shall include:

- (a) An electronic application form for the Customer to enter into a Contract for the supply of natural gas or electricity;
- (b) An electronic version of the actual Contract;
- (c) Instructions on how the Customer may rescind the Contract; and
- (d) A link to the Commission’s website to obtain the applicable rules and regulations governing the relationship between the Customer and the Energy Supplier.

327.21 After the Customer completes the electronic application form and electronically accepts the Contract terms and conditions, the Customer has a three (3) business day Rescission Period from the completed online Contract authorization date to rescind his or her Contract.

327.22 Upon receipt of the Customer’s electronic application and electronic acceptance of the Contract terms and conditions and after the Rescission Period has expired,

the Energy Supplier shall transmit the enrollment transaction to the Natural Gas Utility or the Electric Utility, whichever is appropriate.

327.23 FOR HOME SOLICITATIONS: Home solicitations shall be limited to the hours between 9 a.m. and sunset. During a home Solicitation, the Energy Supplier or its authorized agent shall:

- (a) Present the Customer with a photo identification card that identifies the name of the person making the solicitation and the name of the Energy Supplier that he or she is representing;
- (b) Begin the conversation by stating the following:
 1. The name of the business or organization;
 2. The nature of the visit, i.e., a Solicitation;
 3. A brief description of the subject matter being solicited;
 4. Ask the customer if he/she would like to hear the full Solicitation;
- (c) Present the Customer with a complete copy of the written or electronic Contract being offered and obtain the Customer's consent consistent with one of the methods described in Section 327.11;
- (d) Obtain either an Independent Third-Party telephone verification of the Customer's intent or obtain a signed contract that includes a statement in the Contract under the conspicuous Caption "BUYER'S RIGHT TO CANCEL" which states: "If this agreement was solicited at or near your residence, and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business day after you signed this agreement. This notice must be mailed to: (name and address of seller)."; and
- (e) After the Rescission Period has expired, transmit the enrollment transaction to the Natural Gas Utility or the Electric Utility, whichever is appropriate.

327.24 FOR DIRECT MAIL SOLICITATIONS: If a residential Customer is solicited at home through a direct mail solicitation by an Energy Supplier, the Energy Supplier shall follow the solicitation and contracting requirements in Sections 327.7 and 327.8, respectively, and 327.13 and 327.14 with respect to telephone solicitation if the customer calls the Energy Supplier or its authorized representative in response to the direct mail solicitation.

327.25 In the event of a dispute over the existence of a Contract, the Energy Supplier shall bear the burden of proving the Contract's existence.

- 327.26 When using any of the permitted forms of solicitation, the Energy Supplier shall provide the Customer with a notification of his or her right to rescind the Contract pursuant to Section 327.15.
- 327.27 Upon completion of the Customer's electronic enrollment request and after the Recession Period has expired, the Energy Supplier shall transmit the enrollment transaction to the Natural Gas Utility or Electric Utility, whichever is appropriate.
- 327.28 For purposes of these rules, the electronic submission of the application to Contract with the Energy Supplier constitutes an "electronic signature" and an executed Contract.
- 327.29 If the Customer submits an electronic application and electronic Contract, the Energy Supplier shall acknowledge the Customer's submission with a Confirmation of receipt of the electronic enrollment within twenty-four (24) hours of receipt.
- 327.30 It is the responsibility of the Energy Supplier to provide its website address to the Commission. The Natural Gas Utility, Electric Utility, and Energy Suppliers shall prominently display on their websites' homepages links to the Commission's website pages for Customer Retail Choice and Consumer Suppliers' Offers.
- 327.31 For electronic contracting, the Energy Supplier's website shall allow a Customer to print or save a copy of the Contract.
- 327.32 During the electronic enrollment procedure, each web screen shall clearly display a "Cancel" icon enabling the Customer to terminate the Enrollment transaction at any time. In addition, the cancellation feature shall be clearly explained to the Customer at the beginning of the electronic enrollment process.
- 327.33 At the completion of the electronic enrollment process, and at the end of the three (3) business day Rescission Period, the Energy Supplier, at the Customer's request, shall provide a secure website location or a telephone number where the Customer can verify that he or she has been enrolled in the Energy Supplier's program.
- 327.34 All online transactions between Energy Suppliers and Customers shall be encrypted using Secure Socket Layer (SSL) or similar encryption standards to ensure the privacy of Customers information consistent with Section 309.1.
- 327.35 The Electric Utility shall transfer a Customer to a competitive electricity supplier in no later than three (3) business days after receiving the notice of an enrollment transaction from the competitive electricity supplier. The Electric Utility shall transfer a customer to Standard Offer Service in no later than 3 business days after receiving the Customer's request. The Electric Utility shall accept the last enrollment received from the Energy Supplier at the relevant days' end.

- 327.36 Not less than seven (7) days before the first day of the next month each Energy Supplier shall provide to the Natural Gas Utility a list of new Customers to be supplied by that Energy Supplier beginning with the first day of the next month.
- 327.37 Once the Natural Gas Utility processes a Customer Enrollment from an Energy Supplier, the Natural Gas Utility shall not accept another Enrollment from any other Energy Supplier for that Customer until it receives notice of the Termination of the Customer's Contract.
- 327.38 Energy Suppliers must process all Customer cancellation requests within three (3) business days after receipt of the cancellation request.
- 327.39 The transmittal of an EDI Transaction by the Electric Supplier to the Electric Utility shall not occur until after the three (3) business day Rescission Period.
- 327.40 The transmittal of an enrollment transaction by the Gas Supplier to the Gas Utility shall not occur until after the three (3) business day Rescission Period.
- 327.41 Upon an Energy Supplier's Enrollment of a Customer, the Energy Supplier shall provide to the Customer, within a reasonable period of time the following:
- (a) A statement of enrollment;
 - (b) A description of the agreed-upon billing option and the Company's billing date, if applicable and if different from the Utility's; and
 - (c) Customer service information (including toll-free telephone number, mailing address, and dispute resolution process information).
- 327.42 The Customer shall notify the Energy Supplier, not the Utility, of his or her intent to rescind the Contract within the Rescission Period. If the Customer does request to rescind their Contract within the 3- business day Rescission Period, the Enrollment shall be considered effective. If the Customer notifies the Energy Supplier of his or her intent to rescind the Contract within the 3-business day Rescission Period, the Contract is deemed invalid and non-binding.
- 327.43 After the three (3) business day Rescission Period expires and the enrollment is processed by the Utility, the relationship between the Customer and the Energy Supplier shall be governed by the terms and conditions contained in the Contract.
- 327.44 An Energy Supplier shall provide the Customer with written notice of Contract expiration or termination at least thirty-five (35) days before the expiration or termination of the current Contract. The Energy Supplier's written expiration or termination notice shall include the following:
- (a) Final Bill payment instructions;

- (b) A statement informing the Customer that unless the Customer selects a new Energy Supplier, Termination of Contract shall return the Customer to the Utility; and
- (c) The Commission's telephone number and website address.

327.45 If an Energy Supplier's Contract provides for voluntary renewal of the Contract or for automatic renewal of the Contract (also known as an "Evergreen Contract"):

- (a) The Energy Supplier shall provide written notice to the Customer of the pending renewal of the Contract at least forty-five (45) days before the renewal is scheduled to occur;
- (b) Written notice of any changes to the material terms and conditions (including, but not limited to, changes to the rate, the billing option or the Billing Cycle), shall be provided with or before the forty-five (45) day written notice. The notification of renewal and of any change in Contract terms shall be highlighted and clearly stated; and
- (c) If the Contract is an Evergreen Contract, the forty-five (45) day written notice shall inform the Customer how to terminate the renewal of the Contract without penalty and advise the Customer that terminating the Evergreen Contract without selecting another Energy Supplier shall return the Customer to Natural Gas Sales Service or Electric Standard Offer Service. The written notice shall also inform the Customer that the Commission has additional information on the energy supply choices available to the Customer. The telephone number and website for the Commission shall be included in the written notice.

327.46 ASSIGNMENT OF CONTRACT

- (a) At least 30 days prior to the effective date of any assignment or transfer of a supplier contract from one supplier to another, the suppliers shall jointly provide written notice to the Customers of the supplier, the Commission, the utility and the Office of People's Counsel of the assignment or transfer.
 - 1. Notice to Customer. The suppliers shall jointly send a letter to the Customer informing them of the assignment or transfer. The letter shall include:
 - (a) A description of the transaction in clear and concise language including the effective date of the assignment or transfer; and

- (b) Customer service contact information for the assignee;
 - 2. The terms and conditions of the Customer's contract at the time of assignment shall remain the same for the remainder of the contract term; and
 - 3. The suppliers shall file a notice with the Commission, with a copy to the Office of People's Counsel and the utility, of the assignment or transfer of the Customer contracts and include a copy of the letter sent to Customers.
- (b) Upon request by the Commission, the assignee shall be responsible for providing documents and records related to the assigned contracts. Records shall be maintained for a period of three years or until the contracts are expired, whichever is longer.
- (c) An assignment or transfer of a supplier contract from one supplier to another is not an enrollment or drop.
- 327.47 Within twenty-four (24) hours after making changes to its publicly available current offers (as posted on the Commission's website), an Energy Supplier shall provide the Commission Secretary with information regarding the changes in its rates, charges and services that are being made so that the Commission has current information about the Energy Supplier.
- 327.48 An Energy Supplier shall post on its website current and understandable information about its rates, charges and services.
- 327.49 An Energy Supplier shall not conduct Meter readings unless the Energy Supplier has installed, owns, and reads metering equipment, consistent with the applicable Utility's tariff.
- 327.50 If an Energy Supplier's charges are based on usage, an Energy Supplier shall rely on the Meter reading (actual, estimated, or customer meter readings) provided to it by the respective Utility, unless the Energy Supplier has installed, owns, and reads metering equipment, consistent with the applicable Utility's tariff.
- 327.51 An Energy Supplier may, at the election of a Customer, Bill a Customer in accordance with a level payment billing plan. If an Energy Supplier utilizes the billing services of a Utility, an Energy Supplier may use the level payment plan as part of the Utility's billing service. The Energy Supplier shall inform the Customer of this option and explain how the monthly payments are calculated. Prior to implementation of the level payment billing plan, the Energy Supplier shall provide the Customer with the following information in writing:

- (a) An acknowledgement that the Customer shall be on the level payment billing plan effective the next billing period;
- (b) An estimate of the Customer's use on an annual basis and an explanation of how the monthly payment has been calculated;
- (c) An indication that the final bill for the level payment billing plan effective period shall reflect the last level payment billing plan installment adjusted for any difference between actual and budgeted usage. Amounts overpaid shall be credited to the Customer's account or refunded, if requested by the Customer. Amounts underpaid that are equal to or greater than the monthly payment may be paid in up to three (3) monthly installments; and
- (d) Final bills are issued when either a Customer account is closed or in the case of a Customer with an Energy Supplier, the supply contract is closed or changed. Any level payment billing plan in effect shall be reconciled upon rendering the final bill. Amounts underpaid shall be due within twenty (20) days of final bill rendering. Amounts overpaid shall be refunded or credited to the Customer's utility account within twenty (20) days of final bill rendering.

327.52 The Energy Supplier may perform a periodic analysis of a Customer's level payment billing plan and notify the Customer, within twenty-one (21) days thereafter, if actual usage varies significantly from that upon which the level payment billing plan was based and give the Customer an opportunity for revision of the level payment billing plan. If an Energy Supplier utilizes the billing services of a Utility, the Customer may have an opportunity for revision of the level payment billing plan at the same time as the Utility allows under the Utility's level payment billing plan procedures or at a time designated by the Energy Supplier.

327.53 If the Customer enters into a Deferred Payment Agreement ("DPA") with the Utility pursuant to §306, and the Energy Supplier utilizes the billing services of the Utility, the Utility may include the Energy Supplier's balance as part of its DPA.

327.54 Any Energy Supplier that violates this section, either directly or through its authorized agent, may be subject to Penalties and Sanctions, including license revocation, upon notice given by the Commission.

Section 399, DEFINITIONS, is amended as follows:

399.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Completed Written Contract: An agreement between a Customer and an Energy Supplier that specifies the terms, conditions and charges for the

provision of electric or natural gas services to the Customer and the agreement is signed or acknowledged through Third Party Verification, an electronic signature, or an electronic recording.

Energy Supplier: a person, including an electricity supplier, natural gas Supplier, Aggregator, Broker, or Marketer, but excluding the Standard Offer Service (“SOS”) Administrator and the provision of SOS, who generates or produces natural gas or electricity, who generates or produces natural gas or electricity, sells natural gas or electricity, or purchases, brokers, arranges, or markets natural gas or electricity for sale to customers. The term excludes the following: (A) building owners, lessees, or managers who manage the internal distribution system serving such building and who supply natural gas or electricity solely to occupants of the building for use by the occupants; (B)(i) any person who purchases natural gas or electricity for its own use or for the use of its subsidiaries or affiliates; or (ii) any apartment building or office building manager who aggregates natural gas or electric service requirements for his or her building(s), and who does not: (I) take title to natural gas or electricity; (II) market natural gas or electric services to the individually-metered tenants of his or her building; or (III) engage in the resale of natural gas or electric services to others; (C) property owners who supply small amounts of power, at cost as an accommodation to lessors or licensees or the property; and (D) a Consolidator.

Slamming (for Energy Suppliers): the practice of switching, or causing to be switched, a Customer’s natural gas or electric supplier Account without the express authorization of the Customer.

3. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit written comments not later than 30 days, respectively, after publication of this notice in the *D.C. Register* with Brinda Sedgwick-Westbrook, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, DC 20005. Copies of the proposed rules may be obtained by visiting the Commission’s website at www.dcpsc.org or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPR should call (202) 626-6150.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF SECOND PROPOSED RULEMAKING¹RULEMAKING 41-2017-01 – DISTRICT OF COLUMBIA STANDARD OFFER SERVICE RULES

1. The Public Service Commission of the District of Columbia (“Commission”), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2012 Repl.), hereby gives notice of its intent to adopt the following amendments to Chapter 41 (The District of Columbia Standard Offer Service Rules), Section 4105 (Establishment and Re-Establishment of Standard Offer Service; Customer Switching Restrictions) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (“DCMR”). The Commission shall take final rulemaking action not less than 30 days after publication of this notice in the *D.C. Register*.
2. The notice of proposed rulemaking (NOPR) amends Subsection 4105.9 to require a three-business day transfer period from the electric utility to the competitive electricity supplier when a customer switches electricity providers. This revision is consistent with changes the Commission is proposing to Subsection 327.35 of Title 15 of the DCMR.²

Chapter 41, THE DISTRICT OF COLUMBIA STANDARD OFFER SERVICE RULES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 4105, ESTABLISHMENT AND RE-ESTABLISHMENT OF STANDARD OFFER SERVICE: CUSTOMER SWITCHING RESTRICTIONS, is amended as follows:

4105.9 Notice of Transfers; Transfer of Service; Bill Calculation:

- (a) Notice of Transfer into SOS: A customer who intends to transfer into SOS shall do so by notifying (by telephone, in writing, Internet or other technological means), both the Electric Company and the SOS Administrator, or by canceling service with its Competitive Electricity Supplier.
- (b) Notice of Transfer out of SOS: Notice (by telephone, in writing, Internet or other technological means) that a SOS customer will terminate SOS and obtain service from a Competitive Electricity Supplier shall be provided to the Electric Company and the SOS Administrator by the customer's

¹ The First Notice of Proposed Rulemaking was published at *64 D.C. Register 12735-12736* on December 15, 2017.

² *64 D.C. Register 6128-6144* (June 30, 2017).

Competitive Electricity Supplier pursuant to Chapter 3 of Title 15 of the District of Columbia Municipal Regulations; and

- (c) The Electric Utility shall transfer a Customer to a competitive electricity supplier in no later than three (3) business days after the receipt of the notice of an enrollment transaction from the Competitive Electricity Supplier. The Electric Utility shall transfer a Customer to Standard Offer Service in no later than three (3) business days after receiving the Customer's request. The Electricity Utility will accept the last enrollment received at the relevant days' end.
3. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit comments not later than 30 days after publication of this notice in the *D.C. Register* with Brinda Sedgwick-Westbrook, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, DC 20005. Copies of the proposed rules may be obtained by visiting the Commission's website at www.dcpsc.org or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPR should call (202) 626-5150.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING**Z.C. Case No. 08-06O****(Text Amendment – 11 DCMR)****Minor Modification to Z.C. Order 08-06A to Permit Large Format Retail as a Special Exception Use in the Production, Distribution, and Repair Zones**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Repl.), hereby gives notice of its intent to amend Subtitle U (Use Permissions) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR) to make a minor modification to an amendment made by Z.C. Order No. 08-06A (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted comprehensive amendments to the Zoning Regulations that became effective on September 6, 2016

The proposed minor modification would permit large format retail uses by special exception in Production, Distribution, and Repair (PDR) zones as the Commission originally intended. As part of the deliberations that led to the adoption of the Zoning Regulations of 2016, the Zoning Commission, on October 6, 2014, voted to permit large format retail uses by special exception in certain Mixed Use (MU) zones and in all PDR zones. Although the Commission's intent was noted in the Order at page 25. The Order only included the special exception language for the identified MU zones. Therefore, in order to effectuate the Commission's intent, the text of 11-U DCMR § 551.1(j) is proposed to be added to 11-U DCMR § 802.1.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold underlined** text and deletions are show in ~~striketrough~~ text):

Chapter 8, USE PERMISSIONS PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES, of Title 11-U DCMR, USE PERMISSIONS, is amended as follows:

Subsection 802.1 of § 802, SPECIAL EXCEPTION USES (PDR), is amended by adding a new paragraph (j) as follows:

802 SPECIAL EXCEPTION USES (PDR)

802.1 The following uses shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the provisions of this section:

...¹

(h) Utilities (basic) uses not meeting the conditions of Subtitle U § 801.1(z); however, if the use is an electronic equipment facility (EEF), the Board of Zoning Adjustment shall consider:

(1) How the facility, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, will not inhibit future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian movement;

...

(4) The economic benefits the proposed facility will have on adjacent properties, including the potential for increased business activity within the neighborhood, if that activity will foster economic development; and

(5) The design appearance, landscaping, parking and other such requirements it deems necessary to protect adjacent property and to achieve an active, safe, and vibrant street life; ~~and~~

(i) Waste-related service uses not permitted under Subtitle U § 801.1(aa), but not including hazardous waste, subject to the following conditions:

(1) Regardless of use, the facility shall comply with the following:

...

(11) The applicant shall provide credible evidence to the Board of Zoning Adjustment to demonstrate the ability of the facility and its ancillary elements to comply with all applicable regulations. The evidence shall include, but not be limited to, the following:

(A) An indication of the site and description of land uses within one-quarter (1/4) of a mile of the site

...

(F) A certified statement by an architect or engineer licensed in the District of Columbia that the facility as sited and designed to the best of his or her professional knowledge and belief is capable of complying with this subsection and all other applicable regulations of the District of Columbia government, including, without limitation, regulations

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

adopted pursuant to the Solid Waste Facility Permit Act of 1995, effective February 27, 1996 (D.C. Law 11-94, as amended; D.C. Official Code §§ 8-1051 to 8-1063 (2012 Repl.))-; and

(j) Retail, large format, subject to the following conditions:

- (1) The development standards and design guidelines contained within this section apply to all new large format retail establishments with single tenant space of fifty thousand (50,000) gross square feet or greater;**
- (2) The use shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, parking, loading, deliveries, lighting, trash compacting and collection, hours of operation, or otherwise objectionable conditions;**
- (3) Sufficient automobile parking, but not less than that required in Subtitle C, Chapter 7, shall be provided to accommodate the employees and customers;**
- (4) An application under this section shall include the following information:**
 - (A) A general site and development plan, indicating the proposed use, location, dimensions, number of stories, and height of building;**
 - (B) A study of site characteristics and conditions;**
 - (C) A description of existing topography, soil conditions, vegetation and drainage consisting of written material, plats, maps and photographs;**
 - (D) Proposed topography including street grades and other grading contours;**
 - (E) Identification of mature trees to remain and percent of site to be covered by impervious surface;**
 - (F) Proposed drainage and sewer system and water distribution;**

- (G) Proposed treatment of existing natural features, such as steep slopes, ravines, natural watercourses;
- (H) Proposed method of solid waste collection;
- (I) Estimated water consumption (gallons per year);
- (J) A transportation study, containing the following:

 - (i) Proposed circulation plan, including the location of vehicular and pedestrian access ways, other public space and the location and number of all off-street parking and loading spaces, loading berths and service delivery spaces;
 - (ii) Estimated number and type of trips assumed to be generated by project, and assumed temporal and directional distribution;
 - (iii) Traffic management requirements (lights, stop signs, one-way streets, etc.);
 - (iv) Relationship of the proposed project to the mass transit system (nearest bus stops and routes, nearest Metrorail stations, etc.);
 - (v) Vehicular trip generation, trip assignment and before-and-after capacity analyses and level of service at critical intersections; and
 - (vi) Any other information needed to fully understand the final building proposed for the site;
- (5) An applicant requesting approval under this section must demonstrate that the proposed use, building, or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will:

 - (A) Be in context with the surrounding street patterns;
 - (B) Minimize unarticulated blank walls adjacent to public spaces through facade articulation, materials, display windows, entries, and other architectural efforts; and

- (C) Not result in light spillage off the site;
- (6) Where additional stores or individual uses are located within a large format retail use, each such store shall have at least one (1) exterior customer entrance;
- (7) The following list should be considered as guidelines for the design of large format retail buildings:
- (A) Building design shall incorporate architectural features and patterns to provide visual interest;
- (B) Exterior walls shall feature projections and recesses;
- (C) Building roofs shall incorporate pitched rooflines and detailed roofing materials;
- (D) Building materials shall include stone, wood, brick, glass, and metal in keeping with the surrounding architectural context;
- (E) Entryways shall be well-marked and engaging and provide connection via wide sidewalks to primary streets and parking;
- (F) Building design shall incorporate sustainable measures to include solar energy, geothermal heating and cooling, and use of permeable paving for surface parking areas; and
- (G) Landscaping shall be provided in the rear and side yards to screen and limit visibility of storage areas;
- (8) This section shall not apply to the following:
- (A) Large format retail that would occupy a planned unit development approved as of September 5, 2016; or
- (B) Large format retail that would occupy a project with a completed review under the large tract review regulations (Title 10-B DCMR, Chapter 23) as of September 6, 2016; except that a modification to a completed large tract review that would result in a project with fifty thousand square feet (50,000 sq. ft.) or more of retail use shall also require approval under this section prior to certificate of occupancy for a use

meeting the definition of large format retail;

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than fourteen (14) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 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, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

Z.C. Case No. 17-12

**(Text & Related Map Amendments – 11-K DCMR)
(Height & Density in the Southeast Federal Center Zones)**

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Repl.), hereby gives notice of its intent to amend Subtitle K (Special Purpose Zones), Chapter 2 (Southeast Federal Center Zones) and Subtitle Z (Zoning Commission Rules of Practice and Procedure), Chapter 4 (Pre-Hearing and Hearing Procedures: Contested Cases) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR). The related amendments to the Zoning Map would affect Parcels A, D, E, F, G, H, I, and K of the Southeast Federal Center and which comprise the following properties (Property) within the SEFC zone:

Parcel	Square	Lot(s)	Zone
A	743	94	SEFC-1A
F	743	94	SEFC-1A
G	743	94	SEFC-1A
H	744	807	SEFC-1B
I	744	807	SEFC-1B
K	770	40	SEFC-1B
D	771	811, 813, 814, 7000-7010	SEFC-1B
E	853	All (Also referred to in § 203.2 as Parcel E1)	SEFC-1B
	883	Portion bounded by M Street on the north, Isaac Hull Avenue on the east, and Tingey Street on the south	SEFC-1B

The Property consists of two tracts: the western tract is comprised of the parcels that are bounded by M Street, S.E., 1st Street, S.E., N Place, S.E., Canal Street, S.E., and New Jersey Avenue, S.E.; and the eastern tract is comprised of parcels that are bounded by M Street, S.E., 4th Street, S.E., the US DOT headquarters, Tingey Street, S.E., and the Navy Yard. The Property is located in the Mixed-Use High Density Residential/High Density Commercial land use category on the Future Land Use Map of the District of Columbia Comprehensive Plan.

Broadly, the amendments would eliminate the current combined lot development (CLD) “trading” scheme and instead identify which parcels will be developed with commercial office use and which parcels will be developed with a mix of residential and commercial uses.

To implement these changes, the property within Square 743 (Parcels A, F, and G of the SEFC Master Plan) will be rezoned to the proposed SEFC-1A zone, which will permit a 6.0 floor area ratio (FAR) as a matter of right for any permitted use (including commercial office), and permit an additional 1.0 FAR for any permitted use, with Zoning Commission design review. The property within Square 743 known as “Parcel A” will be permitted to achieve 130 feet in height

as a matter of right; Parcels F and G will be permitted to achieve 110 feet in height as a matter of right and 130 feet with design review, if permitted by the Height Act.

The remaining properties that are the subject of this petition will be rezoned to the new SEFC-1B zone. The SEFC-1B zone is functionally the same as the current SEFC-1 zone, but eliminates the use of CLDs. The SEFC-1B zone will permit a density of 6.0 FAR as a matter of right, with a maximum of 3.0 FAR for nonresidential uses. An additional 1.0 FAR (for residential use only) is permitted with design review. The SEFC-1B zone will permit a height of 110 feet as a matter of right; a height of 130 feet will be permitted on Parcel H with design review, if permitted by the Height Act.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following rulemaking action is proposed:

The Zoning Map of the District of Columbia is amended as follows; with the relevant parcel or parcels indicated after the property to which each relates:

1. Square 743, Lot 94 (Parcels A, F, G) is rezoned from SEFC-1 to SEFC-1A.
2. Square 744, Lot 807 (Parcels H and I); Square 770, Lot 40 (Parcel K); Square 771, Lots 811, 813, 814, and 7000-7010 (Parcel D); Square 770, Lot 40 (Parcel K); and all of Square 853 and the portion of Square 883 bounded by M Street on the north, Isaac Hull Avenue on the east, and Tingey Street on the south (Parcel E) are rezoned from SEFC-1 to SEFC-1B.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold underlined** text and deletions are shown in ~~strikethrough~~ text):

Title 11-K DCMR, SPECIAL PURPOSE ZONES, is amended as follows:

Chapter 2, SOUTHEAST FEDERAL CENTER ZONES – SEFC-1 THROUGH SEFC-4, is amended as follows:

Subsection 200.3 of § 200, GENERAL PROVISIONS (SEFC), is amended to read as follows:

- 200.3 The SEFC-1 zones provide for high-density mixed-use development with ground floor retail, ~~and~~ **with bonus density and height for development proximate to the Navy Yard Metrorail Station and the proposed 1½ Street, and with review of the relationship of new buildings to the M Street, S.E. corridor and the adjacent Washington Navy Yard. The SEFC-1 zones consist of the SEFC-1A zone, which permits high-density commercial or residential use with ground floor retail on parcels A, F, and G near the Navy Yard Metrorail Station entrance, and the SEFC-1B zone, which promotes a mix of high-density**

residential and medium-density commercial development with ground floor retail on parcels D, E, K, H, and I. The Property descriptions and zone district for each parcel is as follows:

<u>Parcel</u>	<u>Square</u>	<u>Lot</u>	<u>Zone</u>
<u>A</u>	<u>743</u>	<u>94</u>	<u>SEFC-1A</u>
<u>F</u>	<u>743</u>	<u>94</u>	<u>SEFC-1A</u>
<u>G</u>	<u>743</u>	<u>94</u>	<u>SEFC-1A</u>
<u>H</u>	<u>744</u>	<u>807</u>	<u>SEFC-1B</u>
<u>I</u>	<u>744</u>	<u>807</u>	<u>SEFC-1B</u>
<u>K</u>	<u>770</u>	<u>40</u>	<u>SEFC-1B</u>
<u>D</u>	<u>771</u>	<u>811, 813, 814, 7000-7010</u>	<u>SEFC-1B</u>
<u>E</u>	<u>853</u>	<u>All (Also referred to in § 203.2 as Parcel E1)</u>	<u>SEFC-1B</u>
	<u>883</u>	<u>Portion bounded by M Street on the north, Isaac Hull Avenue on the east, and Tingey Street on the south</u>	<u>SEFC-1B</u>

Subsection 201.1 of § 201, DEVELOPMENT STANDARDS (SEFC-1), is amended to read as follows:

201.1 The development standards in Subtitle K §§ 202 through 210 control the bulk of structures in the SEFC-1 zones.

§ 202, DENSITY – FLOOR AREA RATIO (FAR) (SEFC-1), is amended as follows:

Subsection 202.1 is amended to read as follows:

202.1 The maximum permitted floor area ratio (FAR) for buildings in the SEFC-1A zone (**i.e., Parcels A, F, and G**) shall be 6.0 with a maximum of 3.0 FAR for non-residential uses, except that a building within Parcels A, F, G, H, and I shall be permitted a maximum density of 7.0 **an additional density of up to 1.0 FAR is permitted, if reviewed and approved by the Zoning Commission pursuant to the standards and procedures of Subtitle K §§ 237.4 and 241;** provided that:

- (a) ~~The additional 1.0 FAR is devoted solely to residential uses, which for the purposes of this subsection does not include a hotel;~~ **To the extent that the approved additional FAR is devoted to residential uses, a minimum of eight percent (8%) of the additional residential density utilized shall be devoted to three (3) bedroom units that:**
 - (i) **May be located anywhere within the residential building;**
 - (ii) **Shall be set aside for households earning fifty percent (50%) or less of the Median Family Income (MFI) for a term of not less**

than thirty (30) years beginning on the date that certificate of occupancy is issued; and

(iii) May also serve as units that are set aside as affordable units pursuant to the terms of any land disposition or other agreement with the District of Columbia that mandates the provision of affordable housing; and

(b) ~~—A minimum of ten percent (10%) of the additional density gained pursuant to this section shall be devoted to three (3) bedroom units, provided that such units may be located anywhere within the residential building.—The reduction or elimination of this the requirements of paragraph (a) may be permitted by the Commission upon a showing by the applicant that exceptional circumstances affecting the property make compliance with this requirement difficult or impossible.~~

Subsection 202.2 is amended by replacing its existing text, which provided for combined lot developments, with the following:

202.2 The maximum permitted density for buildings in the SEFC-1B zone (i.e., Parcels D, E, H, I, and K) shall be 6.0 FAR with a maximum of 3.0 FAR for non-residential uses, except an additional density of up to 1.0 FAR is permitted on Parcels H or I if reviewed and approved by the Zoning Commission, pursuant to the standards and procedures of Subtitle K §§ 237.4 and 241; provided that:

(a) The additional density granted is devoted solely to residential uses, which for the purposes of this paragraph does not include a hotel; and

(b) A minimum of eight percent (8%) of the additional density utilized is devoted to three (3) bedroom units, that:

(i) May be located anywhere within the residential building;

(ii) Shall be set aside for households earning fifty percent (50%) or less of the Median Family Income (MFI) for a term of not less than thirty (30) years beginning on the date that certificate of occupancy is issued; and

(iii) May also serve as units that are set aside as affordable units pursuant to the terms of any land disposition or other agreement with the District of Columbia that mandates the provision of affordable housing; and

(c) The reduction or elimination of the requirements of paragraph (b) may be permitted by the Commission upon a showing by the

applicant that exceptional circumstances affecting the property make compliance with this requirement difficult or impossible.

§ 203, HEIGHT (SEFC-1), is amended, as follows:

Subsections 203.1 and 203.2 are amended to read as follows:

203.1 The maximum permitted building height, not including the penthouse, in the SEFC-1 zones shall be one hundred and ten feet (110 ft.), except as set forth below that:

- (a) ~~A site that has frontage on any portion of New Jersey Avenue, S.E., that is south of and within three hundred twenty two feet (322 ft.) of M Street, S.E., is permitted a maximum height of one hundred thirty feet (130 ft.);~~ The maximum permitted building height for Parcel A shall be one hundred thirty feet (130 ft.); and
- (b) ~~For a site within Parcels A, F, G, or H utilizing the bonus density permitted pursuant to Subtitle K § 202.1, the maximum permitted building height shall be that permitted by the Act to Regulate the Height Act. An additional twenty feet (20 ft.) of building height is permitted in Parcels F, G, and H if reviewed and approved by the Zoning Commission pursuant to the standards and procedures of Subtitle K §§ 237.4 and 241.~~

203.2 ~~A site that has frontage on any portion of New Jersey Avenue, S.E., that is south of and within three hundred twenty two feet (322 ft.) of M Street, S.E., is permitted a maximum height of one hundred thirty feet (130 ft.). Sites fronting on M Street, S.E., east of 4th Street, S.E., are restricted to a height of ninety feet (90 ft.) except that:~~

- (a) For Parcels D and E1, an additional twenty feet (20 ft.) of building height is permitted if reviewed and approved by the Zoning Commission pursuant to paragraph (c) of this subsection and the procedures of Subtitle K § 241;
- (b) For the remaining portions of Parcel E (i.e., excluding Parcel E1), an additional twenty feet (20 ft.) of building height is permitted only for a building that will be occupied by a federal use as a primary use, if such height is reviewed and approved by the Zoning Commission pursuant to paragraph (c) of this subsection and the procedures of Subtitle K § 241; and
- (c) For the purposes of the paragraph (a) and (b) reviews, the Zoning Commission shall consider the relationship of the new building to the Navy Yard and to the east and the report and consider

recommendations of the United States Navy submitted pursuant to Subtitle K § 242.3 The Zoning Commission may require graduated height and/or design features because of the building’s proximity to the Navy Yard.

Subsection 203.3 is repealed.

203.3 DELETED¹

Subsection 204.1 of § 204, LOT OCCUPANCY (SEFC-1), is amended to read as follows:

204.1 The maximum permitted lot occupancy in the SEFC-1 zones shall be one hundred percent (100%) for non-residential uses and seventy-five percent (75%) for residential uses.

Subsections 205.1 and 205.2 of § 205, FRONT SETBACK (SEFC-1), are amended to read as follows:

205.1 A front setback of fifteen feet (15 ft.) minimum for the entire height and frontage of each new building along M Street, S.E., measured from the face of the adjacent curb along M Street, S.E., shall be required in the SEFC-1 zones.

205.2 A front setback of twenty feet (20 ft.) minimum for the entire height and frontage of each new building along the east side of 4th Street, S.E., measured from the face of the adjacent curb along 4th Street, S.E., shall be required in the SEFC-1 zones.

Subsection 206.1 of § 206, REAR YARD (SEFC-1), is amended to read as follows:

206.1 A rear yard of two and one-half inches (2.5 in.) per one foot (1 ft.) of height or a minimum of twelve feet (12 ft.) shall be provided for each structure located in the SEFC-1 zones.

Subsection 209.1 of § 209, GREEN AREA RATIO (SEFC-1) is amended to read as follows:

209.1 A minimum green area ratio (GAR) of .20 shall be required in the SEFC-1 zones.

¹ Subsection 203.3 currently reads:

203.3 Sites fronting on M Street, S.E., east of 4th Street, S.E., are restricted to a height of ninety feet (90 ft.). A building height of one hundred ten feet (110 ft.) maximum is permitted if reviewed and approved by the Zoning Commission pursuant to the procedures of Subtitle K § 211. For the purposes of this review, the Zoning Commission shall consider the relationship of the new building to the Navy Yard to the east and may require graduated height and/or design features because of the building’s proximity to the Navy Yard.

Paragraph (a) of § 237.4 of § 237, USE PERMISSIONS (SEFC-1), is amended to read as follows:

237.4 Within the SEFC-1 zones, the following buildings, structures, and uses are permitted only if reviewed and approved by the Zoning Commission, in accordance with the standards specified in Subtitle K § 241 and procedures specified in Subtitle K § 242:

(a) All buildings and structures that have frontage along M Street, S.E.; **or for which the Zoning Commission considers a request for the additional density or height authorized by Subtitle K §§ 202 or 203;** subject also to the applicant proving that the architectural design, site plan, landscaping, and sidewalk treatment of the proposed building:

(1) Are of superior quality;

(2) **For buildings on Parcel A,** ~~Accommodate~~ the design of the public entrance to the Navy Yard Metrorail Station on Parcel A. The applicant shall demonstrate proactive engagement with the Washington Metrorail Area Transit Authority (WMATA) in the planning and design of Parcel A as a part of the above design review as set **forth** ~~for the~~ below:

(A) If the applicant moves forward with the **design of Parcel A before WMATA is ready to construct** ~~construction of the third entrance, before the applicant is ready to develop Parcel A,~~ the applicant shall demonstrate that it has coordinated with WMATA to **determine how to ensure that the design of Parcel A accommodates the planned entrance** ~~integrate the entrance into the design of Parcel A;~~ and²

² The Office of the Attorney included this revision to subparagraph (2)(A) to reflect the wording of the provision as it appeared at 11 DCMR § 1803.8(a)(1) of the Zoning Regulations of 1958 as of the date of its repeal and replacement with 11-K DCMR 237.4(a)(2)(A). Subparagraph 1803.8 (a)(1) read:

(a) Accommodates the design of a public entrance to the Navy Yard Metrorail Station on Parcel A. The applicant shall demonstrate proactive engagement with the Washington Metrorail Area Transit Authority (WMATA) in the planning and design of Parcel A as a part of the above design review as set forth below:

(1) If the applicant moves forward with the design of Parcel A before WMATA is ready to construct the third entrance, the applicant shall demonstrate that it has coordinated with WMATA to determine how to ensure that the design of Parcel A accommodates the planned entrance; and ...

- (B) If WMATA moves forward with the construction of the third entrance before the applicant is ready to develop Parcel A, the applicant shall demonstrate that it has coordinated with WMATA to integrate the entrance into the design of Parcel A;
- (3) Ensure the provision of 1 1/2 Street, S.E. and N Street, S/E. as open and uncovered multimodal circulation routes; and
- (4) Provide three (3) bedroom dwelling units as required pursuant to Subtitle K § 202.1.;

...

§ 240, COMBINED LOT DEVELOPMENT PROCEDURES (SEFC-1 AND SEFC-4), is repealed:

240 REPEALED

Subsection 241.2 of § 241, ZONING COMMISSION REVIEW STANDARDS (SEFC), is amended by adding a new paragraph (h) as follows:

241.2 In evaluating the application, the Zoning Commission also may consider:

- (a) Compatibility with buildings in the surrounding area through overall massing, siting, details, and landscaping;

...

- (g) For development within or adjacent to the SEFC-4 zone, the Zoning Commission may consider whether the project is consistent with the following goals:

- (1) Providing a wide variety of active and passive recreational uses;
- (2) Encouraging uses that open to, overlook, and benefit the waterfront park; and
- (3) Utilizing siting and design of buildings and uses to improve the natural ecology, to illustrate the importance of natural systems, and/or to interpret the historically important maritime context of the site; **and**

(h) For development on Parcel E, the Zoning Commission may consider the impact of the proposed development on the Navy Yard, including the report and recommendations of the United States Navy made pursuant to Subtitle K § 242.3.

§ 242, ZONING COMMISSION REVIEW PROCEDURES (SEFC), is amended by adding a new § 242.3 to read as follows:

242.3 **At the time of filing an application with the Zoning Commission for design review of development located on Parcel E, any such application shall be referred by the Office of Zoning to the United States Navy for review and report, and shall specifically request an assessment of the impact of the proposed development on the security and operations of the Washington Navy Yard, as well as recommendations for specific measures to be applied to the development and operation of the proposed project that is the subject of the application.**

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

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

Subsection 405.2 of § 405, REFERRALS TO AND REPORTS OF PUBLIC AGENCIES, is amended to read as follows:

405.2 As to those applications for which set down is not required, as soon as an application is accepted for filing by the Director, a copy of the application shall be referred to the Office of Planning and other appropriate agencies for review and comment. A copy shall also be sent for review and comment to:

...

(d) The United States Navy for those applications for approval of development of Parcel E pursuant to Subtitle K § 203.2.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 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, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF HEALTH CARE FINANCE**NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (“DHCF” or “Department”), pursuant to the authority set forth in An Act to enable the District of Columbia (“District”) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2016 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Chapter 27 (Medicaid Reimbursement for Fee for Service Pharmacies) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (“DCMR”).

These second emergency and proposed rules amend the Medicaid reimbursement methodology of covered outpatient drugs for fee for service pharmacies. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (“CMS”) promulgated federal rules that require all states to comply with reimbursement requirements for covered outpatient drugs in accordance with 42 CFR 447.500 – 447.522.

Under the federal rules, states must use actual acquisition costs (“AAC”) as part of the methodology to reimburse ingredient costs of brand name and multiple source drugs that do not have established federal upper limits (“FULs”). The federal rules also provided a definition of professional dispensing fees, which in effect requires states to restructure their professional dispensing fees to take into account additional costs (e.g., overhead, a pharmacist's time in checking the computer for information about an individual's coverage, performing drug utilization review and preferred drug list review activities, and packaging). These emergency and proposed rules amend §§ 2708 through 2711 to comply with the federal requirements for reimbursement methodology and dispensing fees.

First, the federal rules require that the District change its reimbursement methodology to use actual acquisition costs (“AAC”) for brand name and multiple source drugs. With this change, reimbursement for brand name drugs will be the lesser of the National Average Drug Acquisition Cost (“NADAC”), the Wholesale Acquisition Cost (“WAC”), or the usual and customary charges to the general public. Reimbursement for multiple source drugs would be the lesser of the established FUL, NADAC, WAC, the District Maximum Allowable Cost (“DMAC”), or usual and customary charges to the general public. DHCF expects a decrease in aggregate expenditures of approximately \$2,681,140 in FY 2017 and a decrease in aggregate expenditures of approximately \$6,434,735, each year, in FY 2018 through FY 2021.

The federal rules also require that the District reimburse pharmacies a professional dispensing fee that takes into account required factors and ensures the District rate is comparable to other jurisdictions. Taking these factors into account, the District’s reimbursement of the professional dispensing fee will increase from four dollars and fifty cents (\$4.50) to eleven dollars and fifteen cents (\$11.15), the fee amount derived from an analysis of a national cost of dispensing survey

and Virginia's state-wide professional dispensing survey. The District is also amending § 2702 to define the professional dispensing fee and clarify the types of costs included in its calculation.

The federal rules also specify the reimbursement methodologies that apply to: retail pharmacies; specialty drugs primarily dispensed through the mail; non-retail community pharmacies (*e.g.*, institutional or long-term care pharmacy when not included as part of an inpatient stay); clotting factor from Specialty Pharmacies Hemophilia Treatment Centers, Centers of Excellence; drugs acquired via the Federal Supply Schedule ("FSS"); drugs acquired at nominal price outside of 340B Drug Pricing Program and FSS; federally approved 340B covered entity pharmacies; and 340B contract pharmacies. These proposed rules make changes to conform to these federal requirements.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 5, 2017, at 64 DCR 004262. Three (3) sets of comments were received. Unity Health Care ("UHC"), RELX Group, and Mary's Center all responded to request for public comment. DHCF carefully considered all comments received and substantive changes were made as appropriate, as detailed below.

Drug File Vendors

RELX Group and UHC offered comments suggesting that DHCF change the manner in which it references drug file vendors in §§ 2708.2, 2708.5, and 2709.2. RELX Group and UHC both offered that the reference to the specific drug file vendor, First Data Bank, should be replaced by a more inclusive, broader reference to drug databases and drug file price compendia vendors generally. UHC offered that the reference to drug file vendors would be more accurate if replaced by a reference to "drug file pricing compendia vendors." DHCF agrees with these suggestions and is proposing amendments §§ 2708.2, 2708.5, and 2709.2 to reflect the requested changes.

340B Pharmacy Reimbursement

Mary's Center offered comments about reimbursement of entities participating under the 340B Drug Pricing Program. Mary's Center suggested that reimbursement based on 340B AAC is inadequate and adversely impacts the ability of safety net providers to provide treatment for their patients. Mary's Center suggested that the DHCF reimburse 340B entities using the lesser of the NADAC, the WAC, or the Pharmacy Usual and Customary ("U&C") for both brand name and multi-source drugs.

CMS has been prescriptive concerning Medicaid reimbursement rates for 340B-covered entities. In accordance with 42 CFR 447.518(a)(2), the District's payment methodology for drugs dispensed by 340B covered entities must be in accordance with the definition of AAC in 42 CFR 447.502 of the federal rules. For drugs purchased through the 340B program, reimbursement should not exceed the 340B ceiling price. If the drug is purchased outside the 340B program, the reimbursement should not exceed the provider's actual acquisition costs. The rule, as drafted, complies with federal requirements. Given the need to comply with federal requirements, DHCF is not proposing amendments at this time.

Professional Dispensing Fee

UHC suggested that an enhanced professional dispensing fee should be developed for 340B-covered entities and contract pharmacies that reflects the increased compliance costs and management costs of dispensing 340B drugs. Further, UHC argued that the use of national surveys of dispensing costs and a survey of Virginia rates to establish the DHCF's professional dispensing fee is inadequate because it does not take into account that the District is one of the highest-cost metropolitan areas in the nation.

DHCF's analysis of national dispensing fee data and the survey of neighboring states was compliant with CMS guidance to states on the establishment of the professional dispensing fee. DHCF is not proposing additional changes at this time.

Revisions to Conform with CMS Requirements and State Plan Submission

DHCF is also proposing changes in this rulemaking to comport with changes made to the District State Plan for Medical Assistance ("State Plan") based on comments and suggested changes by CMS. Pursuant to these comments, DHCF is proposing the following changes: (1) amendments to § 2703.1 to clarify the scope of the District's covered prescription drug benefit and align formatting with State Plan submission; (2) amendments to § 2706.3 to clarify that agents when used for sexual or erectile dysfunction are excluded from coverage except for limited medical uses; (3) amendments to § 2706.3 to clarify that agents when used for cosmetic purposes or hair growth are excluded from coverage except when medically necessary; (4) amendments to §§ 2708.2 and 2709.1 to conform ordering with the State Plan submission; (5) amendments to § 2710.2 to clarify that the District will provide coverage for outpatient drugs consistent with the requirements of Section 1927 of the Social Security Act; (6) amendments to § 2710.7 to remove a reference to an approximation of the 340B ceiling price; (7) amendments to § 2710.9 to further clarify that drugs acquired through the federal 340B drug pricing program and dispensed by 340B contract pharmacies are not covered; and (8) clarification in § 2710.11 that otherwise excluded or restricted drugs are covered for full benefit dual eligibles to the same extent they are covered for all other Medicaid beneficiaries.

DHCF is also proposing additional changes to clarify intent: 1) amendments to § 2703.1(a) to clarify that legend drugs are covered when approved for safety and effectiveness as a prescription drug by the U.S. Food and Drug Administration ("FDA") and prescribed for its FDA-approved indication; 2) updating the website link in §§ 2708.2(b) and 2709.2(a); 3) minor additions to § 2708.5 to clarify that the District Maximum Allowable Cost determination applies to multiple source drugs; 4) amendments to § 2710.5(c) to replace the reference to "institutional pharmacies" with "pharmacies in inpatient or residential care settings."

Finally, DHCF is proposing edits to § 2701.2, to require, as condition of participation with the District Medicaid Program, that pharmacy service providers cooperate with District Medicaid initiatives to provide information to beneficiaries at the point of sale. District Medicaid initiatives to provide information to beneficiaries at the point of sale may include, but are not limited to: (1) prominently displaying posters or notices; and (2) providing beneficiaries with individualized

notices, letters, or pamphlets. Implementation of the changes proposed in § 2701.2(d) is not dependent upon CMS approval.

These rules correspond to a SPA, which has been approved by the Council of the District of Columbia (“Council”) and CMS. The Council approved the corresponding SPA through the Fiscal Year 2017 Budget Support Act of 2016, effective October 8, 2016 (D.C. Law No. 21-160; 63 DCR 12932). CMS approved the SPA on June 28, 2017 with an effective date of May 6, 2017.

These emergency rules were adopted on March 14, 2018 and became effective immediately. These emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until July 12, 2018, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 27, MEDICAID REIMBURSEMENT FOR FEE FOR SERVICE PHARMACIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 2701 [PROVIDER PARTICIPATION], is amended to read as follows:

2701 PROVIDER PARTICIPATION

2701.1 A provider of pharmacy services shall be a licensed pharmacy. To participate in the District of Columbia’s Medicaid Program, the provider shall:

- (a) Fully comply with any applicable District, state and federal laws or regulations governing the provision and reimbursement of pharmacy services; and
- (b) Complete and sign the Medicaid Provider Agreement.

2701.2 As a condition of participation, the provider shall be required to comply with the following requirements:

- (a) Perform prospective drug utilization review before dispensing each prescription. This shall include screenings for, but not limited to, the following:
 - (1) Therapeutic duplication;
 - (2) Drug-disease contraindications;
 - (3) Drug interactions;

- (4) Incorrect dosage indication, or duration;
 - (5) Drug allergies; and
 - (6) Abuse or misuse;
- (b) Provide patient counseling on all matters which, in the provider's professional judgment, shall be deemed significant, including:
- (1) Name and/or description of the medication;
 - (2) Route, dosage form, and duration of therapy;
 - (3) Directions for use;
 - (4) Common side effects;
 - (5) Potential adverse reactions, contraindications;
 - (6) Storage; and
 - (7) Refill information;
- (c) Obtain, record, and maintain patient profiles including the following:
- (1) Name, address, phone number, age and gender;
 - (2) Individual history (i.e., diseases, allergies, drug reactions);
 - (3) Comprehensive listing of medications; and
 - (4) Relevant comments; and
- (d) Cooperate with any District of Columbia Medicaid Program initiatives to provide information to beneficiaries at the point of sale including, but not limited to:
- (1) Prominently displaying posters or notices; and
 - (2) Providing beneficiaries with individualized notices, letters, or pamphlets.

Section 2702 [RESERVED], is amended to read as follows:

2702 PROFESSIONAL DISPENSING FEE

2702.1 Medicaid reimbursement of covered outpatient drugs to fee for service pharmacies shall include a professional dispensing fee. A professional dispensing fee is a fee that:

- (a) Is incurred at the point of sale or service;
- (b) Pays for pharmacy costs in excess of the ingredient cost of a covered outpatient drug each time a covered outpatient drug is dispensed;
- (c) Includes only pharmacy costs associated with ensuring that possession of the appropriate covered outpatient drug is transferred to a Medicaid beneficiary. Pharmacy costs include, but are not limited to reasonable costs associated with delivery, special packaging and overhead associated with maintaining the facility and equipment necessary to operate the pharmacy, and a pharmacist's time spent:
 - (1) Checking the computer for information about an individual's coverage
 - (2) Performing drug utilization review and preferred drug list review activities;
 - (3) Measuring or mixing of the covered outpatient drug;
 - (4) Filling the container;
 - (5) Counseling a beneficiary; and
 - (6) Physically providing the completed prescription to the Medicaid beneficiary.

2702.2 The professional dispensing fee shall not include administrative costs incurred by the District in the operation of the covered outpatient drug benefit including systems costs for interfacing with pharmacies.

Subsection 2703.1 of Section 2703, REIMBURSEMENT FOR PRESCRIPTIONS, is amended as follows:

2703.1 The District of Columbia Medicaid Program shall reimburse claims submitted by participating providers for the following prescriptions:

- (a) Legend drugs that are approved for safety and effectiveness as prescription drugs by the U.S. Food and Drug Administration ("FDA") and prescribed for their FDA-approved indication;

- (b) Over-the-counter (“OTC”) medications as listed in the District Medicaid Preferred Drug List and the Pharmacy Billing Manual. The following categories of OTC medications shall be covered when prescribed by a licensed provider:
- (1) Oral Analgesics with a single active ingredient (*e.g.*, aspirin, acetaminophen, and ibuprofen);
 - (2) Ferrous salts (sulfate, gluconate);
 - (3) Antacids (aluminum, magnesium, bismuth);
 - (4) Diabetic preparations (*e.g.*, Insulin);
 - (5) Single agent Vitamin B1, Vitamin B6, Vitamin B12, Vitamin D, folic acid products, and geriatric vitamins;
 - (6) Family planning drugs;
 - (7) Senna extract;
 - (8) Smoking cessation products;
 - (9) Single ingredient antihistamine medications;
 - (10) Single ingredient cough and cold medications; and
 - (11) Select agents when used for anorexia, weight loss, or weight gain as indicated in the District Medicaid Preferred Drug List and the Pharmacy Billing Manual;
- (c) Prenatal vitamins and fluoride preparations, as required under Section 1927 of the Social Security Act;
- (d) Diabetic preparations (*e.g.*, blood glucose monitors, blood glucose test strips, syringes), when prescribed by a licensed provider; and
- (e) Other drugs or products used for mitigating disease in the event of a public health emergency.

Subsection 2706.3 of Section 2706, LIMITATIONS AND REQUIREMENTS FOR CERTAIN SERVICES, is amended to read as follows:

2706.3 The drugs or classes of drugs listed in § 1927(d)(2) of Title XIX of the Social Security Act (42 U.S.C. § 1396r-8(d)(2)) shall be excluded from coverage unless specifically placed, either individually or by drug class, on the Medicaid Preferred

Drug List of prior authorized drugs based on FDA-approved indications. The following categories of medications shall be excluded from the Medicaid outpatient pharmacy benefit:

- (a) A drug which has been issued a “less than effective” (“LTE”) rating by the FDA or a drug that is “identical, related or similar” to an LTE drug;
- (b) A drug that has reached the termination date established by the drug manufacturer;
- (c) A drug that the drug manufacturer has not entered into or has not complied with a rebate agreement for in accordance with § 1927(a) of Title XIX of the Social Security Act (42 U.S.C. § 1396r-8(a)), unless DHCF reviewed and determined that it shall be in the best interest of a Medicaid beneficiary to make a payment for the non-rebated drug;
- (d) Investigational drugs;
- (e) Over-the-counter drugs provided by nursing home pharmacies;
- (f) Weight loss;
- (g) Fertility;
- (h) Non-prescription cough and cold;
- (i) Non-prescription vitamin and mineral products;
- (j) Agents when used for the treatment of sexual or erectile dysfunction except for limited medical uses as required by federal law; and
- (k) Agents when used for cosmetic purposes or hair growth except when the District has determined that use to be medically necessary.

Section 2708, MAXIMUM ALLOWABLE COST (MAC) FOR PRESCRIBED MULTIPLE SOURCE DRUGS, is deleted in its entirety and amended to read as follows:

2708 REIMBURSEMENT FOR MULTIPLE SOURCE DRUGS

2708.1 A multiple source drug is a covered outpatient drug for which there is at least one other drug product that is:

- (a) Rated as therapeutically equivalent as reported in the FDA's “Approved Drug Products with Therapeutic Equivalence Evaluations” which is available at <http://www.accessdata.fda.gov/scripts/cder/ob/>;
- (b) Pharmaceutically equivalent and bioequivalent, as determined by the FDA; and

(c) Sold or marketed in the United States during the rebate period.

2708.2 Reimbursement for multiple source drugs shall include a professional dispensing fee in the amount of eleven dollars and fifteen cents (\$11.15) plus the lesser of:

(a) The Federal Upper Limit (“FUL”) of the drug for multiple source drugs, with the exception of the following:

(1) Multiple source drugs that do not have FULs; and

(2) Brand name drugs for which a prescriber has certified in writing as “Dispense as Written” or “Brand Necessary,” subject to the requirements set forth under § 2708.3;

(b) The National Average Drug Acquisition Cost (“NADAC”) when available, which shall be published online at:
<https://www.medicaid.gov/medicaid/prescription-drugs/pharmacy-pricing/index.html>;

(c) The Wholesale Acquisition Cost (“WAC”) plus zero percent (0%), which shall be kept by drug file pricing compendia vendors or drug databases approved by and in use at the federal level;

(d) The pharmacy’s usual and customary charges to the general public; or

(e) The District Maximum Allowable Cost (“DMAC”) established pursuant to §§ 2708.4 and 2708.5.

2708.3 Certification of “Dispense as Written” or “Brand Necessary,” as described in § 2708.2, shall be subject to the following requirements:

(a) The handwritten phrase “Dispense as Written” or “Brand Necessary” shall appear on the face of the prescription form;

(b) If the prescription is for a nursing facility resident, a handwritten phrase “Dispense as Written” or “Brand Necessary” shall be documented in the resident’s medical record accompanied by a copy of the physician’s order and plan of care; and

(c) A dual line prescription form, a check-off box on the prescription form, and a check-off box on the physician’s orders and plan of care shall not satisfy the certification requirement.

2708.4 A DMAC may be established for any drug for which there are two (2) or more A-rated therapeutically equivalent, source drugs with a significant cost difference. The DMAC shall be determined taking into account drug price status (non-rebatable, rebatable), marketplace status (obsolete, regional availability),

equivalency rating (A-rated), and relative comparable pricing. Other factors that may be considered are clinical indications of generic substitution, utilization, and availability in the marketplace.

2708.5 The DMAC for multiple source drugs shall be determined as follows:

- (a) Multiple drug pricing resources shall be utilized to determine the pricing for multiple source drugs, applying the necessary multipliers to ensure reasonable access by providers to the drug at or below the determined pricing benchmark; and
- (b) The resources used to determine DMAC shall be maintained by a vendor under contract with DHCF, and include but are not limited to pharmacy providers, wholesalers, drug file pricing compendia vendors or drug databases approved by and in use at the federal level, and pharmaceutical manufacturers, or any current equivalent pricing benchmark.

2708.6 DHCF shall supplement the CMS listing for DMAC pricing described in § 2708.2(e) by adding drugs and their prices, which meet the following requirements:

- (a) The formulation of the drug approved by the U.S. Food and Drug Administration (FDA) has been evaluated as therapeutically equivalent in the most current edition of its publication, Approved Drug Products with Therapeutic Equivalence Evaluations (including supplements or in successor publications); and
- (b) At least two (2) suppliers list the drug (which has been classified by the FDA as category “A” in its publication, Approved Drug Products with Therapeutic Equivalence Evaluations, including supplements or in successor publications) based on listing of drugs which are locally available.

Section 2709, METHODS FOR DETERMINING COST FOR SINGLE SOURCE DRUGS, is deleted in its entirety and amended to read as follows:

2709 REIMBURSEMENT FOR BRAND NAME DRUGS

2709.1 Reimbursement for brand name drugs shall include a professional dispensing fee in the amount of \$11.15 and the lesser of:

- (a) The pharmacies’ usual and customary charges to the general public; or
- (b) The Actual Acquisition Cost (AAC), which shall be determined by DHCF in accordance with § 2709.2.

- 2709.2 The AAC shall be determined by DHCF based upon the lesser of:
- (a) The NADAC when available, which shall be published online at <https://www.medicaid.gov/medicaid/prescription-drugs/pharmacy-pricing/index.html>; or
 - (b) The WAC plus zero percent (0%), which shall be kept by drug file pricing compendia vendors or drug databases approved by and in use at the federal level.

Section 2710, CLAIMS REIMBURSEMENT REQUIREMENTS FOR RETAIL PHARMACIES, is deleted in its entirety and amended to read as follows:

2710 CLAIMS REIMBURSEMENT REQUIREMENTS FOR PHARMACIES

- 2710.1 Reimbursement by the Department shall be restricted to only those drugs supplied from manufacturers that have a signed a national rebate agreement or an approved existing agreement, as specified in § 1927(a) of Title XIX of the Social Security Act (42 U.S.C. § 1396r-8(a)).
- 2710.2 To be reimbursable, all prescriptions shall comply with District and federal laws and regulations for legal prescriptions. The District of Columbia will provide reimbursement for covered outpatient drugs consistent with prior authorization and other requirements under § 1927 of the Social Security Act.
- 2710.3 To be reimbursable, all prescriptions that have been written, verbally ordered, or electronically initiated by a licensed prescriber shall contain the following information on the prescription form:
- (a) Name and address of patient;
 - (b) Individual Prescriber's Name and National Provider Identifier;
 - (c) Name, strength, and quantity of the medication;
 - (d) Directions for use;
 - (e) Number of refills, if any;
 - (f) Indication for "Dispense as Written" or "Brand necessary," when applicable; and
 - (g) Signature and date of the prescriber.

- 2710.4 To be reimbursable, prescriptions for controlled substances ordered by a licensed prescriber shall contain the prescription requirements set forth in § 2710.3 and include the following additional information:
- (a) The Drug Enforcement Agency (“DEA”) number of the licensed prescriber;
 - (b) The District of Columbia controlled substance registration number of the licensed prescriber; and
 - (c) The X-DEA number of the licensed prescriber for buprenorphine/naloxone drug preparations.
- 2710.5 The reimbursement methods for brand name drugs and multiple source drugs, set forth under §§ 2708 and 2709 of this Chapter, shall apply to the following claims, as appropriate:
- (a) Pharmacy claims for retail pharmacy providers;
 - (b) Specialty drugs primarily dispensed through the mail;
 - (c) Claims from pharmacies in inpatient or residential care settings when not included as part of an inpatient stay;
 - (d) Clotting factors from Specialty Pharmacies Hemophilia Treatment Centers, Centers of Excellence;
 - (e) Drugs acquired via the Federal Supply Schedule (“FSS”); and
 - (f) Drugs acquired at nominal price (outside of 340B Drug Pricing Program and FSS).
- 2710.6 Except for 340B of the Public Health Service Act (340B) contract pharmacies, federally approved 340B covered entity pharmacies that include Medicaid claims in the 340B Drug Pricing Program shall be reimbursed in accordance with §§ 2710.7 or 2710.8, as applicable, plus the professional dispensing fee of eleven dollars and fifteen cents (\$11.15).
- 2710.7 The submitted ingredient cost for drugs purchased through the Federal Public Health Service’s 340B Drug Pricing Program shall mean the 340B acquisition cost, and shall be reimbursed no higher than the 340B ceiling price as published. 340B covered entity pharmacies shall include the National Council for Prescription Drug Program (NCPDP) indicator on each claim for drugs purchased through the 340B program.

- 2710.8 Drugs purchased outside of the 340B program shall be submitted without the NCPDP 340B claim indicator described in § 2710.7, and shall be reimbursed using the methodology described in §§ 2708 and 2709, as applicable, plus up to the established professional dispensing fee of eleven dollars and fifteen cents (\$11.15). All applicable Federal and District Supplemental rebates shall be applied to claims submitted without the NCPDP 340B claim indicator.
- 2710.9 Drugs acquired through the 340B drug pricing program and dispensed by 340B contract pharmacies are not covered. DHCF shall not reimburse prescription claims submitted by 340B contract pharmacies.
- 2710.10 340B contract pharmacies shall exclude Medicaid claims from the 340B Drug Pricing Programs.
- 2710.11 Drugs covered by Medicare for persons who are dually eligible for Medicare and Medicaid shall be billed to Medicare under the Medicare Prescription Drug Benefit Part D. The Medicaid program provides coverage to persons who are dually eligible for excluded or otherwise restricted classes of drugs to the same extent that it provides coverage to all Medicaid beneficiaries.
- 2710.12 Nursing facility pharmacies shall be reimbursed for an additional supply of covered medications when dispensed for use by a beneficiary residing in a long-term care facility during a short-term medically approved trip away from the facility.
- 2710.13 Nursing facility pharmacies' reimbursement for prescribed drugs for patients in their care shall not include the following prescription drugs and items which have been included in the Medicaid reimbursement rates for nursing facilities:
- (a) Over-the-counter medications;
 - (b) Syringes for diabetic preparations;
 - (c) Geriatric vitamin formulations; and
 - (d) Senna extract single dose preparations except when required for diagnostic radiological procedures performed under the supervision of a physician.

Section 2711, CLAIMS REIMBURSEMENT REQUIREMENTS FOR NURSING HOME PHARMACY PROVIDERS, is deleted in its entirety and amended as follows:

2711 [RESERVED]

Section 2799, DEFINITIONS, is amended to read as follows:

2799 DEFINITIONS

For purposes of this chapter, the following terms and phrases shall have the meanings ascribed:

Actual Acquisition Costs – DHCF’s determination of the pharmacy providers’ actual prices paid to acquire drug products marketed or sold by specific manufacturers.

Brand - Any registered trade name commonly used to identify a drug.

Brand name drugs – A single source or innovator multiple source drug.

Compound medication – Any prescription drug, excluding cough preparations, in which two (2) or more ingredients are extemporaneously mixed by a registered pharmacist.

Container – A light resistant receptacle designed to hold a specific dosage form which is or maybe in direct contact with the item and does not interact physically or chemically with the item or adversely affect the strength, quality, or purity of the item.

Department of Health Care Finance – The executive department responsible for administering the Medicaid program within the District of Columbia.

Federal Supply Schedule – A multiple award, multi-year federal contract for medical equipment, supplies, pharmaceutical, or service programs that is available for use by federal government agencies that complies with all federal contract laws and regulations. Pricing is negotiated based on how vendors do business with their commercial customers.

Federal Upper Limit – The upper limits of payment established by the Centers for Medicare and Medicaid Services, consistent with the requirements set forth under 42 CFR §§ 447.512 – 447.516.

Generic drug – A drug that is produced and distributed without patent protection.

Investigational drug – A drug that is under study but does not have permission from Food and Drug Administration to be legally marketed and sold in the U.S.

Legend drug – A drug that can only be dispensed to the public with a prescription.

Medicaid Drug Rebate Program – The program created pursuant to the Omnibus Budget Reconciliation Act of 1990, approved November 5, 1990 (104 Stat. 1388, 42 USC § 1396r-8) (OBRA 1990), which requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services (HHS) for states to receive Federal funding for outpatient drugs dispensed to Medicaid patients.

Maintenance narcotic medication – A narcotic medication that has been dispensed in quantities sufficient for thirty (30) days or more for pain management therapy.

Pharmacy benefit manager – A company under contract with DHCF to manage pharmacy networks, provide drug utilization reviews, outcome management and disease management.

340B Covered Entity Pharmacy – An in-house pharmacy of an entity that meets the requirements set forth in § 340B(a)(4) of the Public Health Services Act.

340B Contract Pharmacy – A pharmacy dispensing drugs on behalf of a covered entity described at § 340B(a)(4) of the Public Health Services Act.

X-DEA number – A unique identification number (x-number) assigned by the Drug Enforcement Administration under the Drug Addiction Treatment Act of 2000 in order to prescribe or dispense buprenorphine/naloxone drug preparations.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2018-032
March 15, 2018

SUBJECT: Appointment – Interim Director, Department of Employment Services


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), it is hereby **ORDERED** that:

1. **UNIQUE MORRIS-HUGHES** is appointed Interim Director, Department of Employment Services, and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2017-135, dated May 25, 2017.
3. **EFFECTIVE DATE:** This Order shall become effective March 16, 2018.



MURIEL BOWSER
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2018-033
March 15, 2018

SUBJECT: Appointment – Director, Mayor’s Office of Legal Counsel

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 101(a) of the Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013, effective December 13, 2013, D.C. Law 20-60, D.C. Official Code §1-608.51a (2016 Repl.), it is hereby **ORDERED** that:

1. **RONALD ROSS** is appointed Director, Mayor’s Office of Legal Counsel.
2. This Order supersedes Mayor’s Order 2015-072, dated February 5, 2015.
3. **EFFECTIVE DATE:** This Order shall become effective on March 16, 2018.



MURIEL BOWSER
MAYOR

ATTEST: 

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

ACHIEVEMENT PREP PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Curriculum Provision and Professional Development Services**

Achievement Prep Public Charter School intends to enter into a sole source contract with Wilson Language Training to procure training and curriculum materials associated with the Wilson Method Coaching Framework for classroom instruction and professional development. For further information regarding this notice, contact bids@achievementprep.org no later than **5:00 pm, March 30, 2018**.

OFFICE OF ADMINISTRATIVE HEARINGS**DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES****PUBLIC NOTICE OF MEETING**

In accordance with D.C. Code § 2-576(1), the District of Columbia Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (Commission) hereby gives notice that it will meet to interview candidates for vacant administrative law judge positions. These interviews will be closed the public pursuant to D.C. Code § 2-575(10) as they involve confidential personnel matters.

The interviews will be conducted on Monday, March 26, 2018 beginning at 9:30 a.m. The interviews will be conducted at the following location:

Office of Administrative Hearings
441 Fourth Street NW, Suite 450 North
Washington, DC 20001

For further information, please contact Shauntinique Steele at nikki.steele@dc.gov or 202-741-5303.

AGENDA**I. Interviews of administrative law judge candidates**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MARCH 28, 2018
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
James Short, Donald Isaac, Sr., Bobby Cato, Rema Wahabzadah,

Show Cause Hearing (Status) 9:30 AM
Case # 17-CC-00066; Prospect Dining, LLC, t/a Chinese Disco, 3251 Prospect
Street NW, License #78058, Retailer CR, ANC 2E
Sale to Minor Violation

Show Cause Hearing (Status) 9:30 AM
Case # 17-CIT-00020; CM-Yards, LLC, t/a 100 Montaditos, 300 Tingey Street
SE, License #94846, Retailer CR, ANC 6D
No ABC Manager on Duty

Fact Finding Hearing* 10:00 AM
Case # 17-251-00136; Bixton Pub, LLC, t/a The Brixton, 901 U Street NW
License #82871, Retailer CT, ANC 1B
Person Injured Outside of the Establishment

Show Cause Hearing* 11:00 AM
Case # 17-CMP-00683; Kiss, LLC, t/a Kiss Tavern, 637 T Street NW, License
#104710, Retailer CT, ANC 1B
Violation of Settlement Agreement

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

Protest Hearing* 1:30 PM
Case # 18-PRO-00004; ANB with Double H, LLC, t/a French 75, 1400 14th
Street NW, License #108192, Retailer CT, ANC 2F
Application for a New License

Board's Calendar

March 28, 2018

Protest Hearing*

4:30 PM

Case # 18-PRO-00002; Lovable Business, LLC, t/a Infusion Club and Restaurant, 1725 Columbia Road NW, License #108251, Retailer CT, ANC 1C

Application for a New License

This hearing is cancelled due to the submission of a Settlement Agreement for the Board's review and approval.

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

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

**NOTICE OF MEETING
CANCELLATION AGENDA**

**WEDNESDAY, MARCH 28, 2018
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-091046 – **Noodles & Company** – Retail – C – Restaurant – 1667 K Street NW
[Licensee requested cancellation.]

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

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, MARCH 28, 2018
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, March 28, 2018 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”

1. Case# 18-CMP-00017, Vita Restaurant and Lounge/Penthouse Nine, 1318 9th Street N.W., Retailer CT, License # ABRA-086037

2. Case# 18-251-00021, Kabin, 1337 Connecticut Avenue N.W., Retailer CT, License # ABRA-091276

3. Case# 18-CMP-00034, Capitol Fine Wine & Spirits, 415 H Street N.E., Retailer A, License # ABRA-082981

4. Case# 18-CMP-00033, Ming’s, 617 H Street N.W., Retailer CR, License # ABRA-083415

5. Case# 18-251-00008, Saint Yves, 1220 Connecticut Avenue N.W., Retailer CT, License # ABRA-099876

6. Case# 18-CMP-00035, Pho 88 Noodles and Grill, 608 H Street N.W., Retailer DR, License # ABRA-101629

7. Case# 18-CMP-00036, The Matchbox, 711-713 H Street N.W., Retailer CT, License # ABRA-060581

8. Case# 18-CMP-00038, Eat First, 609 H Street N.W., Retailer CR, License # ABRA-060387

9. Case# 18-CMP-00039, & Pizza, 705 H Street N.W., Retailer CR, License # ABRA-098584

10. Case# 18-CMP-00037, Lupo Verde, 1401 T Street N.W., Retailer CR, License # ABRA-088527

11. Case# 18-AUD-00006, Asia Nine Bar and Lounge, 915 E Street N.W., Retailer CR, License # ABRA-076177

12. Case# 18-AUD-00007, Nando's Peri Peri, 300 Tingey Street S.E., Retailer CR, License # ABRA-092802

13. Case# 18-AUD-00008, Café Romeo's, 2132 Wisconsin Avenue N.W., Retailer CR, License # ABRA-088282

14. Case# 18-AUD-00009, Equinox, 818 Connecticut Avenue N.W., Retailer CR, License # ABRA-026656

15. Case# 18-AUD-00010, Co Co Sala, 927 F Street N.W., Retailer CR, License # ABRA-076457

16. Case# 17-CMP-00046, Chinese Disco, 3251 Prospect Street N.W., Retailer CR, License # ABRA-078058

17. Case# 18-251-00036, 18th Street Lounge, 1212 18th Street N.W., Retailer CT, License # ABRA-021211

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, MARCH 28, 2018 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 6B. SMD 6B04.
No outstanding fines/citations. No outstanding violations. No pending enforcement matters.
No conflict with Settlement Agreement. *Senart's Oyster and Grille Room*, 520 8th Street SE, Retailer CR, License No. 107079.

2. Review Application for Safekeeping of License – Original Request. ANC 5C. SMD 5C02.
No outstanding fines/citations. No outstanding violations. No pending enforcement matters.
No conflict with Settlement Agreement. *Premier Wines*, 2414 Douglas Street NE, Retailer A
Liquor Store, License No. 093868.

3. Review Application for Safekeeping of License – Original Request. ANC 6B. SMD 6B06.
No outstanding fines/citations. No outstanding violations. No pending enforcement matters.
No conflict with Settlement Agreement. *Safeway #4205*, 415 14th Street SE, Retailer A,
License No. 097707.

4. Review Application for Safekeeping of License – Original Request. ANC 2C. SMD 2C01.
No outstanding fines/citations. No outstanding violations. No pending enforcement matters.
No Settlement Agreement. *Ping Pong Dim Sum*, 900 7th Street NW, Retailer CR, License
No. 105730.

5. Review Application for Safekeeping of License – Original Request. ANC 6A. SMD 6A02.
No outstanding fines/citations. No outstanding violations. There is one pending enforcement
matter. No conflict with Settlement Agreement. *Touche Live*, 1123 H Street NE, Retailer
CT, License No. 104866.

6. Review Request to Extend Safekeeping of License – Eighth Request. Original Safekeeping Date: 7/1/2005. ANC 2F. SMD 2F05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***The Roberts Law Group, PLLC***, 1029 Vermont Avenue NW, Retailer CN, License No. 083728.

7. Review Request to Extend Safekeeping of License – Seventh Request. Original Safekeeping Date: 12/5/2013. ANC 6D. SMD 6D01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***L'Enfant Plaza Hotel***, 480 L'Enfant Plaza SW, Retailer CH, License No. 093846.

8. Review Request to Extend Safekeeping of License – Fourth Request. Original Safekeeping Date: 4/20/2016. ANC 2F. SMD 2F08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Twelve and K Hotel***, 1201 K Street NW, Retailer CH, License No. 095442.

9. Review Request to Extend Safekeeping of License – Fourth Request. Original Safekeeping Date: 6/8/2016. ANC 2E. SMD 2E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***TBD (Thor 3000 M Street LLC)***, 3000 M Street NW, Retailer CH, License No. 102572.

10. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: 9/13/2017. ANC 4A. SMD 4A04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Serengeti***, 6210 Georgia Avenue NW, Retailer CR, License No. 022889.

11. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: 1/31/2018. ANC 2C. SMD 2C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***The Levy Restaurants At Verizon Center***, 601 F Street NW, Retailer CX, License No. 060462.

12. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: 11/29/2017. ANC 5E. SMD 5E10. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Jubilee Market*, 2316 4th Street NE, Retailer B, License No. 074162.
-

13. Review Application for Tasting Permit. ANC 8B. SMD 8B06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Shipley Super Market*, 2283 Savannah Street SE, Retailer B, License No. 109067.
-

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

DC MAYOR'S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS**DC MAYOR'S COMMISSION ON ASIAN AND
PACIFIC ISLANDER AFFAIRS****NOTICE OF REGULAR MEETING**

The DC Mayor's Commission on Asian and Pacific Islander Affairs will be holding its regular meeting on March 21, 2018 at 6:30 pm.

The meeting will be held at the MOAPIA office at One Judiciary Square, 441 4th Street NW, Suite 721N, Washington, DC 20001. The location is closest to the Judiciary Square metro station on the red line of the Metro. All commission meetings are open to the public. If you have any questions about the commission or its meetings, please contact oapia@dc.gov.

The DC Commission on Asian and Pacific Islander Affairs convenes meetings to discuss current issues affecting the DC Asian American and Pacific Islander (AAPI) community.

MEETING AGENDA**DC Commission on Asian and Pacific Islander Affairs Monthly Meeting
Wednesday, March 21, 2018 at 6:30 pm****Meeting Location: 441 4th St NW, Room 721 North Washington, DC**

Call to Order

Introduction of Commissioners

Quorum

Approval of Agenda

Approval of February 2018 Meeting Minutes

Brief Community Announcements and Presentations

1. Ms. Marshella Toldson, Esq. QEM Network, Ward 2 Prevention Coalition, a Partnership between Community and Department of Behavioral Health
2. Cherry Blossom Festival, April 7-28, 2018

Executive Reports and Business Items

1. Director's Report presented by MOAPIA Director David Do
2. Happy Hour for Commissioners and MOAPIA Staff
3. Ideas for new events or projects that the Commission would like MOAPIA to consider (All)

State of Chinatown

1. Judiciary House, 461 H St NW: Stabbing, Murder and Consequential Meetings between ANC, MCL, MPD & DCHA.
2. Proposed Plans to Renovate the Arch at 7th & H St NW.

APIA Heritage Month Celebration

1. AAPI Heritage Month Award Nominations Review and Discussion (All)

AAPI Leadership Forum Update, Martha Watanabe, Commissioner**Meeting Adjournment**

Next Meeting:

Wednesday, April 18, 2018 at 6:30pm

441 4th Street NW, Room 721 North, Washington, DC 20001

Questions:

John Tinpe Chairman, John.Tinpe@dcbc.dc.govBen Takai, Vice Chair & Secretary, Ben.Takai@dcbc.dc.gov

**DEPARTMENT OF BEHAVIORAL HEALTH
BEHAVIORAL HEALTH PLANNING COUNCIL**

NOTICE OF PUBLIC MEETING

The District of Columbia Department of Behavioral Health will hold its next meeting on Friday, March 30, 2018 10:00 AM – 12:00 PM. The meeting will be held at the DC Department of Behavioral Health, 64 New York Avenue NE, Room 284e, Washington, D.C. 20002.

Below is the agenda for this meeting. Please RSVP to Jocelyn Route jocelyn.route@dc.gov, and for additional information or assistance call (202)671-3204 or e-mail jocelyn.route@dc.gov.

AGENDA

- I. Call to Order: Welcome, Introductions, & Roll Call
- II. Agenda Review & Approval
- III. Deputy Director's Report
- IV. Committee Chair Reports
- IV. New Business
 - I. DBH Results Based Accountability
 - II. Elections for Vacant Council Offices
 - III. Bylaw Amendments
- V. Next Steps for Council
- VI. Public Comment
- VI. Meeting Adjournment

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**

Vacant Building Enforcement

Address:	Square:	Lot:
1220 Irving Street NW	2850	0117

The Department of Consumer and Regulatory Affairs (DCRA) has reviewed and **approved** your request for exemption from the Vacant Building Registration requirements, for the property listed above, for the following reason(s): **Economic Hardship**

Based on the supporting evidence provided, you are exempt from the vacant tax rate for **2018 tax year ONLY**. Annually you are required by law to register vacant property or seek an exemption for the current tax year. DCRA will notify the Office of Tax and Revenue (OTR) to reclassify the subject property as a Class 1/Class 2. DCRA reserves the right to revoke this exemption if the building is not maintained in accordance with the Vacant Building Maintenance standards, or if disqualifying information is obtained.

D.C. CRIMINAL CODE REFORM COMMISSION

NOTICE OF PUBLIC MEETING

WEDNESDAY, APRIL 4, 2018 AT 10:00 AM
441 4TH STREET N.W., ROOM 1112, WASHINGTON, D.C., 20001

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, April 4, 2018 at 10am. The meeting will be held in Room 1112 of the Citywide Conference Center on the 11th Floor of 441 Fourth St., N.W., Washington, DC. The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov. The agency address is 441 4th St NW, Suite 1C001S, Washington, D.C., 20001.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Advisory Group Written Comments on Draft Reports and Memoranda:
 - (A) Third Draft of Report #2, *Basic Requirements of Offense Liability*;
 - (B) First Draft of Report #13, *Criminal Attempt Penalties*;
 - (C) First Draft of Report #14, *Definitions for Offenses Against Persons*;
 - (D) First Draft of Report #15, *Assault and Offensive Physical Contact Offenses*;
 - (E) First Draft of Report #16, *Robbery*; and
 - (F) First Draft of Report #17, *Criminal Menace and Criminal Threat Offenses*.
- III. Discussion of Draft Reports and Memoranda Under Advisory Group Review:
 - (A) First Draft of Report #18, *Solicitation and Renunciation*;
 - (B) First Draft of Report #19, *Homicide*;
 - (C) First Draft of Report #20, *Abuse & Neglect of Children, Elderly, and Vulnerable Adults*;
 - (D) Second Draft of Report #14, *Definitions for Offenses Against Persons*;
 - (E) Advisory Group Memorandum #16, *Supplemental Materials to the First Draft of Report #18*; and
 - (F) Advisory Group Memorandum #17, *Supplemental Materials to the First Draft of Reports #19-20*.
- IV. Adjournment.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

**Certification of Filling a Vacancy
In Advisory Neighborhood Commission**

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

JAMES HARNETT
Single-Member District 2A08

TAYLOR BERLIN
Single-Member District 3D07

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit No. 7193 to Roubin & Janeiro, Inc. to construct and operate portable screener equipment at the Roubin & Janeiro, Inc. hot mix asphalt plant facility located at 4901 Shepherd Parkway SW, Washington DC 20032. The contact person for the facility is Joe Roubin, Vice President, at (703) 491-9100.

The proposed overall emission limits for the equipment are as follows:

- a. Emissions from the engine shall not exceed those found in the following table, as measured according to the procedures set forth in 40 CFR 89, Subpart E for NMHC, NO_x, and CO and 40 CFR 89.112(c) for PM. [40 CFR 60.4204(b), 40 CFR 60.4201(a), and 40 CFR 89.112(a)-(c)]

Pollutant Emission Limits (g/kW-hr)		
NMHC+NO _x	CO	PM
4.0	5.0	0.30

- b. Emissions of dust shall be minimized in accordance with the requirements of 20 DCMR 605 and the “Operational Limitations” of the permit.
- c. The emission of fugitive dust from any material handling, screening, crushing, grinding, conveying, mixing, or other industrial-type operation or process is prohibited. [20 DCMR 605.2]
- d. Emissions from the screener and associated engine powering the screener shall not exceed those achieved by proper operation of the equipment in accordance with manufacturer’s specifications.
- e. Visible emissions shall not be emitted into the outdoor atmosphere from stationary sources; provided, that the discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction of the equipment. [20 DCMR 606.1]
- f. In addition to Condition II(e), exhaust opacity from the engine, measured and calculated as set forth in 40 CFR 86, Subpart I, shall not exceed [40 CFR 89.113]:
 - 1. 20 percent during the acceleration mode;
 - 2. 15 percent during the lugging mode;

3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*
- g. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

Emissions from the unit are not expected to exceed the following:

Pollutant	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM)	3.01
Carbon Monoxide (CO)	0.92
Oxides of Nitrogen (NO _x)	0.73
Volatile Organic Compounds (VOC)	0.28
Oxides of Sulfur (SO _x)	0.23

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after April 23, 2018 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT**NOTICE OF PUBLIC COMMENT PERIOD AND PUBLIC HEARING****State Implementation Plan Air Quality Revisions**

Notice is hereby given that a public hearing will be held on Monday, April 23, 2018, at 5:30 p.m. in Room 576 at 1200 First Street NE, 5th Floor, in Washington, D.C. 20002. This hearing provides interested parties an opportunity to comment on two different proposed revisions to the District of Columbia's (District) State Implementation Plan (SIP), codified at 40 CFR Part 52, Subpart J, in accordance with the final rule titled *Implementation of the 2008 NAAQS for Ozone: State Implementation Plan Requirements* (80 Fed. Reg. 12264, March 6, 2015).

The first revision includes the District's certification that the existing federally-approved Nonattainment New Source Review (NNSR) program, covering the Washington, DC-MD-VA nonattainment area for the 2008 ozone National Ambient Air Quality Standards (NAAQS), is at least as stringent as the requirements at 40 CFR § 51.165 for ozone and its precursors.

The United States Environmental Protection Agency (EPA) previously approved a District-wide NNSR SIP revision, which covered the District nonattainment area for the 2008 ozone NAAQS on March 19, 2015 (80 Fed. Reg. 14310). The Department of Energy and Environment (DOEE) has not subsequently amended the approved NNSR program. Upon review of the approved NNSR program, DOEE has found and proposes to certify that no changes are necessary to comply with the 2008 ozone NAAQS NNSR requirements.

The second revision consists of a certification that the District's existing Emission Statement program is at least as stringent as the requirements in § 182(a)(3)(B) of the federal Clean Air Act (CAA) (42 U.S.C. § 7511a(a)(3)(B)) in support of the 2008 ozone NAAQS.

The District was designated as a nonattainment area for the 2008 ozone NAAQS after promulgation of the revised standards to 0.075 parts per million (ppm). As a nonattainment area requirement under the § 182(a)(3)(B), the District must address its emission statement requirements. The District proposes to certify that the existing emission statement program covering the nonattainment area for the 2008 ozone NAAQS is at least as stringent as the requirements in § 182(a)(3)(B).

The District proposes to request that, under the authority of D.C. Official Code §§ 8-101.05-101.06 and Mayor's Order 2006-61 (June 14, 2006), and in accordance with the requirements of 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), EPA approve, as SIP revisions, the two aforementioned certifications. Once the District has addressed any comments received during this public comment period and its related hearing, the District proposes to submit the certifications to EPA for approval as a revision to its SIP pursuant to the provisions of § 107 of the CAA.

Copies of the proposed certifications are available for public review during normal business hours at the offices of DOEE, 1200 First Street NE, 5th Floor, Washington, DC 20002, and on-line at <https://doee.dc.gov/>.

Interested parties wishing to testify at this hearing are asked to submit in writing their names, addresses, telephone numbers and affiliation, if any, to Ms. Alexis Tinsley at the DOEE address above or at alexis.tinsley@dc.gov by 4:30 p.m. on April 23, 2018. Interested parties may also submit written comments to Ms. Alexandra Catena, Monitoring and Assessment Branch, Air Quality Division, DOEE, at the same address or by email at alexandra.catena@dc.gov. Questions about this SIP revision should be directed to Mr. Rama S. Tangirala by phone at (202) 535-2989 or email rama.tangirala@dc.gov, or Ms. Catena at (202) 741-0862 or alexandra.catena@dc.gov.

The public comment period closes at the conclusion of public hearing on April 23, 2018 and no comments will be accepted after April 23, 2018.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

Office of Government Ethics

Advisory Opinion – Unredacted - 1687-001 – Local Hatch Act (“Meet and Greet”)

VIA EMAIL

Robert Vinson Brannum
158 Adams Street, NW
Washington, DC 20001
rbrannum@robertbrannum.com

Dear Mr. Brannum:

This opinion responds to your January 1, 2018, request to the Board of Ethics and Government Accountability for an advisory opinion as to whether the Local Hatch Act and ethics laws prohibit you, an employee and member of the Commission on the Martin Luther King Jr. Holiday, from hosting “meet and greets” for partisan political candidates. Specifically, you have requested guidance as to whether the following activities would violate the Local Hatch Act:

- A. Hosting political “meet and greets, not fundraisers” at your home;
- B. Publicizing and inviting others to attend political meet and greets in your home.¹

¹ In your submission, you requested guidance on whether the following activities would violate the Local Hatch Act:

- A. to host political “meet and greets” [not fundraisers] in (your) home,
- B. not to receive funds, solicit funds, or request donations in support of costs related to hosting “meet and greets” [not fundraisers] in (your) home,
- C. not to receive funds, solicit funds, or request donations or contributions in support of any candidate or campaign during any “meet and greet” [not fundraisers] hosted in (your) home,
- D. to publicize and invite others to attend political “meet and greets” [not fundraisers] hosted in (your) home, or
- E. not to attend a partisan political fundraiser independently hosted by (your) wife in (your) home.

This opinion addresses your prospective activities, as *refraining* from the other activities you describe would not violate the Local Hatch Act.

You also requested guidance on whether these activities violate any “election expenditure laws.” However, that request must be submitted to the Office of Campaign Finance and the Board of Elections, as it falls outside this Office’s jurisdiction. *See* section 202(a)(1) of the Ethics Act (stating that the purpose of the Board of Ethics and

The Code of Conduct is applicable to all District government employees.² Based on the information within your request, I conclude that the aforementioned activities would not violate the Local Hatch Act³ or 6B DCMR § 1800.3(g)⁴, both of which are elements of the Code of Conduct.

The Local Hatch Act

The Local Hatch Act restricts the political activities of District government “employees.” This term is defined to include any individual who is “paid by the District government from grant or appropriated funds for his or her services or holding office in the District of Columbia . . .” or who is “a member of a board or commission” pursuant to D.C. Official Code §§ 1-523.01(e) and (f).⁵ Political activity is defined as “any activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group, ballot initiative, or referendum.”⁶ One of the overarching principles of the Local Hatch Act is to prohibit District government “employees” from engaging in political activity related to *any* type of election while on duty.⁷ Specifically, District government “employees” are prohibited from engaging in all political activity while on duty; in a room or building occupied in the discharge of official duties; wearing a uniform or official government insignia, or using a government vehicle.⁸

While the Local Hatch Act strictly limits employees’ conduct while on duty, it permits them to engage in certain political activities outside of work, i.e. in their personal capacity. Those

Government Accountability shall be to “administer and enforce the Code of Conduct”) D.C. Official Code § 1-1162.02(a)(1).

² See section 101(7) of the Ethics Act (defining statutes and rules that comprise the Code of Conduct) D.C. Official Code § 1-1161.01 (7). Additionally, the Board of Ethics and Government Accountability is statutorily authorized to administer and enforce the Code of Conduct as to “all employees and public officials serving the District of Columbia, its instrumentalities, subordinate and independent agencies, the Council of the District of Columbia, boards and commissions, and Advisory Neighborhood Commissions . . .” D.C. Official Code §§ 1-1162.01a, 1-1162.02(a)(1).

³ The Prohibition on Government Employee Engagement in Political Activity Act of 2010, effective March 31, 2011 (D.C. Law 18-335; D.C. Official Code § 1-1171.01 et seq.).

⁴ DPM § 1800.3(g) (Title 6B, Chapter 18 of the D.C. Municipal Regulations also referred to as the District Personnel Manual or DPM is included within the Code of Conduct).

⁵ D.C. Official Code § 1-1171.01(3).

⁶ *Id.* at § 1-1171.01(8)(A).

⁷ *Id.* at § 1-1171.01(4) (defining “‘on duty’ as the time period when an employee is [i]n a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or [r]epresenting any agency or instrumentality of the District government in an official capacity”).

⁸ *Id.* at § 1-1171.03(a)(1) – (4).

allowances depend on whether the political activity relates to a partisan⁹ campaign as opposed to a nonpartisan campaign, and whether such an election is regulated by the D.C. Board of Elections¹⁰ or by another jurisdiction. An employee may lawfully take an active part in political management or political campaigns – both partisan and non-partisan. This authorization extends to both District-regulated elections as well as those regulated by other jurisdictions. However, the employee must not use his or her official title or position to interfere with or affect the result of any such election.¹¹ The employee also must not knowingly direct – or authorize anyone else to direct – a subordinate to participate in a political campaign or make a financial contribution to a campaign.¹²

In District-regulated elections, an employee is prohibited from fundraising,¹³ and may not file as a candidate for a partisan political office.¹⁴ However, an employee is permitted to file as a candidate in a nonpartisan District election – such as Advisory Neighborhood Commissioner – and may fundraise for his/her own nonpartisan campaign. Employees also can run for partisan offices in jurisdictions other than the District.

Meet and Greet Events

A “meet and greet” is an event where members of the community can meet a political candidate. These events often take place at a residence within the community that the candidate seeks to serve if elected to political office. Because the Local Hatch Act allows employees to take an active part in political management and campaigns, you are permitted to organize and host “meet and greet” events for partisan or nonpartisan candidates.¹⁵ However, in doing so, you are still prohibited from fundraising.¹⁶ Therefore, you must ensure that you engage in absolutely no fundraising at any “meet and greet” events that you host, or in which you play an active role.

Fundraising also includes requiring attendees to pay “cost-of-attendance” or make financial donations to cover any expenses related to the event that you incur. Since the “meet and greet”

⁹ D.C. Official Code § 1-1171.01(5) (defining partisan as an adjective means related to a political party).

¹⁰ Hereinafter, an election that is regulated by the D.C. Board of Elections will be referred to as a “District-regulated” election or campaign.

¹¹ D.C. Official Code § 1-1171.02(a)(1).

¹² D.C. Official Code § 1-1171.02(a)(4).

¹³ D.C. Official Code § 1-1171.02(a)(2).

¹⁴ D.C. Official Code § 1-1171.02(a)(3).

¹⁵ See supra footnote 11.

¹⁶ Fundraising is defined as “knowingly soliciting, accepting, or receiving a political contribution from any person, except if the employee has filed as a candidate for political office.” *Id.* at § 1-1171.02(a)(2). See D.C. Official Code § 1-1171.01(9)(A) defining political contribution as a gift, subscription, loan, advance, or deposit of money, or anything of value; contract, promise, or agreement to make a contribution; payment for personal services rendered; and paid or unpaid personal services for any political purpose. Employees are prohibited from fundraising for political contributions, which are made with the “objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group that is regulated by the District.” D.C. Official Code § 1-1171.01(11).

benefits the candidate participating in it, you cannot accept such contributions or donations to offset the cost of the event, as those donations from other attendees would be considered political contributions made in support of that candidate. However, this restriction only applies when an employee is *hosting* a “meet and greet” event, or playing an active role in it. Employees are permitted to *attend* “meet and greets” that are organized for fundraising purposes – and they can even make a personal contribution to the candidate in question – but the employee cannot take an active part in organizing or conducting such an event.

In your submission, you acknowledged that the Local Hatch Act prohibits you from “raising funds for local partisan political campaigns and candidates,” and you indicated that you do not intend to receive funds, solicit funds, or request donations in support of a candidate, or to offset your costs related to hosting such “meet and greets.” Therefore, under the Local Hatch Act, you are permitted to host “meet and greets” but not “fundraisers” in your home.

Regarding your second question — whether you are permitted to publicize and invite others to attend political meet and greet events in your home — the Local Hatch Act does not prohibit you from engaging in such activity. However, because some “meet and greets” turn into fundraisers – and people may incorrectly assume that your event allows fundraising – your event should be publicized as a “meet and greet **only**.” This Office further recommends that employees include a disclaimer on any advertising materials expressly stating that the “meet and greet” is not being held for fundraising purposes to minimize the risk of confusion.

In sum, your prospective activity does not violate the Local Hatch Act.

6B DCMR § 1800.3(g)

As a District government employee, you are required to adhere to ethical standards, even when engaging in activities outside of work. Similar to the Local Hatch Act’s prohibition on the use of official title/position to interfere with or affect the results of an election, section 1800.3(g) of the District’s personnel regulations provides that an employee “shall not use public office or position for private gain.”¹⁷ Therefore, when hosting or publicizing your “meet and greets,” you are prohibited from using your District employment to endorse any political candidate, political group, or political party; or in any manner that could be construed to imply that the District sanctions your personal activities or the activities of another; or in a manner that is intended to coerce or induce a person to provide a benefit to another.¹⁸

In conclusion, assuming your compliance with the rule previously stated, your two proposed activities described above do not violate 6B DCMR § 1800.3(g).

¹⁷ D.C. Official Code § 1-1171.01 et seq.; DPM §1800.3(g).

¹⁸ 5 CFR § 2635.702(a)-(c). While this Office is not bound by the rules promulgated by the federal Office of Special Counsel and the manner in which it interprets the federal Hatch Act, 5 U.S.C. § 7321–7326 (Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1001), this Office frequently looks to the federal Office for guidance. In this instance, the example articulated by the Office of Special Counsel provides a good framework for District employees as well.

Please be advised that this advice is provided to you pursuant to section 219(a) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012 (D.C. Law 19-124, D.C. Official Code § 1-1161.01 et seq.) , which empowers me to provide such guidance. As a result, no enforcement action for violation of the District’s Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

Finally, you are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless and until you consent to such disclosure in writing, should you wish to do so. I encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure. Please let me know if you have any questions or wish to discuss this matter further. I may be reached at (202) 481-3411, or by email at Brentton.wolfingbarger2@dc.gov.

_____/s/_____
Brentton Wolfingbarger
Director of Government Ethics
Board of Ethics and Government Accountability

#1687-001

INGENUITY PREP PUBLIC CHARTER SCHOOL**INVITATION FOR BID****Food Service Management Services**

Ingenuity Prep PCS is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2018-2019 school year with a possible extension of (4) one year renewals.

All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements.

Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on March 23, 2018 from Xavier Barnes at bids@ingenuityprep.org or (703) 401-2952.

Proposals will be accepted at bids@ingenuityprep.org on April 14, 2018, not later than May 6, 2018.

All bids not addressing all areas as outlined in the IFB will not be considered.

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC MEETING**

LARUBY Z. MAY, BOARD CHAIR

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will convene at **9:00 a.m. on Wednesday, March 28, 2018**. The meeting will be held at the United Medical Center, 1310 Southern Ave., SE, Washington, DC 20032 in the Conference Room. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA

- I. CALL TO ORDER**
- II. DETERMINATION OF A QUORUM**
- III. APPROVAL OF AGENDA**
- IV. READING AND APPROVAL OF MINUTES**
February 28, 2018
- V. CONSENT AGENDA**
 - A. Dr. Eric Li, Interim Chief Medical Officer
 - B. Dr. Mina Yacoub, Medical Chief of Staff
- VII. EXECUTIVE MANAGEMENT REPORT**
Chief Executive Officer
- VIII. COMMITTEE REPORTS**
 - Patient Safety and Quality Committee
 - Finance Committee
- IX. PUBLIC COMMENT**
- X. OTHER BUSINESS**
 - A. Old Business
 - B. New Business
- XI. ANNOUNCEMENTS**

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2 -575(b)(2)(4A)(5),(9),(10),(11),(14).

**OFFICE OF THE DEPUTY MAYOR FOR
PLANNING AND ECONOMIC DEVELOPMENT**

NOTICE OF MEETING

The Office of the Deputy Mayor for Planning and Economic Development will convene a meeting of the DC Government Interagency Working Group on Autonomous Vehicles, pursuant to Mayor's Order 2018-18.

The meeting will be held at the date, time, and location as follows:

Date: Thursday, March 29, 2018

Time: 4:00 p.m. – 5:00 p.m.

Location: 1350 Pennsylvania Avenue, NW
Suite 317
Washington, DC, 20004

Contact: Marie Whittaker, marie.whittaker@dc.gov
202.741.2140

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

FORMAL CASE NO. 1140, IN THE MATTER OF THE INVESTIGATION INTO THE ESTABLISHMENT OF A PURCHASE OF RECEIVABLES PROGRAM FOR NATURAL GAS SUPPLIERS AND THEIR CUSTOMERS IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Code and in accordance with Section 2-505 of the District of Columbia Code,¹ of its intent to act upon the proposed amendments to Firm Delivery Service Gas Supplier Agreement – Rate Schedule No. 5, of Washington Gas Light Company (“WGL” or “Company”) General Regulations Tariff in not less than thirty (30) days after the date of publication of this Notice of Proposed Tariff (“NOPT”) in the *D.C. Register*.

2. The proposed tariff revisions are related to WGL’s implementation of its Purchase of Receivables (“POR”) program for natural gas suppliers and their customers in the District.² To implement the program, WGL requested authority to amend Rate Schedule No. 5 of its tariff, which governs the relationship between competitive service providers (“CSPs”) and WGL. On July 17, 2017, WGL filed its initial revisions to Rate Schedule No. 5 and additional revisions on September 28, 2017.³ The Commission approved WGL’s POR program and on October 27, 2017 issued a NOPT.⁴ On February 21, 2018, WGL filed additional revisions to pages 27B, 27E and 27GGG of its tariff. On March 7, 2018, WGL filed a Motion for Approval of Revised Tariff, seeking to provide clarity and update its revised Rate Schedule No. 5, pages 27GGG and 27G, and requesting approval of all revised pages implementing the POR program. This NOPT supersedes the October 27, 2017, NOPT.

3. Generally, in Rate Schedule No. 5, pages 27B, 27E, 27G, 27GG, 27GGG, 27H and 27HH, WGL sets forth the calculation of the discount rate for the POR program, and the mechanism for implementing the POR program. Specifically, WGL lists seven components of the discount rate – bad debt expense, implementation costs, incremental collection costs, cash working capital costs, risk factor, reconciliation factor, and late payment revenues. WGL will calculate separate discount rates for residential and non-residential customers. Further, payment

¹ D.C. Code § 2-505 (2001 Ed.) and D.C. Code § 34-802 (2001 Ed.).

² *Formal Case No. 1140, In the Matter of the Investigation into the Establishment of a Purchase of Receivables Program for Natural Gas Suppliers and Their Customers in the District of Columbia* (“Formal Case No. 1140”), Order No. 18798, rel. June 15, 2017.

³ *Formal Case No. 1140, Washington Gas Light Company’s Purchase of Receivables Implementation Plan*, filed July 17, 2017. On September 28, 2017, WGL filed a revised page 27G to Attachment C of its Implementation Plan.

⁴ *Formal Case No. 1140, Notice of Proposed Tariff*, rel. October 27, 2017, *D.C. Register* Vol 64 No. 43.

to suppliers will occur twice a month, but the Company has the right to hold back or reverse payment on disputed charges. The CSP enrollment and exit from the POR program will be administered in accordance with specific monthly deadlines. WGL also requests that the Commission amend 15 DCMR§ 327.36 to coincide with its proposed enrollment changes. Specifically, WGL proposes that CSPs provide new customer lists to WGL seven (7) calendar days prior to the first of the next month.

4. The Commission hereby gives this notice of WGL's proposed tariff amendments associated with the POR program. WGL proposes to revise the following tariff pages of P.S.C. - D.C. No. 3:

GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 3
Eleventh Revised Page No. 27B
Fourth Revised Page No. 27E
Ninth Revised Page No. 27G
Original Page No. 27GG
Original Page No. 27GGG
Eight Revised Page No. 27H
Original Page No. 27HH

5. WGL's proposed tariff pages 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 as well as on the Commission's website at www.dcpssc.org. Once at the website, open the "eDocket System" tab, click on "Search Current Dockets" and input "1140" in the "Select Case Number" field, and then select Items #18 and 19. Copies of the tariff pages and attachments are available, upon request, at a per page reproduction fee.

6. Comments on the update of Firm Delivery Service Gas Supplier Agreement – Rate Schedule No. 5 must be made in writing to Brinda Westbrook-Sedgwick, at the above address, at psc-commissionsecretary@dc.gov or by clicking on the following link: <http://edocket.dcpssc.org/comments/submitpubliccomments.asp>. Comments must be received within thirty (30) days of the date of publication of this NOPT in the *D.C. Register*. Once the comment period has expired, the Commission will take final action. Persons with questions concerning this NOPT should call (202) 626-5150.

DISTRICT OF COLUMBIA SENTENCING COMMISSION**NOTICE OF PUBLIC MEETING**

The Commission meeting will be held on Tuesday, March 20, 2018 at 5:00 p.m. The meeting will be held at 441 4th Street, N.W. Suite 430S Washington, DC 20001. Below is the planned agenda for the meeting. The final agenda will be posted on the agency's website at <http://sentencing.dc.gov>

For additional information, please contact: Mia Hebb, Staff Assistant, at (202) 727-8822 or email mia.hebb@dc.gov

Meeting Agenda

1. Review and Approval of the Minutes from the February 20, 2018 Meeting - Action Item, Judge Weisberg.
2. Agency Performance Hearing and Mayor's FY 19 Budget Update – Informational Item, Judge Weisberg and Barb Tombs-Souvey.
3. Status Report on Sentencing Guideline Survey/Focus Group Project – Informational Item, Barb Tombs-Souvey and Taylor Tarnalicki.
4. Election of New Sentencing Commission Chairman – Action Item, Judge Weisberg.
5. Continued Discussion of Criminal History Issues Identified at Retreat – Participatory - Judge Weisberg and Barb Tombs-Souvey.
 - a. Further Discussion on Double Counting Offenses
 - b. Prioritization of Criminal History Related Issues to be Discussed/Examined
6. Schedule Next Meeting - April 14, 2018.
7. Adjourn.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

2018 Ward 8 Equitable Food Incubator Grant

This revised NOFA updates the application deadline.

The Department of Small and Local Business Development (DSLBD) is soliciting applications for the **Ward 8 Equitable Food Incubator Grant**. DSLBD intends to award up to five (5) grants from the \$250,000 in total available funding for Fiscal Year 2018. The application deadline is Friday, April 6, 2018 at 2:00 p.m.

The purpose of the Ward 8 Equitable Food Incubator Grant is to provide food preparation infrastructure to resident businesses of Ward 8, in Ward 8.

Eligible applicants: Businesses or nonprofit organizations that have a federal recognized tax exemption. For additional eligibility requirements and exclusions, please review the Request for Applications (RFA) which has been posted at <http://dslbd.dc.gov/service/current-solicitations-opportunities>.

Eligible Use of Funds: Funds may be used to provide food preparation infrastructure to resident businesses of Ward 8, in Ward 8. Funds can be used for expenses incurred during the Period of Performance, which is October 1, 2017 through September 30, 2018. For additional examples of eligible uses of funds and exclusions, please review the RFA.

Application Process: Interested applicants must complete an online application by **Friday, April 6, 2018** at 2:00 p.m. Applications submitted via hand delivery, mail or courier service will not be accepted. Applications received after the deadline will not be forwarded to the review panel. Instructions and guidance regarding application preparation can be found in the RFA, which will be available at <http://dslbd.dc.gov/service/current-solicitations-opportunities>.

Selection Process: Grant recipients will be selected through a competitive application process. All applications from eligible applicants that are received before the deadline will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria listed below.

1. Capacity and Experience of the Applicant (25 points)
2. Strength of the Project Implementation Plan (25 points)
3. Financial Viability of Applicant Organization (25 points)
4. Creativity and Innovation (25 points)

A program team will review the panel reviewers' recommendations. The Director of DLSBD will make the final determination of grant awards. A grantee will be selected by April 20, 2018.

Award of Grants: Up to five (5) grants totaling \$250,000 will be awarded. The amount of awards may be between \$10,000 and \$250,000.

For More Information: Attend the Application Information Session. Please refer to the Request for Applications to see the date, time and location of this meeting.

Questions may be sent to Kate Mereand at the Department of Small and Local Business Development at Katherine.Mereand-Sinha@dc.gov. All questions must be submitted in writing.

Reservations: DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

2018 Ward 8 Grocery Grant

This revised NOFA updates the application deadline.

The Department of Small and Local Business Development (DSLBD) is soliciting applications for the **Ward 8 Grocery Grant**. DSLBD intends to award up to two (2) grants from the \$400,000 in total available funding for Fiscal Year 2018. The application deadline is Friday, April 6, 2018 at 2:00 p.m.

The purpose of the Ward 8 Grocery Grant is to encourage the development of alternative models for grocery stores for Ward 8.

Eligible applicants: Businesses or nonprofit organizations that have a federal recognized tax exemption. For additional eligibility requirements and exclusions, please review the Request for Applications (RFA) which has been posted at <http://dslbd.dc.gov/service/current-solicitations-opportunities>.

Eligible Use of Funds: Funds may be used to develop alternative grocery stores in Ward 8. Funds can be used for expenses incurred during the Period of Performance, which is October 1, 2017 through September 30, 2018. For additional examples of eligible uses of funds and exclusions, please review the RFA.

Application Process: Interested applicants must complete an online application by **Friday, April 6, 2018** at 2:00 p.m. Applications submitted via hand delivery, mail or courier service will not be accepted. Applications received after the deadline will not be forwarded to the review panel. Instructions and guidance regarding application preparation can be found in the RFA, which will be available at <http://dslbd.dc.gov/service/current-solicitations-opportunities>.

Selection Process: Grant recipients will be selected through a competitive application process. All applications from eligible applicants that are received before the deadline will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria listed below.

1. Capacity and Experience of the Applicant (25 points)
2. Strength of the Project Implementation Plan (25 points)
3. Financial Viability of Applicant Organization (25 points)
4. Creativity and Innovation (25 points)

A program team will review the panel reviewers' recommendations. The Director of DLSBD will make the final determination of grant awards. A grantee will be selected by April 20, 2018.

Award of Grants: Up to two (2) grants totaling \$400,000 will be awarded. The amount of awards may be between \$10,000 and \$390,000.

For More Information: Attend the Application Information Session. Please refer to the Request for Applications to see the date, time and location of this meeting.

Questions may be sent to Jennifer Prats at the Department of Small and Local Business Development at jennifer.prats@dc.gov or 202-727-3900.

Reservations: DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

TWO RIVERS PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Principal Leadership Training**

Two Rivers Public Charter School intends to enter into a sole source contract with School Leader Lab. The decision to sole source is based on the unique nature of the program in DC, including School Leader Lab's provision of a cohort-based learning experience composed of participants from similar schools that is unlike any other offering in the city. In addition, School Leader Lab is offering Two Rivers PCS a program subsidy of approximately \$16,000 per participant, affording Two Rivers PCS the opportunity to participate. The estimated yearly cost is approximately \$20,000 per participant. 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.

**WASHINGTON CONVENTION AND SPORTS AUTHORITY
(T/A EVENTS DC)**

NOTICE OF EMERGENCY MEETING

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that it has scheduled an Emergency Meeting for Thursday, March 15, 2018, for the purpose of receiving a report from its Finance Committee.

The meeting will take place in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mount Vernon Place, N.W., Washington, D.C. 20001, beginning at 9:30 a.m.

For additional information, please contact:

Sean Sands
Chief of Staff
Washington Convention and Sports Authority
t/a Events DC

(202) 249-3012
sean.sands@eventsdc.com

WASHINGTON LEADERSHIP ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****WLA XQ Super School Design & Implementation Strategy**

Washington Leadership Academy is looking for a strategic partner to develop a 5-year vision and plan.

Proposals due March 30, 2018. For more information or to submit, contact Natalie Gould at ngould@wlapcs.org.

For full RFP, please visit: www.wlapcs.org/bids

WLA XQ Super School Virtual Reality Content

Washington Leadership Academy is looking for a partner to co-create virtual reality content.

Proposals due March 30, 2018. For more information or to submit, contact Natalie Gould at ngould@wlapcs.org.

For full RFP, please visit: www.wlapcs.org/bids

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, April 5, 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

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|----|---|-----------------------|
| 1. | Call to Order | Board Chairman |
| 2. | Roll Call | Board Secretary |
| 3. | Approval of March 1, 2018 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 PUBLIC MEETING

DC Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) DC Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, March 27, 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.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dewater.com.

DRAFT AGENDA

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|----|---------------------|-------------------------|
| 1. | Call to Order | Committee Chairperson |
| 2. | Monthly Updates | Chief Financial Officer |
| 3. | Committee Work plan | Chief Financial Officer |
| 4. | Other Business | Chief Financial Officer |
| 5. | Executive Session | Committee Chairperson |
| 6. | Adjournment | Committee Chairperson |

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

Application No. 19153 of Independence Avenue Investments LLC, as amended,¹ pursuant to 11 DCMR § 3103.2, for variances from the off-street parking requirements under § 2101.1, the parking space width requirements of § 2115.3, and the parking space striping requirements of § 2117.3, to commit parking spaces to a car-sharing service in the R-4 District at premises (rear) 1524 Independence Avenue, S.E. (Square 1072, Lots 80 and 81)².

HEARING DATES: February 23, 2016; October 4, 2016; November 30, 2016; and
January 11, 2017³
DECISION DATE: January 11, 2017

DISMISSAL ORDER

PRELIMINARY MATTERS

On September 30, 2015, David S. Crowley on behalf of Independence Avenue Investments LLC (the "Applicant") filed this application with the Board of Zoning Adjustment (the "Board" or "BZA"). The Applicant originally requested a variance from the off-street parking requirements under § 2101.1, to commit parking spaces to a car-sharing service in the R-4 District at premises (rear) 1524 Independence Avenue, S.E. (Square 1072, Lots 80 and 81) (the "Subject Property"). The Applicant later amended the application to add variance relief from the parking space width requirements of § 2115.3 and the parking space striping requirements of § 2117.3. (Exhibit 33.)

Members of the Capitol Square Condominium Association (the "Association"), located at 1520-1524 Independence Avenue, S.E., raised the issue that the Applicant is not the owner of the Subject Property in this application, nor is he authorized by the property owner to seek the relief

¹ The relief requested in the original application was amended to add variances from the parking space width and parking space striping requirements. (Revised self-certification form in Exhibit 33.) The caption has been revised accordingly.

² The original application for relief, filed on September 30, 2015 (Exhibit 1) erroneously requested relief for lots 2025 through 2032, which are not record lots, but rather parking spaces located within Lots 80 and 81. In the Applicant's February 8, 2016 revised zoning self-certification, Lots 80 and 81 were correctly cited. The caption was revised accordingly.

³ The application was originally scheduled for hearing on January 12, 2016. The hearing was postponed to February 23, 2016 at the Applicant's request. The Board continued the hearing to April 5, 2016, but the Applicant requested multiple further postponements of the hearing to May 10, June 21, July 12, and October 4, 2016. At the hearing on October 4, 2016, the Board requested that the Applicant submit evidence of the Applicant's ownership of the property, and continued the hearing until November 30, 2016. The Board granted a final postponement, at the Applicant's request, to January 11, 2017.

requested. (Exhibits 54 and 65.) To support this claim, the Association introduced evidence into the record that the bylaws of the Association would require that the Board of the Directors of the Association authorize the Applicant to seek relief related to the parking spaces at the Subject Property. (Exhibit 54.) To rebut this claim, the Applicant argued that he owns the parking spaces located on the Subject Property that are at issue in this application. (Hearing Transcript (“Tr.”) of January 11, 2017 at p. 11.) Ultimately, the Board found that the Applicant did not offer sufficient evidence of ownership to overcome the Association’s argument that the Applicant is not the proper entity to bring forward the application. The Board dismissed the case on those grounds.

Notice of Application and Notice of Hearing. By memoranda dated October 14, 2016, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), and Advisory Neighborhood Commission (“ANC”) 6B, the ANC within which the subject property is located. Pursuant to 11 DCMR § 3113.13, OZ mailed letters providing notice of the hearing to the Applicant, ANC 6B, and all owners of property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on October 23, 2015. (62 DCR § 13801). A hearing was scheduled for January 12, 2016. The initial hearing was postponed to February 23, 2016 at the Applicant’s request.

Party Status. Pursuant to 11 DCMR § 3199.1(b) the Applicant and ANC 6B were automatically parties. On October 3, 2016, after the initial hearing and first continued hearing on the case, the Board received a party status request in opposition from Capital Square Condominium Unit Owners Association (the “Association”). (Exhibit 60.) In a later proceeding, the Board dismissed the application on procedural grounds before taking action on the party status request.

OP Report. In a report dated February 16, 2016, the Office of Planning (“OP”) could not recommend approval of Applicant’s request for relief under 11 DCMR § 2101.1 because the Applicant did not provide a narrative justification for the relief sought. (Exhibit 37.) In a report dated September 9, 2016, OP stated that while it was not opposed to the concept of granting the Applicant’s request for relief, the Applicant must provide an accurate site plan showing the number of zoning compliant spaces to be provided, the proposed use for these spaces, the relief requested, and a statement of justification for said relief. (Exhibit 49.) In a supplemental report dated September 29, 2016, OP was again unable to make a recommendation. It requested a list of further information to be submitted into the record, including clarification of the ownership issues raised as to the property. (Exhibit 58.) In a report dated November 18, 2016, OP stated that the Applicant had not filed the additional information requested in the prior supplemental report and, therefore, it could not make a recommendation regarding the requested relief (Exhibit 62.)

DDOT Report. The District Department of Transportation (“DDOT”) submitted a report dated February 16, 2016, stating that it had no objection to the requested approval. (Exhibit 38.)

ANC Report. The subject property is in the jurisdiction of ANC 6B. ANC 6B filed a report indicating that at their regularly scheduled, properly noticed public meeting on February 9, 2016,

the ANC voted 7-0-0 to support the Applicant's request for zoning relief with several stipulations. (Exhibit 40.) The ANC stipulated that (1) it would not support a variance for car share usage; (2) if relief for a car share use is granted, that only two parking spaces be used for that purpose; and (3) the four spaces on Lot 80 appear to only have room for three vehicles. The ANC further noted it was extremely difficult for the Commission to render a decision on this application due to the multiple lots and the connection with the two condominium buildings.

FINDINGS OF FACT

1. The property is located at 1524 Independence Avenue, S.E. (Square 1072, Lots 80 and 81) (the "Subject Property"). The Subject Property is currently improved with two twelve-unit condominium buildings.
2. The Subject Property is located in the R-4 Zone District.
3. The Applicant developed the condominium buildings located on Lots 80 and 81. According to a surveyor's plat signed August 4, 2006, the Applicant was once the owner of Lots 80 and 81. (Exhibit 45.) The Applicant argued at the January 11, 2017 hearing that this plat demonstrates the Applicant's continued ownership of these lots. (Tr. of January 11, 2017 at p. 11.)
4. Parking spaces P-1 through P-4 are located on Lot 81 and parking spaces P-5 through P-8 are located on Lot 80.
5. The Applicant is the owner of parking spaces P-1, P-2, and P-5 – P-7. Parking space P-3 is owned by condominium resident Rashida MacMurray-Abdullah. Parking space P-4 is owned by condominium resident Alejandro Sante.
6. The Applicant applied for an area variance to reduce the required number of off-street parking spaces for Lots 80 and 81 on September 30, 2015. The Applicant filed a revised zoning self-certification seeking a reduction of the parking space width requirements of § 2115.3 and the parking space striping requirements of § 2117.3 to commit parking spaces to a car-sharing service on February 8, 2016.
7. The Association maintains that the Applicant does not own Lots 80 and 81 and is not authorized to seek zoning relief for parking spaces located on these lots. (Exhibits 54 and 65.)
8. On September 19, 2016 the Association introduced the Association's By-Laws to call into question the Applicant's claim of ownership of Lots 80 and 81.
9. The condominium By-Laws and Declaration were both signed by the Applicant on July 24, 2006.

10. On September 29, 2016 the Office of Planning requested confirmation of the Applicant's right to seek relief as to Lots 80 and 81. The Board made note of the ownership issue and the Office of Planning's request at the October 4, 2016 hearing. The Office of Planning again requested this information in their November 18, 2016 report.
11. The Applicant stated in a February 19, 2016 memorandum to the BZA that all the units in the condominium were sold by 2005. (Exhibit 41.) The Association argued that the Applicant transitioned control of the Association to the unit owners in May 2007. (Exhibit 54.) The Association testified at the January 11, 2017 hearing that the Board of Directors "own[s] the land and the common interest in the association." (Tr. of January 11, 2017 at p. 15.)
12. At the hearing on January 11, 2017, in response to the ownership issue raised by the Association, the Applicant argued that (1) Documentation from the Department of Consumer and Regulatory Affairs ("DCRA") lists the Applicant as the owner of Lots 80 and 81, and (2) Capitol Square Condominium Association documents reflect the Applicant's ownership of six parking spaces on Lots 80 and 81. (Tr. of January 11, 2017 at p. 11.)
13. The Association does not dispute the Applicant's claim of ownership to six parking spaces. (Exhibit 54.)
14. The Association testified at the January 11, 2017 hearing that the Board of Directors is the present owner of Lots 80 and 81. (Tr. of January 11, 2017 at p. 15.)
15. The Applicant did not submit a letter from the Association granting authorization to seek relief as to Lots 80 and 81.

CONCLUSIONS OF LAW

The Board is authorized to consider requests for relief filed by the "owner of property for which application is made" or "[a]n authorized agent . . . on behalf of the owner." (11 DCMR § 3113.3-4.) The Board's procedural regulations make clear the Board's authority to "at any time require additional evidence demonstrating the authority of the agent to act for the owner." (11 DCMR § 3113.4.) Further, the Board's rules of practice and procedure allow the Board to "dismiss an application or appeal for failure of the applicant or appellant to comply with the procedural requirements of [Subtitle Y]." (11-Y DCMR § 600.3.)⁴ However, no application shall be dismissed on those grounds unless, "after due notice of the deficiency and expiration of a

⁴ When this application was filed and during the first hearing on this application, the Zoning Regulations of 1958 ("ZR58") were in effect. On September 6, 2016, the Zoning Regulations of 2016 ("ZR16") replaced ZR58. Based on the vesting provisions of ZR16, this application was vested under ZR58 with regard to the relief requested, as it was first heard before September 6, 2016. The procedural requirements in Subtitle Y of ZR16, however, applied to the hearings that were held after September 6, 2016. Accordingly, the Board relied on the provisions of Subtitle Y on November 30, 2016 and January 11, 2017 when considering the procedural deficiencies of the application and when dismissing the application.

reasonable time as fixed by the Board, the deficiency has not been corrected.” (11-Y DCMR § 600.4.)

After the Capitol Square Condominium Association (the “Association”) introduced evidence that called into question the Applicant’s authority to seek relief for the parking spaces located on the Subject Property, the Board provided the Applicant with notice of the deficiency at its hearing on October 4, 2016. During that hearing, the Board acknowledged the ownership issue and asked the Applicant to submit additional information to reflect his ownership of the property. (Hearing Tr. of October 14, 2016 at p. 48-50.) The Board noted that, if sufficient evidence of ownership is not shown, the case will be dismissed. (Hearing Tr. of October 14, 2016 at p. 50.) After giving the Applicant notice of the deficiency, the Board continued the hearing until November 30, 2016 and granted the Applicant further postponement until January 11, 2017. The final postponement of the hearing was also granted with the intent of allowing the Applicant to attend the Association’s annual meeting in December 2016. In allowing the postponement of the hearing from October 4, 2016 to January 11, 2017, the Board provided reasonable time for the Applicant to correct the deficiency by filing evidence to substantiate its claim that it is the “owner of property for which application is made” as required by § 3113.3.

In response to the issues raised by the Association, the Applicant responded by arguing that: (1) Documentation from the Department of Consumer and Regulatory Affairs (“DCRA”) lists the Applicant as the owner of Lots 80 and 81, and (2) Capitol Square Condominium Association documents reflect the Applicant’s ownership of six parking spaces on Lots 80 and 81. (Tr. of January 11, 2017 at p. 11.) For the following reasons, the Board finds that these arguments do not support a finding that the Applicant is the owner of the property for which application was made, nor that the Applicant was authorized by the owner of lots 80 and 81 to seek this relief.

Although the Applicant did at one point own lots 80 and 81, the Board finds that the Association is the current owner of these lots, not the Applicant. On August 4, 2006, the Department of Consumer and Regulatory Affairs’ Office of the Surveyor issued a plat (Exhibit 45) that lists the Applicant as the owner of Lots 80 and 81. The Applicant argued at the January 11, 2017 hearing that this plat demonstrates the Applicant’s ownership of these lots. (Tr. of January 11, 2017 at p. 11.) However, this plat also states that it “hereby subdivides the two buildings . . . into twenty-four (24) residential condominium units and eight (8) parking spaces with certain general and limited common elements as more fully set forth in the Declaration and By-Laws of the project[.]” (Exhibit 45.) The Declaration of this project states that the Applicant “hereby submits the Property to the provisions of the Condominium Act to create a plan of condominium ownership of the property.” (Exhibit 54.) The D.C. Condominium Act states that an applicant can have authority to exercise the powers and responsibilities of condominium associations until the time set in the condominium instrument. (D.C. Condominium Act, D. C. Law 1-89, D. C. Official Code § 42-1903.02.) The condominium instrument, signed by both the Applicant and the Association, sets the date on which authority will transfer to the Association as when “units to which three fourths (3/4) of the undivided interests in the common elements appertain have been conveyed.” (Exhibit 54.) The Applicant stated in a February 19, 2016 memorandum to the

BZA that all the units in the condominium were sold by 2005. (Exhibit 41.) The Association argues that the Applicant transitioned control of the Association to unit owners in May 2007, and testified at the January 11, 2017 hearing that the Board of Directors “own[s] the land and the common interest in the association.” Based on the evidence and testimony in the record, the Board finds that the Association is the present owner of Lots 80 and 81.

The Applicant is the owner of six parking spaces on Lots 80 and 81. Two additional parking spaces on Lots 80 and 81 are owned by condominium residents. At the January 11, 2017 hearing, in response to the Board’s contention that the Applicant may not have authority to seek this relief, the Applicant argued that they are the owner of the aforementioned six parking spaces, which justifies the Applicant in seeking relief as to the parking requirements on Lots 80 and 81. The Association does not dispute the Applicant’s claim of ownership to these six parking spaces. Nonetheless, the Board finds that the Applicant’s claim of ownership to parking spaces located within Lots 80 and 81 is not determinative of whether they have a right to seek relief as to Lots 80 and 81, as it has been established in the record that the Association is the owners of the lots at issue. Given that the Applicant does not own these lots, the Board finds that he may only seek relief upon authorization of the Association.

The Board finds the Applicant was not authorized by the Association to seek relief as a third party. Pursuant to 11 DCMR § 3113.4, in order for a third party to seek relief under authorization of the property owner the third party must submit “a letter signed by the owner authorizing the agent to act on the owner’s behalf in respect of the application.” The Applicant submitted no such authorization, despite attempts to seek authorization from the Association by attending the Association’s annual meeting in December 2016.

Great Weight

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, for the reasons discussed, the Board concurs with the concerns raised in Office of Planning’s reports regarding the Applicant’s lack of ownership.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) ANC 6B filed a written report indicating their support of the Applicant’s request for zoning relief with several stipulations and concerns. (Exhibit 40.) The concerns raised by the ANC pertained to the relief being requested, however, and the Board dismissed the application on procedural grounds before reaching the merits. Accordingly, the Board could not give “great weight” to those concerns.

The Board concludes that the Applicant is not the owner of the Subject Property, nor has the Applicant been authorized to seek zoning relief on behalf of the property owner. Based on the

findings of fact, the Board has determined that the Applicant is not permitted to seek relief as to Lots 80 and 81.

It is hereby **ORDERED** that this appeal be **DISMISSED**.

VOTE: 3-0-2 (Frederick L. Hill, Carlton E. Hart,⁵ and Robert E. Miller to Dismiss; two Board seats vacant).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

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

FINAL DATE OF ORDER: March 14, 2018

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.

⁵ Board Member Hart did not participate in the original hearings of the case, but read the record in order to participate on January 11, 2017.

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

Order No. 19415-A of Verizon Wireless, Motion for Modification of Consequence, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the time limit condition of BZA Order No. 19415 to allow the temporary location of a Cell on Wheels (“COW”) in the RF-1 Zone on Square 643E, Lot 800.

The original application (No. 19415) was pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the antenna towers and monopole requirements of Subtitle C § 1313.9, to locate a temporary Cell on Wheels (“COW”) in the RF-1 Zone at premises located on Square 643E, Lot 800.

HEARING DATES (19415):	February 8, 2017 and March 8, 2017
DECISION DATE (19415):	March 8, 2017
ORDER ISSUANCE DATE (19415):	February 13, 2018
MODIFICATION DECISION DATES:	February 21, 2018 and March 7, 2018

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On March 8, 2017, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Verizon Wireless (the “Applicant”) in Application No. 19415 for a special exception under the antenna towers and monopole requirements of Subtitle C § 1313.9, to locate a temporary Cell on Wheels (“COW”) in the RF-1 Zone. The Board issued Order No. 19415 on February 13, 2018. (Exhibit 7 of the record for Case No. 19415-A.) The Board’s approval was subject to two conditions:

1. Approval of the temporary location of the COW is granted for a term to end March 15, 2018.
2. The Applicant shall not permit collocation of the COW by any other wireless service provider.

MOTION FOR MODIFICATION OF CONSEQUENCE

On February 5, 2018, the Applicant submitted a request for modification of consequence to the conditions of Order No. 19415. Specifically, the Applicant seeks to modify Condition 1 of the Board’s Order that limits the approval to a term to end on March 15, 2018. (Exhibit 3.) The Applicant argues that the modification of this condition is necessary because, though a new permanent location for the COW has been secured and permits for the new facility have been filed, construction on the new site will take approximately six months. After the new site is in

operation in the fall of 2018, the Applicant intends to remove the temporary COW from the Subject Property and restore the site as necessary. For this reason, the Applicant requests to extend the term of approval for Order No. 19415 by six months, to expire instead on September 15, 2018.

The Applicant indicated that the proposed modification of consequence does not require additional relief from the Zoning Regulations. Further, the Applicant does not seek to modify Condition 2 of approval included in BZA Order No. 19415.

The Merits of the Request for Modification of Consequence

The Applicant's requested modification of a condition of the Order complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a "proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board."

Pursuant to Subtitle Y §§ 703.8-703.9, the request for modification of consequence shall be served on all other parties to the original application and those parties shall be allowed at least ten days to submit a response to the request. The Applicant provided proper and timely notice of the request for modification of consequence to Advisory Neighborhood Commission ("ANC") 6D; the ANC Commissioner for Single Member District 6D02; and Brian Friedman, the party in opposition to Application No. 19415. (Exhibit 3.) Though the parties were allowed at least ten days for response, neither the affected ANC nor the party in opposition to the underlying case filed a response to this request for modification of consequence.

The Applicant also served its request on the Office of Planning ("OP"). OP submitted a report on February 20, 2018 recommending approval of the proposed modification of consequence. (Exhibit 8.)

As directed by 11 DCMR Subtitle Y § 703.4, 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 consequence. 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 modification of consequence to a condition approved in Case No. 19415, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval. During its initial deliberations on this request, the Board expressed concern about the Applicant's maintenance of the Subject Property and its plans to restore the property after the temporary COW is removed. Therefore, the Board requested that the Applicant submit plans for site maintenance and restoration in advance of the Board's decision. The Board conditioned its approval of the modification of consequence on the Applicant's compliance with those plans, as filed to the record in Exhibit 9.

As noted, the parties to the underlying case were the ANC, Brian Friedman, and the Applicant. The ANC and Brian Friedman did not submit a response to the request for modification of consequence. Accordingly, a decision by the Board to grant this request would not be adverse to

any party. 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. 19415 is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS, AS MODIFIED:**

1. Approval of the temporary location of the COW is granted for a term to end September 15, 2018.
2. The Applicant shall not permit collocation of the COW by any other wireless service provider.
3. The Applicant shall maintain the site according to the Supplemental Facility Maintenance Plan and Permanent Restoration Plan in Exhibit 9.

In all other respects, Order No. 19415 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON MARCH 8, 2017: 4-0-1

(Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Peter G. May to APPROVE; one Board seat vacant.)

VOTE ON MODIFICATION OF CONSEQUENCE ON MARCH 7, 2018: 4-0-1

(Frederick L. Hill, Lesylleé M. White, Carlton E. Hart, and Peter G. May to APPROVE; Lorna L. John not participating.)

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: March 12, 2018

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.

**BZA APPLICATION NO. 19415-A
PAGE NO. 3**

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

Application No. 19638 of BB&H Joint Venture, as amended¹, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 203.1(j) and pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the pervious paving requirement of Subtitle U § 203.1(j)(4), to permit the continued use of the property as an accessory parking lot in the MU-7 Zone at premises 4422 Connecticut Avenue N.W. (Square 1971, Lot 822).

HEARING DATES: December 13, 2017, January 24, 2018, and March 7, 2018²
DECISION DATE: March 7, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 6 (original), 42 (first revised) and 46 (final 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") 3F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. The ANC submitted two timely reports in support of the application with conditions. The first ANC report dated January 16, 2018, indicated that at a duly noticed and scheduled public meeting on January 16, 2018, at which a quorum was present, the ANC voted 7-0-0 in support of the application subject to the existing conditions³ and a nine-year time limit. (Exhibit 42.) The ANC

¹ The application originally requested a special exception (Exhibit 6), but once it was identified by the Office of the Attorney General that the Applicant does not meet one of the special exception criteria related to pervious paving, i.e. that at least 80% of the parking surface shall be of pervious pavement, the application was amended to request variance relief from that requirement under Subtitle U § 203.1(j)(4). (Exhibit 46.)

² The hearing in this case was postponed from December 13, 2017, at the request of all the parties. (Exhibit 33.) The Board of Zoning Adjustment granted that request. (Exhibit 34.) The case was heard January 24, 2018 and continued to March 7, 2018.

³ This application is for the continued, conditioned use of the subject property as an accessory parking lot. The existing parking lot was established pursuant to BZA Order No. 16000 (1994) and renewed by the Board four other times, i.e. BZA Order Nos. 16541, 17200, 17875, and 18741.

submitted a supplemental report dated February 20, 2018, in which the ANC indicated that at a duly noticed and scheduled public meeting on February 20, 2018, at which a quorum was present, the ANC voted 6-0-0 in support of approval of the amended relief, with the conditions included in its January 2018 resolution pertaining to the special exception and with an additional condition that the accessory parking lot be repaved with pervious paving within three years of the Board's approval. (Exhibit 48.)

The Office of Planning ("OP") submitted two timely reports, recommending conditioned approval of the application. OP's first report recommended approval of the special exception, with 12 conditions, including a nine-year term and a requirement that the existing parking lot be repaved with pervious paving within three years. (Exhibit 38.) OP's supplemental report recommended approval of the amended application with conditions. (Exhibit 49.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 35.)

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the pervious paving requirement of Subtitle U § 203.1(j)(4), to permit the continued use of the property as an accessory parking lot in the MU-7 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 and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle U § 203.1(j)(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.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the use provisions of Subtitle U § 203.1(j), to permit the continued use of the property as an accessory parking lot in the MU-7 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 203.1(j), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Approval shall be for a period of **NINE (9) YEARS** beginning on the date upon which the order became final.
2. There shall be no dumpsters in the accessory parking lot.
3. At no time shall delivery, vendor, or trash trucks be permitted to enter the accessory parking lot.
4. Two trash cans shall be maintained on the parking lot and emptied at least once per day, or more often if they are overflowing with trash.
5. The parking space and fence along the western boundary of the site shall be maintained in good condition at all times. All parts of the lot shall be kept free of refuse and debris. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the property shall be pruned as necessary.
6. An exterminator shall perform extermination services once a month, or as necessary, to control any rodents.
7. The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the property of the name, telephone number, and e-mail address of the appointed liaison. When that individual is no longer designated to act as the liaison, the Applicant shall use the same procedure to notify the neighborhood of his or her successor.
8. The Applicant shall provide to the ANC and the residences within 200 feet, an annual report summarizing its compliance with the conditions.

9. Existing wheel stops, signage, guardrail, parking space striping, and direction signage painted on the pavement shall be properly maintained.
10. The Applicant shall, as necessary, repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.
11. The Applicant shall maintain a barrier along the north side of the accessory parking lot to limit ingress and egress into the accessory parking lot along its northern border.
12. The Applicant shall repave the existing parking lot with pervious paving within **THREE (3) YEARS** of the date of the order granting this application.

VOTE: **4-0-1** (Frederick L. Hill, Peter A. Shapiro, Lesylleé M. White, and Carlton E. Hart, to APPROVE; Lorna L. John, not participating or voting.)

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: March 12, 2018

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.

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,

BZA APPLICATION NO. 19638

PAGE NO. 4

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. 19693 of 128 17th Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 205.5, from the rear addition requirements of Subtitle E § 205.4 to construct a rear addition to an existing one-family dwelling and convert it into a flat in the RF-1 Zone at premises 128 17th Street N.E. (Square 1083, Lot 56).

HEARING DATE: Applicant waived right to a public hearing

DECISION DATE: March 7, 2018

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated November 15, 2017, from the Zoning Administrator, certifying the required relief. (Exhibit 4.)

Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board of Zoning Adjustment's ("Board" or "BZA") expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 2.)

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") 6A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on January 11, 2018, at which a quorum was in attendance, ANC 6A voted 6-0 to support the application. (Exhibit 32.)

The Office of Planning ("OP") submitted a timely report dated February 23, 2018, in support of the application. (Exhibit 35.) The District Department of Transportation ("DDOT") submitted a timely report, dated February 22, 2018, expressing no objection to the approval of the application. (Exhibit 34.)

Two letters from neighbors in support of the application were submitted to the record. (Exhibits 14 and 17.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by Subtitle Y §§ 401.7 and 401.8. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant 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 § 205.5, from the rear addition requirements of Subtitle E § 205.4 to construct a rear addition to an existing one-family dwelling and convert it into a flat in the RF-1 Zone. No parties appeared at the public meeting 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 §§ 205.5 and 205.4, 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 REVISED PLANS AT EXHIBIT 37.**

VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Peter A. Shapiro to APPROVE.)

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: March 9, 2018

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

BZA APPLICATION NO. 19693

PAGE NO. 2

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. 19701 of Amy and Fernando Wright, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 205.5 from the rear addition requirements of Subtitle E § 205.4, to construct a two-story rear addition to an existing one-family dwelling in the RF-1 Zone at premises 1511 C Street S.E. (Square 1074, Lot 26).

HEARING DATE: March 7, 2018

DECISION DATE: Month 7, 2018

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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC did not submit a report regarding this BZA application. However, the Applicant's agent testified that the ANC voted in support of the application.

The Office of Planning ("OP") submitted a timely report dated February 23, 2018, in support of the application. (Exhibit 33.) The District Department of Transportation ("DDOT") submitted a timely report, dated February 22, 2018, expressing no objection to the approval of the application. (Exhibit 32.)

Three neighbors, including both adjacent owners, submitted letters in support of the application. (Exhibits 11, 12, and 30.) Also, Gary Peterson of the Capitol Hill Restoration Society testified in support of 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 § 205.5 from the rear addition requirements of Subtitle E § 205.4, to construct a two-story rear addition to an existing one-family dwelling in

the RF-1 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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E §§ 205.5 and 205.4, 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 7.**

VOTE: **3-0-2** (Carlton E. Hart, Peter A. Shapiro, and Lesylleé M. White to APPROVE; Lorna L. John and Frederick L. Hall, not participating or voting).

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: March 13, 2018

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.

BZA APPLICATION NO. 19701

PAGE NO. 2

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. 19702 of Kate and Matthew Gallery, as amended¹ pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.4, the lot occupancy requirements of Subtitle E § 304.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story, rear addition to an existing one-family dwelling in the RF-1 Zone at premises 656 Independence Avenue S.E. (Square 870, Lot 62).

HEARING DATE: March 7, 2018

DECISION DATE: March 7, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibits 5 (Original) and 32 (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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC did not submit a report to the record. At the hearing the Applicant's Agent testified that the ANC had voted in support of the application.

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 adjacent neighbors to the east and west submitted letters of support. (Exhibits 26 and 27.) Gary Peterson of the Capitol Hill Restoration Society provided testimony in support of the application at the hearing.

¹ The Applicant amended the application (Exhibit 32) by adding a special exception from the rear addition requirements of Subtitle E § 205.4 to the original request for special exceptions under Subtitle E § 5201 from the nonconforming structure requirements of Subtitle C § 202.2, and the lot occupancy requirements of Subtitle E § 304.1.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for special exceptions under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.4, the lot occupancy requirements of Subtitle E § 304.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story, rear addition to an existing one-family dwelling in the RF-1 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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle E §§ 5201, 205.4, and 304.1, and Subtitle C § 202.2 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 11**

VOTE: **3-0-2** (Carlton E. Hart, Lesylleé M. White, and Peter A. Shapiro, to APPROVE; Frederick L. Hill, and Lorna L. John not participating or voting.)

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: March 13, 2018

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

BZA APPLICATION NO. 19702

PAGE NO. 2

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. 19704 of Milestone East Capitol 4, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the new residential development provisions of Subtitle U § 421, and pursuant to Subtitle X, Chapter 10, for variances from the floor area ratio requirements of Subtitle F § 302, the lot occupancy requirements of Subtitle F § 304, and the rear yard requirements of Subtitle F § 305, to construct a new 90-unit apartment house and retain seven existing apartment houses in the RA-1 Zone at premises 127 35th Street, S.E. (Square 5413, Lot 802).¹

HEARING DATE: March 7, 2018
DECISION DATE: March 7, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6 (original); Exhibit 30 (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") 7F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7F, which is automatically a party to this application. ANC 7F did not submit a written report related to the application. However, the Chairman of ANC 7F filed a letter dated March 5, 2018 requesting to have the case record remain open 14 days to allow the submission of a written ANC report after the ANC meets on March 20, 2018. (Exhibit 39.)

The Commissioner for ANC Single Member District ("SMD") 7F06 testified at the hearing in support of the application and noted that the ANC voted unanimously in support of the

¹ The Applicant indicated that it intends to file a planned unit development ("PUD") application for the larger Meadow Green Courts site later in the year, but sought relief for this aspect of the project in this case before the BZA based on deadlines of the annual funding cycle for Low Income Housing Tax Credits ("LIHTC"). The Board previously approved part of this project in Case No. 18972-A (60-unit affordable apartment building for seniors).

application at a special meeting on February 26, 2018. With regard to the request in the March 5th letter, the SMD Commissioner testified that a written report from ANC 7F would not contain additional substantive information other than what was expressed in her testimony. By consensus, the Board denied the ANC Chair's motion to keep the record open 14 days for the ANC report, based on the testimony of the SMD Commissioner at the hearing that the report would not contain any new issues or concerns.

The Office of Planning ("OP") submitted a timely report recommending approval of the application with one condition requiring demolition of two of the buildings prior to the issuance of a certificate of occupancy. (Exhibit 33.) The Applicant agreed to OP's proposed condition.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 32.)

Letters of support were submitted by the Meadow Green Courts Resident Association (Exhibit 28) and Councilmember Vincent Gray (Exhibit 38). At the hearing, the vice president of the Meadow Green Courts Resident Association and one resident testified in support of the application. One neighbor who resides at 3427 B Street, S.E. expressed concerns about the lack of information provided about the proposal to the community at-large. In response to her concerns, the Board encouraged the Applicant to communicate with the witness and other neighbors to answer questions and provide more clarification about the Applicant's plans.

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the floor area ratio requirements of Subtitle F § 302, the lot occupancy requirements of Subtitle F § 304, and the rear yard requirements of Subtitle F § 305, to construct a new 90-unit apartment house and retain seven existing apartment houses in the RA-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse 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 variances from 11 DCMR Subtitle F §§ 302, 304, and 305, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the new residential development provisions of Subtitle U § 421. 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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 421, 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 EXHIBITS 31C1, 31C2, AND 31C3 – PREHEARING STATEMENT: TAB C (PLANS – PART 1, PART 2, AND PART 3) - AND WITH THE FOLLOWING CONDITION:**

1. Prior to the issuance of the Certificate of Occupancy for the new apartment building, the Applicant shall demolish two buildings within the new lot area.

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Anthony J. Hood to APPROVE.)

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: March 9, 2018

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

BZA APPLICATION NO. 19704

PAGE NO. 3

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**

Order No. 19704-A in Application No. 19704 of Milestone East Capitol 4, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the new residential development provisions of Subtitle U § 421, and pursuant to Subtitle X, Chapter 10, for variances from the floor area ratio requirements of Subtitle F § 302, the lot occupancy requirements of Subtitle F § 304, and the rear yard requirements of Subtitle F § 305, to construct a new 89-unit apartment house and retain seven existing apartment houses in the RA-1 Zone at premises 127 35th Street, S.E. (Square 5413, Lot 802).¹

HEARING DATE: March 7, 2018

DECISION DATE: March 7, 2018

CORRECTED SUMMARY ORDER²

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6 (original); Exhibit 30 (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") 7F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7F, which is automatically a party to this application. ANC 7F did not submit a written report related to the application. However, the Chairman of ANC 7F filed a letter dated March 5, 2018 requesting to have the case record remain open 14 days to allow the submission of a written ANC report after the ANC meets on March 20, 2018. (Exhibit 39.)

¹ The Applicant indicated that it intends to file a planned unit development ("PUD") application for the larger Meadow Green Courts site later in the year, but sought relief for this aspect of the project in this case before the BZA based on deadlines of the annual funding cycle for Low Income Housing Tax Credits ("LIHTC"). The Board previously approved part of this project in Case No. 18972-A (60-unit affordable apartment building for seniors).

² This Corrected Summary Order was issued to correctly reflect the reduced number of units proposed as 89 units (down from 90 units as originally proposed), to cite the plans commensurate with the 89-unit building, and to correctly reflect the Zoning Commission member voting on the case as Mr. Shapiro, not Mr. Hood. The changes have been underscored within the order.

The Commissioner for ANC Single Member District (“SMD”) 7F06 testified at the hearing in support of the application and noted that the ANC voted unanimously in support of the application at a special meeting on February 26, 2018. With regard to the request in the March 5th letter, the SMD Commissioner testified that a written report from ANC 7F would not contain additional substantive information other than what was expressed in her testimony. By consensus, the Board denied the ANC Chair’s motion to keep the record open 14 days for the ANC report, based on the testimony of the SMD Commissioner at the hearing that the report would not contain any new issues or concerns.

The Office of Planning (“OP”) submitted a timely report recommending approval of the application with one condition requiring demolition of two of the buildings prior to the issuance of a certificate of occupancy. (Exhibit 33.) The Applicant agreed to OP’s proposed condition.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 32.)

Letters of support were submitted by the Meadow Green Courts Resident Association (Exhibit 28) and Councilmember Vincent Gray (Exhibit 38). At the hearing, the vice president of the Meadow Green Courts Resident Association and one resident testified in support of the application. One neighbor who resides at 3427 B Street, S.E. expressed concerns about the lack of information provided about the proposal to the community at-large. In response to her concerns, the Board encouraged the Applicant to communicate with the witness and other neighbors to answer questions and provide more clarification about the Applicant’s plans.

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for area variances from the floor area ratio requirements of Subtitle F § 302, the lot occupancy requirements of Subtitle F § 304, and the rear yard requirements of Subtitle F § 305, to construct a new 89-unit apartment house and retain seven existing apartment houses in the RA-1 Zone. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse 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 variances from 11 DCMR Subtitle F §§ 302, 304, and 305, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without

substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the new residential development provisions of Subtitle U § 421. 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 report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 421, 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 EXHIBITS 41A1 AND 41A2 - FINAL PLANS AND DRAWINGS AND PPT - AND WITH THE FOLLOWING CONDITION:**

1. Prior to the issuance of the Certificate of Occupancy for the new apartment building, the Applicant shall demolish two buildings within the new lot area.

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter A. Shapiro to APPROVE.)

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: March 13, 2018

BZA APPLICATION NO. 19704-A
PAGE NO. 3

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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28Q**

Z.C. Case No. 05-28Q

Parkside Residential, LLC

**(Approval of a Second-Stage PUD and Modification of an Approved First-Stage PUD @
Square 5041, Lot 806 and Square 5056, Lots 809 and 813)**

July 24, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing (“Public Hearing”) on June 19, 2017 to consider an application (“Application”) from Parkside Residential, LLC (“Applicant”) for review and approval of a second-stage planned unit development and related modification of an approved first-stage planned unit development and Zoning Map amendment (collectively, a “PUD”). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), Subtitles X and Z. The Public Hearing was conducted in accordance with the provisions of Chapter 4 of Title 11, Subtitle Z of the District of Columbia Municipal Regulations. For the reasons stated below, the Commission hereby approves the Application.

FINDINGS OF FACT

I. PUD History and Procedural History of the Application

1. The property that is the subject of this PUD includes Lot 806 in Square 5041, Lots 809 and 813 in Square 5056, and portions of closed streets in Square 5041 and Square 5056 (collectively, the “Property” or “Parcel 9”) in the Parkside neighborhood of Ward 7. (Exhibit [“Ex.”] 3 at 2.) The Property is bounded by Kenilworth Terrace, N.E. to the southeast, Grant Place, N.E. to the southwest, Parkside Place, N.E. to the northwest, and Burnham Place, N.E. to the northeast. (*Id.* at 10.) Grant Place, N.E. and Burnham Place, N.E. have been closed as public streets by act of the City Council and are incorporated into the Property. The Property is approximately 54,423 square feet in area and is currently unimproved. (*Id.*) The Applicant proposes to construct two new buildings containing a mix of retail, residential, and office uses, with below-grade parking (“Project”) on the Property. (*Id.* at 2.) The Project contains approximately 76 total residential units. (Ex. 27A(2).)
2. In an order effective as of April 13, 2007, the Commission approved the first-stage planned unit development application of the Applicant in Z.C. Order No. 05-28 (“Parkside PUD”), the first-stage order to which this Application for a second-stage PUD succeeds. (Ex. 3F.)
3. The Parkside PUD approves a plan of development for 10 “building blocks” across the approximately 15.5-acre site that is the subject of such PUD (collectively, “Parkside”). (Ex. 3H.) The Parkside PUD authorizes a mix of

residential, mixed-use, commercial, and retail buildings to contain approximately 3,003,000 square feet of gross floor area (“GFA”), including 1,500-2,000 dwelling units, 500,000-750,000 square feet (“sf”) of office space, 30,000-50,000 sf of retail, 260,000 sf of educational uses, and 43,000 sf of healthcare uses; an overall density of 4.4 floor area ratio (“FAR”); and a maximum height of 110 feet for the office buildings and 90 feet otherwise. (Ex. 3 at 1.)

4. In 2008, in Z.C. Case No. 05-28A, the Commission approved a second-stage application for three of the 10 blocks in the Parkside PUD—Blocks A, B, and C. The Commission approved a senior living facility consisting of 98 units to be reserved for individuals with an income no greater than 60% of the area median income (“AMI”). It also approved 100 townhouses, 42 of which would be reserved for buyers with incomes between 80% and 120% AMI. This proposal was later modified in Z.C. Case No. 05-28G. The senior housing has been constructed on Block A and the townhouses are now complete on both Blocks B and C. (*Id.*)
5. In 2010, in Z.C. Case Nos. 05-28B and 05-28C, the District of Columbia Primary Care Association (“DCPCA”) and Lano Parcel 12, LLC, working with the University of the District of Columbia’s Community College of the District of Columbia (“CCDC”), submitted second-stage PUD applications for portions of Blocks H and I. The applicants submitted a simultaneous request (Z.C. Case No. 05-28E¹) to modify the Parkside PUD in order to accommodate the projects proposed in the second-stage applications. The Commission approved both second-stage applications, as well as certain modifications to the Parkside PUD. The DCPCA building has been constructed (subject to modifications approved in Z.C. Case No. 05-28I); however, the second-stage approval for CCDC has lapsed. (*Id.* at 1-2.)
6. In 2011 in Z.C. Case No. 05-28F, the Commission approved a second-stage application for a one-acre park (“Community Green”) located on Block D. The park was included as a benefit and amenity of the Parkside PUD as a whole. The Community Green provides passive recreation for neighbors and provides a central gathering place for the community. The Community Green has been constructed. (*Id.* at 2.)
7. In 2013, in Z.C. Case Nos. 05-28J and 05-28K, the Commission approved a modification to the Parkside PUD and second-stage application for Block E. Block E contains a multi-family building consisting of 186 affordable residential units reserved for individuals with an income no greater than 60% of the AMI. Construction on Block E is complete and is currently being leased for occupancy. (*Id.* at 1; Ex. 16B at 12.)

¹ Z.C. Cases 05-28D, 05-28G, 05-28H, 05-28I, 05-28L, 05-28M, and 05-28N consisted of either minor modifications to various second-stage PUDs or extensions to the First-stage PUD. (*See* Ex. 2 at Appendix.)

8. In April 2017, in Z.C. Case No. 05-28P, the Commission approved an approximately 190-unit market-rate multi-family residential building with below-grade parking on Block J.
9. Nearly concurrent with the Application, in Z.C. Case Nos. 05-28R and 05-28S, the Applicant sought second-stage PUD approval for two multi-family residential buildings, 25 townhouses, and optional ground-floor retail in the multi-family buildings, all with underground parking and at-grade pedestrian improvements on Parcels 8 and 10 of Block F.
10. On March 3, 2017, in Z.C. Case No. 05-28T, an affiliate of the Applicant applied for modification of the Parkside PUD and second-stage approval for Block H (“Block H Application”), which is pending before the Commission. The Block H Application proposes to construct an office building designed to accommodate a federal anchor office tenant, and includes ground-floor retail uses and approximately 111 enclosed, at-grade parking spaces.
11. On October 11, 2016, the Applicant delivered a notice of its intent (“NOI”) to file a zoning application to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commission 7D (“ANC”). (Ex. 3C.) On November 18, 2016, the Applicant delivered an amended NOI. (*Id.*) On January 13, 2017, the Applicant filed the Application for this PUD and certified that the Application satisfied the PUD filing requirements. (Ex. 1, 3D). The Application was accepted as complete by the Office of Zoning (“OZ”) on October 5, 2016. (Ex. 5.) OZ referred the Application to the ANC, the Councilmember for Ward 7, and the District Office of Planning (“OP”), and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 6-10.)
12. On March 17, 2017, the Applicant filed modified architectural plans, drawings, and renderings for the Application in response to preliminary comments from OP. (Ex. 12-13.)
13. On March 17, 2017, OP delivered a report regarding the Application (“OP Setdown Report”), recommended that the Commission set the Application down for public hearing, and requested additional information from the Applicant. (Ex. 15; *see also* Finding of Fact [“FF”] ¶ 74.)
14. At a Commission public meeting on March 27, 2017 (“Setdown”), OP presented the OP Setdown Report. (March 27, 2017 Transcript [“Tr. 1”] of the Commission’s Regular Public Meeting at 32-47.) The Commission then requested additional information from the Applicant. (*Id.*; *see also* FF ¶ 69.)
15. On April 25, 2017, the Applicant filed its pre-hearing statement (“PHS”), which included updated plans and information in response to the requests from OP and the Commission. (Ex. 16.)

16. Notice of the public hearing for Z.C. Case No. 05-28Q was published in the *D.C. Register* on May 5, 2017 (64 *D.C. Reg.* 67361) and was mailed to the ANC and to owners of property within 200 feet of the Property. (Ex. 18-20.) On May 9, 2017, the Applicant posted notice of the public hearing at the Property. (Ex. 21.) On June 14, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 30.)
17. Pursuant to the Zoning Regulations, 11-X DCMR (“X”) § 405.3,² OP requested comments on the Project from the District Department of Consumer and Regulatory Affairs (“DCRA”); Department of Employment Services (“DOES”); Department of Energy and the Environment (“DOEE”); Department of Health; the Department of Housing and Community Development (“DHCD”); Department of Parks and Recreation; District of Columbia Office on Aging; District of Columbia Public Schools; District Department of Transportation (“DDOT”); Fire and Emergency Medical Services; Metropolitan Police Department; DC Water; and the Washington Metropolitan Area Transit Authority. (Ex. 15 at 15.) On May 11, 2017, OP held an interagency meeting, inviting representatives from numerous agencies. (Ex. 29 at 11.)
18. On May 19, 2017, the Applicant filed a comprehensive transportation review (“CTR”) for the Project. (Ex. 25.)
19. On May 30, 2017, the Applicant filed its supplemental pre-hearing statement (“Supplemental PHS”), which included additional updated plans and drawings, and further information in response to the requests for the OP and the Commission. (Ex. 27.)
20. On June 9, 2017, OP and DDOT each submitted a final report dated June 9, 2017 (respectively, the “OP Final Report” and “DDOT Report”). (Ex. 28, 29.)
21. On June 16, 2017 the Applicant filed a motion for a waiver of the 20-day period required pursuant to Subtitle Z, § 401.5 to submit information into the record in response to the OP Final Report, the DDOT Report, and the ANC. (Ex. 34.)
22. On June 16, 2017, Applicant filed its responses to agency reports (“Responses”). The Responses included revised proposed flexibility, revisions to the transportation demand management plan (“TDM Plan”), and an amendment to the community benefits agreement (as so amended, the “CBA”). (Ex. 33.)
23. On June 19, 2017, the ANC, which is automatically a party to this proceeding, filed a report (“ANC Report”). (Ex. 48-50.) The ANC Report stated that the ANC had voted in support of the Project by a vote of 5-0, on the condition of continued collaboration between the parties. (Ex. 48.) No requests for party status were filed in this proceeding.

² This Application proceeds under the provisions of the Zoning Regulations in effect as of September 6, 2016. Accordingly, the provisions of 11 DCMR §§ 2407.3 and 2408.3 are inapplicable to the instant proceeding.

24. On June 19, 2017, the Commission conducted a public hearing in accordance with Subtitle Z of the Zoning Regulations on Z.C. Case No. 05-28Q. (June 19, 2017 Transcript [“Tr. 2”] of Z.C. Case No. 05-28Q at 3-4.)
25. As a preliminary matter prior to Applicant’s testimony, the Commission accepted the following Applicant’s witnesses as experts: Mr. Brian Earle in architecture; Mr. Robert Schiesel in traffic engineering and design; and Mr. Otto Condon in urban design. (*Id.* at 5-6.)
26. At the Public Hearing, the Applicant provided testimony from Mr. Jonathan Novak, (*id.* at 11–17); Mr. Condon, (*id.* at 17-21); Mr. Earle, (*id.* at 21-31); and Mr. Schiesel, (*id.* at 31-35.) These witnesses also answered questions from the Commission. (*Id.* at 38-99, 125-41.) The ANC cross-examined Applicant’s witnesses. (*Id.* at 96-99.)
27. OP testified and presented its report at the Public Hearing. (*Id.* at 99-101; Ex. 29; *see also* FF ¶ 77.) DDOT also testified and presented its report. (Tr. 2 at 101-03; *see also* FF ¶ 77.) Neither the Applicant nor the ANC cross-examined OP or DDOT. (Tr. 2 at 105.)
28. At the Public Hearing, the ANC testified, presented its resolution in favor of the Application, and answered the Commission’s questions. (*Id.* at 106-19; *see also* FF ¶ 89-91.)
29. At the Public Hearing, Ward 7 resident Mr. Sheridan Fuller testified to express his “cautious support” for the Application, and answered the Commission’s questions. (Tr. 2 at 120-125.)
30. No persons or organizations spoke in opposition to the Application at the Public Hearing. (*Id.*)
31. At the conclusion of the public hearing, the Commission closed the record with the exception of items requested from the Applicant and the ANC, and a request for Mr. Fuller’s written testimony. (*Id.* at 141; *see also* Ex. 54.)
32. On June 26, 2017, the Applicant provided its list of final proffers and draft conditions pursuant to Subtitle X § 308.8. (Ex. 56.) On July 3, 2017, the Applicant filed a written post-hearing submission (“Post-Hearing Submission”) in response to items requested by the Commission. (Ex. 57.)
33. On July 10, 2017, the Applicant provided its final proffers and conditions and filed a draft order. (Ex. 60, 59.)
34. On July 24, 2017, the ANC filed a report. (Ex. 61.)

35. On July 24, 2017, the Commission took final action to approve the Application. July 24, 2017 Transcript [“Tr. 3”] of the Commission’s Regular Public Meeting at page 22.

II. Summary of the Property and the Project

36. The Applicant seeks review and approval for the Project as a second-stage PUD with related modifications to the approved Parkside PUD for the development of the Project on the Property. (Ex. 2A.) The Application does not modify the formerly approved PUD-related Map Amendment (“Map Amendment”), which was approved as part of the Parkside PUD to change the zoning for the Property to the C-3-A Zone District from the R-5-A Zone District. (*Id.*)

Overview of the Property and Surrounding Area

37. The Parkside PUD is located in Ward 7, northwest of the intersection of Minnesota Avenue, N.E. and Benning Road, N.E. Parkside is surrounded by the Anacostia River and Kenilworth Park to the northwest, the existing Mayfair Mansions residential apartment complex to the northeast, the Anacostia Freeway (Highway 295) and the Orange Line tracks to the southeast, and the former Pepco plant to the southwest. The Property is located midblock along the southeast boundary of the Parkside PUD and is part the large, currently vacant, “superblock” located between Kenilworth Terrace, N.E. and Parkside Place, N.E. The Property is currently entirely vacant.
38. The Property, Parcel 9 of Block F in the original Parkside PUD layout, is located at the center of Parkside. (*Id.* at 10.) Three of the four surrounding blocks are also currently unimproved, and the fourth contains the existing Community Green. (*Id.*) Although the Property and surrounding blocks are unimproved, Parkside already has streets, sidewalks, and other infrastructure in place to serve the many townhomes, apartments, senior units, and schools already in the neighborhood. (*Id.*)
39. The Parkside PUD is partially constructed. Approximately 100 townhomes, 186 apartments, 98 senior housing units, and a healthcare clinic have been built. Approximately nine acres of the Parkside PUD site remains vacant land. (Ex. 2.)
40. The Property is surrounded by currently vacant lots and the Community Green. The vacant lots are the subject of pending and future second-stage PUD applications. (*See* Z.C. Case Nos. 05-28R, 05-28S, and 05-28T.) Immediately northeast of the Property, the Parkside PUD contemplated residential uses that have not yet been approved but that are part of a second-stage PUD application pending before the Commission in Z.C. Case No. 05-28S. Southwest of the Property, the Parkside PUD contemplated residential uses that have not yet been approved but that are part of a second-stage PUD application pending before the Commission in Z.C. Case No. 05-28R. The property included in Cases No.

05-28Q (referred to as Parcel 9), 05-28R (referred to as Parcel 8), and 05-28S (referred to as Parcel 10) comprise the entirety of Block F, as it was defined in the Parkside PUD. Opposite the Property along Kenilworth Terrace, N.E. is Parkside's Block H, which is the subject of an existing second-stage PUD application that is expected to contain a mix of office and retail uses. (See Z.C. Case No. 05-28T.) Further east of the Property is the Kenilworth Avenue, N.E./Anacostia Freeway/Orange Line corridor which creates a significant barrier between the Property and other land uses even further to the east. The surrounding undeveloped blocks are all controlled by the Applicant or affiliates of the Applicant and are expected to be constructed roughly contemporaneously with the proposed Project.

41. Land uses in the vicinity of the Property include a former Pepco plant, the Educare early-childhood educational facility, Neval Thomas Elementary School, Cesar Chavez Public Charter School, Metrotown apartments and townhomes, and the Parkside townhomes, which were constructed in the 1990s. Two blocks north of the Property are the Mayfair/Paradise multifamily rental communities. Eastland Gardens is located approximately one-half mile to the north of the Property.
42. The Property has vehicular access to the Baltimore/Washington corridor via Highway 295, a six-lane highway that provides convenient access to downtown Washington, to Route 50 and points east, to the Baltimore-Washington Parkway to Howard County and Baltimore, and to the Capital Beltway. The Minnesota Avenue Metrorail Station, with Orange Line service, is located immediately across Highway 295 from the site, within walking distance over a pedestrian bridge ("Bridge") that connects to the Metrorail Station. The Minnesota Avenue Station is seven stops (i.e., approximately 10 to 15 minutes) on the Orange Line from the Metro Center Station. In the opposite direction, the Orange Line runs to New Carrollton, a major employment center for Prince George's County, Maryland. (*Id.*) Two Metrobus lines, the U5 and U6, serve Parkside directly, and numerous other lines serve the nearby Minnesota Avenue, N.E.
43. Parkside is well-served by outdoor space, with thousands of acres of nearby protected parkland, including Kenilworth Aquatic Gardens, Anacostia Park, and the National Arboretum and Kingman Island forming a large, continuous, green space and recreational complex. The Anacostia Riverwalk Trail is under expansion, and approximately 15 miles of the 28-mile trail system are open today. The Parkside Community Green is also nearby.
44. Commercial uses predominate along Minnesota Avenue, N.E. to the northeast and southeast of the Property, and the heart of the Benning neighborhood to the southeast contains the East River Park Shopping Center with a public library, a grocery store, and pharmacy as well as other shops and restaurants. Parkside itself, like the adjacent residential blocks, contains no significant retail other than a single convenience store along Kenilworth Terrace, N.E.

45. Apart from other blocks of Parkside and the schools mentioned above, several other developments are currently planned or have recently been constructed. These include the construction of the first phase of the DOES Government Center, which Center consists of 230,000 sf of office space and first-floor retail. The Park 7 project near the Minnesota Avenue Metrorail Station contains 376 affordable rental units and approximately 20,000 sf of retail space with construction completed in 2014. Also nearby are: (i) a 172 rental unit-development known as Lotus Square; and (ii) a development containing 125 affordable townhouses along with public housing units known as MetroTowns at Parkside, both of which were completed in the recent past.

Parkside PUD

46. Parkside has been adopted by America's Promise Alliance, a coalition of over 400 national organizations working collaboratively to bring comprehensive education and social services to underserved communities based upon the Harlem Children's Zone model. (*Id.*) The Parkside community was accepted into the federal Promise Neighborhood Program with a \$25 million grant from the US Department of Education in December 2012, which is the centerpiece of former President Obama's urban initiatives. (*Id.* at 12-13.) The Promise Neighborhoods Program seeks to engage all resident children and their parents into an achievement program based on tangible goals, including matriculation to college for each and every participating student, positive physical and mental health outcomes for children, and parenting classes. (*Id.* at 13.) The program also seeks to provide employment training and counseling to provide meaningful employment opportunities for the parents. (*Id.*)
47. The Parkside PUD was approved prior to September 6, 2016, and accordingly, pursuant to Subtitle A of the Zoning Regulations, the substantive requirements of the 1958 Zoning Regulations ("ZR58") apply to the Project, except as the Parkside PUD is modified.
48. In sum, once the modifications to the original approval are accounted for, the final Parkside PUD approval allows approximately three million sf of GFA: approximately 43,000 sf of health care uses, 260,000 sf of educational uses, 750,000 sf of commercial uses, and approximately two million sf of residential uses. (Ex. 2 at 2.) Prior to this Order (including the three pending cases cited above), the Commission approved 1.15 million sf of residential use and approximately 43,000 sf of health care use. (Ex. 2 at Appendix 2.)
49. The Parkside PUD approves the overall massing and program for the Parkside PUD site and set forth parameters for each of the site's building blocks, including Block F, which is the subject of the instant order. The Parkside PUD approved the following parameters with respect to Block F in total: Number of Units – 330-

365; Lot Occupancy – 47.4 percent;³ GFA – 444,825 sf; FAR – 3.13⁴; Height – 72-90 feet; and Parking – 485 surface parking spaces. (*Id.* at 7.)

50. In the Parkside PUD (which was approved three days after the adoption of the Inclusionary Zoning [“IZ”] regulations), the Applicant proffered a commitment, which the Commission accepted, to set aside 20% of the residential component of the overall Parkside PUD to be affordable for households at 80% AMI and an additional 20% of the overall residential component to be affordable for households at 80-120% of AMI. To date, the Applicant and its affiliates have constructed 384 total units, of which 284 (74%) are affordable at 60% AMI (i.e., at a deeper level of affordability than is required under the Parkside PUD, which required only that units be affordable at 80% AMI); 42 (11% of the total) are affordable at 80-120% AMI; and 58 (15% of the total) are market rate. (Ex. 3 at p. 16, n. 7.) Upon completion of the Project and including the new units added by the Project, 44% of the units in the Parkside PUD will be market-rate units. (Ex. 16, Tr. 2, p. 8.) The Commission finds that Parkside’s mixed-income housing and mixed-use approach, of which the Project is a key element, is essential for attracting a mix of commercial uses to the Parkside neighborhood. (Ex. 3 at 5-6.) The Commission agrees with the OP’s assessment that the inclusion of office space would further policies related to the provision of business and employment opportunities, and make the retail space that is desired for the neighborhood more viable. (Tr. 1 at 36.)

The Project

51. Overview. The Project consists of two new buildings containing a mix of retail, residential, and office uses, plus approximately 141 below-grade parking spaces and 10 sidewalk parking spaces shared among the uses on the Property. (Ex. 3 at 2; Ex. 3(I)(2).) One building will contain approximately 76 residential units (with approximately 20% of the units reserved as workforce housing). (*Id.*) The other building will contain office space. Both buildings will contain ground-floor retail. (*Id.*)
52. The Project that is the subject of this second-stage Application contains two buildings, one office and one residential, and both with ground-floor retail, and approximately 141 below-grade parking spaces. The office building will have a maximum height of 90 feet and the residential building will have a maximum height of 85 feet.
53. The Applicant presented evidence that development in the Parkside neighborhood has led to sufficient critical mass of residents to support the proposed new retail uses. The development of office uses at the site will further support new retail by

³ Under the Parkside PUD, Lot Occupancy was calculated using area of the individual building blocks rather than lot area.

⁴ As noted above, the first-stage PUD FAR of 3.13 was calculated based on the block area. Using lot area, the first-stage PUD FAR is 3.32.

providing a daytime commercial use. The retail will be located on a new vehicular and pedestrian promenade that runs through the site and provides a direct connection between the central Community Green and the planned pedestrian bridge (“Bridge”) from the Minnesota Avenue Metrorail station. The primary rationale for this phase of the development of Parkside are the addition of retail and office uses, the construction of additional multi-family units, and the activation of the keystone Parcel 9 at the center of the neighborhood, with its prominent linkage to the planned pedestrian walkway to the Metrorail station.

54. The Project’s site plan addresses its important context in the Parkside neighborhood. The plan for Parcel 9 calls for two seven-story buildings separated by a promenade (“Promenade”) that has a flexible relationship between pedestrian space and vehicular space. The Promenade links the Community Green and the greater Parkside neighborhood to the future Bridge. The placement of buildings of roughly equal height and mass on either side of the Promenade creates a framing effect that heightens the significance of the Community Green and signifies an arrival into the Parkside neighborhood. The near symmetry of the two buildings, offset slightly because of their differing uses, reinforces the nearly uniform grid of the neighborhood and recalls Parkside’s classical street plan. Parking and loading access have been relegated to the periphery of this block with the primary urban design emphasis being the axial connection between the Community Green and the planned pedestrian pathway to the Metrorail station. The two buildings form strong edges along each of the surrounding streets, creating defensible boundaries and a strong sense of place and hierarchy. The two buildings have rectilinear configurations with more significant setbacks from Kenilworth Terrace, N.E., which is anticipated to be commercial in nature, than from Parkside Place, N.E., which will have a more residential character given its proximity to the Community Green. The size of the two proposed buildings also establishes a sense of commercial significance to Parkside when viewed from the adjacent Anacostia Freeway, serving as an indication that the neighborhood is maturing. The height and density of the two buildings is fairly uniform across the Property, with embellishments, articulation, and materials used to create visual interest and significance.
55. The Project’s height and mass are appropriate relative to the existing context and the planned development of Parkside. The two buildings are each carved back at the upper levels on the Community Green side of the Project, in a gesture to the residential character of that portion of the neighborhood. Contrastingly, the two buildings rise to their full posture on Kenilworth Terrace, N.E., with the intent that the Project will contribute a strong presence on that street in anticipation of future commercial phases. The two buildings approximately mirror each other in height and mass, with the office building being slightly (five feet) taller and somewhat more massive given the market demands for broader floorplates for office uses relative to residential ones. Parcel 9 has an overall density of approximately 3.81 FAR and will contain approximately 207,759 square feet. For comparison, the Parkside PUD authorized a maximum density of 3.13 FAR for Parcel 9. The FAR

of 3.13 was based on the block area for Block F, whereas the 3.81 FAR for Parcel 9 is based on the lot area. Using the lot area, the first-stage PUD density is 3.32 FAR. As noted above, the office building will be approximately 90 feet and the residential building approximately 85 feet.

56. The Project is consistent with the Zoning Regulations and Parkside PUD with respect to other development standards, except as noted below. The Project will occupy approximately 55.4% of the overall lot area, which is slightly greater than what was contemplated (47.3%) in the Parkside PUD for all of Block F. As a result of this increase, the Applicant required a modification from the Parkside PUD with respect to lot occupancy.⁵ Neither front nor rear yards are required for the Property (the Property is a through lot), and none are provided here. Two side yards, each 24 feet, are provided, and comply with the requirement that such yards be two inches for each foot of height. The Project includes three open courts, all of which comply with the Zoning Regulations.
57. The rectilinear form of each building creates significant efficiencies for the Project overall. The office building features a broad, approximately 18,400 square foot floorplate surrounding an elevator and stair core on each of the six upper levels. Likewise, the residential building has a single double-loaded corridor on each upper level. Each building has its main lobby entrance off of the Promenade between the two buildings, a design that encourages pedestrians to engage with the common space between the two buildings. Retail uses wrap the ground floor along both Parkside Place, N.E. and Kenilworth Terrace, N.E. Bike storage is provided at ground level in both buildings. Part of the Applicant's strategy with respect to neighborhood transportation issues is to encourage Parkside residents, especially future residents, to utilize non-automotive forms of transportation. Giving bicycles a prominent location in the Project at-grade opposite the Community Green sends a clear signal that bicycles are a priority transportation mode. By locating the Project's bicycle storage room at-grade with windows similar to those found on a retail storefront, the increased visibility will encourage engagement and adoption among the residents. This design is in line with studies that have shown that more visible bike storage leads to increased adoption.
58. The residential building contains a mix of studio, one-bedroom, one-bedroom plus den, and two-bedroom units. The residential building also has ample dedicated amenity space for resident events, and both buildings have occupiable outdoor rooftop terraces.
59. The Applicant has made a significant commitment to providing affordable housing as part of the overall Parkside development, and has to date delivered

⁵ The 47% from the first-stage PUD was calculated using the Block area, whereas the 54% is calculated from the lot area. Using the lot area, the first-stage PUD lot occupancy for Block F would be 50.2%.

residential units available to a mix of incomes.⁶ Accordingly, the Applicant is ahead of schedule with respect to satisfying the Parkside PUD's affordability requirements, and as such, this Application's residential building contains only workforce units and not any affordable units.

60. The approach to the design of each of the Project's buildings creates a connection between function, massing and building expression through materials, detailing and scale. While each of the two buildings are treated differently, the overall approach develops building expressions that complements the surroundings context and anticipates the overall development of the neighborhood as it transitions from a smaller scale, less dense residential community into an active, safe, mixed-use and urban-focused environment as described below:
- (a) The overall form of the residential building emphasizes the pattern of the unit windows while incorporating larger modulations on the longer south and north façades that break down the buildings mass. At grade level, façade modulation is achieved through a careful balance of brick, and storefront glazing systems supporting an active pedestrian experience; and
 - (b) The office building intentionally creates a larger, more civic presence with a fenestration aesthetic that draws on a simpler, larger scale grid pattern formed with cement panels and fixed window elements. In an approach similar to the residential building, façade modulation is concentrated at the grade level and rooftop areas featuring contrasting materials emphasizing the main form and discrete elements. The grade level façade is a highly transparent storefront system that visually connects the interior to the exterior creating the sense of interior spaces as an extension of the pedestrian environment. The rooftop modulation accentuates terrace areas with green roofs that breaks down the building mass towards the park and residential neighborhood.
61. Landscaping. The Project features landscaping at grade and on the rooftop of the office building. The central landscape feature at grade, and indeed the organizing principle of the site plan, is the Promenade through the center of Parcel 9. This Promenade accommodates both vehicles and pedestrians, with an emphasis on functioning as a shared space that is able to be flexibly closed and opened for special events, such as markets and festivals. The Promenade creates the vital pedestrian linkage between the Community Green and the Bridge. The Promenade features street trees and other ground level vegetation, which serve dual purposes of beautification and stormwater control. Street trees and vegetation also line Parkside Place, NE and Kenilworth Terrace, N.E. adjacent to the Project. Vegetation is provided at the rooftop level as a green amenity for building

⁶ To date, the Applicant has delivered 384 residential units, of which 286 are reserved at affordable (60% AMI) levels and 42 at workforce (80-120% AMI) levels; that is, 85% of the units delivered to Parkside thus far have been affordable or workforce units.

occupants and for the environmental benefits. Innovative and artistic fixtures are employed to give the Project a unique character.

62. Parking and Loading. The Project includes a unified below-grade garage expected to contain approximately 141 parking spaces. Ten additional parking spaces are provided at grade along the Promenade. Eighty long-term bicycle parking spaces are provided in secure rooms at grade, and an additional 32 short-term spaces are provided in public space around the perimeter of the Project's two buildings. The Applicant anticipates constructing the garage with knock-out walls to allow connection to future below grade garages on the adjoining Parcels 8 and 10. Access to the garage and loading areas is via alleys at the periphery of the project, which alleys are also shared with Parcels 8 and 10. The existing curb cuts on the Property are relocated to accommodate the proposed configuration. Two new curb cuts are added to allow the proposed Promenade at the center of the Project. The Project's loading is entirely enclosed and does not necessitate any truck backing up into public right of ways. However, the Project does not provide the requisite number of loading berths and delivery areas required under the Zoning Regulations. Accordingly, the Application requires relief with respect to loading.
63. LEED. This Project is designed to the level of LEED-Gold for both the office building and the residential building.

Modifications to and Consistency with the Parkside PUD

64. The Project is consistent with the general parameters established for Block F in the Parkside PUD, but differs slightly with respect to certain elements. Therefore, this Application seeks modifications to the Parkside PUD. The elements of the Project that differ from the Parkside PUD include:
- (a) Use: The first-stage PUD did not contemplate office use on the Property. After study, the Applicant presented evidence that locating at least some office use on the Property is essential to allowing the ground-floor retail to succeed and that the timing is appropriate for establishing office uses as part of this phase of development;
- (b) Gross Floor Area/Floor Area Ratio: The first-stage PUD contemplated 151,200 square feet for Parcel 9, whereas 207,759 square feet are now proposed. The density contemplated under the first-stage PUD would have resulted in an FAR of 3.13,⁷ whereas the Project will have an FAR of approximately 3.81 (for Parcel 9 only);

⁷ As noted above, the first-stage PUD FAR of 3.13 was calculated based on the block area. Using lot area, the first-stage PUD FAR is 3.32.

- (c) Lot Occupancy: The first-stage PUD authorized a lot occupancy of 50%⁸ for the entirety of Block F, whereas the Project will have a lot occupancy of 55.4%. The reduced lot occupancy is primarily a result of the conversion of one of the two buildings to office use and the concomitant enlargement of the floor plate of such building to satisfy market demands for office layouts; and
- (d) Parking: The first-stage PUD approved 114 surface parking spaces for Parcel 9, whereas the Project will provide 141 below-grade parking spaces plus 10 on-street spaces along the Promenade.
65. These modest proposed modifications are consistent with the overall massing, development envelope, policy objectives, impacts, consistency with planning objectives, character, and appropriateness of the Parkside PUD, and were undertaken following detailed studies of the Project's site plan, architecture, landscaping, and transportation as well as current market conditions.
66. The Applicant and the Project are in compliance with the conditions of the Parkside PUD as follows:
- (a) Condition 1: As part of the Application, the Applicant formally confirmed the Map Amendment to rezone the Property from the underlying R-5-A Zone District to the C-3-A Zone District;
- (b) Condition 2: The Application is largely consistent with the concepts the Commission approved in the Parkside PUD, subject to the modifications requested herein regarding the proposed uses, lot occupancy, GFA/FAR, and parking;
- (c) Condition 3: The Project demonstrates further development and refinement of the concepts and massing submitted in connection with the Parkside PUD. The Public Benefits are consistent with those proposed during the Parkside PUD;
- (d) Condition 4: The Project is consistent with the overall dimensional limits set forth in the Parkside PUD Conditions, as modified in Z.C. Order No. 05-28E. The Project is consistent with the maximum height limits allowed pursuant to the Parkside PUD. A construction schedule for the Bridge is expected to be issued in 2017. Construction of the Community Green is complete;
- (e) Condition 5: Not applicable to this Application;

⁸ As noted above, the first-stage PUD lot occupancy was calculated using the block area rather than the lot area. In the first-stage PUD, the block lot occupancy for Block 9 was 47%.

- (f) Condition 6: Not applicable to this Application. The Project does not include any affordable housing. The Applicant has previously provided updates on its provision of affordable housing and is significantly ahead of its obligations with respect to this Condition;
- (g) Condition 7: The Project includes workforce housing units.
- (h) Condition 8: Landscape plans, and detailed architectural plans and elevations are included in the Final Plans;
- (i) Condition 9: Not applicable to this Application. This analysis was addressed in prior first-stage and second-stage applications;
- (j) Condition 10: The Applicant provided the CTR in fulfillment of this Condition;
- (k) Condition 11: This Application addresses the design and anticipated use of the Promenade at the center of the Property in (a) of this Condition. The Applicant has previously given to DDOT a 45-foot-wide easement at the center of the site as part of the retail plaza. In a prior second-stage application, the Applicant submitted plans regarding buffering the Pepco site;
- (l) Condition 12: Not applicable to this Application. The Applicant is not including for-sale affordable residential units in connection with this Application;
- (m) Condition 13: This Application has been filed prior to October 3, 2017. This condition has been satisfied;
- (n) Condition 14: The Applicant is developing Parkside in phases. The Application is one phase of the 10 building blocks that were approved during the Parkside PUD; and
- (o) Condition 15: This Condition is restated as a Condition of this Order.

Community Outreach

67. The Applicant engaged in significant outreach to the surrounding community prior to and after the Public Hearing. The Project reflects the extensive Applicant-led community outreach. The Applicant undertook extensive outreach as part of the first-stage PUD process, and that outreach continues as Parkside comes to fruition as a fully realized neighborhood. The ownership team has continued to meet with the community, as well as government representatives from the OP (on November 22, 2016), DDOT (on December 13, 2016). The Applicant met with the ANC at its next meeting on February 14, 2017, and with the Parkside Civic Association on February 16, 2017, and has engaged in considerable efforts to

engage and inform the nearby residents and other affected and interested stakeholders. The Applicant continued its dialogue with the ANC and the community more generally after the Public Hearing, including, but not limited to, attending a special meeting of the ANC on June 28, 2017. The preferences and desires of numerous community groups and individuals shaped the Project's Public Benefits as evidenced in the Community Benefits Agreement with the ANC 7D for Parkside.

Summary of Public Benefits

68. The Commission approved a package of public benefits in its evaluation of the Parkside PUD ("Parkside Public Benefits") and determined those Benefits appropriately balanced the flexibility requested during the PUD process. The Parkside Public Benefits include: (a) provision of affordable housing in 20 % of the residential component of the Parkside PUD; (b) provision of workforce housing in 20% of the residential component of the Parkside; (c) superior site planning including the provision of the one-acre Community Green and four additional acres of landscaped and/or hardscaped areas; (d) superior urban design; (e) provision of easements for pedestrian access to the Bridge as well as a \$3 million dollar contribution to the Bridge itself; (f) provision of transit-accessible jobs and training for Parkside residents; (g) conservation of natural resources and completion of the LEED-ND certification; and (h) other uses of special value to the community and the District as a transformational, mixed-use, mixed-income, transit-oriented development in Ward 7. As noted above, the Parkside Public Benefits were approved under ZR58. The Applicant has expanded upon and refined the Parkside Public Benefits in this Application. More specifically, the Applicant has proffered the following Public Benefits: (a) superior urban design, architecture, and landscaping; (b) efficient site planning; (c) transportation infrastructure and mass transit improvements; (d) environmental and sustainable benefits; (e) uses of special value to the neighborhood or the District as a whole; (f) other benefits that substantially advance the Comprehensive Plan; and (g) streetscape improvements.

III. Commission Comments and Questions

69. On March 27, 2017, following review of the Initial Statement, at Setdown the Commission provided comments on the Application and requested that the Applicant: (a) provide a comparison between what was originally approved in the first-stage PUD approval and what was proposed at the second-stage; (b) consider design modifications for the residential building that would make the building appear more residential in character, and consider including balconies and changing use and/or color of fiber cement panels in the building; (c) consider additional environmental enhancements, such as a green roof or solar panels, on the roof of the residential building; (d) provide information regarding the necessity of IZ compliance in light of the Application's modifications to the Parkside PUD and provide information on the status of the Parkside PUD's

provision of affordable housing through the instant Application; (e) provide information regarding the introduction of a new use (*i.e.*, office) in the second-stage application that was not included in the first-stage application in light of the Comprehensive Plan.

70. In response to the Commission's comments and questions at Setdown, the Applicant provided, in its PHS, and Supplemental PHS, and at the Public Hearing, the following:
- (a) Comparison of First-Stage Approvals and Second Stage Applications. In the PHS, Applicant provided a detailed overview of the parameters of the approved Parkside PUD. (Ex. 16A.) Applicant also provided information regarding the second-stage applications, including the instant Application, which had followed from the Parkside PUD. (*Id.*) Applicant further provided comparisons of the first-stage approved design and second-stage approved or proposed designs and modifications for Blocks A through I. (*Id.*) In the Supplemental PHS, Applicant provided further illustrations of the differences between the approved first-stage plans and the proposed second-stage plans; (Ex. 27A.)
 - (b) Design Modifications for the Residential Building. In the PHS, the Applicant provided revised plans in response to Commission comments at Setdown. The design revisions included: (i) a warm accent color to distinguish the residential building from the office building; (ii) additional inset balconies in the residential building to further enhance its residential character; (iii) a change in the design and color of the windows of the residential building to further distinguish it from the office building; and (iv) additional information regarding proposed materials for the buildings. (Ex. 16.) In the Supplemental PHS, Applicant provided further refined designs, including revisions to the façade of the residential building to further enhance the residential appearance of the building. (Ex. 27; Ex. 27A.) The Applicant provided additional explanation of the modifications to the residential building at the Public Hearing; (Tr. 2 at 25-31, 50-56.)
 - (c) Environmental Enhancements. In the Supplemental PHS, the Applicant referred the Commission to its commitment to pursue a LEED-Gold level of design for both buildings and provided updated LEED scorecards. (Ex. 27; Ex. 27A4.) Applicant also stated it was continuing to research the feasibility of including solar panels on the residential building; (Ex. 27.)
 - (d) Necessity of IZ Compliance. The Commission agrees with the Applicant that this project is not subject to IZ because the Parkside PUD was set down prior to March 14, 2008, and is therefore exempt from IZ under 11

DCMR § 2608.2⁹, which provides that IZ does not apply to buildings set down before that date.

In some instances, the Commission has found that a PUD modification can trigger IZ when the modifications are so great that the modified project is not the same “building.” This is because the exemption rule states that IZ “shall not apply to any building approved by the Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.” (11 DCMR § 2608.2.) Thus, if the Applicant is no longer developing the same building, it no longer qualifies for the exemption.

In this case, there are some relatively significant changes to the office building, but the uses in the office building do not trigger any inclusionary zoning requirements. The residential building on Parcel 9 include uses that would trigger an IZ requirement, but the changes Applicant seeks through the modification are relatively minor, and do not include any additional residential gross floor area. The Commission therefore considers the residential building on Parcel 9 the same “building” the Commission approved previously, and for purposes of determining whether the modification triggers an IZ requirement under 11 DCMR § 2608.2, and finds that it remains exempt from IZ; and

- (e) Information Regarding Introduction of Office Use at Second-Stage Approval. In its Supplemental PHS, the Applicant presented two examples of developments that proceeded pursuant to a PUD and that included an office use in an area currently designated as Medium Density Residential use on the Comprehensive Plan’s Future Land Use Map (“FLUM”). The Applicant further stated, as it had previously, that the inclusion of office use is supported by the Comprehensive Plan’s goals of commercial and economic development. (Ex. 27.) In the OP Final Report, the OP expressed support for the office use, and stated that the office use was consistent with the Comprehensive Plan and the FLUM. (Ex. 29 at 4.)

71. At the Public Hearing, the Commission questioned Applicant regarding: (a) the total amount of office versus retail space for the current proposed Parkside PUD; (b) the methodology of calculating market-rate parking and the facilities that were used to calculate market-rate; (c) the provision of solar panels on residential building, and logistics of allocating solar panel space to future residents; (d) the location of workforce units within the residential building; (e) other developments in the District that have street-level bicycle storage facilities; (f) the design and materials of the buildings; (g) the adoption of DDOT’s proposed conditions; (h) the potential application of IZ requirements, and the Project’s compliance with

⁹ The Project has vested development rights and is therefore subject to the 1958 Zoning Regulations. (11-A DCMR §102.3(a).)

IZ; (i) potential tenants for the office building; (j) the size and location of retail space; (k) potential tenants for retail space; (l) language regarding the requested design flexibility in regards to exterior building materials; (m) traffic impacts; (n) division of parking among various uses at the Project; and (o) the make-up of the Project team.

72. The Commission finds that the Applicant responded completely to the Commission's questions at the Public Hearing as follows:

- (a) Office versus Residential Uses in Parkside PUD. The Applicant explained that the office component of the Parkside PUD will ultimately likely increase over the amount originally approved as part of the Parkside PUD but the Applicant has not yet come close to exceeding the limit established in the Parkside PUD; (Tr. 2 at 39.)
- (b) Calculation of Market-Rate Parking. The Applicant explained that the condition to establish the garage parking rates at no lower than nearby market rates was an industry convention and would be more meaningful in the future when other parking garages existed nearby. In its Post-Hearing Submission, the Applicant explained that the Minnesota Avenue Metrorail station park-and-ride garage located at 4000 Minnesota Ave., NE is within 0.25 miles (walking) of the Project's office building once the Bridge is complete. On weekdays, the park-and-ride garage's current daily rate is \$4.60 and the current monthly rate is \$65.00;
- (c) Provision of Solar Panels/Green Roof. The Applicant provided evidence that the total rooftop area of the residential building available for solar is 4,500 square feet, which could accommodate up to 189 panels and produce a theoretical maximum of approximately 550,000 KW/h annually (which, for scale, equals approximately 25-30% of the electrical energy demand for the residential units in the building). The residential building will be constructed to contain the necessary infrastructure to accommodate future rooftop solar. Accordingly, the Applicant does not propose a green roof for this area. In lieu of providing a green roof on the condominium building, the Project provides the infrastructure necessary for the future installation of a photovoltaic array. Such infrastructure includes sizing the roof to support the increased load, a roof membrane warranted to support the installation of a ballasted array, and raceways from the roof to individual units and the building main electric room. This infrastructure eliminates many of the costliest barriers to installing such a system. At the same time, it allows the residential building's future condominium association ("Association") to procure an array in a manner that best suits their needs and the time of their choosing. This approach is beneficial for a variety of reasons including:

- It allows the Association to choose whether to purchase the array all at one time in a cooperative model, or to allow individuals unit owners to purchase panels at their election;
- If purchased cooperatively, the Association can choose whether to use the array to service common areas, individual units, or some combination thereof; and
- It allows the individual homeowners and/or the Association to take advantage of the Solar Renewable Energy Credit Program in the District.

In order to satisfy, in part, stormwater requirements applicable to the Project, the office building includes green roof rather than rooftop solar. The office building contains 6,500 square feet of green roof area plus outdoor roof terrace across two levels as an outdoor amenity space for building occupants. The provision of a green roof on the office building provides an overall greater environmental benefit and allows the Project's stormwater management requirements to be satisfied on-site. The Applicant has committed to construct the office building to the level of LEED-Gold and has studied sustainability measures for the building as a whole;

- (d) Location of Workforce Units in Residential Building. The Applicant committed to following the distribution requirements of the IZ regulations with respect to the location of the Project's workforce housing unit; (Ex. 57.)
- (e) Other District Buildings with Street-Level Bicycle Storage. Part of the Applicant's strategy with respect to neighborhood transportation issues is to encourage Parkside residents, especially future residents, to utilize non-automotive forms of transportation. Giving bicycles a prominent location in the Project at-grade opposite the Community Green sends a clear signal that bicycles are a priority transportation mode. The Commission finds that, by locating the Project's bicycle storage room at-grade with windows similar to those found on a retail storefront, the increased visibility has the effect of encouraging engagement and adoption of bicycle use among the residents. The Applicant provided examples in the District where secure, indoor bicycle storage is successfully included at the ground level. The Project is well-served by the Anacostia River Trail, which the Applicant hopes will serve as a meaningful bicycle connection for Parkside much as the MBT does for the NoMA neighborhood;
- (f) Refinements to Building Designs. The Applicant explained the changes to the Project so that the residential building reads more clearly as such. (Tr.

2 at 50-52.) In the Post-Hearing Submission, the Applicant provided additional information on materials; (Ex. 57.)

- (g) Adoption of DDOT Proposed Conditions. The Applicant committed to adopt DDOT's conditions with respect to TDM; (Tr. 2 at 56-57.)
- (h) Potential Application of IZ Requirements. The Applicant provided a response that the Project's modification triggered IZ only with respect to the office building and that this position had been discussed with OAG. (Tr. 2 at 59; *see also* FF ¶ 70(d).) The Applicant confirmed that the office building's penthouse would not trigger the affordable housing contribution requirements because it does not meet the minimum size of 1,000 square feet. (Tr. 2 at 60.) The Post-Hearing Statement includes additional information on the size of the office building's penthouse; (Ex. 57.)
- (i) Potential Tenants for the Office Building. The Applicant confirmed that it did not have specific tenants yet for the office building but that it was marketing the building to community-serving groups in Ward 7 and beyond, many of which currently occupy space designed for retail uses rather than office space. (Tr. 2 at 61-62.) The Applicant confirmed that the Project was designed to be constructed in a single phase given the below-grade garage; (*Id.*)
- (j) Size and Location of Retail Space. The Applicant confirmed that the retail was divided unevenly among the Project's two buildings, with approximately 5,800 sf in the residential building and approximately 10,900 sf in the office building; (*Id.* at 63-64.)
- (k) Potential Tenants for Retail Space. The Applicant confirmed that the Project is expected to be the first Parkside project to contain retail and that the Applicant had been in coordination with the community to identify their preferences for the type of retail included in the Project. (*Id.* at 64-66.) The Applicant further confirmed that identifying a small-footprint, fresh-food grocer was a priority; (*Id.*)
- (l) Flexibility regarding Exterior Building Materials. In its Post-Hearing Submission, the Applicant proposed revised flexibility language incorporated herein as a Condition of this Order;
- (m) Traffic Impacts. The Applicant provided a justification for continuing to develop in the Parkside neighborhood despite unresolved regional traffic issues; (Tr. 2 at 75-82.)
- (n) Division of Parking among Various Uses. The Applicant included a plan showing the nesting of residential-restricted parking inside the garage; and (Ex. 27A.)

- (o) Project Team. The Applicant confirmed that no one from the Project team was from Ward 7.
73. The Commission finds that the Applicant had thoroughly addressed its comments. The Applicant provided, in response to Commission's comments and questions, answers that are supported by substantial evidence contained in the record.

IV. Agency Reports and Testimony

Office of Planning

74. In the OP Setdown Report, the OP recommended that the Commission set the Application down for public hearing, and requested the following from the Applicant: (a) refinement and enhancement of the designs of each of the two buildings, including additional façade detail and enhancement of the building design to create a more interesting appearance to the buildings; (b) submission of a traffic study in advance of the Public Hearing; (c) consideration of additional green roof or solar panels on the residential building; (d) additional justification for opening the Promenade, which had been pedestrian-only under a previous design, to vehicular traffic; (e) information regarding the methodology that will be used to calculate the sale of the workforce units, and how workforce units will differ from market-rate units; and (f) submission of a LEED checklist for the office building and a Green Communities checklist for the residential building. (Ex. 15.)
75. In response to the OP Setdown Report, the Applicant provided the following:
- (a) Design Modifications for the Residential Building. The Applicant's PHS and presentation the Public Hearing included information responsive to this request from OP; (*See* FF ¶¶ 70(b); 72(f).)
 - (b) Traffic Study. The Applicant timely filed the CTR.
 - (c) Green Roof or Solar Panels. In its Supplemental PHS, Applicant stated it was continuing to research the feasibility of including solar panels on the residential building. (Ex. 27.) In its Post-Hearing Submission, the Applicant provided a detailed response regarding solar and green roof strategies; (Ex. 57; *see* also FF ¶ 72(c).)
 - (d) Information Regarding Opening of Promenade to Vehicles. In its PHS, the Applicant included information regarding the necessity of opening the Promenade to vehicle traffic to support the viability of the retail uses at the Promenade. (Ex. 16.) The Applicant provided a letter from Joe Falcone of Lincoln Property Company, the Applicant's commercial broker, which explained the importance of vehicle access for the success of retail uses. (Ex. 16C.) The Applicant further stated that DDOT supported opening the

Promenade, in part to avoid the creation of a superblock with limited vehicle porosity; (Ex. 16.)

- (e) Information Regarding Pricing and Design of Workforce Units. The Applicant provided information regarding pricing calculations for the workforce units; and (Ex. 16B.)
- (f) Submission of LEED Checklists. In the PSH and Supplemental PHS, the Applicant provided LEED checklists, reiterated its previous commitment to pursue LEED-Gold level designs for both buildings, and provided updated LEED scorecards. (Ex. 16D3; 27; 27A4.)

76. In the Final OP Report, OP stated that Applicant had addressed all previous issues raised by the OP and the Commission at Setdown, and requested or recommended: (a) further information regarding the price of proposed workforce units in comparison to area market rates; (b) that the various design flexibility should be limited or refined; (c) that the Applicant revise certain façades; (d) the Project include a green roof and/or solar panels; (e) that the Applicant implement various TDM measures; (f) that the Applicant coordinate with UFA regarding protection or transplanting heritage trees on the Property; (g) provision of comparison of proposed workforce housing to area market rate housing. (Ex. 29 at 12.)

- (a) Pricing Information. In its Responses, the Applicant noted the dearth of market-rate transactional information for new construction for-sale housing in Ward 7, the product type initially contemplated for the Project. The only recent comparables are the new three-bedroom market-rate townhouses on Blocks B and C which sold for between \$400,000 and \$470,000;
- (b) Flexibility. With the Post-Hearing Submission, the Applicant substantially revised the flexibility in accordance with language approved by the Office of Attorney General and previously approved by the Commission; (Ex. 57.)
- (c) Façade Design Revisions. In its Responses, the Applicant provided revisions to façade materials and further renderings depicting the exterior of the residential building; (Ex. 33D.)
- (d) Provision of Green Roof or Solar Panels. As noted above, in the Post-Hearing Submission, the Applicant provided an explanation of its green roof and rooftop solar panel strategy;
- (e) TDM Measures. The Applicant agreed to implement OP's recommendations in its TDM plan; (Ex. 33.)

- (f) Coordinate with UFA Regarding On-Site Heritage Trees. The Applicant agreed to coordinate with UFA regarding protection or transplanting of five on-site heritage trees; and (Ex. 33.)
 - (g) Provision of Comparison of Proposed Workforce Housing to Area Market Rate Housing. The Applicant provided a comparison of proposed workforce housing to area market-rate housing. (Ex. 33.)
77. At the Public Hearing, OP testified in support of the Project, and specifically in favor of the proposed modifications. (Tr. 2 at 99-101.) The OP stated that the Applicant had responded to issues raised by the Commission and the OP, and reiterated the OP's support of providing solar panels on the roof of the residential building. (Tr. 2 at 100.) OP further testified that the proposed office use was not inconsistent with the Comprehensive Plan. (*Id.*)
78. The Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions. The Applicant has responded to OP's comments and questions with answers that are supported by substantial evidence in the record.

DDOT

79. The DDOT Report noted no objection to the Project, provided that the TDM plan is effectively implemented. The DDOT Report also noted certain post-hearing conditions. (Ex. 28.)
80. The Commission finds that the Applicant has addressed all comments and questions raised by DDOT. The Commission further finds that, as DDOT testified at the Public Hearing, because all comments and questions have been addressed, DDOT does not object to the Project.
81. The DDOT Report included numerous findings, which the Commission hereby adopts. The DDOT Report found that the Applicant utilized sound methodology and assumptions to perform its analysis.
82. The DDOT Report requested that the Applicant provide three electronic vehicle charging stations at the Project. The Applicant agreed and the Post-Hearing Submission shows the location of such stations. (Ex. 57A.)
83. The DDOT Report supported the implementation of the TDM plan which requires the Applicant to:
- (a) Designate a TDM coordinator;
 - (b) Unbundle the cost of residential parking from the lease or purchase price of units;
 - (c) Charge market-rate prices for all garage parking;

- (d) Provide bicycle parking facilities in accordance with or exceeding the Zoning Regulations;
 - (e) Provide TDM Materials to New Residents in the Residential Welcome Packet;
 - (f) Install a transportation information center display in the lobby of the residential building;
 - (g) Provide bicycle repair stations within the bicycle storage room of each building;
 - (h) Provide showers and changing facilities in the office building;
 - (i) Dedicate two parking spaces within the garage for car-sharing services; and
 - (j) Fund the installation of a new 19-dock Capital Bikeshare station and one year of maintenance.
84. To address potential traffic congestion at the intersection of Kenilworth Terrace and Nannie Helen Burroughs N.E., DDOT proposed, and the Applicant agreed to, the following mitigation conditions. The Applicant must:
- (a) Fund the installation of hardware necessary to implement proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs N.E., up to \$25,000;
 - (b) Install a transportation information center display in the lobby of the office building;
 - (c) Unbundle the cost of parking from office leases; and
 - (d) Provide at least 20 additional feet of space within the proposed 19-dock Capital Bikeshare station to accommodate and additional eight docks if expanded in the future.
85. At the Public Hearing, DDOT testified that it supported the Applicant's proposed conditions, and that DDOT had no objection to the approval of the Application. (Tr. 2 at 101, 103.) At the Public Hearing, DDOT also addressed regional traffic issues affecting Ward 7. (*Id.* at 102-103.) DDOT testified that it was making improvements in Ward 7, including the addition of a second left turn lane on Nannie Helen Burroughs to Kenilworth. (*Id.* at 102.) DDOT also testified regarding ongoing improvements that are intended to relieve traffic in Ward 7. (*Id.* at 102-103.)

86. The Commission requested that DDOT appear before the Commission again regarding improvements being made in and around the area of the Project, and scheduled for DDOT to attend and testify at the Commission meeting on July 10, 2017.
87. The Commission finds that DDOT's reports and testimony were thorough and credible and helpful in considering the Application, and accordingly gives such testimony appropriate weight in reviewing the Application.

UFA

88. DDOT's Urban Forestry Administration ("UFA") submitted comments memorialized in the OP Final Report. (Ex. 29 at 12.) UFA noted that five heritage trees are located within the Promenade and that the proposed buildings may interfere with the root zones of such trees. It noted that it will continue to work with the Applicant in resolving this issue.

V. ANC Reports and Testimony

89. ANC 7D submitted two reports. The first report was submitted June 19, 2017. (Ex. 48.) It stated that the ANC 7D and the Applicant were engaged in a continuing dialogue to address concerns the ANC had about potential transportation and traffic mitigations, retail strategy and planning, activation of public spaces and parking, and that both parties were committed to continue the dialogue with the goal of a mutual agreement.
90. The second ANC 7D Report was submitted July 24, 2017. (Ex. 61.) It stated that the ANC and the Applicant had reached an agreement that addressed all of the ANC's concerns, and that at a properly noticed meeting with a quorum present, the ANC had voted unanimously to support the application without conditions.
91. At the public hearing, the ANC expressed concerns regarding three issues, namely: (a) transportation and traffic issues; (b) provision of retail within Parkside; and (c) the provision of community spaces and community infrastructure. (*Id.* at 110.) These items are addressed below in the Findings on Core Issues section of this Order. (*See* ¶¶ 95-96 ("Core Issues").)

VI. Persons in Support

92. At the Public Hearing, Ward 7 resident Sheridan Fuller spoke in favor of the Project, and also expressed some concerns regarding the impacts of the Project. (Tr. 2 at 120-123.) Specifically, Mr. Fuller expressed his concerns regarding: (a) traffic; (b) community spaces; and (c) impact on housing costs. Mr. Fuller's concerns are addressed in more detail along with concerns raised by opponents of the Project. (*See* FF ¶ 94.)

VII. Opponents' Concerns and Objections

93. The Commission received written testimony from 19 individuals or organization expressing concerns regarding the Project. (Ex. 11, 32, 35-47, 49-50, and 52.)¹⁰ Most of these Form Objections expressed support for the arrival of retail development in the neighborhood and stated that the Project had, from their perspective, improved since the initial designs. The Commission has reviewed all of the testimony in the record and finds such testimony to be generally credible. The following paragraph identifies and addresses the concerns and objections in the Form Objections. These collective concerns and objections are grouped into categories (rather than addressed as individual items of testimony from each individual author) for review and analysis. A subset of such concerns and objections, together with certain of those raised by the ANC, are addressed in more detail in the Core Issues section of this Order.¹¹
94. The Form Objections expressed concerns about the following categories of issues:
- (a) Parking. One individual expressed concern about the Project's potential impact on parking. (Ex. 11.) The Commission relies on DDOT's report and finds that the Project provides adequate parking for the mix and amount of uses proposed. DDOT's report reflects the same conclusion. Moreover, the Commission finds that the Applicant's proffer to study parking concerns in Parkside as part of the Public Benefits ensures that any adverse Parking impacts are offset by the quality of such Public Benefits;
 - (b) Noise. One individual expressed concern about the Project's potential impact on noise. (Ex. 11.) The Commission finds that noise impacts from the Project are either capable of being mitigated as part of the Construction Management Plan or not unacceptable in light of the Projects' public benefits and the Parkside Public Benefits as a whole;
 - (c) Property Value Impacts. One email expressed concern about the Project's potential impact on lowering property values. (Ex. 11.) Another witness raised concerns that the Project will increase property values. (Tr. 2 at 122.) These concerns were reiterated in the Form Objections. The Commission finds that the Applicant's substantial commitment to providing affordable housing and workforce housing as part of Parkside as a whole and as part of the instant Project offsets any impacts on

¹⁰ Sixteen of the emails are form in nature. (See Ex. 35-47, 49-50, and 52 ("Form Objections").) However, this does not diminish the consideration that the Commission gives the Form Objections upon review. This note is merely to explain that citations to individual letters are generally not provided herein because the concerns and objections summarized herein are generally attributable to all opponents.

¹¹ The Commission does not suggest that the contested issues addressed in this paragraph are immaterial. Rather, the designated Core Issues grouped below all warranted a greater intensity of scrutiny by the Commission and are grouped together with concerns raised by the ANC purely for organizational purposes.

surrounding property values. The Commission tends to disagree that the Project will decrease property values given the investment in converting a currently-vacant land to productive uses;

- (d) Property Uses. One email stated that the Property should be used for green space, commercial space, or condominiums. (Ex. 11.) The Commission finds that Parkside provides green space, as required pursuant to the Parkside PUD, in the form of the Community Green. The Commission also notes that the Applicant has committed to assisting with opening up nearby lands under the control of the National Park Service to community use. (Ex. 27B.) This Project includes both commercial space (office and retail) as well as multifamily residential units that are proposed to be for-sale products. Accordingly, the Commission finds that these concerns are more than adequately addressed;
- (e) Traffic. Transportation issues are addressed in the Core Issues below; (*See* FF ¶ 96(a).)
- (f) Public spaces and amenities for public. Public and community space issues are addressed in the Core Issues as well; (*See id.*)
- (g) Invest in development/employment training/education. The Form Objections encouraged the Applicant to invest in community development, such as job training and the provision of employment opportunities. The Commission finds that the Applicant has committed to providing a robust package of employment-related benefits. (Ex. 27B.) A significant portion of the Parkside program is to include an education conveyor belt. (*See* FF ¶¶ 46; 122; 133(h).) The Commission finds that the Applicant is highly responsive to this issue;
- (h) Community Engagement. Some of the Form Objections encouraged the Applicant to consider expanding its commitment in the CBA, and to continue to engage with the community. The Commission finds that the Applicant satisfied this request. The CBA was amended and expanded. (Ex. 33C.) The Applicant continued its dialogue with the ANC and the community more generally after the Public Hearing, including, but not limited to, attending a special meeting of the ANC on June 28, 2017; and (Ex. 57.)
- (i) Tree Protection and Landscaping Measures. Casey Trees, a District-based tree advocacy organization included comments in the record regarding the heritage trees that exist on the Property. (Ex. 32.) The Commission finds that the Applicant has prepared a site and landscaping plan that can accommodate the appropriate treatment, including if necessary, relocation of such trees.

VIII. Findings regarding Core Issues

95. The Commission finds that the Applicant has responded fully and satisfactorily to each material contested issue raised in this Application. The Commission has reviewed the entire record in this case and finds that three categories of items raised by the ANC, community opponents, and the Commission are best consolidated in this section as Core Issues. Although the Commission ultimately agrees with the Applicant and affords OP's analysis its requisite great weight, the objections and concerns raised by the ANC and other opponents warrant careful scrutiny. In sum, the Commission resolves these contested questions in favor of the Applicant and finds that the Project is consistent with the Zoning Regulations and the PUD Evaluation Standards.
96. The Core Issues in this matter include: (a) traffic and transportation issues; (b) provision of retail space; and (c) provision of community space.
- (a) Transportation and Traffic Issues. The Applicant committed, as part of the Community Benefits Agreement ("CBA") that the Applicant has provided to the ANC, to engage a transportation engineer to provide suggested solutions to larger, regional traffic issues outside the scope of the Project that affect Parkside and nearby neighborhoods. (Ex. 27B. The suggested solutions will be used to facilitate dialogue between the ANC and other members of the community on the one hand and DDOT on the other. The CBA also obligates the Applicant to engage a transportation engineer to develop a parking and curbside management plan with ANC and community input to identify the community's desired parking restrictions for each block of the Parkside neighborhood. The parking plan will provide DDOT and the community a context to develop a unified parking solution for the neighborhood. Altogether the Applicant has committed to spend \$20,000 to study potential solutions to: (i) regional and neighborhood traffic concerns affecting Parkside and surrounding neighborhoods; and (ii) parking issues within Parkside. This amount is above what DDOT has requested, and the Applicant has committed to provide, as mitigation for the transportation impacts of the instant Application. The Commission understands that the locations, traffic and parking issues reviewed as part of this exercise are ultimately controlled by and subject to the discretion of DDOT, but finds the Applicant's willingness to be an advocate to DDOT on behalf of the community's interests constitutes a public benefit;
- (b) Retail. Also as part of the CBA, the Applicant committed to engage in quarterly meetings and/or updates on retail leasing and marketing activities involving the Application and adjacent blocks. (Ex. 33C.) The meetings/updates will involve a working group composed of community residents. These meetings give the community a seat at the table in determining Parkside's retail future; and

- (c) Community Infrastructure. To address the ANC's and other community members' concerns regarding the shortage of community space in Parkside that is both large enough and flexible enough to satisfy the various community needs and time constraints, the Applicant committed up to \$20,000 to renovate and modernize an existing Parkside neighborhood community room currently under control of the Parkside Townhome Home Owner's Association ("Parkside HOA"). The renovation and future use of the existing community room by the ANC and other community groups is subject to the review and approval of the Parkside HOA, and the Applicant and the ANC are in active negotiations with the Parkside HOA regarding the possible renovation and use of this space. Renovating the existing community room is a preferable solution because it provides a space for the ANC and community groups in the very near term. The Applicant is awaiting the ANC's and Parkside HOA's response on this proposal, but is confident a mutually acceptable solution exists. In the event an agreement cannot be reached with the Parkside HOA regarding the renovation and use of the existing community room, the Applicant will work with the ANC and the community to identify another location for community meeting space within the Parkside PUD. The Commission also notes that the existing Community Green as well as the retail Promenade proposed as part of the Application and the elevated plaza ("Plaza") proposed as part of the pending application for Block H (i.e., Z.C. Case No. 05-28T) create a network of connected pedestrian-oriented public space infrastructure in the Parkside neighborhood. That is, the Applicant has already made a significant commitment to provide public gathering spaces at Parkside. At the request of the ANC, the Applicant is committed to studying additional means of further activating the public gathering spaces through dynamic landscaping and furniture to make the spaces feel more inviting and family-friendly. The proposals to identify and provide a community room and additional activation of the public space surrounding the Project are additive relative to the Parkside Public Benefits.

IX. Development Incentives: Map Amendment, Zoning Relief, and Flexibility

97. The PUD Process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under the Zoning Regulations, the Commission retains discretion to grant relief from the development standards of the Zoning Regulations and to allow for project flexibility development incentives. (X §§ 303.1, 303.11, 303.13.) The Zoning Regulations specifically allow the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment. Generally, such relief is available at the discretion of the Commission; however, where such relief is available only by special exception ordinarily, the Commission must determine that the relief request satisfies that standard for

relief. (*Id.* § 303.13.)¹² A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (*Id.* § 303.12.)

98. As part of the Application, the Applicant requested the Commission grant relief from the strict application of loading requirements for both the office and residential buildings (collectively, the “Development Incentives”) and the Map Amendment.
99. Minor Modifications to the Project do not need to comply with Zoning Regulations effective as of September 6, 2016 because this Application is vested under the 1958 Zoning Regulations. Subtitle A, § 102.4. Current Zoning Regulations do apply to the Project’s loading because the Project’s inclusion of office use is a modification from the first-stage PUD.

Map Amendment

100. The Property is currently in the R-5-A Zone District, and the Parkside PUD approved the Map Amendment to the C-3-A Zone District. The Commission previously found as part of the Parkside PUD that the Map Amendment is not inconsistent with the Comprehensive Plan, which finding satisfies the requirements for granting the Map Amendment. (*See* X § 500.3 and Z.C. Case 05-28.) The Commission sees no reason to disturb its previous findings regarding granting the Map Amendment.

Loading Requirements Relief

101. Under the Zoning Regulations applicable to the Project, the Project is required to provide two 30-foot loading berths for the office building; however, only one is proposed. The Commission finds that the requested relief is appropriate given the public benefits and amenities provided as part of the Project, the context surrounding the Project site, and the general consistency of the Project with the Zoning Regulations for similar relief under a matter-of-right development. Under the Zoning Regulations applicable to the Project, the Project is required to provide a 55-foot berth for the residential building; however, it is providing a 30-foot berth instead. The Commission finds that the requested relief is appropriate given the public benefits and amenities provided as part of the Project, the context surrounding the Project site and the general consistency of the Project with the Zoning Regulations for similar relief under a matter-of-right development.

¹² Subtitle X § 303.13 provides in relevant part that “[a]s part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards.”

PUD-Related Flexibility

102. The Applicant requested certain flexibilities in relation to finalizing the design and construction of the Project. These flexibilities have been refined and narrowed pursuant to comments from the Commission and the OP. (Ex. 33A, 56.) The Commission finds that the proposed flexibilities are sufficiently minor and circumscribed, and approves the flexibilities as proposed in the Applicant Supplemental PHS. (Ex. 33A.)

Inclusionary Zoning.

103. This project is not subject to IZ because the Parkside PUD was set down prior to March 14, 2008, and is therefore exempt from IZ under 11 DCMR § 2608.2¹³, which provides that IZ does not apply to buildings set down before that date. In some instances, the Commission has found that a PUD modification can trigger IZ when the modifications are so great that the modified project is not the same “building.” This is because the exemption rule states that IZ “shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.” (11 DCMR § 2608.2.) Thus, if the Applicant is no longer developing the same building, it is no longer qualifies for the exemption. In this case, there are some relatively significant changes to the office building, but the uses in the office building do not trigger any inclusionary zoning requirements. So there is no reason to apply IZ to that building. The residential building on Parcel 9 does include uses that would trigger an IZ requirement, but the changes Applicant seeks through the modification are relatively minor, and do not include any additional residential gross floor area. The Commission therefore considers the residential building on Parcel 9 to be the same “building” the Commission approved previously, and for purposes of determining whether the modification triggers an IZ requirement under 11 DCMR § 2608.2, finds that it remains exempt from IZ.
104. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.” (11-A DCMR § 101.1 [“Zoning Purposes”]) The Commission finds that Project is in harmony with the Zoning Purposes because it protects light and air on the Property and surrounding Properties, prevents overcrowding by providing retail uses and public

¹³ The Project has vested development rights and is therefore subject to the 1958 Zoning Regulations. 11-A DCMR §102.3(a).

gathering spaces, and provides a more equitable distribution of business land uses that create favorable conditions with respect to transportation (e.g., transit-oriented employment opportunities) and civic activity. The Project is also generally consistent with the height, density, and dimensional aspects of the Zoning Regulations and the Parkside PUD, requiring only modest flexibility with respect to loading. For the reasons set forth above, the Commission finds the Applicant has satisfied the standards necessary for the Commission to grant the requested Development Incentives.

X. PUD Requirements

105. As set forth in the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; (c) protects and advances the public health, safety, welfare, and convenience; (d) is not inconsistent with the Comprehensive Plan and does not result in action inconsistent therewith; (e) does not circumvent the intent and purposes of the Zoning Regulations; and (f) undergoes a comprehensive public review by the Commission in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits (collectively, the “PUD Requirements”). (X §§ 300.1, 300.2, 300.5.)

(a) The Project is superior to the development of the Property under the matter-of-right standards for the following reasons:

- Public Space. The Project’s physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—encourages pedestrian use and mitigates traffic impacts by promoting and encouraging active mobility over driving. The Project’s Promenade also presents a key linkage between the Community Green and the nearby Metrorail Station;
- Retail and Office Uses. The Project adds office and retail uses in a transit-oriented location. These types of uses are rarely constructed anew in Ward 7 and would not be possible at this location but for the Project proceeding under a PUD with an approved PUD-related map amendment. The community has expressed its desire for more retail space in Ward 7. Additionally, these uses provide employment and economic benefits, which makes the Project superior to a matter-of-right development;
- Other Public Benefits. The Project includes the other public benefits, as discussed further below (FF ¶¶135-148), many of which

would not be required or feasible under a matter-of-right development; and

- Community Engagement. A matter-of-right development would not have afforded the community as many opportunities to engage with the Applicant and provide feedback. The PUD process has facilitated extensive community engagement and the Applicant has responded to community input through, among other actions, entering into the CBA;
- (b) The public benefits are commendable in number and quality. For the reasons set forth more fully in the public benefits findings, the public benefits are of a commendable quality. (*See* FF ¶¶ 135-146.) There are at least nine distinct categories of public benefits for the Project and additional public benefits for the Parkside PUD overall, absolute numbers that the Commission finds to be commendable. Finally, the Commission finds that the public benefits are meaningful. The public benefits address the preferences, needs and concerns of community residents, were developed following the Applicant’s robust community engagement process, supported by OP, and are not inconsistent with the Comprehensive Plan; (*See* FF ¶¶ 67,135-148.)
- (c) The Project protects and advances the public health, safety, welfare, and convenience:
- Public Health. The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. (Ex. 3 at 21.) There are no existing residential units on the Property or on any adjacent blocks. The availability of open adjacent lots for staging and parking will allow the Applicant to readily mitigate any construction-period impacts. (*Id.* at 30.) The Applicant has also agreed to enter into a Construction Management Plan with the ANC. (Ex. 56 at 2.) The Project includes a number of mitigation measures, notably the pedestrian-oriented design, linkage to the Community Green, and bicycle facilities, which protect and affirmatively advance the public health. The Project also includes funding to develop a re-design of a nearby park. The Project does not entail any unwarranted overcrowding or overpopulation. The Project also complies with all applicable environmental performance standards;
 - Safety. The Project protects and advances safety: the Project has been designed in a manner that puts “eyes on the street” to promote public realm safety. The Project also includes funding for a transportation study to investigate issues surrounding circulation; (Ex. 56 at 5.)

- Welfare. The Project protects and advances the public welfare by bringing much-needed economic activity to Ward 7, which has long been overlooked for the purposes of locating new office tenants. The Applicant has also agreed to multiple measures to promote and encourage the hiring of Ward 7 residents for jobs, including permanent positions, related to the Project; and (Ex. 56 at 2-4.)
 - Convenience. Finally, the Project protects and advances the public convenience by adding new neighborhood-serving retail uses. Such retail serves existing Parkside residents and has a strong transit-oriented component. The Project also facilitates the connection of the Bridge in the Parkside neighborhood, and the Bridge improves convenience in access to the Metrorail station;
- (d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project’s lack of inconsistency with the Comprehensive Plan are provided below; (*See* FF ¶¶ 111-125.)
- (e) The Project does not circumvent the Zoning Purposes. The Project does not circumvent the Zoning Purposes. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare.” (11-A § 101.1.) Findings regarding the Project’s protection and advancement of the public health, safety, convenience, and welfare are provided above: (FF ¶ 104(c).)
- Morals. The Project promotes morals insofar as the Application was undertaken with extensive community outreach. (FF ¶¶ 67) The Commission finds that this community dialogue exemplifies public morals as expressed through the Zoning Regulations and PUD process;
 - Order. The Project exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District with respect to the above-cited objectives. The Project complies with all of the specific development standards set forth in the Zoning Regulations, except where flexibility is hereby requested, which flexibility is minor in this instance and expressly contemplated as part of the PUD process. (X §§ 300.1, 303.1.) The Project allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks, and location east of existing residences; and

- Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land, including office and retail space, which is currently vacant. (FF ¶ 37.) The Project also promotes public prosperity with respect to its future provision of tax revenue to the District and its addition of many new employees in Ward 7. It also introduces a new transit-oriented employment opportunity for District residents; and
- (f) The Project has undergone a comprehensive public review by the Commission, which has evaluated the Project's flexibility and incentives in proportion to the public benefits. The Commission has reviewed the entirety of the record. The record is complete with multiple detailed briefings from the Applicant and reports from multiple District agencies and the ANC. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, and the ANC. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to OP, DDOT and the ANC. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

106. The Commission finds that the Project satisfies the PUD Requirements.

XI. PUD Balancing and Evaluation Standards

PUD Balancing

107. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of § 304 of Subtitle X. The Applicant has the burden of proof to justify the granting of the Application according to such standards. (X § 304.2.)
108. The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (D.C. 2014). The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding. (Ex. 3, 12, 13, 14, 16, 25, 27, 56, 57 (plus exhibits thereto).) The Commission, in its reasonable determination, accepts such filings as containing evidence substantial to support the findings contained herein.
109. Pursuant to Subtitle X § 304.3, in deciding this PUD Application the Commission has, according to the specific circumstances of this Application, judged, balanced, and reconciled the relative value of: (a) the Public Benefits and other project amenities offered as part of the Project, (b) the Development Incentives requested by the Applicant (where, pursuant to Subtitle X § 303.12, the requested Map

Amendment is a type of PUD incentive), and (c) any potential adverse effects (collectively, the “PUD Balancing Test”).

- (a) The public benefits are numerous and of a high quality. In sum, the Project provides the numerous public benefits. A full accounting of the public benefits is provided below; (See FF ¶¶ 135-146.)
- (b) The Project’s Development Incentives are comparatively minor and appropriately granted in light of the public benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project. The Project’s individual Development Incentives are described above. (See FF ¶¶ 97.) The most significant, by far, of the Development Incentives is the Map Amendment, which was approved in the Parkside PUD. The Map Amendment allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter of right. The Development Incentives underlie and indeed make possible the public benefits, and the public benefits justify the additional height and density afforded by the Map Amendment;
- (c) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. The ANC lists potential adverse effects of the Project. (See FF ¶¶ 89-91.) The Applicant separately identified and studied potential adverse impacts of the Project. See FF ¶¶ 126-134. Such findings are incorporated herein. As the Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the Public Benefits; and
- (d) The Public Benefits together outweigh the Project’s potential adverse effects and justify the Development Incentives. The Commission returns to a familiar point in its review of the record in this proceeding: the Project adds much needed commercial uses to Parkside and provides numerous Public Benefits. These items are the offset the additional density sought through the Application.

110. The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

PUD Evaluation Standards

111. As set forth in the immediately succeeding paragraphs, the Commission hereby also finds that the Project: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the “Plan”)

related to the Property; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property (collectively, the “PUD Evaluation Standards”). (See X § 304.3.)

PUD Evaluation Standards

112. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in conservation, stabilization and improvement of each neighborhood and community in the District. (See DC Code Section 1-306.01(b).) The Project advances these purposes by furthering social and economic development through the construction of new office and retail uses on currently vacant land, providing market-rate and workforce housing, investing in a District neighborhood that seeks new investment, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property. The Project assists in the improvement and stabilization of the urban environment in the immediate neighborhood and the District as a whole.
113. OP Findings regarding the Comprehensive Plan. The OP Final Report finds that the Project is not inconsistent with the Comprehensive Plan. (See Ex. 29.) The Commission gives great weight to these OP findings and incorporates them herein.
114. As part of the Parkside PUD, the Commission found that the proposal for Parkside, including the proposal for the Property (with which the Project hereby complies) was consistent with the Plan and other adopted policies of the District. (See Z.C. Order No. 05-28, FF ¶¶ 35, 36, 38, 45, 46 and Conclusions of Law ¶ 8 (“Approval of the first-stage PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning in this case and finds that the proposed project is consistent with and fosters numerous themes and elements of the Comprehensive Plan.”).) Given the findings in the record, the clear conclusions of law in the Parkside PUD, and the consistency between the instant Project and the Parkside PUD, the Commission finds that the Project is not inconsistent with the Comprehensive Plan.
115. Future Land Use Map and Generalized Policy Map. The FLUM designates the Property as appropriate for medium density residential uses. The medium-density

residential designation is used to define neighborhoods where mid-rise apartment buildings are the predominant use (four to seven stories). By definition, the FLUM is to be interpreted broadly. (10-A2 DCMR § 226(a).) The FLUM is intended to provide a “generalized guide for development and conservation decisions” and is expressly “not a zoning map.” (10-A2 DCMR § 226, *et. seq.*) The Map designations are generally imposed at the block scale, but the Comprehensive Plan’s Map guidelines expressly accommodate differential treatment for different parcels or buildings on a single block. That is, the “the land use category definitions describe the general character of development in each area,” but there may be “individual buildings” that deviate from the expressed designations. (10-A2 DCMR § 226(c).) The Map guidelines also provide for additional flexibility from the strict designations of the Map in the context of a PUD. (*Id.*) The DC Court of Appeals recently clarified that “even if a proposal conflicts with one or more individual policies associated with the [Comp. Plan], this does not, in and of itself preclude the Zoning Commission from concluding that the action would be consistent with the Comp. Plan as a whole.” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1034 (D.C. 2016) (internal quotation omitted).) The Commission finds that the Project, in the context of the overall Parkside PUD, complies with the FLUM for the following reasons:

- (a) An apartment building with seven floors of units is consistent with the FLUM designation;
- (b) The Property was rezoned to the C-3-A Zone District under the first-stage PUD. Office use is permitted as a matter of right in the C-3-A Zone District;
- (c) The inclusion of commercial uses on the Property is not inconsistent with the FLUM. Providing office in this location is also consistent with the Property’s inclusion in the Central Employment Area (“CEA”). The CEA includes a variety of office users, including major government offices and draws workers and visitors from across the region;
- (d) The Property is immediately adjacent to areas designated for mixed-use, high-density commercial uses. Accordingly, it is reasonable that the Property could be used for commercial uses because the intent of the FLUM is to be interpreted broadly;
- (e) The Comprehensive Plan’s Generalized Policy Map designates the Property as Neighborhood Enhancement Area, which is to ensure that new development fits in and responds to the existing character, natural features, and existing/planned infrastructure capacity. As OP noted, the Project is not inconsistent with such designation; and (Ex. 29 at 12.)

- (f) The overall Parkside PUD, and the Project both substantially comply with the Comprehensive Plan. Specifically, the Project's introduction of office and commercial uses further the policies associated with the Comprehensive Plan, and any conflict with the FLUM created by the introduction of these uses is outweighed by the Project's benefits that promote the Comprehensive Plan's objectives. (*See* FF ¶¶ 115-124.)
116. Land Use ("LU") Element. The Project is not inconsistent with the LU Element. The Comprehensive Plan devotes a great deal of attention to the importance of transit-oriented development, mixed-use development and the promotion of commercial centers. The LU Element also encourages the integration of new developments into the existing urban fabric, the infilling of vacant lots that create gaps in the urban fabric, and the introduction of housing, while maintaining buffer zones from commercial developments and preserving neighborhood character. The Commission finds that the Project is not inconsistent with the LU Element:
- (a) First, the Project encourages development around Metrorail stations, it is a mixed-use development, and it creates a commercial center in an area that desires commercial development. The residential and office components fulfill the Plan's objective to locate for infill development near the existing transportation infrastructure and provide the critical mass needed to support the commercial uses;
- (b) Second, the Plan also seeks to achieve "land use compatibility" – specifically, the enhancement and stabilization of the District's neighborhoods by the protection of residential neighborhoods from non-residential and disruptive uses. The Project is an important infill development that replaces vacant lots, and, especially in the context of the overall Parkside PUD, incorporates of the surrounding neighborhood through pedestrian-oriented development and the inclusion of public spaces; and
- (c) Third, the Project presents a "buffer" between the lower-density townhouse residential uses that exist at Parkside today and the higher intensity highway and highway-adjacent commercial uses planned for future phases. The Project serves as an important transition between the commercial nature of Kenilworth Terrace and the lower-density residential along Parkside Place.
117. Transportation Element. The Plan emphasizes creation of a multi-modal transportation system that links land use and transportation. The Plan encourages strengthening the linkage between land use and transportation as new development occurs, and the Project precisely strengthens such linkage. Parcel 9 is located between the commercial center of Kenilworth Terrace and the lower density residential uses in the Parkside community. The development will not only transition the uses and density, but it will provide a connection between the

uses, and that connection is the fundamental organizing principle for the Project's site plan and physical design. The project will transform the vacant lot into a contributing part of the Parkside community. Further, the Applicant is contributing funds to the construction of a pedestrian bridge—the construction of which is expected to begin within the year—to facilitate access between the site and the Metro station. In all, the Project facilitates and encourages the use of the Metro Station and is the first phase of Parkside to add jobs, in addition to housing, near transit.

118. Housing Element. The Plan's overarching goal for housing in the District is to increase the supply of safe and affordable housing. The Project advances that objective by providing new residential units and supporting the creation of housing in future phases of the Parkside PUD. The Parkside PUD is a private sector-led redevelopment effort that produces new housing, and particularly workforce housing on a vacant site in an historically underinvested portion of the District. The Project incorporates a mix of uses and residential units for a mix of income levels. Perhaps most significantly, the Project includes a comprehensive vision that matches social, economic, healthcare, education and other programs with real estate development to establish and nurture a fully functioning neighborhood.
119. Environmental Protection Element. The Project is not inconsistent with the Comprehensive Plan's environmental protection element's goal to protect and enhance the manmade and natural environment through environmentally-conscious steps. The Project's landscape plan will help beautify Parkside, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity, thereby advancing these policies. There is an extensive landscape plan providing for abundant trees, retention of many existing trees, and comprehensive and creative stormwater treatment on the Property. The Project proposes elements to improve water quality through design features such as the use of a rain garden in the courtyard to treat runoff from impervious surfaces, including roofs and paved areas; and through the use of a vegetative swale (bio-filtration) to treat runoff from the Property. The Project will seek to be constructed to meet Green Communities and LEED-Gold certification levels. Finally, the overall PUD has been selected as a LEED-ND (Leadership in Energy and Environmental Design for Neighborhood Developments) Pilot project.
120. Economic Development Element. The Project is consistent with the economic development element, the overarching goal of which is to strengthen the District economy and help District residents find and keep jobs. The Project introduces a smaller-floorplate office concept that introduces some diversity into the Ward 7 office space market. In addition, the Project introduces retail and job opportunities to an area where such opportunities have traditionally been limited. In addition, in its proposed conditions the Applicant has agreed to: (i) direct the Project's contractors and subcontractors to use reasonable efforts to hire Ward 7 residents, with a goal of 51% of all new hires being Ward 7 residents; (ii) facilitate job

trainings for Ward 7 residents; (iii) assist in soliciting Ward 7 residents for available jobs; and (iv) hold a job fair for Ward 7 residents. (Ex. 56.)

121. Parks, Recreation, and Open Space Element. The development is consistent with the Parks, Recreation, and Open Space element, which calls for the inclusion of neighborhood or community parks on large sites. The Comprehensive Plan specifically recognizes the value of functional open space. The Parkside PUD contemplated the Community Green, a one-acre open park, that was approved by the Commission in Z.C. Case Nos. 05-28A and 05-28F. The Green has been constructed and has been well received by the community. The Community Green serves as an amenity for residents and neighbors and will create an attractive resting point that District residents can appreciate while they take an evening stroll, walk the dog, or simply read a book outside. The Project enhances that amenity by introducing ground-level activities, well-designed adjacent sidewalks and street uses, and by introducing new residents and officer workers to use and monitor the Green. The Project's Promenade also presents a key linkage between the Green and the nearby Metrorail Station.
122. Urban Design Element. The Project is consistent with the Comprehensive Plan's urban design policies insofar as they provide for: (a) neighborhood connectivity; (b) gateways from East-of-the-River neighborhoods to Anacostia River crossings, with landscape and transportation improvements along Howard Road, Martin Luther King Jr. Avenue, Pennsylvania Avenue, Randle Circle (Minnesota and Massachusetts), Benning Road, and Kenilworth Avenue; (c) use of the District's major avenues and boulevards, particularly important streets that suffer from poor aesthetic conditions, to reinforce the form and identity of the city; (d) the creation of neighborhood centers; (e) infill development; (f) the integration of large site developments; (g) the protection of open spaces; (h) the consideration of surrounding neighborhoods in large site developments; and (i) improving the street environment. The Urban Design Element of the Plan seeks to, among other goals, strengthen civic identity through a renewed focus on public spaces and boulevards; designing for successful neighborhoods and large site reintegration; improving the public realm, particularly street and sidewalk space; and promoting design excellence throughout the District. The Project reflects the beneficial architectural qualities of the surrounding residential neighborhoods. Parcel 9 includes an appropriate use, density and height, and the Parkside PUD allows for sufficient private and public open space for the residents. The buildings and the intervening Promenade provide an important connection between previously approved second-stage applications, providing the unity and cohesion of plan that Parkside needs.
123. Educational Facilities Element. The Comprehensive Plan encourages the development of educational facilities throughout the District in a manner that is compatible with adjacent residential uses. Accordingly, the Project supports this objective by providing a critical infusion of commercial and additional residential uses at a key location in the Parkside neighborhood. Ultimately, the Project helps

the educational facilities in existence in and planned for the Parkside neighborhood continue to thrive.

124. Far Northeast and Southeast Area Element. The Property is located in the Far Northeast and Southeast Area of the Comprehensive Plan. It is not located within the boundaries of any Policy Focus Area of that Area Element. The current condition of the Parkside neighborhood, with over nine vacant acres of land, discourages an active connection between the Anacostia waterfront and the Ward 7 community. The Parkside PUD and the Project create significant contributions to area elements, including, but not limited to, the development of retail use, the development of new housing, the increased accessibility of transit, and the connection to the waterfront. The contributions to these elements outweigh other inherently conflicting area elements, such as the preference for low density development. Additionally, the Parkside PUD and the Project also encourage the maintenance of the current low density neighborhoods by providing economic and residential uses to potentially absorb increased development without disrupting the current neighborhoods. The development of the Parkside PUD creates a more inviting, accessible and active connection to the Anacostia waterfront. The new Bridge and the urban design of the Project encourages the Ward 7 community to use the waterfront and its new and existing amenities. The Bridge also makes the waterfront accessible to visitors to the area who come from other parts of the District or the Maryland and Virginia suburbs. The increased activity engendered by these first phases of development creates a friendlier, more inviting atmosphere for residents wanting to access the waterfront. The strong visual corridors and pedestrian pathways of the site design encourage use of the waterfront. The Parkside PUD also reflects the District's plan for concentrating a mix of uses at the Minnesota Avenue Metrorail Station. The addition of a significant office and retail building as part of the Project supports the concept of Parkside as a true mixed-use development. The heights and density proposed for development are also appropriate for the PUD's proximity to public transit and its role in transitioning between uses and creating a buffer from the adjacent highway. Finally, the Project's design creates an appropriate transition between the greater heights along Kenilworth Avenue to the lesser heights as the development stretches toward the Anacostia River.
125. Taken as a whole, the Project is not inconsistent with the District or Area Elements of the Plan or with the objectives of other adopted public policies applicable to the Property. There are individual objectives in these site-specific plans that the Project either does not address or does not substantially advance. Planning policy documents by their very nature are comprehensive and occasionally internally contradictory. However, the Project is not inconsistent with the broad public planning objectives for Ward 7 and Parkside specifically.
126. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by the ANC or any other party or person. Therefore, for the reasons set forth more fully above the Commission

finds that the Application, including the Map Amendment, is not inconsistent with the Plan.

Project Impacts

127. For the following reasons, the Commission finds that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities, but instead creates impacts that are either favorable, capable of being mitigated, or acceptable given the Public Benefits.
128. Zoning and Land Use.
- (a) The approved Map Amendment for the property's zoning to the C-3-A Zone District is consistent with the Transit-Oriented Development ("TOD") categories on the Generalized Land Use Map of the Comprehensive Plan and is compatible with the zoning designated for adjacent blocks pursuant to the First-stage PUD. The C-3-A designation for the Property is consistent with its development as a mixed-use, TOD node for the Parkside neighborhood; and
 - (b) From a land use perspective, the Project will create no unacceptable impacts on surrounding neighborhoods. Any impacts from the Project's proposed land use are either favorable, capable of being mitigated, or acceptable given the quality of the significant public benefits included as part of the Project. The Project's mix of office, retail and multi-family residential uses is entirely appropriate given the proximity to transit and highway access, the ongoing development efforts in the neighborhood, and the extensive planning and community support for the First-stage PUD. The Project's height and mass are an appropriate transition from the approved greater densities closer to the Anacostia Freeway and the Metrorail station to the less intense residential uses to the northwest. The Project's introduction of a critical mass of commercial uses to the neighborhood is a favorable land use impact. The proposed commercial uses will create economic opportunities and continue with the stabilization of the neighborhood. The continued contribution of new, high-quality, for-sale multi-family housing units to Ward 7 will have additional positive impacts on the surrounding areas as such contribution advances other aspects of the Parkside Vision. To the extent there are any ancillary unfavorable impacts arising out of the Project, such impacts are either mitigated by the Project's design or offset by the quality of the public benefits associated with this Project and the Parkside PUD as a whole outweigh any negative effect. Moreover, the Project's conversion of vacant lots to productive and active uses, and the creation of a thoughtfully-designed public pedestrian space will also have positive impacts.

129. Housing. The Project's addition of new housing is a favorable impact. The Project will contain 20% workforce housing for the life of the Project. (Ex. 56.) The Project continues the trend of creating new high-quality, transit-accessible housing units. Such units are in high demand across the District and the need for such units is particularly dire in Ward 7. The addition of new housing will have favorable impacts on surrounding areas by adding residents who will support the proposed commercial uses. The Project's inclusion of workforce- and market-rate units has favorable impacts because it will help establish Parkside as a mixed-income community and not one that overly concentrates affordable housing.
130. Construction-Period Impacts on Neighbors. During the development period for Parcel 9, the Project's impacts on neighbors are capable of being mitigated, and the Applicant has significant experience successfully completing construction projects in infill locations without disturbing neighbors. There are no existing residential units on the Property or on any adjacent blocks. The availability of open adjacent lots for staging and parking will allow the Applicant to readily mitigate any construction-period impacts.
131. Open Space, Urban Design and Massing Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the proposed buildings, proposed and existing open spaces, and the urban design of the Project. The existing conditions include a vacant block that does little to contribute to the adjacent Community Green. The Project will have favorable impacts on the Green by providing ground level uses and new residents to activate the public realm. In addition, the Project creates a strong, obvious connection between the Metrorail station and Parkside's Community Green. Finally, the Project has favorable impacts on the surrounding area as a keystone linking the multi-family buildings on Blocks J and E and establishing the context for the future, higher-density phases along Kenilworth Ave.
132. Design and Aesthetic Impacts. The Project's design and architecture have a favorable outcome, no unacceptable impacts, and are likely to become a point of resident and community pride. The Project incorporates the highest-quality architecture and exemplary design. Upon completion of Parcel 9, the new buildings will appear fresh and emblematic of new investment without appearing overly contemporary or out-of-place. Instead, the Project will continue the architectural vocabulary that is emerging in Parkside and that will establish a high baseline of quality of design and finishes expected for projects in the vicinity. The Project's landscaping and public realm detailing will be truly exemplary and will have a strongly favorable impact on surrounding areas, as it further contributes to the sense of place in the Parkside neighborhood with the introduction of retail uses. The Project's overall design and its details strongly reinforce and strengthen the character of the surrounding residential areas and will be favorable for the neighborhood.

133. Transportation and Mobility Impacts. The Project does not have an adverse impact on the public transportation facilities or roadways that cannot otherwise be mitigated. The Project's vehicular traffic impacts are mitigated by its transit options, and the Project achieves the right balance of mobility. The Property is well-served by transit and vehicular infrastructure, and the Project's relatively small scale will not introduce adverse impacts on either system that can't otherwise be mitigated. The Project's favorable transit access and its strong TDM program help mitigate any expected traffic concerns. Additionally, the Project includes \$25,000 for the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to alleviate traffic congestion. Transportation-related mitigations are as follows: (Ex. 56.)
- (a) Transit. The Minnesota Avenue Metrorail station is less than a half-mile walk from the Property, and that station is relatively underutilized relative to other stations in the WMATA system. Numerous Metrobus lines also service the Property, including a Priority Corridor Network route, and it is expected that many of the Project's residents will use public transit. The Property has a TransitScore of 73 (which indicates "Excellent Transit" with "transit convenient for most trips");
 - (b) Parking. The Project includes approximately 141 below-grade parking spaces to accommodate the parking demand of residents and occupants of the office building, and 10 street-level parking spaces to accommodate retail-use customers. The Applicant commits to providing \$5,000 for use by the ANC for a traffic consultant to develop a parking and curbside management plan. (Ex. 56.) Bicycle usage is also coherently integrated into the design of the Project, with long-term spaces in a dedicated storage room and the required short-term spaces provided elsewhere in public space. The Project provides sufficient new off-street parking to serve new residents, but not so much parking as to induce unnecessary driving;
 - (c) Curb Cuts. The Project entails relocating existing curb cuts on the Property to accommodate the proposed configuration. The existing curb cuts on the Property will be relocated to accommodate the proposed configuration. Two new curb cuts will be added to allow the proposed through connection at the center of the Project. Loading and parking will be accessed from former rights-of-way that have been closed and will function as alleys;
 - (d) Pedestrian Realm. The landscaping and streetscaping improvements proposed as part of Parcel 9 prioritize pedestrian access along each of the surrounding streets and create a permeable connection through the Property between the Bridge and adjacent blocks. Additionally, the Applicant commits to providing \$7,500 to be used by the ANC to develop a conceptual design for a play and/or athletic field in the nearby National

Park Service-owned land. (Ex. 56.) The Project's ground floor designs, site plan, building layout, and streetscape all prioritize pedestrian access to and interaction with the Project. The alley improvements anticipated will allow the Project to prioritize pedestrian access along each of the main streets surrounding Parcel 9 and to create a permeable connection between the Project and the Community Green;

- (e) TDM. The Project includes an extensive TDM plan to mitigate any transportation impacts. The Project includes \$25,000 for the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to alleviate traffic congestion. (Ex. 56.) The Applicant also commits to providing \$15,000 for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required for mitigation of potential impacts of the overall Parkside PUD. (Ex. 56.) The Project's physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—mitigates traffic impacts by promoting and encouraging active mobility over driving. At the same time, the Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. To the extent the Project creates transportation or mobility impacts on the neighborhood or District more generally, they are either capable of being mitigated through the TDM or acceptable given the quality of the Public Benefits. The TDM plan includes the following commitments: (Ex. 33B.)

- The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
- All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site;
- The Applicant will unbundle the cost of residential parking from the cost of lease or purchase of each unit;
- The Applicant will unbundle the cost of vehicle parking from the cost of the office lease;
- The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;

- The Applicant will install a Transportation Information Center Display (electronic screen) within the office building lobby containing information related to local transportation alternatives;
- The Applicant will or exceed zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;
- The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials;
- The Applicant will provide bicycle repair stations to be located within the bicycle storage rooms.
- The Applicant will dedicate two spaces within the garage for car-sharing services to use with right of first refusal;
- The Applicant will provide showers and corresponding changing facilities for the office use; and
- The Applicant will fund the installation of a new Capital Bikeshare station and one year of maintenance. The station will be a 19-dock station. An additional 20 feet of space will be provided to accommodate eight additional docks is expanded in the future.

134. Project Impacts on City Services and Project Environmental Impacts. The Project does not have any adverse impacts on the public facilities or District services that it will rely on for service. Likewise, the Project will not have adverse environmental impacts as described below: (Ex. 3 (and exhibits thereto).)

- (a) Water Demand. The Project contains approximately 207,759 square feet of new GFA. The average daily water demand for this project can be met by the existing District water system. The Project's connection for the fire and residential water supply will be made within the existing distribution system and will be coordinated with DC Water. The two buildings will have individual water meters; (*Id.*)
- (b) Sanitary Sewer Demand. The sanitary sewer connections for the Project will be made within the existing distribution system and will be coordinated with DC Water. As noted above, the infrastructure for the Parkside neighborhood has largely already been constructed; (*Id.*)
- (c) Stormwater Management. The Project has been designed to achieve high levels of on-site stormwater retention. The proposed bio-retention basin planters, green roofs, and permeable pavement are designed to exceed

DOEE stormwater management retention and detention requirements. The requisite inlets and closed pipe system will be designed and constructed in compliance with the standards set by DOEE, DC Water, and DDOT;

- (d) Solid Waste Services. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor;
 - (e) Electrical Services. Electricity for the new Buildings will be provided by the Potomac Electric Power Company (“Pepco”) in accordance with its usual terms and conditions of service. All electrical systems will be designed to comply with the D.C. Energy Code. Transformers will be installed on the Property in accordance with Pepco’s design guidelines;
 - (f) Energy Conservation. The Project will be constructed in full compliance with Article 24 (Energy Conservation) of the District of Columbia Building Code. Conformance to code standards will minimize the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building;
 - (g) Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District of Columbia law; and
 - (h) Public Schools. The Project is highly unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District’s nearby schools to take on additional students. In addition, several private and charter schools are near the Project, offering educational options to residents who may seek alternatives to the neighborhood public schools. Moreover, in the city as a whole, the population of school-age children is declining while the population of childless households is increasing. Because of these trends, the nature of the Project’s demographics, and the variety of school choices nearby, the Applicant expects that the school network will be able to accommodate, without any unfavorable impacts, the school-age children that may reside at the Project.
135. Other Impacts. The findings related to issues raised by the ANC includes additional discussion on the Project’s impacts and the Commission’s balancing thereof. In sum, the Project’s impacts are either capable of being mitigated or not unacceptable in light of the public benefits.

Public Benefits

136. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (X § 305.1.)

137. The Project achieves the goals of the PUD process by creating a high-quality mixed-use commercial development with significant related public benefits. The Commission finds that the Project includes the public benefits enumerated in the following paragraphs, which are not inconsistent with the Plan as a whole with respect to the Property.
138. Subtitle X § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the public benefits are addressed in the following paragraphs. In general, the public benefits relate to the area of the ANC.
139. Superior urban design, architecture, and landscaping (Subtitle X § 305.5(a) and (b)). The Project's urban design and landscaping are superior public benefits. Subsections 305.5(a) and (b) of Subtitle X list urban design and landscaping as categories of public benefits and project amenities for a project proceeding under a PUD. The Project incorporates numerous design precepts that guide superior urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of Parcel 9. For instance, the Project's urban design prominently frames the pedestrian promenade leading to the Community Green and creates a strong sense of arrival in the Parkside neighborhood. Similarly, the Project's strong edges along existing streets give the two buildings visual heft and create an urban condition that is hospitable for pedestrians and guides them through the center of the PUD site. The Project similarly includes elements of superior architectural and landscape design. For example, the Project presents a thoughtful ground-floor design that integrates seamlessly with the Promenade. The Project also utilizes high-quality façade materials and finishes. With respect to landscaping, the Project employs a palette of vegetation and fixtures that is simultaneously appropriate for the neighborhood and representative of the Project's place-making objectives.
140. Site planning, and efficient and economical land utilization (§ 305.5(c)). The proposed site plan is another superior benefit of the Project. Pursuant to Subtitle X § 305.5(c) of the Zoning Regulations, "site planning and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Commission. The benefits of the Project's site plan and efficient land utilization are captured in the Project's overall density, introduction of commercial uses, and absolute number of new residential units provided. The Project's greater heights and density near transit nodes exemplify economical land utilization. The proposed development serves as a transition from the commercial uses along Kenilworth Avenue and the residential uses along Parkside Place and its design is of the appropriate massing and height to establish this transition. The Project also improves land that has been vacant for decades, and its development will make it a significant contribution to establishing a community within the Parkside PUD. At an FAR of greater than 3.0, the proposed density is appropriate for the Property given the proximity to transit options while not overbearing the lower density

residential neighborhoods to the north, south, and east of the Site. The Project is designed to benefit from proximity to nearby protected areas, the Anacostia River and natural grades and perhaps most importantly, the major transportation corridor to the southeast, including the Minnesota Avenue Metrorail Station and the Anacostia Freeway. The site plan is designed to infill and continue the urban build out of the Parkside neighborhood. It will connect the existing Parkside Townhomes with the fabric of the city and will establish a true mixed-use and transit-oriented development in the heart of Ward 7.

141. Employment benefits. The Applicant has committed to providing employment benefits at the request of the ANC, and such commitments constitute public benefits under the Zoning Regulations. (X § 305.5(h).) The development provides a commercial development to bring full time workers and retail options to Parkside. Continuing the trend of reversing years of disinvestment in Ward 7, the Project is a potential economic boon for the surrounding area and contributes to the successful creation of a retail market. In addition, in its proposed conditions the Applicant has agreed to: (i) direct the Project's contractors and subcontractors to use reasonable efforts to hire Ward 7 residents, with a goal of 51% of all new hires being Ward 7 residents; (ii) direct the Project's managers of the retail, residential and office space to use reasonable good faith efforts to select permanent employees from among qualified Ward 7 residents (iii) facilitate job trainings for Ward 7 residents; (iv) assist in soliciting Ward 7 residents for available jobs; and (v) hold a job fair for Ward 7 residents. (Ex. 48B, 56.)

142. Housing and affordable housing (§ 305.5(f), (g)). The Project includes a greater number of housing units than could be developed on the site as a matter of right and reserves 20% of the units as workforce housing units for the first purchaser. (Ex. 56.) Pursuant to §§ 305.3(f) and (g) of Subtitle X, the production of housing that exceeds the amount that would have been required through matter-of-right development under existing zoning and affordable housing above what is required under the IZ provisions of the Zoning Regulations is a public benefit. The Project makes a significant contribution of new residential and new workforce units on a site that is transit-accessible, part of an exciting mixed-income development, and well-positioned to take advantage of economic opportunities that emerge in the Parkside neighborhood in the future. Specifically, the Commission finds that the Project provides housing and affordable housing public benefits because:
 - (a) Creation of additional housing. The housing proposed as part of the Project exceeds the amount possible through a matter-of-right redevelopment pursuant to the applicable limits in the underlying zone (i.e., the R-5-A Zone District) by approximately 53,170 square feet. Under existing zoning there is no residential minimum for the underlying RA-1 zone, which has a maximum FAR of 0.9 (1.08 with the IZ bonus). The provision of additional workforce and market rate units helps meet the housing needs of the District; and

- (b) Creation of affordable housing in the Project and Parkside PUD. Although the Project that is the subject of this Application does not include any affordable housing units, the overall Parkside development approved pursuant to the first-stage PUD includes a significant contribution of affordable and workforce housing units. The overall PUD reserves: (i) 20% of the total residential component as affordable units to households having an income not exceeding 80% of AMI for the Washington, DC Metropolitan Statistical Area (adjusted for family size); and (ii) a further 20% of the total residential component for workforce housing targeted to households that have an income between 80-120% of the AMI. While this phase of the overall Parkside PUD will include market-rate units and workforce housing units only, the Parkside PUD as a whole provides a diverse number of housing options for households at different price points. This Project, with its addition of retail and other economic development opportunities, and its keystone site plan, is central to making possible the development of affordable units in other phases of the Parkside PUD.
143. Transportation infrastructure and mass transit improvements (§ 305.5(o) and (p)). Subtitle X § 305.5(p) provides that mass transit improvements, including construction of improvements to Metrorail station entrances, also constitute public benefits for a PUD. As noted above, a central organizing element of the Project's design is the construction of the vehicular and pedestrian Promenade through the center of Parcel 9. The Applicant committed to allowing pedestrian access through the Promenade as part of the street-closing process before the District Council. Further, as part of the Parkside PUD, the Applicant agreed to contribute to the construction of a new pedestrian bridge between the Parkside neighborhood and the Minnesota Avenue Metrorail Station. The Applicant has committed 25% of the cost of the bridge not to exceed \$3 million to ensure that this bridge be constructed to improve access to this site. The Applicant and DDOT have entered into an agreement, secured by the \$3 million that the Applicant has already posted, fulfilling this obligation. The groundbreaking for the pedestrian bridge is anticipated to occur in 2017, pending the commitment of the balance of the funds from public sources.
144. Environmental and sustainable benefits (§ 305.5(k)). The Project includes innovative sustainable design elements and will achieve appropriate levels of environmental certification. Subtitle X § 305.5(k) provides that environmental benefits are also public benefits to the extent such environmental benefits exceed the standards required by zoning or other regulations. The overall Parkside PUD has been designed to exceed the standards for LEED-ND certification. This Project will be designed to achieve LEED-Gold for both the office and residential buildings.
145. Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (§ 305.5(q)). As part of the public process leading to the Parkside PUD,

the Applicant worked with residents, community members, the ANCs, and OP to identify additional public benefits of special significance to residents and neighbors. Subtitle X § 303.5(q) lists uses of special value to the neighborhood as public benefits of a PUD. The development will provide a multifamily and commercial development to bring full time residents, workers, and retail options to Parkside. The Project will also serve as an important transition between commercial uses and lower-density residential uses on the PUD Property. The proposed development will enhance a site that has been vacant for several years and will connect the existing Parkside Townhomes, senior housing, Community Green, and the multifamily units with the greater community.

146. Other public benefits which substantially advance the Comprehensive Plan (§ 305.5(r)). The Applicant commits to providing \$5,000 for use by the ANC for a traffic consultant to develop a parking and curbside management plan. (Ex. 56.) Additionally, the Applicant commits to providing \$7,500 to be used by the ANC to develop a conceptual design for a play and/or athletic field in the nearby National Park Service-owned land. (Ex. 56.) the Applicant committed up to \$20,000 to renovate and modernize the existing Parkside HOA neighborhood community room. (Ex. 57.)
147. Streetscape improvements. The Project's physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—encourages pedestrian use and mitigates traffic impacts by promoting and encouraging active mobility over driving. The Project's Promenade also presents a key linkage between the Community Green and the nearby Metrorail Station.

Consistency of the Public Benefits with the Plan.

148. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project.
149. Accordingly, the Project satisfies the PUD Evaluation Standards.

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. (X § 307.1; Z §§ 205, 300, 400-08, 600-06, 700-707.) The Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4 and Subtitle X § 300.3. The Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements; and (ii) the Applicant, OZ, OP, and the Commission have

satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations.

2. The minimum area included within a proposed PUD must be no less than 15,000 sf and all such area must be contiguous. (X § 301.) The Application satisfies these minimum area and contiguity requirements.
3. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the “Act”).

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards enumerated above. (X §§ 304.2, 500.2.) The Commission’s findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (DC 2014).) Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support” the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm’n.*, 73 A.3d 107, 125 (DC 2013).) The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards.

Consistency with the PUD Process, Zoning Regulations, and Plan

5. Pursuant to the Zoning Regulations, the purpose of the PUD process is “to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.” (X § 300.1.) The Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter of right via the underlying zoning. The Commission has found that the public benefits are meaningful and are commendable both in number and quality. Finally, the Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan.
6. The PUD process is intended to “provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.” (X § 300.2.) The Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are

nonetheless consistent with the intent and purposes of the Zoning Regulations. The Project is not inconsistent with the Comprehensive Plan. Therefore, the Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

Evaluation Standards

7. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Comprehensive Plan. (X §§ 500.1, 500.3.) The Commission has made extensive findings that the Map Amendment, as it supports the Project, is not inconsistent with the Plan. Accordingly, the Map Amendment satisfies the relevant standard for approval.
8. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). (X §§ 303.1, 303.11.) The Applicant seeks the Loading Relief pursuant to the Commission's discretion to grant relief from any development standards of the Zoning Regulations. The Commission has found that such item of relief does not impair the Zoning Purposes and is not inconsistent with the Comprehensive Plan. (*Id.*) The Commission concludes it may exercise its discretion to grant such Development Incentives subject to the Conditions (as such term is hereinafter defined) hereof.
9. The PUD provisions require the Commission to evaluate whether the Application: “(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” (*Id.* § 304.4.) The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfies the PUD Evaluation Standards. The Commission concludes the Project is not inconsistent with the Comprehensive Plan as a whole, accepts the entirety of the Applicant's impact analysis contained in the record and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes Public Benefits, as described below, which are also not inconsistent with the Comprehensive Plan.
10. In particular, the Commission finds that the Project's inclusion of an office use is not inconsistent with the Comprehensive Plan. Provisions of the Comprehensive Plan guiding interpretation of the FLUM instruct that the FLUM use designations describe the “general character” of development for all of the properties on a block but that there may be individual buildings that deviate from the designation. This guidance supports office use on the Property because lots similarly designated are anticipated to contain residential use. The specific policy objectives of the District and Area Elements of the Comp. Plan offer significant support for office use as part of the Project. In particular, the consistency

of the Project's transit-oriented and economic development components justifies modest misalignment with the FLUM designation.

11. The Zoning Regulations define Public Benefits as “superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” X § 305.2. Such public benefits must satisfy the following criteria (“Public Benefit Criteria”): (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4). Based on the Commission's findings regarding the Public Benefits as well as the Conditions of this Order, the Commission concludes that the Public Benefits benefit the surrounding neighborhood and the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria.
12. The Commission must undertake a “comprehensive public review” of the PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.” (X § 300.5.) In deciding on the Application, the Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case” as follows: (X §§ 304.3, 303.12.)
 - (a) The Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. The Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and Development Incentives requested and potential adverse effects against the proposed public benefits, in light of the circumstances of the case;
 - (b) The Commission's review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the concerns and statements about the Project raised by the ANC and District agencies. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANC. There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items; and

- (c) The Project warrants the Development Incentives (including the Map Amendment) and flexibility in light of the Project's extensive and comprehensive public benefits. The Development Incentives directly support the Project's provision of public benefits. The public benefit-supporting nature of the Development Incentives affords the public benefits ample cushion to offset any potential adverse effects. The Project has largely been designed to avoid such effects. However, to the extent such effects exist as a result of the Project—for instance with respect to traffic—the magnitude of the public benefits and the Applicant's mitigation efforts provide sufficient justification for the Project notwithstanding such effects. Moreover, the public benefits generally accrue most significantly to the area immediately surrounding the Project. Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it. The Commission concludes that the Project's Development Incentives are warranted in light of the public benefits, when considering the specific nature of the area surrounding the Project and the Project's overall consistency with the Comprehensive Plan.
13. Accordingly, the Project's public benefits justify the Development Incentives requested even in light of the background concerns of the ANC regarding the potential adverse effects of the Project. The Application satisfies the PUD Requirements.
14. The Commission must grant approval to any second-stage PUD application that it finds in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, provided such approval may be subject to conditions. (X § 309.2.) The Commission has found that the Application is in accordance with the Zoning Purposes, the PUD process, and the Parkside PUD. Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order.
15. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give “great weight” to the issues and concerns raised in the written report of the affected ANC. While ANC 7D's first report listed four areas of concern, it further stated that it was engaged in an ongoing discussion with the Applicant in an effort to resolve them. ANC 7D's second report stated that it had “reached agreement” on the areas of concern and that its support was without condition. The Commission understands this to mean that the ANC no longer had issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Commission to give great weight to. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
16. The Commission is also required to give great weight to the recommendations of OP under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04). The Commission has reviewed the OP Setdown Report and OP Final Report and heard testimony from OP and finds that OP supports the Application. The Commission gives OP's recommendation to approve the Application great weight.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for review and approval of the second-stage PUD, modification to a first-stage approval and the related map amendment to the C-3-A Zone District for the Property that are the subject of the Application. The approval of this PUD is subject to the following guidelines, conditions, and standards (“Conditions”).

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as Exhibit 57A1-57A9 (“Final Plans”), as modified by the guidelines, conditions, and standards herein.
2. The Project shall have flexibility from the use, FAR, lot occupancy, and parking requirements set forth in Z.C. Order No. 05-28, as noted in the Findings of Fact. The Project shall further have flexibility from the Zoning Regulations from the loading requirements as noted in the Findings of Fact.
3. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - (a) To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - (b) To provide a range in the number of residential units and number of parking spaces plus or minus 10% from the number depicted on the Plans;
 - (c) To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, louvers and vents, such that the refinements do not substantially change the external configuration or appearance of the building; and
 - (d) To coordinate with DDOT to finalize the streetscape design and materials during the public space process.

B. PUBLIC BENEFITS**1. Prior to issuance of a building permit, the Applicant shall:**

- (a) Execute a Development and Construction Management Plan with the ANC, which plan shall include terms substantially similar to those proposed in Exhibit 27B;
- (b) Direct the Project's contractors and subcontractors to use reasonable good faith efforts to select new hires from among qualified persons with a goal of at least 51% of all new hires being residents of Ward 7. This commitment shall be included in each contract with Project contractors and subcontractors. The Applicant shall provide to the ANC on a quarterly basis for the duration of construction, an employment report documenting the number of Ward 7 residents hired for the Project. The employment reports to the ANC will provide a summary of: (i) the approximate number of employees working on the Project in total; (ii) the number of new hires working on the Project; and (iii) the number of the new hires that are Ward 7 residents, provided the specific contents of such report may be modified by mutual agreement of the Applicant and the ANC;
- (c) In coordination with the ANC, identify a local representative, group, organization and/or coordinator to facilitate job training for future jobs related to the Project, and to help administer solicitations from Parkside to the Ward 7 community for available jobs. All solicitations shall include details regarding the specifications, requirements and/or skillset desired for the available jobs; and
- (d) Host a job fair in coordination and in partnership with the ANC, Ward 7 Business Partnership, DC DOES and DC DSLBD, to identify (i) qualified candidates for construction job openings and (ii) Ward 7-based subcontractors.

2. Prior to issuance of a certificate of occupancy, the Applicant shall:

- (a) Provide evidence to the Zoning Administrator that it advertised jobs and contracting opportunities with the following: (i) the Project's contractor's website, (ii) the ANC's website, (iii) community message boards, (iv) Project signage, and (v) referral partners, as applicable, and in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;
- (b) Provide evidence to the Zoning Administrator that it has used or directed the managers of its office, residential and retail space to use, reasonable

good faith efforts to select permanent new hires from among qualified residents of Ward 7. These positions may include, but are not limited to, marketing positions, facilities management positions, or landscaping positions. The Applicant shall advertise these job opportunities on its website and through referral partners, as applicable, in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;

- (c) Provide the Zoning Administrator evidence that it has provided the ANC with a written quarterly update on the number of Ward 7 residents hired for positions within the Project; and
- (d) Submit evidence to the Zoning Administrator, in the form of a document certified by a LEED Accredited Professional that the Project will comply with the LEED requirements at the LEED-Gold level, however actual LEED certification shall not be required.

3. **Until the earlier of the issuance of a certificate of occupancy for the first retail space or 90% of lease up of the retail space,** the Applicant shall: Provide the Zoning Administrator evidence that it has no less than quarterly, either held a meeting or provided an update to the community working group (“Retail Working Group”) to discuss the status of Parkside’s efforts to market approved retail spaces in the Project. As part of the quarterly meetings, the Applicant shall provide the Retail Working Group copies of market studies, reports and marketing material for the Project for review and comments. The Retail Working Group members shall be obligated to keep confidential work product and information regarding the leasing effort and potential retail operators provided by the Applicant. The Retail Working Group shall be composed of eight individuals, which shall include the Single Member District representative for the Project, a member of the Parkside Civic Association, and a representative of the Applicant. The remaining members of the group shall be determined by the ANC Single Member District representative.

4. **Prior to the issuance of the first Certificate of Occupancy for the residential building on Parcel 9, the Applicant shall demonstrate the following:**

- (a) **For the life of the Project,** the Applicant shall:
 - (i) Provide a total of approximately 78,460 square feet of residential GFA of housing in the residential building on Parcel 9;
 - (ii) Set aside no less than 20% of the residential units in the residential building on Parcel 9 as workforce housing units available to households with an annual median income between 80% of the Area Median Income and 120% of the Area Median Income

(“Workforce Units”), provided such income restriction shall only apply to the first purchaser of the Workforce Units;

- (b) The distribution of the Workforce Units shall generally be in accordance with Sheet A.1.04 of Exhibit 27; and
 - (c) The Applicant shall record a covenant pursuant to X § 311.6 requiring compliance with conditions B.4(a) and B.4(b).
5. **Prior to the issuance of the first certificate of occupancy for development approved in Z.C. Case Nos. 05-28P, 05-28Q, 05-28R, 05-28S, and 05-28T**, the Applicant shall provide evidence to the Zoning Administrator that it has funded, at a cost to the Applicant of up to \$25,000, the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, NE intersection to help alleviate traffic congestion.
6. **Prior to issuance of the first building permit for the development approved in Z.C. Case Nos. 05-28P, 05-28Q, 05-28R, and 05-28S, the Applicant shall:**
- (a) Contribute up to \$7,500 (the “Landscape Fund”) to an escrow account for use by the ANC to hire a landscape architect to develop a conceptual design for a play and/or athletic field in the National Park Service (“NPS”)-owned open space (“NPS Land”) behind Neval Thomas Elementary School. Preference for the landscape architect shall be given to qualified Ward 7-based CBE firms. The Landscape Fund shall be used for the following scope and for no other purpose: (i) one community charrette led by the landscape architect and include all involved stakeholders (including but not limited to the ANC, Parkside Civic Association, Neval Thomas Elementary School representatives, Cesar Chavez Middle and High School representatives, Mayfair Tenants Association, Parkside, and any additional community members interested) to identify play space needs, goals and objectives for the NPS Land; (ii) development by the landscape architect of a concept design and layout for the NPS Land utilizing the input and feedback generated from the community charrette to guide the design; (iii) one presentation of the conceptual design to community stakeholders by the landscape architect; and (iv) one meeting with the landscape architect, community stakeholders, and the appropriate NPS and/or DC representatives to review the proposed conceptual design and advocate for use of NPS Land, but only to the extent NPS and/or DC representatives agree to attend such a meeting. As NPS owns the NPS Land, the ANC acknowledges and agrees that NPS is solely responsible for the design and use of the NPS Land. The landscape design shall be developed to a concept level only and with the intent to be used as a community tool to show NPS what is possible in the

space and promote the conversion of the NPS Land by NPS to a play and/or athletic field for use by the community, and the design shall not include detailed plans that could be used for permitting and/or construction. Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy;

- (b) Contribute up to \$15,000 in an escrow account (“Transportation Study Fund”) for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required to mitigate the overall first-stage Parkside PUD (“Parkside Study”). The goal of the Parkside Study is to provide analysis and feasibility regarding potential solutions to larger, regional traffic issues to facilitate discussions with DDOT. The Parkside Study shall include the following scope and the Transportation Study Fund shall be used for no other purpose: (i) schedule a meeting with the traffic consultant and community, including but not limited to the ANC, Parkside Civic Association, Mayfair Tenant’s Association and any additional community associations, parties or members interested, to identify the community’s top traffic issues and/or congested locations; (ii) have the traffic consultant study the top issues and/or locations and develop a few potential solutions that might alleviate some of the issues; (iii) present the findings and potential traffic solutions to the community; and (iv) schedule a meeting between the traffic consultant, the ANC and/or appropriate community representatives and DDOT to present the potential traffic solutions to DDOT. It is understood that locations and traffic issues reviewed as part of the Parkside Study are ultimately controlled by and subject to the discretion of DDOT, and outside of the scope of any of the Projects, and that Parkside cannot guarantee DDOT’s approval of the scope of the Parkside Study or any of the proposed traffic solutions or other recommendations developed by the traffic consultant. The intention of the Parkside Study is to identify potential traffic solutions for the locations of most concern to the community in a similar way to other DDOT studies that the traffic consultant has advised on to help facilitate DDOT’s review. The Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy; and
- (c) Set aside up to \$5,000 in an escrow account for use by the ANC for a traffic consultant to develop a parking and curbside management plan (“Parking Plan”) with and for use by the ANC and community, with the understanding that DDOT is responsible for making and implementing any recommendations in the Parking Plan. The purpose of the Parking Plan is to identify the parking regulations, such as RPP and on-street parking meters, desired for each block to provide DDOT and the

community a context to develop a parking solution for the whole neighborhood instead of on a block-by-block basis. The boundaries for Parking Plan shall be the blocks within the area bordered by Foote St., N.E., Anacostia Street, N.E., Hayes St., N.E., and Kenilworth Terrace, N.E., plus the portion of Kenilworth Terrace, N.E. between Hayes Street, N.E. and Jay Street, N.E. Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy.

C. Transportation Mitigation

1. **For the Life of the Project** (except where otherwise noted below), the Applicant shall abide by the terms of the TDM plan, which requires compliance with the following:
 - (a) The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who shall act as a point of contact with DDOT;
 - (b) All parking on site shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site;
 - (c) The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit;
 - (d) The Applicant shall unbundle the cost of vehicle parking from the cost of the office lease;
 - (e) The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;
 - (f) The Applicant shall install a Transportation Information Center Display (electronic screen) within the office building lobby containing information related to local transportation alternatives;
 - (g) The Applicant shall meet or exceed zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;
 - (h) The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
 - (i) The Applicant shall provide bicycle repair stations to be located within the bicycle storage rooms;

- (j) The Applicant shall dedicate two spaces within the garage for car-sharing services to use with right of first refusal; and
 - (k) The Applicant shall provide showers and corresponding changing facilities for the office use.
2. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall adopt a loading management plan to coordinate resident moving operations, office deliveries, and trash removal operations.
 3. **Prior to the issuance of a certificate of occupancy or the office building**, the Applicant shall fund the installation of a new 19-dock Capital Bikeshare station and one year of maintenance. The location of the station shall be finalized with DDOT during the public space process, and it must include an additional 20 feet of space to be left available to accommodate eight additional docks if expanded in the future
 4. **Prior to issuance of a building permit for the Project**¹⁴, the Applicant shall fund and install the hardware necessary to implement the proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs, N.E., subject to DDOT approval, with a maximum cost to the Applicant of \$25,000, if not already completed at the time such building permit is issued.

D. MISCELLANEOUS

1. The Zoning Regulations Division of DCRA shall not issue any building permits for the PUD until the Applicant has recorded a Covenant (the “PUD Covenant”) in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The change of zoning to the C-3-A Zone District shall be effective upon the recordation of the PUD Covenant.
3. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.

¹⁴ This same requirement was stated in Condition B.2.g of Z.C. Order 05-28P effective September 1, 2017. It is the Commission’s intent that this funding requirement be satisfied prior to whichever project’s certificate of occupancy is issued first.

4. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 24, 2017, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0**.

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 23, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28R/05-28S
Z.C. Case Nos. 05-28R and 05-28S
Parkside Residential, LLC
(Second-Stage PUD and Modification of Significance to an Approved First-Stage PUD
@ Square 5041, Lot 807 and Square 5056, Lot 810)
September 25, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing (“Public Hearing”) on July 31, 2017 to consider two applications concurrently (collectively, the “Applications”) from Parkside Residential, LLC (“Applicant”) for review and approval of two second-stage planned unit developments and modifications of an approved first-stage planned unit development and Zoning Map amendment (collectively, a “PUD”). The Zoning Commission considered the Applications pursuant to Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), Subtitles X and Z. The Public Hearing was conducted in accordance with the provisions of Chapter 4 of Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission hereby approves the Applications.

FINDINGS OF FACT

I. Procedural Summary

1. The property that is the subject of this PUD includes Lot 807 in Square 5041 (“Parcel 8”) and Lot 810 in Square 5056 (“Parcel 10”) (together, the “Property”), which are located in Ward 7. (Ex. [“Ex”] 2-2A.) The Property is in the Parkside neighborhood of Northeast DC. (*Id.*) Each of Parcels 8 and 10 are rectangular and contiguous, but the two parcels are not contiguous to each other. (Ex. 38A at A0.06.) Parcel 8 consists of approximately 38,086 square feet (“sf”), or approximately 0.87 acres, and Parcel 10 consists of approximately 41,601 sf, or approximately 0.95 acres. (*Id.*) The Applicant proposes to redevelop the Property with a total of 25 townhouses with in-unit garage parking (the “Townhouses”) and two mixed-used multifamily residential buildings with below-grade parking (the “Multifamily Buildings” and each a “Multifamily Building”) and to provide additional public benefits (“Public Benefits”) as described below (collectively, the “Project”). (Ex. 2.)
2. In an order effective as of April 13, 2007, the Commission approved the first-stage PUD application in Z.C. Order No. 05-28 (“Parkside PUD”), the first-stage order to which these Applications for a second-stage PUD succeeds. (Ex. 2F.)
3. The Parkside PUD approves a plan of development for 10 “building blocks” across the approximately 15.5-acre site that is the subject of such PUD (collectively, “Parkside”). (Ex. 2.) The Parkside PUD authorizes a mix of residential, mixed-use, commercial, and retail buildings, which are approved to contain in the aggregate approximately 3,003,000 sf of gross floor area (“GFA”),

including 1,500-2,000 dwelling units, 500,000-750,000 sf of office space 30,000-50,000 sf of retail, and 43,000 sf of healthcare uses; an overall density of 4.4 floor area ratio (“FAR”); and maximum heights of 90 to 110 feet. (Ex. 2 at 1-2.) Both Parcels 8 and 10 are located on Block F of the Parkside PUD. Parcel 9 on Block F separates the two parcels that are the subject of the Applications. Parcel 9 is the subject of Z.C. Case No. 05-28Q.

4. In 2008, in Z.C. Case No. 05-28A, the Commission approved a second-stage application for three of the 10 blocks in the Parkside PUD—Blocks A, B, and C. Those three blocks contain a senior living facility consisting of 98 units to be reserved for individuals with an income no greater than 60% of the area median income (“AMI”) plus 100 townhouses, 42 of which were reserved for buyers with incomes between 80% and 120% AMI (units subject to such income restrictions being “Workforce Units”). This proposal was later modified in Z.C. Case No. 05-28G. The senior housing has been constructed on Block A, and the townhouses are now complete on both Blocks B and C. (*Id.*)
5. In 2010, in Z.C. Case Nos. 05-28B and 05-28C, the District of Columbia Primary Care Association (“DCPCA”) and Lano Parcel 12, LLC, working with the University of the District of Columbia’s Community College of the District of Columbia (“CCDC”), submitted applications for second-stage PUDs and modifications to the Parkside PUD for portions of Blocks H and I. The applicants submitted a simultaneous request, Z.C. Case No. 05-28E,¹ to modify the Parkside PUD in order to accommodate the projects proposed in such second-stage applications. The Commission approved both second-stage applications, as well as certain modifications to the Parkside PUD. The DCPCA building has been constructed (subject to modifications approved in Z.C. Case No. 05-28I); however, the second-stage approval for CCDC has lapsed. (*Id.*)
6. In 2011, in Z.C. Case No. 05-28F, the Commission approved a second-stage application for a one-acre park (“Community Green”) located on Block D. The park was included as a benefit and amenity of the Parkside PUD, provides passive recreation for neighbors, and provides a central gathering place for the community. The Community Green has been constructed. (*Id.*)
7. In 2013, in Z.C. Case Nos. 05-28J and 05-28K, the Commission approved a modification to the Parkside PUD and second-stage application for Block E. Block E contains a multifamily building consisting of 186 affordable residential units reserved for individuals with an income no greater than 60% AMI. Construction on Block E is complete and is currently being leased for occupancy. (*Id.* at 2.)

¹ Z.C. Cases 05-28D, 05-28G, 05-28H, 05-28I, 05-28L, 05-28M, and 05-28N consisted of either minor modifications to various of the second-stage PUDs or extensions to the Parkside PUD. (See Ex. 2 at Appendix.)

8. In April 2017, in Z.C. Case No. 05-28P, the Commission approved an approximately 191-unit, market-rate multifamily residential building with below-grade parking on Block J.
9. In July 2017, in Z.C. Case No. 05-28Q, the Commission approved a second-stage PUD with related modifications to the approved Parkside PUD for the development of two new buildings containing a mix of retail, residential, and office uses, with below-grade parking on Parcel 9 of Block F. Parcel 9 is approved to contain 76 for-sale, multifamily residential units, with 20% of such units reserved as Workforce Units for the initial purchaser only. (Ex. 27C.) The two buildings contain in the aggregate approximately 16,704 square feet of ground-floor retail space. The office building contains approximately 112,595 square feet of upper-story office use. A landscaped, shared vehicle-pedestrian promenade leading to the Community Green separates the two buildings on Parcel 9. (Ex. 2.) Approximately 141 parking spaces are below grade. (Ex. 2.) The two alleys separating Parcel 9 from Parcels 8 and 10 are shared among the three parcels. (Ex. 38A at A1.01, A3.02.)
10. In July 2017, in Z.C. Case No. 05-28T, the Commission also approved a second-stage PUD with related modifications to the approved Parkside PUD for the development of an office building with ground-floor retail on Block H. The Block H building contains a GFA of 503,019 sf, an effective density of 7.21 FAR, a maximum height of 110 feet, and a publicly accessible plaza where the proposed pedestrian bridge (“Pedestrian Bridge”) from the Minnesota Avenue Metrorail Station enters the Parkside neighborhood. (Ex. 10A at 17.) Construction on Block H has not yet begun.
11. In Z.C. Case No. 05-28O,² the Commission granted an extension of the Parkside PUD approval through October 3, 2017. All remaining phases of the Parkside PUD must file an application for second-stage approval prior to that date. Second-stage applications for Block G and portions of Blocks H and I have not yet been filed. (Ex. 10A.)
12. On December 19, 2016, the Applicant delivered a notice of its intent (“NOI”) to file zoning applications to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commission (“ANC”) 7D, and the ANC 7D04 single-member Commissioner, pursuant to § 300.7 of Subtitle Z of the Zoning Regulations. (Ex. 2C.) The Applicant filed materials for the Applications (“Initial Statement”) on February 7, 2017, and the Applications were accepted as complete by the Office of Zoning (“OZ”) by letter dated February 16, 2017. (Ex. 1-2I16, 3.) The Applicant certified the Applications satisfied the PUD filing requirements. (Ex. 2D.) OZ referred the Applications to the ANC, the Councilmember for Ward 7, and the District Office of Planning (“OP”), and

² Z.C. Cases 05-28D, 05-28G, 05-28H, 05-28I, 05-28L, 05-28M, and 05-28N consisted of either minor modifications to various of the second-stage PUDs or extensions to the first-stage PUD. (See Ex. 2 at Appendix.)

notice of the filing of the Applications was published in the *D.C. Register*. (Ex. 4-8.)

13. On May 12, 2017, the Applicant filed revised plans for the Project. (Ex. 10, 10D1-10D3.) The Applicant also sought to have the Applications heard simultaneously, along with the application filed in Z.C. Case No. 05-28Q, and provided a statement of the good cause and lack of prejudice or prohibition by law for the Commission to do so. (*Id.*) The Applicant also provided a letter from the ANC supporting the Commission's simultaneous consideration of the Applications. (Ex. 10C.) In addition, the Applicant provided materials comparing the Parkside PUD with the second-stage approvals granted and sought to that point. (Ex. 10A.)
14. On May 12, 2017, OP delivered a report ("OP Setdown Report") on the Applications, recommended that the Commission set the Applications down for public hearing, and requested the following additional information from the Applicant.
 - a. Submit plans and drawings showing the ground floor as retail consistent with the request for flexibility, and analysis indicating the viability and impact of retail at this location;
 - b. Refine the colors of the apartment building façade materials to create more interesting appearances;
 - c. Consider the provision of additional balconies on the apartment buildings;
 - d. Provide a count for the number of units by bedroom type, with and without ground-floor retail;
 - e. Provide additional detailing and façade treatments to the townhouses to:
 - i. Enliven the sides of the end unit townhouses facing a street with additional windows and/or window types; and
 - ii. Match the fourth floor of the front facades of the townhouses with brick consistent with the remainder of the front façade;
 - f. Consider the addition of solar panels on the townhouse roofs;
 - g. Explore the ability to increase the amount of green roof proposed and/or provide solar panels on the apartment building roof tops outside of the areas dedicated to mechanical use;
 - h. Submit additional detail on refuse collection from the townhouses and the apartment buildings;

- i. Submit landscaping plans, including descriptions on how any plantings would thrive atop a below-grade parking garage;
 - j. Submit a traffic study a minimum of 45 days in advance of the public hearing;
 - k. Refine and narrow the range of flexibility requested through the PUD; and
 - l. Request a modification to permit up to 378 dwelling units on all of Block F should no retail be provided on Parcels 8 and 10, and flexibility to not comply with IZ for these two parcels.
15. At the Commission's public meeting on May 22, 2017 ("Setdown"), OP presented the OP Setdown Report. (See May 22, 2017 Transcript ["Tr. 1"] at 62-84.) The Commission expressed its appreciation for the Applicant's solar panels and increased green roof and thinks solar panels should be a higher priority than green roof, and if solar panels are not incorporated, the Commission wants the rationale as to why not. The Commission agreed with OP that the design of the row houses needs work: the side elevations do not look good; the use of large-scale hardi panel on the fourth floor is not attractive; and the flexibility on the materials and signage needs to be tightened. The apartment buildings also need work in that they look flat and dull, and resembled communist-block housing from the 1960s. Because the buildings are stick-built on a podium, they look cheap and may not age well. Notwithstanding these misgivings, the Commission voted to set down both applications for a single hearing. (Tr. 1 at 82-83.)
 16. On May 19, the Applicant filed a consolidated transportation review for the Project ("CTR") in conjunction with the development proposed for Parcel 9 under Z.C. Case No. 05-28Q. (Ex. 12-12A9.) On May 26, 2017, the Applicant filed its pre-hearing statement ("PHS"), which included information in response to the requests from OP and this Commission, and paid the requisite hearing fees. (Ex. 13-15, 18.)
 17. Notice of the Public Hearing for Z.C. Case No. 05-28T was published in the *D.C. Register* on June 16, 2017 (64 *D.C. Reg.* 67907), and was mailed to ANC 7F and to owners of property within 200 feet of the Property. (Ex. 16, 17, 21.) On June 20, 2017, the Applicant posted notice of the Public Hearing at the Property. (Ex. 22-23.) On July 26, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 31.)
 18. Pursuant to the Zoning Regulations, 11-X DCMR ("X") § 405.3,³ OP requested comments on the Project from the District Department of Consumer and Regulatory Affairs ("DCRA"); Department of Employment Services ("DOES");

³ The Applications proceed under the procedural provisions of the Zoning Regulations in effect as of September 6, 2016. Accordingly, the provisions of 11 DCMR §§ 2407.3 and 2408.3 are inapplicable to the instant proceeding.

Department of Energy and the Environment (“DOEE”); Department of Health; the Department of Housing and Community Development (“DHCD”); Department of Parks and Recreation; District of Columbia Office on Aging; District of Columbia Public Schools; District Department of Transportation (“DDOT”); Fire and Emergency Medical Services; Metropolitan Police Department; DC Water; and the Washington Metropolitan Area Transit Authority. (Ex. 11 at 16.)

19. A discussion of all filed reports is contained in the portion of this Order entitled “Agency Reports.”
20. On July 11, 2017, the Applicant filed a supplemental statement (“20-Day Statement”) providing: additional information requested from OP and the Commission; an update on community outreach and engagement; and updated architectural plans, drawings, and renderings. (Ex. 27-27F7.)
21. On July 31, 2017, this Commission conducted the Public Hearing in accordance with Subtitle Z of the Zoning Regulations. (July 31, 2017 Transcript [“Tr. 2”] at 3.)
22. The ANC is automatically a party to this proceeding. (11-Z DCMR (“Z”) § 403.5(b).) The ANC filed a preliminary report on the Applications on June 19, 2017 (“ANC Report”). (Ex. 20.) The ANC filed a supplemental report on July 22, 2017 (“ANC Final Report”). (Ex. 30.) Both reports will be discussed in the portion of this Order entitled “ANC Report and Testimony.”
23. There were no requests for party status.
24. At the conclusion of the Public Hearing, the Commission closed the record except with respect to those items of information requested.
25. On August 14, 2017, the Applicant filed a written post-hearing submission in response to items requested by the Commission (“Post-Hearing Submission”). (Ex. 38-38B.) On August 7, 2017, the Applicant provided draft proffers and conditions pursuant to X § 308.8. (Ex. 37.) On August 21, 2017 the Applicant filed its revised and final list of proffers and conditions pursuant to Z § 308.12. (Ex. 39.)
26. On August 28, 2017, OP filed a supplemental report (the “Supplemental Report”) in response to the Applicant’s Post-Hearing Submission, which addressed certain items that OP believed remained unresolved. (Ex. 40.)
27. On September 5, 2017, the Applicant filed a response to OP’s Supplemental Report (“Applicant’s Response”), which aimed to clarify the unresolved items as presented by OP. (Ex. 41.)

28. On September 25, 2017, the Commission voted to accept the Applicant's response to the OP Final Report and took final action to approve this Application at its regular public meeting. (September 25, 2017 Transcript ["Tr. 3"] at 38-39.)

II. The Project

29. The Applicant seeks this Commission's review and approval for the Project as a second-stage PUD with related modifications to the approved Parkside PUD for the development of the Project on the Property. (Ex. 2-2I16.) The Applicant also seeks formal adoption of the Zoning Map amendment ("Map Amendment") approved as part of the Parkside PUD to change the zoning for the Property to the C-3-A Zone District from the R-5-A Zone District. (*Id.*)

Overview of the Property and Surrounding Area

30. The Parkside PUD is located in Ward 7, northwest of the intersection of Minnesota Avenue, N.E. and Benning Road, N.E. Parkside is surrounded by the Anacostia River and Kenilworth Park to the northwest, the existing Mayfair Mansions residential apartment complex to the northeast, the Anacostia Freeway (Highway 295) and the Orange Line tracks to the southeast, and the former Pepco plant to the southwest. Parcel 8 is bounded by Parkside Place, N.E. to the northwest, Grant Place, N.E. to the northeast, Kenilworth Terrace, N.E. to the southeast, and Roosevelt Place, N.E. to the southwest. Parcel 10 is bounded by Parkside Place, N.E. to the northwest, Cassell Street, N.E. to the northeast, Kenilworth Terrace, N.E. to the southeast, and Burnham Place, N.E. to the southwest. Grant Place, N.E. and Burnham Place, N.E. were closed as part of a separate process. Parcel 9 in the Parkside PUD separates Parcels 8 and 10 from each other. The Property is currently entirely vacant. (Ex. 2.)
31. The Parkside PUD is partially constructed, with streets and infrastructure largely in place. Approximately 100 townhouses, 186 apartments, 98 senior housing units, the Community Green, and a healthcare clinic have been constructed under the Parkside PUD. Four schools have also been constructed in the immediate vicinity of the Parkside PUD area. Approximately nine acres of the Parkside PUD site remains vacant land. (Ex. 2.)
32. Parcel 8 is surrounded to the southwest by the 186-unit all-affordable multifamily residential building on Block E (under the Parkside PUD) and existing townhouses that are not part of the Parkside PUD to the northwest. The blocks immediately northeast of Parcel 8 (i.e., Block F, Parcel 9 under the Parkside PUD) and southeast (Block G, Parcel 12) are currently vacant. Parcel 10 is surrounded to the northeast by the future site of the approved 191-unit all market-rate multifamily residential building on Block J (under the Parkside PUD) and existing townhouses that are not part of the Parkside PUD to the northwest. The blocks immediately southwest of Parcel 10 (i.e., Block F, Parcel 9 under the Parkside PUD) and southeast (Block H, Parcel 12) are currently vacant but subject to

approved second-stage PUD Orders. (See Z.C. Case Nos. 05-28Q and 05-28T.) To the southeast of the Property beyond Kenilworth Avenue, N.E. is the Anacostia Freeway/Orange Line corridor which creates a significant barrier between Parkside and other neighborhoods further to the east in Ward 7. The surrounding undeveloped blocks are all controlled by affiliates of the Applicant and are expected to be constructed ahead of or concurrent with the proposed Project. (Ex. 2.)

33. Land uses near the Property include a former Pepco plant, the Educare early-childhood educational facility, Neval Thomas Elementary School, Cesar Chavez Middle and High School, Metrotown apartments and townhouses, and the Parkside townhouses, which were constructed in the 1990s. Two blocks north of the Property are the Mayfair/Paradise multifamily rental communities. The Eastland Gardens neighborhood is located approximately one-half mile to the north of the Property. (*Id.*)
34. The Property has vehicular access to the Baltimore/Washington corridor via Highway 295, a six-lane highway that provides convenient access to downtown Washington, to Route 50 and points east, to the Baltimore-Washington Parkway to Howard County and Baltimore, and to the Capital Beltway. The Minnesota Avenue Metrorail Station, with Orange Line service, is located immediately across Highway 295 from the site, within walking distance via an existing pedestrian connection to the Metrorail Station. The Minnesota Avenue Station is seven stops (i.e., approximately 10 to 15 minutes) on the Orange Line from the Metro Center Station. In the opposite direction, the Orange Line runs to New Carrollton, a major employment center for Prince George's County, Maryland. Two Metrobus lines, the U5 and U6, serve Parkside directly, and numerous other lines serve the nearby Minnesota Avenue, N.E. (*Id.*)
35. Parkside is well served by outdoor space, with thousands of acres of nearby protected parkland, including Kenilworth Aquatic Gardens, Anacostia Park, and the National Arboretum and Kingman Island forming a large, continuous, green space and recreational complex. The Anacostia Riverwalk Trail is under expansion, and approximately 15 miles of the 28-mile trail system are open today. The Parkside Community Green is also nearby. (*Id.*)
36. Commercial uses predominate along Minnesota Avenue, N.E. to the northeast and southeast of the Property, and the heart of the Benning neighborhood to the southeast contains the East River Park Shopping Center with a public library, a grocery store and pharmacy as well as other shops and restaurants. Parkside itself, like the adjacent residential blocks, contains no significant retail other than a single convenience store along Kenilworth Terrace, N.E. (*Id.*)
37. Apart from other blocks of Parkside and the schools mentioned above, several other developments are currently planned or have recently been constructed. These include the construction of the first phase of the DOES Government Center,

which Center consists of 230,000 sf of office space and first-floor retail. The Park 7 project near the Minnesota Avenue Metrorail Station contains 376 affordable rental units and approximately 20,000 sf of retail space with construction completed in 2014. Also nearby are: (i) a 172 rental unit-development known as Lotus Square, and (ii) a development containing 125 affordable townhouses along with public housing units known as MetroTowns at Parkside, both of which were recently completed. (*Id.*)

Parkside PUD

38. Parkside has been adopted by America's Promise Alliance, a coalition of organizations working to bring education and social services to underserved communities based upon the Harlem Children's Zone model. The Parkside community was accepted into the federal Promise Neighborhood Program with a \$25 million grant from the US Department of Education in December 2012. (*Id.*) The Promise Neighborhoods Program seeks to engage all resident children and their parents into an achievement program based on tangible goals, including matriculation to college for each and every participating student, positive physical and mental health outcomes for children, and parenting classes. The program also seeks to provide employment training and counseling to provide meaningful employment opportunities for the parents. (*Id.*)
39. The Parkside PUD was approved prior to September 6, 2016, and accordingly, pursuant to Subtitle A of the Zoning Regulations, the substantive requirements of the 1958 Zoning Regulations ("ZR58") apply to the Project, except as the Parkside PUD is modified.
40. In sum, once the approved modifications to the original approval are accounted for, the final Parkside PUD approval allows approximately three million square feet of total GFA: approximately 43,000 sf of health care uses, 260,000 sf of educational uses, 750,000 sf of commercial uses, and approximately two million sf of residential uses. (Ex. 2.) Including the recent second-stage approvals on Parcels 9 and 12, 1.414 million sf has been fully entitled at Parkside.

III. The Project

41. The Project that is the subject of these second-stage Applications contains the two Multifamily Buildings, which may include optional ground-floor retail and below-grade parking, as well as the 25 Townhouses. The Multifamily Buildings have a maximum height of 85 feet, and the Townhouses have a maximum height of approximately 45 feet. Both Multifamily Buildings contain an amenity terrace that steps down to the Townhouses and the Community Green. The Multifamily Buildings are oriented along Kenilworth Terrace, N.E. and the Townhouses along Parkside Place, N.E. This phase introduces a diversity of housing types including for-sale single-family home residential units (including both market-rate and Workforce Units) and multifamily residential units (including both market-rate

and Workforce Units), the tenure for which will be dictated by the market. This phase supports the overall vision of the Parkside neighborhood because it integrates this housing diversity into a wider fabric of the Parkside community. The Applicant also seeks flexibility to dedicate the first floor of the Multifamily Buildings to retail use if a sufficient retail market has been established within the Parkside PUD. Kenilworth Terrace, N.E. is a prime opportunity to introduce retail uses, which serve not only the existing and future residents, but also help attract tenants to the approved future office use on Blocks F and H.

42. Completion of Block F marks a critical link in unifying the Parkside community. It bridges the literal gap between Blocks E and J and provides the gateway to the Pedestrian Bridge. Block F also creates an important connection with the existing Parkside townhouses. Overall, it is a central component of the Parkside PUD site plan and a key strategic element with its housing diversity and retail uses.
43. The Project's site plan addresses its important context in the Parkside neighborhood. The plan for Parcels 8 and 10 features the two seven-story Multifamily Buildings with optional ground-floor retail on the eastern two-thirds of the block and the four-story Townhouses on the western third. A private alley separates the Multifamily Buildings from the adjacent Townhouses. The symmetry of the two Multifamily Buildings reinforces the nearly uniform grid of the neighborhood and recalls Parkside's classical street plan. Parking and loading access have been relegated to the periphery of each parcel with the primary urban design emphasis being the sidewalk connections leading to the planned pedestrian pathway to the Metrorail station. The Multifamily Buildings form strong edges along each of the surrounding streets, creating defensible boundaries and a strong sense of place and hierarchy. The Multifamily Buildings also have rectilinear configurations with more significant setbacks from Kenilworth Terrace, N.E., which is anticipated to be commercial in nature at ground level.
44. Along Parkside Place, N.E., the Project is entirely residential in character with the 25 Townhouses being constructed immediately to the lot line to create a strong street wall that is comfortable for pedestrian travel and that is characteristic of so many strong residential neighborhoods in the District, including elsewhere in the Parkside neighborhood. An eight-foot-wide court open from the ground to the sky separates the Townhouses into two blocks on each of the two parcels. This court provides pedestrian access into the interior of each parcel but does not accommodate vehicles. A private alley to the rear of the Townhouses connects to the alleys serving the Multifamily Buildings and the adjacent Parcel 9. A screen fence and vegetation separate the alley from the Multifamily Buildings' interior courtyards.
45. The size of the proposed Multifamily Buildings establishes for Parkside a sense of visual significance when viewed from the adjacent Anacostia Freeway, and serves as an indication that the neighborhood is maturing. The height and density of the Townhouses steps down significantly from the Multifamily Buildings in order to

be compatible with the existing houses opposite Parkside Place, N.E. The step-down creates a uniform character along the street.

46. The Project's height and mass are appropriate relative to the existing context and the planned development of Parkside. The Multifamily Buildings each step down at the upper levels in the direction of Parkside Place, N.E., in a gesture to the residential character of the townhouses on the northwestern portion of the Property. Contrastingly, the Multifamily Buildings rise to their full posture on Kenilworth Terrace, N.E. with the intent that the Project contributes a strong presence on that street, consistent with the massing of the commercial phases approved along Kenilworth Terrace. The Multifamily Buildings are approximate mirrors of each other in height and mass. The Townhouses are approximately half the height of the Multifamily Buildings (approximately 45 feet) and are broken into two strings of units on each of the two parcels.
47. Parcel 8 has an overall density of 3.75 FAR and contains approximately 144,750 sf; Parcel 10 has an overall density of 3.67 FAR and contains approximately 152,494 sf. The Townhouses consist of a total of 29,594 sf and 32,043 sf of GFA on Parcels 8 and 10, respectively. The Project contains an aggregate of 295,244 sf of GFA. For comparison, the Parkside PUD authorized a maximum density of 3.32⁴ FAR for all of Block F, including the development on Parcel 9, which was the subject of Z.C. Case No. 05-28Q. Overall, including the proposal for Parcel 9, Block F has density of 3.75 FAR. As noted above, the two Multifamily Buildings are approximately 85 feet tall, which is consistent with the Parkside PUD's approval of 90-foot maximum heights for all of Block F. A comparison of the massing contemplated in the Parkside PUD application and the instant Applications is shown on sheets A0.01-0.03 and A0.06 of Exhibit 38A.
48. The Project is consistent with the Zoning Regulations and Parkside PUD with respect to other development standards, except as noted below. The Project occupies approximately 60% of the overall lot area, which is greater than what was contemplated (47%) in the Parkside PUD for all of Block F (including Parcel 9, which is the subject of Z.C. Case No. 05-28Q). As a result of this increase, the Applicant requests a modification from the Parkside PUD with respect to lot occupancy.⁵ Neither front nor rear yards are required for the parcels (both are considered through lots under the applicable zoning requirements), and none are provided here. The Project complies with respect to the side yards and courts that are provided, except that each of the two courts separating the two blocks of Townhouses on each parcel do not satisfy the required dimensions.

⁴ The Parkside PUD approved FAR was 3.13 calculated using the Block area. The Parkside PUD FAR of 3.32 is calculated using the lot area for Parcel F.

⁵ The 47% from the Parkside PUD was calculated using the Block area, whereas the 59% is calculated from the lot area. Using the lot area, the Parkside PUD lot occupancy for Block F would be 50.2%.

49. The rectilinear form of the Multifamily Buildings creates efficiencies for the Project overall. The Multifamily Buildings each have a single double-loaded corridor on each upper level. Each Multifamily Building has its main lobby entrance off of the adjacent streets, a design that encourages pedestrians to engage with the sidewalks and public realm. Retail uses may wrap the ground floor along Kenilworth Terrace, N.E. if the Project is delivered with retail. Bike storage is provided at ground level in both buildings.
50. The Multifamily Buildings contain a mix of studios and one- and two-bedroom units. Both Multifamily Buildings have ample dedicated amenity space for resident events, and both Buildings have outdoor rooftop terraces suitable for occupation.
51. The Townhouses are each four stories, with an in-unit garage and the option for either a second parking space or a den on the ground floor. The upper floors include at least three bedrooms and living and kitchen space. The units are each typically 16 feet wide and feature a roof deck.
52. The Applicant has made a significant commitment to providing affordable housing as part of the overall Parkside development, and has to date delivered residential units available to a mix of incomes.⁶ Accordingly, the Applicant is ahead of schedule with respect to satisfying the Parkside PUD's affordability requirements, and this Application's residential building contains only Workforce Units—20% of the Townhouses and 20% of the units in each of the Multifamily Buildings—and not any affordable units.⁷
53. The approach to the design of each of the Multifamily Buildings in the proposal creates a connection between function, massing, and building expression through the thoughtful application of materials, detailing, and scale. While each of the two Buildings are treated differently, the overall approach develops building expressions that complement the surroundings context while anticipating the overall development of the neighborhood as it transitions from a smaller scale, less dense residential community into an active, safe, mixed-use, and urban-focused environment.
54. The overall form of the Multifamily Buildings emphasizes the pattern of the unit windows while incorporating larger modulations on the longer south and north façades that break down the buildings mass. At grade level, façade modulation is achieved through a careful balance of brick, metal panel, and storefront glazing systems supporting an active pedestrian experience.

⁶ To date, the Applicant has delivered 384 residential units, of which 286 are reserved at affordable (60% AMI) levels and 42 at workforce (80%-120% AMI) levels; that is, 85% of the units delivered to Parkside thus far have been affordable or workforce units.

⁷ The workforce for-sale units will be income-restricted for the initial purchaser only. The workforce rental units will be income-restricted for a period consistent with the financing for the project, for a maximum of 30 years.

55. The coordination and application of materials and detailing creates unique building expressions that reflect the functions of each and develop a vocabulary that express the ambitions of the neighborhood. This shared architectural voice creates an identity as the neighborhood evolves and transforms into a vibrant, pedestrian, livable, community.
56. The design of the Townhouses reflects the contemporary architecture expressed in the existing Parkside townhouses today. It features classical brick colors with modern accent materials, clean lines, and selective use of ornamentation around front entrances. The end units feature brick façades, and siding is reserved for the rear of the units and the end units facing the courtyards.
57. The Project features landscaping at grade. The Project's streetscaping includes street trees and other ground level vegetation, which serves dual purposes of beautification and stormwater control. The Project's lighting plan ensures pedestrian comfort and safety. Innovative and artistic fixtures and finishes are employed to give the Project a unique character.
58. Each of the two Parcels includes a unified below-grade garage expected to contain in total approximately 141 parking spaces serving the Multifamily Buildings, with a small number of parking spaces, if any, reserved for retail uses, if applicable. Each Townhouse unit has an in-unit garage parking space with the option to add a second such space. Both Multifamily Buildings provide 45 long-term bicycle parking spaces in secure rooms at grade, and an additional eight short-term spaces are provided on each of Parcels 8 and 10 as well. The Applicant anticipates constructing the garages with knock-out walls to allow connections to the future below-grade garage on the adjoining Parcel 9. Access to the garages and loading areas occur via alleys at the periphery of the Project, which alleys are also shared with Parcel 9. The existing curb cuts on the Property are relocated to accommodate the proposed configuration, and new curb cuts are added to Roosevelt Place, N.E. and Cassell Place, N.E. to create connections to the private alleys separating the Multifamily Buildings from the Townhouses.
59. The Project's loading is within the Multifamily Buildings and accessed only via alleys and therefore does not necessitate any truck backing up into public right of ways.
60. Practically speaking, the PUD process is the only viable mechanism for constructing the Project. Parkside, with its proximity to Metrorail and highway access, is an appropriate location for the density and mix of uses proposed in the Applications. The PUD process affords the Commission the flexibility needed to provide the necessary dimensional zoning accommodations and uses to implement the Comprehensive Plan for the District of Columbia, 10A § 100, *et seq.* (the "Comprehensive Plan").

61. The Project is consistent with the Zoning Regulations and Parkside PUD. The Project requires minor relief, as noted below, which this Commission hereby grants.

Modifications to and Consistency with the Parkside PUD

62. As part of the Applications, the Applicant simultaneously seeks modification of the Parkside PUD. The PUD process was created to allow greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under X § 303.1, 303.11, and 303.13, the Commission retains discretion to grant flexibility with respect to development standards. Under Z § 704, the Commission may make significant modifications to previous orders. The Zoning Regulations specifically allow the Commission to approve any zoning relief that would otherwise require the approval of the Board of Zoning Adjustment.
63. The Applicant seeks modest changes to the Parkside PUD, as enumerated below. These proposed modifications are generally consistent with the Parkside PUD, including the overall massing, development envelope, policy objectives, character, and appropriateness of the Parkside PUD. These changes are also all consistent with the vision for Parkside. These modest proposed modifications are consistent with the overall massing, development envelope, policy objectives, impacts, consistency with planning objectives, character, and appropriateness of the Parkside PUD, and were undertaken following detailed studies of the Project's site plan, architecture, landscaping, and transportation as well as current market conditions. Moreover, these alterations improve the overall quality of the community in this phase and help ensure the long-term viability of the Parkside neighborhood.
64. The specific elements of the Project that differ from the Parkside PUD are:

Use: The Parkside PUD did not contemplate retail use on the Property. After further study, the Applicant believes that locating at least some retail use on the Property may be helpful in attracting office tenants to Parcels 9 and 12 and establishing a critical mass of neighborhood-serving retail along Kenilworth Terrace, N.E. at Parkside. The Applicant anticipates providing ground-floor retail only in the event the real estate market supports it;

GFA/FAR: The Parkside PUD contemplated 293,625 square feet for Parcels 8 and 10, whereas 295,244 square feet are now proposed. The density contemplated under the Parkside PUD would have resulted in an FAR of 3.32, whereas the Project reflects a modest increase, with an FAR of 3.75 on Parcel 8 and 3.67 on Parcel 10;

Lot Occupancy: The Parkside PUD authorized a lot occupancy of 50% for the entirety of Block F (including Parcel 9), whereas the Project has a lot occupancy of 60%; and

Parking: The Parkside PUD approved 485 surface parking spaces for all of Block F (including Parcel 9), whereas the Project provides 141 below-grade parking spaces plus up to 50 at-grade parking spaces enclosed within the Townhouses. Significantly, the surface parking contemplated in the Parkside PUD has been replaced with usable, community, vegetated courtyard space.

65. The Applicant and the Project are in compliance with the conditions of the Parkside PUD as follows:

Condition 1: As part of the Applications, the Applicant formally confirmed the Map Amendment to rezone the Property from the underlying R-5-A Zone District to the C-3-A Zone District;

Condition 2: The Applications are largely consistent with the concepts the Commission approved in the Parkside PUD, subject to the modifications requested herein;

Condition 3: The Project demonstrates further development and refinement of the concepts and massing submitted in connection with the Parkside PUD. The Public Benefits are consistent with and accretive to those proposed during the Parkside PUD;

Condition 4: The Project is consistent with the overall dimensional limits set forth in the Parkside PUD Conditions, as modified in Z.C. Order No. 05-28E. The Project is consistent with the maximum height limits allowed pursuant to the Parkside PUD. A construction schedule for the Pedestrian Bridge is expected to be issued in 2017. Construction of the Community Green is complete;

Condition 5: This condition of the Parkside PUD is not applicable to the Applications;

Condition 6: This condition of the Parkside PUD is not applicable as the Project does not include any affordable housing. The Applicant provided updates on its provision of affordable housing pursuant to the Parkside PUD and is significantly ahead of its obligations with respect to this condition overall.

Condition 7: The Project reserves 20% of the total number of units as Workforce Units for each of the two Multifamily Buildings and for the Townhouses. The Workforce Units are income-restricted upon the initial sale only (or for as long as the initial permanent financing up to 30 years in the event any Workforce Units in the Multifamily Buildings are rental units) and are not income-restricted in perpetuity, pursuant to the Parkside PUD; (See FF ¶ 70 for additional discussion on the control period for the Workforce Units.)

Condition 8: Landscape plans, and detailed architectural plans and elevations are included in the Final Plans (as such term is hereinafter defined);

Condition 9: This condition of the Parkside PUD is not applicable to the Applications. This analysis was addressed in prior second-stage applications;

Condition 10: The Applicant provided the CTR in fulfillment of this condition;

Condition 11: This condition of the Parkside PUD is not applicable to the Applications. The Commission approved as part of Z.C. Case No. 05-28Q, plans for the design and anticipated use of the pedestrian retail plaza at the center of Parkside, as required in (a) of this condition. The Applicant has previously given to DDOT a 45-foot-wide easement at the center of Parcel 9. The Applicant submitted plans in a prior application for buffering the Pepco site;

Condition 12: This condition of the Parkside PUD is not applicable to the Applications. The Applicant is not including for-sale affordable residential units in connection with the Applications;

Condition 13: The Applications have been filed prior to October 3, 2017. This condition has been satisfied;

Condition 14: The Applicant is developing Parkside in phases. The Applications are one phase of the 10 building blocks that were approved during the Parkside PUD; and

Condition 15: This condition is restated as a condition of this Order.

66. The Applicant engaged in outreach to the surrounding community prior to and after the public hearing. The Project reflects the extensive Applicant-led community outreach. The preferences and desires of numerous community groups and individuals shaped the Project's public benefits.

IV. Commission Comments and Questions

67. Following review of the Initial Statement at Setdown, the Commission provided comments on the Applications and requested that the Applicant: (a) provide a table summarizing the breakdown of the residential units approved and built under the Parkside PUD's various second-stage PUD applications (including the instant Applications) broken down by income-restriction; (b) revise the design to include additional balconies; (c) either provide solar panels or explain the reasons solar panels are not feasible; (d) improve the side elevations of the Townhouses and refine the hardy panels on the fourth floor of the front of the Townhouses; (e) revise the design and signage flexibility language originally requested; and (f) improve the color and detail on the Multifamily Buildings and provide improved renderings of those buildings. (Tr. 1 at 62-71.)
68. The Applicant provided in its PHS, 20-Day Statement, Post-Hearing Statement, and at the Public Hearing responses to the Commission's questions and comments at Setdown:

Affordable Housing Summary: In its 20-Day Statement, the Applicant provided a table summarizing the breakdown of residential units approved to date under the Parkside PUD as well as the instant proposal broken down by income-restriction. That table is as follows:

Block	Number of Residential Units	Number of Market Rate Units (% of Total)	Number of Affordable Units @ 60% AMI (% of Total)	Number of Workforce Units (% of Total)
Parkside PUD	1500-2000	60%	20%	20%
A	98	0	98	0
B, C	100	58	0	42
E	186	0	186	0
F (Parcel 9)	76	61	0	15
J	191	191	0	0
Total approved to date	651	310 (48%)	284 (44%)	57 (9%)
F (Parcels 8, 10)	289 ⁸	231	0	58
Total including Parcels 8 and 10	940	541 (58%)	284 (30%)	115 (12%)

Additional Balconies: In its 20-Day Statement and in subsequently revised plans, the Applicant added two additional balconies per floor to the Multifamily Building on Parcel 8 and six additional Juliette balconies per floor to the building on Parcel 10. Each of the Townhouses includes private outdoor space. (Ex. 13A1-13A2.) The Applicant evaluated the Commission’s request for additional balconies. Because of the constraints of wood construction, cantilevering balconies over public space is not a feasible option. As a result, all balconies must be inset into the building, which reduces the living space in the units. The Applicant’s market analysis indicated that while some renters prefer balconies in lieu of larger living space inside the unit, the vast majority do not. Based on this analysis, the Project includes 14 units with full balconies on Parcel 8. Providing additional units with balconies does not align with market demand;

Solar Panels: The Applicant committed to pre-wiring each Townhouse to accommodate solar panels. In addition, the initial resident of each Townhouse has the option to have solar panels installed as part of construction, with the initial resident receiving the economic incentives and benefits for installing the panels. At the Public Hearing, the Applicant also committed to providing solar panels on the rooftop of the Multifamily Buildings;

Townhouse Elevations: In its 20-Day Statement and at the public hearing, the Applicant showed revisions to the Townhouses: the brick front façade has been extended to the top floor of the Townhouse units; the side elevations now have additional windows and brick recesses and have been re-aligned in a more symmetrical manner; the amount of railing on the front façade has been reduced

⁸ Assuming the ground floors of the two multifamily buildings are used for residential purposes.

and completely removed from end unit elevations and the amount of visible brick parapet wall has been increased; and brick now wraps around to the rear façade of the end units;

Revisions to Flexibility Language. Prior to the public hearing, the Applicant provided revised language regarding design flexibility in response to the Commission's concerns; and (Ex. 27.)

Multifamily Building Design and Renderings. At the public hearing, the Applicant provided improved renderings, revisions to the colors of the Multifamily Buildings, and samples of the Project's materials, all of which addressed the questions and concerns raised by the Commission at Setdown. (Ex. 34-35A2.) The Commission requested at the public hearing in Z.C. Case No. 05-28Q for the adjacent Parcel 9, that the penthouse on the residential building in that case be made a darker color. Consequently, the Applicant revised the Project's penthouse cladding to be a dark grey fiber cement panel.

69. At the Public Hearing, the Commission asked the Applicant: (a) in regard to the control period on the Project's Workforce Units, whether the Applicant can provide at least eight percent of the units as income-restricted in perpetuity; (b) about the percentage of the Multifamily Buildings' electricity needs that would be met by the solar panels provided; (c) why solar panels were not proposed for the Townhouses as a standard feature; (d) whether the Townhouses could structurally support solar panels; (e) whether the Townhouses' rooftop structures satisfied the setback requirements of the Zoning Regulations; (f) where the downspouts for the Townhouses drained; (g) whether the colors for the Townhouses were preselected by the Applicant or left to the initial purchaser to select; (h) about the design flexibility that it was requesting; (i) to clarify the color of the Multifamily Buildings' penthouse cladding; (j) to clarify the Project's phasing and the flexibility requested with respect thereto; (k) about its LEED commitment; (l) about the Project's materials; (m) whether the Multifamily Buildings' rooftops would be usable by occupants; (n) whether retail and residential parking would be segregated if retail uses are included in the Multifamily Buildings; (o) whether the residential space on the ground floor of the Multifamily Buildings could later be converted to retail; (p) to provide a summary of all of the flexibility requested; (q) to identify whether any members of the Applicant's development team were from the community surrounding the Project; and (r) whether the Applicant's job reporting benefit responded to DOES. (Tr. 2 at 19-70 and 73-77.)
70. The Applicant responded to the Commission's questions and comments at the Public Hearing:

Control Period on the Workforce Units. The control period on the Workforce Units varies in part based on the tenure of the units. The Multifamily Buildings will be either rental or for-sale buildings, depending on the residential market at

the time of delivery. If the Multifamily Buildings are rental, the rental Workforce Units will have a control period equal to the initial permanent financing as required by the lender up to a maximum of 30 years from each Building's receipt of certificate of occupancy. If the Multifamily Buildings are for-sale, control period will be limited to the initial purchaser only, as provided in the Parkside PUD. The Townhouses are all for-sale, and the control period for the Workforce Units is limited to the initial purchaser only, as provided in the Parkside PUD. As noted below, OP opposes this proposal and believes the Workforce Units, or at least some portion of them, should be income-restricted in perpetuity. However, this is the Applicant's proffer, which the Commission cannot change. Instead, the Commission may only deny a PUD if the public benefits are not commensurate with the development flexibility granted. That is not the case here. In any event, the Commission believes the policy objectives cited in the Applicant's Response outweigh those cited by OP in this limited instance. (Ex. 41.) Accordingly, the Commission adopts the Applicant's proposal with respect to the control period on the Workforce Units.

The Workforce Units under the Parkside PUD are in addition to a commitment to reserve at least 20% of the residential units as affordable for residents with an annual income equal or less than 80% AMI. That is, a total of 40% of the residential units in the PUD are income-restricted in some way.

OP's position is contrary to the express language of the Commission's findings in the Parkside PUD approval and inconsistent with previous second-stage PUDs at Parkside. Accordingly, the Commission does not adopt OP's recommendation notwithstanding the great weight owing to OP's written reports.

In the Parkside PUD, the Commission found that "20 percent of the residential portion of the PUD will be dedicated to individuals making between 80 and 120 percent [AMI]. *There will be no control period for this housing component.*" (Z.C. Order No. 05-28, FF ¶ 34(b) (emphasis added).) Subsequently, the Commission found that "the Applicant requested a clarification of [the Parkside PUD] to more clearly specify that *the income limitation only applies to the initial purchaser on the property.*" (Z.C. Order No. 05-28G, FF ¶ 19 (emphasis added).) This then became a condition of the second-stage Order. (See *id.* Decision ¶ B.4 ("*This income limitation shall only apply to the initial purchaser.*") (emphasis added).)

The Townhouses are for-sale units, similar to the townhouses previously approved on Parkside Blocks B and C as part of Z.C. Case Nos. 05-28A and 05-28G. Under those PUDs, 42 of the 100 existing townhouses approved by the Commission were reserved as Workforce Units, with the restriction applicable to the initial purchaser only. (See *id.*)

The Commission reaffirmed the control period for Parkside's Workforce Units in the condominium project proposed on Parcel 9 of Block F in Z.C. Case 05-28Q. The Commission approved the Workforce Units included as part of that

application to be income-restricted only as to the initial purchaser. (See Z.C. Case No. 05-28Q, Ex. 60 at 1 (“the Applicant shall . . . set aside no less than 20% of the residential units as workforce housing units available to households with an annual median income between 80% [AMI] and 120% [AMI] (“Workforce Units”), *provided such income restriction shall only apply to the first purchaser of the Workforce Units.*”)) (emphasis added).)

Limiting the control period for the Workforce Units to the initial purchaser is entirely consonant with the purpose of the Parkside vision as articulated in the Parkside PUD. The initial homebuyer of a Workforce Unit captures the economic benefits of homeownership upon resale. That is the essence of the wealth-creation objectives of the Parkside PUD. Limiting the resale value of for-sale Workforce Units reduces the value of such units, which only hurts the initial occupants. This prevents the owner from accruing wealth through homeownership and limits the benefits of homeownership.

The best outcome for the long-term success and sustainability of Parkside is for the establishment of a mixed-income community, one that offers residents an opportunity for upward economic mobility through home-ownership based wealth creation. This is the crux of Parkside’s proposal to include Workforce Units. Accordingly, the Workforce Units provide a pathway for income qualified homeowners to purchase a home and then provide them an opportunity through homeownership to accrue wealth either upon resale or through the ability to borrow against the equity in their home. Restricting future sales prices of the Workforce Units impedes the policy objectives value of the Workforce Units. The Applicant’s commitment to providing mixed-income housing in a currently mostly rent-restricted affordable market balances against rapid price increases experienced elsewhere in the District while also ensuring that Parkside has a mix of incomes suitable to support the retail uses that are widely desired in the neighborhood.

The Applicant has proceeded with a concept for workforce housing that allows wealth creation for homeowners. To date, 57 total Workforce Units have been approved in the Parkside PUD and none have a control period beyond the initial purchaser. By limiting the Workforce Units’ income restrictions to the first purchaser only, residents are able to build equity in their home. This “wealth creation” affords them an opportunity to improve their economic status, which is one of the prime benefits of homeownership. The wealth creation benefits of homeownership accrue sooner than resale. For instance, an owner of a residential unit that is not burdened by a resale restriction may borrow against their equity in their home and use that home equity loan to pay for college, medical expenses, or the like. If the Workforce Units are burdened with an income restriction in perpetuity, there is limited incentive for homeownership versus renting. The instant proposal is consistent with the Parkside PUD and previous second-stage decisions at Parkside.

The novel flexibility that the Applicant seeks in the Applications (relative to previous second-stage PUDs) is the option to offer the Workforce Units in the Multifamily Buildings as either rental or for-sale. If the Multifamily Buildings deliver as rental, then the Workforce Units therein would be the first rental workforce housing units at Parkside. Moreover, to the Applicant's knowledge, such rental workforce housing units would be a unique product type in Ward 7 more generally. The Applicant requests the flexibility to deliver as either rental or for-sale because the Applicant is not certain that the multifamily market at Parkside can absorb as many for-sale units as the total number of units proposed. Thus, the Applicant seeks the flexibility to make the determination as to whether for-sale or rental product are more appropriate for the market conditions when the buildings are ready to come online. The Multifamily Buildings may ultimately both be rental, both for-sale, or one may be rental and the other for-sale.

Parkside's Workforce Units are distinct from and achieve different policy objectives than Parkside's affordable housing. Parkside's Workforce Units are not a substitute for the current inclusionary zoning requirements; rather such Units are in addition to Parkside's 20% affordable housing commitment, a percentage that is much higher than what is required under inclusionary zoning today. The Parkside PUD separately imposes affordability requirements that the Applicant has satisfied ahead of market-rate housing and at much deeper levels of affordability than required.

The plain language of the Parkside PUD Order is clear that there would be no control period on the workforce for-sale units. If a perpetual control period was critical to realizing the policy behind the workforce housing, it should have been reflected in the Parkside PUD Order, but was not. To require a perpetual control period now, changes one of the fundamental considerations in developing and underwriting the overall Parkside PUD and directly affects the financing of the instant Applications.

Only nine percent of the total units approved to date have been reserved as Workforce Units, compared to 44% of units reserved for households with an annual income no greater than 60% AMI, and 48% of units reserved at market rates; (Ex. 27C.)

Multifamily Building Solar Potential. The Applicant responded that based on very preliminary and rough calculations the solar panels would support approximately 10%-15% of each building's common area electricity load. (Tr. 2 at 39-40.)

Townhouse Solar Potential. The Applicant committed to pre-wiring each Townhouse to accommodate solar panels and intends to offer solar panels as a purchase option to all Townhouse buyers. Providing solar panels as a purchase option is economically the most accretive to the homeowner and provides the quickest payback period on the solar investment. The Applicant also intends to

provide prospective purchasers with information to educate them on the benefits of solar generation and ownership.

As with the case of the affordability period for the workhouse housing, this Commission has not authority to compel the Applicant to include the solar panels within the cost of purchase. The only issue is whether the public benefit is of value. Based upon the Applicant's analysis in Exhibits 38 and 41, the Commission concludes that it is.

The anticipated cost to install solar panels is between \$15,000 and \$18,000 per Townhouse, all of which goes to increase the purchase price of the Townhouse if included with the initial construction. The increased purchase price of the Townhouse makes it more difficult for potential first-time homebuyers to enter the market, limits the number of other potential home purchase options, like upgraded finishes, that the homeowner can afford, and reduces the number of solar incentives available to the homeowner.

By providing the solar panels as an option, the Townhouse purchaser is better able to take advantage of the federal Investment Tax Credit, which is equal to 30% of the gross cost of the system at installation, and gives the purchaser the flexibility to utilize the multiple solar financing options available in DC, which include a solar loan, power purchase agreement and a solar lease. With a pre-installed system, the homeowner is still able to benefit from the Solar Renewable Energy Credits generated by the system but the loss of the 30% federal Tax Credit increases the typical payback period for the purchaser from three years to six years. If the initial purchaser does not have the cash available to buy the solar system outright, or does not want to be responsible for the long-term maintenance of the system, then the purchaser can enter into a power purchase agreement or solar lease for the system. These options allow the purchaser to benefit from the solar electricity generated by the system without the upfront cost and maintenance risk, and would not be available if the solar panels are pre-installed on the Townhouse.

For those initial purchasers that decline to install solar energy systems initially, the homeowner still has a pre-wired townhouse and can elect to install solar panels at any point after the initial acquisition without being burdened with the additional infrastructure costs to upgrade the Townhouse to support a solar energy system.

OP noted in its Supplemental Report, however, that it would be easier and more economically beneficial for the developer to finance the cost of installing solar panels on the Townhouses rather than leaving it for the individual homeowners. (Ex. 40.) The Applicant disagrees and believes its approach is economically the most beneficial to the homeowner and provides the quickest payback period in the solar investment for the homeowner. The Commission is persuaded by the Applicant because it provides the greatest flexibility for the homeowner.

OP suggests two programs for the Applicant to utilize to finance installation of the panels: DC PACE and Power Purchase Agreement (“PPA”). The DC PACE program applies to commercial and multifamily development; it does not apply to single family homes, such as the Townhouses. The PACE program imposes a special tax assessment for repayment which ultimately decreases the affordability of the Townhouses and not only raises the barrier to entry for homeownership but may render them unaffordable to lower income individuals. By contrast, the Applicant’s proposal allows homeowners who both desire and can afford solar panels to opt into applicable incentive programs without obligating other homeowners to do the same. The latter approach does not impose the financial burden of solar panels on those homeowners who cannot otherwise afford to participate in the program. The PPA approach may not require upfront costs from the homeowner but it eliminates financial incentives otherwise be derived by the homeowners for pursuing solar.

Rather than increase the base cost of each Townhouse and obligate all homeowners to a specific solar program while still protecting financial incentives for pursuing solar, the Project includes the infrastructure and wiring to support solar panels, at the Applicant’s expense, and offers solar as an option to each homeowner with information on the different solar purchase and financing options available. This includes: (i) outright purchase of the panels, which has the highest upfront cost to the homeowner but allows them to take advantage of the federal tax credit and Solar Renewable Energy Credits generated by the panels; (ii) a solar lease with the panel provider, which lowers the upfront burden to the homeowner by spreading out the cost of panels over a set number of years; or (iii) a PPA with the solar panel provider or similar solar affiliate within DC, which has little to no upfront cost to the homeowner and the solar panels are owned and maintained by a third party. All options have different capital requirements and payback periods for the homeowner. Providing solar as an option allows the homeowner to choose the solar financing or ownership option that best suits their needs, minimizes barriers to homeownership, and maximizes the financial incentives for the homeowner of choosing solar;

Townhouse Solar Construction. The Applicant confirmed that the Townhouses can accommodate the load and wiring for rooftop solar panels; (Tr. 2 at 50-51.)

Townhouse Rooftop Structure Setbacks. The Applicant, in its Post-Hearing Submission, confirmed that the Townhouses satisfied the rooftop setback requirements; (Ex. 38 at 2.)

Downspouts. The Applicant confirmed that the Townhouses’ downspouts tie into the Project’s below-grade stormwater management system; (Tr. 2 at 52.)

Townhouse Materials. The Applicant confirmed that the brick colors for the Townhouses are pre-selected by the Applicant and its design team and are not purchaser options; (*Id.* at 53.)

Design Flexibility. The Applicant confirmed that it had revised and reduced the design flexibility it sought; (*Id.* at 54-57; Ex. 38B.)

Penthouse Cladding. The Applicant confirmed the Multifamily Buildings' penthouse colors matched the materials previously approved by the Commission; (Tr. 2 at 57.)

Project Phasing. The Applicant confirmed that it would submit an application for a building permit for the Townhouses within two years of the issuance of this Order but seeks flexibility to submit an application for a building permit for the two Multifamily Buildings within four years of the issuance of this Order. (Ex. 38B; Tr. 2 at 57-61.) In its Post-Hearing Submission, the Applicant elaborated that phasing the Project's residential uses is critical to its success. The Commission recently approved the construction of 267 multifamily units on Parcels 11 and 9: 191 rental units and 76 condominium units, respectively. (Z.C. Case Nos. 05-28P and 05-28Q.) Both approved projects are anticipated to commence construction by 2020 and deliver the units by 2021, which coincides with the delivery of the Townhouses, for a delivery of a total of nearly 300 units by 2021. If the Multifamily Buildings were to follow the same schedule, 556 residential units would be delivered in Parkside at the same time. This is not a practicable approach because it would overwhelm the market with residential units such that many are likely to sit vacant for an extended period of time and undermine efforts to finance the Project. Potential lenders for Parcels 8 and 10 will want to understand the absorption rate for the units on Parcels 9 and 11 before agreeing to finance the Multifamily Buildings. Potential lenders will be reticent to finance the up to 264 multifamily units on Parcels 8 and 10 without adequate assurance that the units on Parcels 9 and 11 have leased up and will not be direct competition for the new units on Parcels 8 and 10. For instance, in the event the Applicant pursues HUD financing for the Multifamily Buildings, HUD will not accept an application for financing the Multifamily Buildings until the building on Parcel 11 is 93% occupied;

LEED Commitment. The Applicant confirmed that the Multifamily Buildings would be constructed to a LEED-Gold level of design and that the Parkside PUD as a whole had been certified LEED-ND Gold but that the individual buildings might not be separately certified; (Tr. 2 at 61.)

Materials. The Applicant explained the materials choices for the Townhouses and described the materials boards; (Tr. 2 at 62; Ex. 35A1-35A2.)

Rooftop Use. The Applicant confirmed that the rooftop terraces on the Multifamily Buildings were sized to satisfy life-safety codes and to allow some occupant use; (Tr. 2 at 63-64.)

Retail Parking. The Applicant confirmed that the below-grade residential parking and the retail parking, if any, would be segregated; (Tr. 2 at 64-65.)

Ground-Floor Conversion. The Applicant confirmed that the intent was that the Multifamily Buildings would be delivered with a ground-floor use pre-selected and that no conversion was likely to occur post-delivery; (*Id.* at 66-67.)

Flexibility Summary. In its Post-Hearing Submission, the Applicant provided a summary of the flexibility that it sought; (Ex. 38B; see also FF ¶ 85.)

Development Team. The Applicant confirmed that no one on the Project team lived in the area around the Project; and (Tr. 2 at 67-69.)

Job Reporting Requirement. The Applicant confirmed that it will make reports on job availability and hiring to the ANC and to the Zoning Administrator, and that the reporting to the Zoning Administrator would allow that official to enforce the proffer through the issuance of building permits and certificates of occupancy and the like. (Tr. 2 at 73-77; Ex. 37.)

71. At the Public Hearing, the Commission had questions for OP and the ANC. The Commission asked: (a) OP about the Project's workforce housing commitment and whether OP supported requiring the Workforce Units to be income-restricted in perpetuity; (b) OP to review post-hearing the setbacks of the mechanical structures on the Townhouses; and (c) the ANC whether it had discussed with Applicant any interim uses for the ground-floor retail space in the Multifamily Buildings:

Workforce Units. OP testified that it preferred that the Workforce Units maintain an income restriction in perpetuity for at least eight percent of the income-restricted units. OP also testified that the Inclusionary Zoning ["IZ"] program is intended to function as a wealth-sharing function, where only a portion of the wealth created through homeownership accrues to the homeowner. The Commission notes that the Parkside PUD is exempt from IZ and this phase does not propose any affordable units. As noted above, the policy objectives behind workforce housing in this Project differ from the policy objectives behind for-sale inclusionary units, which were cited by OP; (Tr. 2 at 21-24.)

Townhouse Rooftop Structures. The OP Supplemental Report confirms that the final plans depict the minimum rooftop structure setbacks as required; and (Ex. 40 at 3.)

Interim Uses. The ANC responded that it had discussed with the Applicant providing retail pop-ups and other flexible uses for the retail space and that this was how the ongoing community retail working group would have input in the development of the Project's retail spaces. (Tr. 2 at 74-75.)

V. Agency Reports and TestimonyOffice of Planning

72. In the OP Setdown Report, OP requested that the Applicant: (a) submit plans and drawings showing the ground-floor as retail consistent with the request for flexibility and submit analysis indicating the viability and impact of retail at this location; (b) refine the colors of the Multifamily Buildings' façade materials to create more interesting appearances; (c) consider the provision of additional balconies on the Multifamily Buildings; (d) provide a count for the number of units by bedroom type, with and without ground-floor retail; (e) provide additional detailing and façade treatments to the Townhouses to enliven the sides of the end unit Townhouses facing a street with additional windows and/or window types and match the fourth floor of the front facades of the Townhouses with brick consistent with the remainder of the front façade; (f) consider the addition of solar panels on the Townhouse roofs; (g) explore the ability to increase the amount of green roof proposed and/or provide solar panels, on the Multifamily Buildings' roof tops outside of the areas dedicated to mechanical use; (h) submit additional detail on refuse collection from the Townhouses and the Multifamily Buildings; (i) submit landscaping plans, including descriptions on how any plantings would thrive atop a below-grade parking garage; (j) submit a traffic study in advance of the public hearing; (k) refine and narrow the range of flexibility requested through the PUD; and (l) request a modification to permit up to 378 dwelling units on all of Block F should no retail be provided on Parcels 8 and 10, and flexibility to not comply with inclusionary zoning for the Project. (Ex. 11.)
73. In response to the OP Setdown Report, the Applicant provided the following information:

Retail Flexibility. In its 20-Day Statement, the Applicant provided additional information regarding the retail flexibility. (See FF ¶ 85.) In sum, the Applicant proposes to provide residential units at the ground floor of the Multifamily Buildings; however, it seeks flexibility to convert the ground-floor area to retail in the event a sufficient retail market exists for such uses. The Applicant is unwilling to commit to providing retail space outright because it believes that in the event sufficient retail demand does not exist for such use, empty ground-floor retail space on Parcels 8 and 10 would be detrimental to the success of retail on other adjacent blocks. The retail spaces in each building is modestly sized at approximately 7,000 square feet. The space is not intended to compete with destination retail centers in Ward 7, but rather be smaller, neighborhood serving retailers. One of the main strategies for the Parkside PUD is to create a walkable, transit-oriented neighborhood, and the addition of retail that can provide day-to-day needs is an essential element in fostering healthy neighborhoods and strong communities. Given the dearth of neighborhood-serving retail in the vicinity, the

Applicant sees this as an opportunity to introduce the services, goods, and conveniences that have long been absent in this area;

Color Palette. In its 20-Day Statement, the Applicant provided the requested information and revisions regarding the Project's colors;

Balconies. The Applicant revised the Project to include additional balconies, as noted above;

Unit Count. The 20-Day Statement provided tables summarizing the unit-type and size for the Project with and without ground-floor retail. (Ex. 13A1.) The maximum total number of units on Block F, including the 76 multifamily units on Parcel 9, is 365, which is the amount approved for Block F in the Parkside PUD;

Additional Detailing. The Applicant's subsequent design plans included the additional detailing requested;

Solar Panels on Townhouses. The Applicant's response regarding solar panels on the Townhouses satisfied OP's request that in the alternative, the Townhouses be pre-wired for solar panels;

Solar Panels on the Multifamily Buildings. The Applicant committed to provide solar panels on the Multifamily Buildings, as noted above;

Refuse Collection. The Applicant clarified that private trash operators use the private alleys to access the Property. The Townhouse include indoor storage areas for trash cans in the garages; on trash day, individual owners place their trash cans along a four-foot strip between the rear of their house and the private alley; the trucks pull into the alley to pick the trash up from each home. In the Multifamily Buildings, each floor has a trash room with a chute for residents to deposit their trash. Trash is then to be collected and wheeled down the service corridor to a dumpster in the loading area for each respective building. The trash trucks then back into the loading area to empty the dumpsters;

Landscaping Plans. Landscaping plans were included on Sheets L1.01 to L3.04 of Exhibit.13A1-13A2. Information on the provision of landscaping on top of a garage is contained in Exhibit 13A2 at Sheet L3.03;

Traffic Study. The Applicant filed the CTR on May 19, 2017; (Ex. 12A1-12A9.)

Design Flexibility. As noted above, the Applicant in its Post-Hearing Submission clarified the scope of design flexibility requested; (Ex. 33, 38B.)

Modification. The Applicant noted that the modifications proposed as part of the Applications are minor relative to the approved Parkside PUD. The overall amount of residential GFA on Block F is below what was originally approved, and the newly proposed commercial uses for which modifications are sought would

not trigger the IZ requirements. To the extent the footprint of the Parcel 8 and 10 Multifamily Buildings are larger than those originally proposed, such change is largely in order to justify below-grade parking and remove the previously-approved surface parking. In sum, the modifications to the Parkside PUD in the Applications are consistent with the Parkside PUD and the public benefits are commensurate with the requested flexibility; and

Traffic Study. The CTR was submitted in advance of the Public Hearing. (Ex. 12-12A9.)

74. In the OP Hearing Report, OP requested the Applicant: (a) submit a materials board with all materials in all colors proposed to better articulate the actual proposed finishes of the buildings; (b) provide solar panels for each Townhouse, or, should the Commission opt not to require the installation of solar panels on the roof of each Townhouse, commit to pre-wire each of the Townhouses to accept solar panels, whether solar panels are included in the initial purchase or not; and (c) adopt transportation demand management (“TDM”) measures recommended by DDOT (set forth below). OP also noted that (d) it did not support the “flexibility” to apply income restrictions only to the first sale of units. (Ex. 29.)
75. In response to the OP Final Report, the Applicant provided the following information:

Materials. The Applicant submitted materials boards at the public hearing; (See Ex. 35A1-35A2.)

Solar. As noted above, the Applicant committed to provide solar panels on the Multifamily Buildings and to pre-wire the Townhouses for solar panels;

DDOT Issues. The Applicant agreed to OP’s and DDOT’s TDM requests, except with respect to the Townhouse parking because the garages are internal to the units so the parking cannot feasibly be unbundled. (Ex. 33.) DDOT confirmed that the Applicant satisfied all outstanding issues necessary before the Public Hearing and that it would continue to work with the Applicant through the public space approval process; and (Tr. 2 at 75.)

Workforce Units Control Period. As noted above, the Applicant did not agree with OP’s request to restrict the Workforce Units in perpetuity.

76. In the OP Supplemental Report, OP: (a) did not support the Applicant’s phasing request; (b) recited comments from DOEE regarding financing options for the solar panels on the Townhouses; and (c) concluded that workforce restriction was intended to apply for the life of the Project. OP also confirmed that the Project satisfied the rooftop structure setback requirements and verified the downspout connections. (Ex. 40.)

77. This Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions in the Applicant's Response. (Ex. 41.)

Phasing. The Applicant's phasing request is reasonable and detailed, as noted above. OP's objections run contrary to the successful development of Parkside for the reasons articulated in the Applicant's response to the OP Supplemental Report; (Ex. *Id.*)

Solar Panels on Townhouses. As noted above, the solar financing mechanisms proposed in the OP Supplemental Report are not as effective, and the Applicant has satisfied the Commission's and OP's requests by pre-wiring the Townhouses for solar panels; and

Workforce Control Period. For the reasons set forth in the Applicant's response to the OP Supplemental Report and as summarized above, the Commission disagrees that the Parkside PUD intended to impose a control period on the Workforce Units. To the contrary, the Parkside PUD, OP's prior testimony to the Commission, and subsequent second-stage PUDs all clearly indicate that no control period was intended or required. Accordingly, the Commission declines to impose one here except in the event the Workforce Units are delivered as rental units, up to a minimum of 30 years from each building's receipt of a Certificate of Occupancy, as offered by the Applicant.

District Department of Transportation

78. The DDOT Report noted no objection to the Project provided the Applicant's proposed TDM program is effectively implemented and the Project satisfies DDOT's approvals required during the public space process. (Ex. 28 at 4.) The DDOT Report included numerous findings, which the Commission hereby adopts as if restated herein. (*Id.*)
79. The TDM plan includes the following elements. The Applicant must:

Designate a TDM coordinator: (i) to be responsible for organizing and marketing the TDM plan, (ii) to act as a point of contact with DDOT, and (iii) to implement a carpooling system such that employees who wish to carpool can easily locate other employees who live nearby;

Price all parking at no less than market rates (defined as the average cost for parking in a 0.25-mile radius from the Project) and unbundle parking from the cost of individual units;

Install a transportation information center display (electronic screen) within the lobbies of the Multifamily Buildings, which display must contain information related to local transportation alternatives;

Meet or exceed the requirements of the Zoning Regulations for bicycle parking facilities at the Project, including long-term parking located within the Project and short-term bicycle parking around the perimeter of the Property;

Dedicate two parking spaces within the Project's garage for car-sharing services to use with right of first refusal (such spaces must be in addition to those reserved in the garage on Parcel 9), and in the event such spaces are not reserved, then offer Bikeshare memberships to residents up to an aggregate cost of \$25,000.000;

Provide bicycle repair stations to be located within the bicycle storage room(s);

Provide TDM materials to all new residents;

Install two electric vehicle stations in the parking garage;

Fund and install the hardware necessary to implement the proposed traffic signal changes at the intersection of Kenilworth Terrace and Nannie Helen Burroughs N.E., subject to DDOT approval, with a maximum cost to the Applicant of \$25,000, if not already completed; and

Convert Hayes Street, N.E. from one-way to two-way from Kenilworth Terrace, N.E. to Anacostia Avenue, N.E. to the extent not already completed as part of previous Parkside second-stage PUDs. (Ex. 28.)

80. At the public hearing, DDOT confirmed its agreement with the Applicant's revised changes to the TDM package. (Tr. 2 at 74.)

VI. **ANC Report, Testimony, and Cross-Examination**

81. The ANC Report offers conditional support for the Project contingent upon the Applicant responses to its questions set forth in pages 2-3 of its report. These issues fall within three broad categories: (a) transportation and traffic-related issues; (b) provision of community space and public realm improvements; and (c) updates on Parkside's retail strategy. (Ex. 20.) In the ANC final report, the ANC provided that it supported the Applications and that its conditions of support had been satisfied. (Ex. 20B, 27A, 30.)

82. In response to the ANC report, the Applicant noted the following:

Traffic Calming, Congestion, TDM Measures, DDOT Advocacy, Access, and Regional Transportation Issues. In its 20-Day Statement, the Applicant noted its commitment to being a partner with the ANC and community residents to identify possible solutions to regional transportation and neighborhood parking concerns. As part of the Community Benefits Agreement ("CBA") that the Applicant provided to the ANC, the Applicant committed to engage a transportation engineer to provide suggested solutions to larger, regional traffic issues outside the scope of the Project that affect Parkside and nearby neighborhoods. (Ex. 27A.)

The suggested solutions are to be used to facilitate discussions between the ANC and other members of the community on the one hand and DDOT on the other. The CBA also obligates the Applicant to engage a transportation engineer to develop a parking and curbside management plan with ANC and community input to identify the community's desired parking restrictions for each block of the Parkside neighborhood. The parking plan provides DDOT and the community a context to develop a unified parking solution for the neighborhood. Altogether the Applicant has committed to spend \$20,000.00 to study potential solutions to: (i) regional and neighborhood traffic concerns affecting Parkside and surrounding neighborhoods, and (ii) parking issues within Parkside. This amount is above what DDOT has requested, and the Applicant has committed to provide, as mitigation for the transportation impacts of the instant Applications;

Community Space and Public Realm Improvements. The Applicant committed to work with the ANC and the Parkside Homeowners Association ("Parkside HOA") of the Parkside Townhomes to find and fund the renovation of the existing Parkside HOA's community room ("Community Room") for use by the ANC and other community groups. (Ex. 30.) Renovating the existing Community Room modernizes an existing under-utilized space within the Parkside neighborhood to provide a space for the ANC and community groups in the very near term. This commitment also brings another important community stakeholder, the Parkside HOA, into the conversation. Finally, the Applicant has agreed to set aside \$30,000.00 for improvements in the public realm subject to DDOT review and approval pursuant to the public space process. These improvements further the Applicant's and the ANC's joint place-making vision for Parkside's public realm and provide amenities for families, residents, and visitors; and (*Id.*)

Retail Study. Also as part of the CBA, the Applicant committed to engage in quarterly meetings and/or updates on retail leasing and marketing activities involving the Applications and adjacent blocks. The meetings and/or updates will involve a working group composed of community residents. These meetings give the community a voice in determining Parkside's retail future. (Ex. 27A.)

83. At the public hearing, the ANC provided oral testimony indicating broad support for the Project and noting that the dialogue between the Applicant and the community led to major improvements in the Project and the Public Benefits. (Tr. 2 at 73.) The ANC noted that it continued to work with the Applicant on several substantive issues. (*Id.* at 73, 78.)

VII. Persons in Support or Opposition

84. No persons or organizations submitted written testimony or spoke at the public hearing in support of or in opposition to the Project. Accordingly, the Commission finds there were no contested issues in the pendency of the Application.

VIII. Development Incentives: Map Amendment, Flexibility, and Zoning Relief

85. As part of the Applications, the Applicant requested the Commission grant the following development incentives (collectively, the “Development Incentives”): (a) the Map Amendment; (b) the flexibility to deliver the ground-floor use of the Multifamily Buildings (or portions thereof) as retail rather than residential use in the event a sufficient retail market is established at Parkside (“Retail Flexibility”); (c) the flexibility to deliver the Multifamily Buildings as either rental or for-sale or one rental and one for-sale, depending on market conditions at the time of delivery and the flexibility to deliver the Multifamily Buildings on a longer timeline than typical of PUD applications (i.e., the Applicant proposes to submit an application for a building permit for the Townhouses within two years of the issuance of this Order but seeks flexibility to submit an application for a building permit for the Multifamily Buildings no later than four years after the issuance of this Order (the “Tenure and Phasing Flexibility”); certain standard elements of design flexibility routinely included in PUDs; (d) flexibility from the inclusionary zoning requirements of the Zoning Regulations, which requirements were triggered by the Applications’ modifications to the Parkside PUD, which itself includes an extensive inclusionary zoning requirement (“IZ Flexibility”); (e) flexibility from the ZR58 loading requirements that are no longer applicable under the now-effective Zoning Regulations (the “Loading Relief”); and (f) relief from the theoretical lot requirements of ZR58 (the “Zoning Relief”). (Ex. 38B.) These items are addressed in turn below:

Map Amendment. The Property is currently in the R-5-A Zone District, and the Parkside PUD approved the Map Amendment to the C-3-A Zone District for the Property. The Commission previously found as part of the Parkside PUD that the Map Amendment is not inconsistent with the Comprehensive Plan, which finding satisfies the requirements for granting the Map Amendment. (See X § 500.3 and Z.C. Case 05-28.) The Commission confirms that it approved the map amendment previously in the Parkside PUD and, as such, it is not the subject of the second-stage applications;

Retail Flexibility. Consistent with the Parkside PUD, the Applicant proposes to provide residential units at the ground floor of the Multifamily Buildings on Parcels 8 and 10; however, it seeks flexibility to convert such ground-floor area (or portions thereof) to retail in the event a sufficient retail market exists for such uses. The Applicant is unwilling to commit to providing retail space outright because it believes that in the event sufficient retail demand does not exist for such use, empty ground-floor retail space on Parcels 8 and 10 would be detrimental to the success of retail use on other adjacent blocks. The Project’s ground-floor design has different characteristics for retail uses relative to the design for residential uses. Such design differences reflect the inherent operational differences in the two types of use. The difference in design is generally confined to the public space areas, and the buildings themselves are readily adaptable to different uses. The provision of retail on Parcels 8 and 10, if demand exists, can

help create a more robust critical mass of retail in Parkside. Retail on Parcels 8 and 10 can help retail on Parcels 9 and 12 succeed, bolster the ground-floor retail experience within the neighborhood, and further help activate the pedestrian realm along Kenilworth Terrace, N.E. The Applicant expects that, to the extent the instant Project includes retail in one or both Multifamily Buildings, such retail will be neighborhood-serving. There is a total of 7,409 sf and 7,155 sf of retail space in the two buildings. Such floor areas limit the potential future tenants to relatively smaller, more neighborhood-serving retailers compared to the tenants at the East River Park Shopping Center at the intersection of Benning Road, N.E. and Minnesota Ave., N.E., which shopping center is focused towards more regional and big box retailers. In light of the Applicant's justification for such flexibility the Commission finds it reasonable and desirable for the Project to have the flexibility to deliver the ground floors of the Multifamily Buildings as either retail or residential (or a mix of the two) depending upon future market conditions;

Tenure and Flexibility. The Applicant's desire to deliver the residential units in the Multifamily Buildings as either for-sale or rental depending on future market conditions is reasonable given the number of units proposed on Block F as a whole and desirable to avoid a situation where units remain vacant for any period of time. The Applicant's request to deliver the Multifamily Buildings over a greater than typical timeframe is reasonable and desirable for similar reasons notwithstanding OP's objection to this flexibility. The Applicant presents a compelling case that such flexibility in timing is necessary for the financing and delivery of the Project and the success of the Project overall;

IZ Flexibility. As more fully set forth above, the Commission supports granting the Project flexibility from the inclusionary zoning regulations in light of the Parkside PUD's requirements for the provision of affordable housing (and the Applicant's subsequent provision of such housing at deeper levels of affordability than is required under the Parkside PUD) and Workforce Units. The Parkside PUD was exempt from inclusionary zoning program, but the Commission has interpreted the inclusionary zoning program to apply to the Applications by virtue of the Applications' modification of the Parkside PUD to increase the residential density on the Property;

Loading Relief. The Multifamily Buildings do not include a 55-foot loading berth, which was required under ZR58 for multifamily residential buildings, but is no longer required under the 2016 Zoning Regulations. The Commission sees no reason to impose this requirement on a vested PUD when it is no longer applicable to new multifamily buildings; and

Zoning Relief. The Project's site plan includes multiple buildings on a single record lot. Additionally, the individual theoretical lots that are the subject of the Applications do not fully comply with the court and rear yard requirements of ZR58, but the overall lots do comply with the applicable requirements. These

theoretical lot requirements are also no longer applicable under the 2016 Zoning Regulations. Again, the Commission sees no reason to impose these technical requirements on a vested PUD when they no longer apply to new multifamily buildings and where the concerns that these regulations abrogate (e.g., ensuring adequate light and air) are subject to the Commission's design review discretion and are in that respect satisfactory.

IX. Comprehensive Plan

86. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (See DC Code § 1-306.01(b).) The Project advances these purposes by furthering social and economic development through the construction of new residential and (possibly) retail uses on currently vacant land, investing in a District neighborhood that seeks new investment, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property. The Project assists in the improvement and stabilization of the urban environment in the immediate neighborhood and the District as a whole.
87. OP Findings regarding the Comprehensive Plan. The OP Setdown Report and OP Hearing Report find that the Project is not inconsistent with the Comprehensive Plan. (See Ex. 11 at 11-16, Ex. 29 at 12-14.) The Commission gives great weight to these OP findings, which the Commission hereby adopts as if restated herein.
88. As part of the Parkside PUD, the Commission found that the proposal for Parkside, including the proposal for the Property (with which the Project is hereby consistent) was consistent with the Plan and other adopted policies of the District. (See Z.C. Order No. 05-28, FF ¶¶ 35, 36, 38, 45, and 46 and Conclusions of Law ¶ 8 (“Approval of the first-stage PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning in this case and finds that the Project is consistent with and fosters numerous themes and elements of the Comprehensive Plan.”).) Given the findings in the record, the clear conclusions of law in the Parkside PUD, and the consistency between the instant Project and the Parkside PUD, the Commission finds that the Project is not inconsistent with the Comprehensive Plan.

89. Future Land Use Map and Generalized Policy Map.

The Future Land Use Map designates the Property as appropriate for Medium-Density Residential uses. The Medium-Density Residential designation is used to define neighborhoods where mid-rise apartment buildings are the predominant use (four-seven stories). The seven-story Multifamily Buildings are consistent with this designation. Likewise, the Project's four-story Townhouses are also consistent with this designation.

The potential inclusion of commercial uses on the Property is not inconsistent with the Future Land Use Map. The Property is immediately adjacent to areas designated for mixed-use, high-density commercial uses. Accordingly, it is reasonable that the Property could be used for ground-floor commercial uses because the intent of the Future Land Use Map is to be interpreted broadly and is expressly not a zoning map. The Applicant set forth a detailed justification that the Project's potential retail component is not inconsistent with the Comprehensive Plan as a whole despite nominal lack of support on the Future Land Use Map for ground-floor retail uses. (Ex. 27B.) The Commission wholly adopts such justification provided in Exhibit 27B and incorporates herein by reference the analysis contained therein, with a summary as follows:

Although the Project's proposed retail use is not expressly contemplated under the Future Land Use Map's residential use designation for the Property, the Map designation alone does not preclude retail use on the Property under the recent *Friends of McMillan Park v. Zoning Commission* decision from the DC Court of Appeals.⁹ In *McMillan*, the court noted that "the [Comprehensive Plan] reflects numerous occasionally competing policies and goals" and ruled that the Zoning Commission is not precluded from concluding that an action would be consistent with the Comprehensive Plan as a whole "even if a proposal conflicts with one or more individual policies associated with the [Comprehensive Plan]." (Internal citations omitted).

The Comprehensive Plan expressly provides that the map and the textual District Elements should be given the same "legal weight." Thus, in light of the *McMillan* ruling, when evaluating a PUD and balancing any competing aspects of the Comprehensive Plan, the Commission gives no more weight to the Project's consistency with the Map than it does to the textual policies of the Comprehensive Plan's applicable District Elements and Area Elements. As detailed below and as found by OP, the Project is consistent with numerous textual elements of the Comprehensive Plan and inconsistent with none.

The stated purposes of the Comprehensive Plan are also relevant to the consistency finding for the Applications. Among the legislatively-established purposes of the Comprehensive Plan is the promotion of economic growth in jobs

¹¹ Note: Sheet A 0.06 in Exhibit 38A1 (Vicinity and Tabulations) contains two typographical errors: first, the total Block F FAR is 3.75 (not 3.85) and second, the Parcel 8 FAR is 3.75 (not 3.70).

for District residents. The Project's potential retail components are consistent with the Comprehensive Plan in light of this legislatively-established purpose. Accordingly, the Commission may consider the economic development and job promotion purposes of the Comprehensive Plan in addition to (or against) its land use planning purposes when evaluating the Application. To the extent the Project's potential retail use is not fully consistent with the land use planning objectives of the Comprehensive Plan's Future Land Use Map (and the Project in this instance is nonetheless consistent from a land use perspective), the Commission nonetheless weighs the policy aspirations of the economic development and job creation purposes heavily in favor of allowing retail on the Property because of the Property's location in Ward 7 and near transit. The Project's economic development and job creation aspirations—especially in Ward 7, a part of the District that has historically struggled to establish a meaningful base of commercial development—are particularly relevant in this instance.

In addition, the Future Land Use Map is intended to be read “broadly” and not as a zoning map. Provisions of the Comprehensive Plan guiding interpretation of the Future Land Use Map instruct that the Map's use designations describe the “general character” of development for all of the properties on a block but that there may be individual buildings that deviate from the designation. This guidance supports retail use on the Property because the Townhouse lots, which are similarly-designated on the Future Land Use Map, are anticipated to contain residential uses exclusively.

The specific policy objectives of the District and Area Elements of the Comprehensive Plan offer significant support for retail use as part of the Project. In particular, the consistency of the Project's transit-oriented and economic development components justifies the modest misalignment with the Future Land Use Map designation.

Finally, because the Applications entail modifying the Parkside PUD, the inquiry as to whether the Project's retail use is consistent with the Comprehensive Plan as a whole necessitates consideration of the entire Parkside PUD site and the policy objectives for the entire Parkside site. The Project's role in the overall redevelopment plan for Parkside supports its use for retail purposes.

The Comprehensive Plan's Generalized Policy Map designates the Property as a Neighborhood Enhancement Area, which is to ensure that new development fits in and responds to the existing character, natural features, and existing/planned infrastructure capacity. As OP noted, the Project is not inconsistent with such designation. (Ex. 11 at 12.)

90. Land Use (“LU”) Element. The Project is not inconsistent with the LU Element. The Comprehensive Plan devotes a great deal of attention to the importance of transit-oriented development and mixed-use development and protecting established single-family residential neighborhoods from inappropriate

development. The Project is located a short walk to the Minnesota Avenue Metrorail station, which is less than one-half mile from the Property, and it is similarly close to the commercial center approved along Kenilworth Terrace, N.E. As such, it fulfills the Plan's objective to locate infill development near the existing transportation infrastructure and provides the critical mass needed to support the commercial uses approved for the Project. Moreover, the Project presents a "buffer" between the lower-density townhouse residential uses that exist at Parkside today and the higher intensity highway and highway-adjacent commercial uses planned for future phases. The Plan also seeks to achieve "land use compatibility"—specifically, the enhancement and stabilization of the District's neighborhoods by the protection of residential neighborhoods from non-residential and disruptive uses, as well as through the incorporation of market and workforce housing. The Property serves as an important transition between the commercial nature of Kenilworth Terrace, N.E. and the lower-density residential along Parkside Place, N.E.

91. Transportation Element. The Plan emphasizes creation of a multi-modal transportation system that links land use and transportation. The Plan encourages strengthening the linkage between land use and transportation as new development occurs, and the Project precisely strengthens such linkage. Parcels 8 and 10 are located between the commercial center of Kenilworth Terrace, N.E. and the lower-density residential uses in the Parkside community. The development transitions from the higher-intensity uses and densities along the freeway southeast of the site to the lower-intensity uses and densities towards the Anacostia River northwest of the site. The Project also fills gaps in the connection between the uses. The Project transforms existing vacant lots into a contributing part of the Parkside community. Further, the District and the Applicant are funding construction of the Pedestrian Bridge—the construction of which is expected to begin within the year—to facilitate access between the Property and the Metro station. In all, the Project facilitates and encourages the use of the Metro station and is among the first phases of Parkside to have the potential to add jobs, in addition to housing, near transit.
92. Housing Element. The Plan's overarching goal for housing in the District is to increase the supply of safe and affordable housing. The Project advances that objective by contributing to the emergence of a stable neighborhood and supporting the creation of housing in ongoing and future phases of the Parkside PUD. The Project is a private sector-led redevelopment effort that produces new housing, and particularly workforce housing on a vacant site in an historically underinvested portion of the District. The Project incorporates a mix of uses and residential units, including family-sized townhouse units for a mix of income levels. Perhaps most significantly, the Project includes a comprehensive vision that matches social, economic, healthcare, education, and other programs with real estate development to establish and nurture a fully functioning neighborhood.

93. Environmental Protection Element. The Project is not inconsistent with this Element. The Plan's overarching goal for environmental protection is to protect and enhance the manmade and natural environment through environmentally-conscious steps. The Project's landscape plan helps beautify Parkside, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity, thereby advancing these policies. There is an extensive landscape plan providing for trees, sustainable construction, and comprehensive and creative stormwater treatment on the Property. The Project proposes elements to improve water quality through design features to treat runoff from the Property. The Project will be constructed to a level to achieve LEED-Gold for new construction and to include solar panels on the Multifamily Building rooftops and to accommodate solar on the Townhouses, all of which are strong civic priorities. Finally, the overall PUD has been selected as a LEED-ND Pilot project (i.e., a demonstration project).
94. Economic Development Element. The overarching goal for economic development in the District is to strengthen the District economy and help District residents find and keep jobs. The Project has the potential to introduce retail and job opportunities to an area where such opportunities have traditionally been limited. Moreover, the Project's economic opportunities are all transit-accessible, which is an important feature for retail jobs where employee parking is often limited. Even if the Project does not include retail uses, its contribution of additional residents at a mix of incomes supports the development of retail and office uses elsewhere under the Parkside PUD.
95. Parks, Recreation, and Open Space Element. The Project is not inconsistent with the Parks, Recreation, and Open Space policies in the Plan. The Comprehensive Plan specifically recognizes the value of functional open space. The Parkside PUD contemplated the Community Green, a one-acre open park, which was approved by the Commission in Z.C. Case Nos. 05-28A and 05-28F. The Community Green has been constructed and has been well-received by the community. The Community Green serves as an amenity for residents and neighbors and create an attractive resting point that District residents can appreciate while they take an evening stroll, walk the dog, or simply read a book outside. The Project enhances that amenity by introducing ground-level activities, well-designed adjacent sidewalks and street uses, and by introducing new residents and office workers to use and monitor the Community Green. The Parcel 9 project's promenade also strengthens a key linkage between the Community Green and the nearby Metrorail Station by filling in the blocks between such centers of gravity. Various aspects of the Project's public benefits further objectives of the Plan regarding the usability of open space.
96. Urban Design ("UD") Element. The Project is not inconsistent with the UD Element. The Urban Design Element of the Plan seeks to, among other goals, strengthen civic identity through a renewed focus on public spaces and boulevards; designing for successful neighborhoods and large site reintegration;

improving the public realm, particularly street and sidewalk space; and promoting design excellence throughout the District. The Project reflects the beneficial architectural qualities of the surrounding residential neighborhoods. Parcels 8 and 10 include an appropriate use, density and height, and the Parkside PUD allows for sufficient private and public open space for the residents. The Project provides an important connection between previously approved second-stage applications, providing the urban realm unity and cohesion that Parkside needs.

97. Educational Facilities Element. The Comprehensive Plan encourages the development of educational facilities throughout the District in a manner that is compatible with adjacent residential uses. Accordingly, the Project supports this objective by providing a critical infusion of additional residential uses and the opportunity for commercial uses at a key location in the Parkside neighborhood. Ultimately, the Project helps the educational facilities in existence in and planned for the Parkside neighborhood continue to thrive.
98. Far Northeast and Southeast Area Element. The Property is located in the Far Northeast and Southeast Area of the Comprehensive Plan. It is not located within the boundaries of any Policy Focus Area of that Area Element. The current condition of the Parkside neighborhood, with over nine vacant acres of land, discourages an active connection between the Anacostia waterfront and the Ward 7 community. The development of the Parkside PUD creates a more inviting, accessible, and active connection to the Anacostia waterfront. The new Pedestrian Bridge and the urban design of the Project encourages the Ward 7 community to use the waterfront and its new and existing amenities. The Pedestrian Bridge also makes the waterfront accessible to visitors to the area who come from other parts of the District or the Maryland and Virginia suburbs. The increased activity engendered by these first phases of development creates a friendlier, more inviting atmosphere for residents wanting to access the waterfront. The strong visual corridors and pedestrian pathways of the site design encourage use of the waterfront. The Parkside PUD also reflects the District's plan for concentrating a mix of uses at the Minnesota Avenue Metrorail Station. The addition of retail supports the concept of Parkside as a true mixed-use development. The heights and density proposed for development are also appropriate for the PUD's proximity to public transit and its role in transitioning between uses and creating a buffer from the adjacent highway. Finally, the Project's design creates an appropriate transition between the greater heights along Kenilworth Avenue, N.E. to the lesser heights as the development stretches toward the Anacostia River.
99. Taken as a whole, the Project is not inconsistent with the District or Area Elements of the Plan or with the objectives of other adopted public policies applicable to the Property. There are individual objectives in these site-specific plans that the Project either does not address or does not substantially advance. Planning policy documents by their very nature are comprehensive and occasionally internally contradictory. However, the Project is not inconsistent with the broad public planning objectives for Ward 7 and Parkside specifically.

100. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by OP, the ANC, or any other agency, party or person. Therefore, for the reasons set forth more fully above the Commission finds that the Applications, including the Map Amendment, is not inconsistent with the Plan.

X. **Project Impacts**

101. For the following reasons, the Commission finds that the Project does not result in unacceptable impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits.

102. Zoning and Land Use.

From a land use perspective, the Project creates no unacceptable impacts on surrounding neighborhoods. Any impacts from the Project's proposed land use are either favorable, capable of being mitigated, or acceptable given the quality of the significant public benefits included as part of the Project. The Project's mix of multifamily and townhouse residential uses is appropriate given the existing and approved surrounding multifamily and townhouse uses, the proximity to transit and highway access, the ongoing development efforts in the neighborhood, and the extensive planning and community support for the Parkside PUD. The Project's proposed retail, to the extent the Applicant exercises its flexibility to implement retail uses, is also appropriate given the ongoing development context. The Project's height and mass are an appropriate transition from the approved greater densities closer to the Anacostia Freeway and the Metrorail station to the less intense residential uses to the northwest.

The Project's potential introduction of additional retail helps attract and retain a critical mass of commercial uses in the Parkside neighborhood. This effect is a favorable land use impact of the Project. The proposed retail uses create economic opportunities and continue the stabilization of the neighborhood. The continued contribution of new, high-quality multifamily housing units to Ward 7 has additional positive impacts on the surrounding areas as such contribution advances other aspects of the economic vision for Parkside. Moreover, the Project's conversion of vacant lots to productive and active uses, and the creation of a thoughtfully designed public pedestrian space also has positive impacts.

To the extent there are any ancillary unfavorable land use impacts arising out of the Project, such impacts are either mitigated by the Project's design or offset by the quality of the Public Benefits associated with this Project in particular and the Parkside PUD as a whole.

103. Housing. The Project's addition of new housing is a favorable impact. The Project continues Parkside's trend of creating new, high-quality, transit-accessible, mixed-

income housing units. Such units are in high demand across the District, and the need for such units is particularly dire in Ward 7. The addition of new housing has favorable impacts on surrounding areas by adding residents to support the proposed commercial uses. The Project's inclusion of a mix of Workforce Units and market-rate units has favorable impacts because it helps establish Parkside as a mixed-income community and not one that overly concentrates affordable housing.

104. Construction-Period Impacts on Neighbors. During the development period for the Project, the Project's impacts on neighbors are capable of being mitigated. There are currently no existing residential units on the Property. The availability of open adjacent lots for staging and parking allows the Applicant to readily mitigate any construction-period impacts. In addition, the Project is subject to the CMP during construction. The availability of open lots for staging and parking allows the Applicant to readily mitigate any construction-period impacts.
105. Open Space, Urban Design and Massing Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the proposed buildings, proposed and existing open spaces, and the urban design of the Project. The existing conditions include vacant blocks that do little to contribute to the nearby Community Green or adjacent residential blocks. The Project has favorable impacts on the Community Green by providing ground level uses and new residents to activate the public realm and possible additional retail space to support the proposed office uses nearby and create a critical mass of neighborhood-serving retail and positive street activity. Finally, the Project has favorable impacts on the surrounding area by linking the multifamily buildings on Blocks J and E and establishing the context for the future, higher-density phases along the south-east side of Kenilworth Ave., N.E.
106. Design and Aesthetic Impacts. The Project's design and architecture have a significantly favorable outcome, no unacceptable impacts, and are likely to become a point of resident and community pride. The Project incorporates the highest quality architecture and exemplary design. The new buildings are fresh and emblematic of new investment. The Project continues the architectural vocabulary that is emerging in Parkside and that establishes a high baseline of quality of design and finishes expected for projects in the vicinity. The Project's landscaping and public realm detailing are exemplary, have a favorable impact on surrounding areas, and further contributes to the sense of place in the Parkside neighborhood. The Project's overall design and its details strongly reinforce and strengthen the character of the surrounding residential areas and is favorable for the neighborhood.
107. Transportation and Mobility Impacts. The proposed Project does not have an adverse impact on the public transportation facilities or roadways that it relies on for service. The Project's traffic impacts are strongly mitigated by nearby transit options, and the Project achieves the right balance of mobility. The Property is

well-served by transit and vehicular infrastructure, and the Project's significant reduction in parking (relative to the proposed amount of parking in the Parkside PUD) does not introduce adverse impacts on either system.

Transit. The Project's vehicular traffic impacts are strongly mitigated by nearby transit options, and the Project achieves the right balance of mobility. The Property is well served by transit and vehicular infrastructure, and the Project's relatively small scale does not introduce adverse impacts on either system. The Minnesota Avenue Metrorail station is less than a one-half-mile walk from the Property, and that station is underutilized relative to other stations in the WMATA system. Numerous Metrobus lines also service the Property, and it is expected that many of the Project's residents will use public transit. The Project's favorable transit access helps mitigate any expected traffic concerns.

Parking. The Project also contains approximately 141 below-grade parking spaces to accommodate the parking demand of residents of the Multifamily Buildings. The Townhouses each have one or more dedicated in-unit garage parking spaces. Bicycle usage is also coherently integrated into the design of the Project, with long-term spaces in dedicated storage rooms and the required short-term spaces provided as required at ground level. The Project's physical form—loading and garage access from alleys, new construction facing the street, minimal new curb cuts, a tree-lined streetscape—mitigates traffic impacts by promoting and encouraging active mobility over driving. At the same time, the Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. The Project provides sufficient new off-street parking to serve new residents, but not so much parking as to induce unnecessary driving. No surface parking lots are proposed as part of the Project, which the Applicant believes is an improvement relative to the Parkside PUD (which included surface parking lots).

Curb Cuts. The alley improvements shared with the work on Parcel 9 allow this Project to prioritize pedestrian access along each of the surrounding streets and to create a permeable connection between the Project and adjacent blocks. The Project's ground-floor design, site plan, and building layouts all prioritize pedestrian access to and interaction with the Project.

Pedestrian Realm. The landscaping and streetscaping improvements proposed as part of the Project prioritize pedestrian access along each of the surrounding streets. The Project's ground-floor design, site plan, building layout, and streetscape and landscape improvements prioritize pedestrian access to and interaction with the Project.

TDM. The Project includes a robust TDM plan to mitigate any transportation impacts. To the extent the Project creates transportation or mobility impacts on the neighborhood or District more generally, they are either capable of being mitigated through the TDM or acceptable given the quality of the Public Benefits.

108. Project Impacts on City Services and Project Environmental Impacts. The Project does not have any adverse impacts on the public facilities or District services that it relies on for service. Likewise, the Project does not have adverse environmental impacts.

Water Demand. The Project contains approximately 295,244 square feet of new GFA. The average daily water demand for this Project can be met by the existing District water system. The proposed connection for the fire and residential water supply will be made within the existing distribution system and will be coordinated with DC Water. The Project has multiple individual water meters.

Sanitary Sewer Demand. The sanitary sewer connections for the Project are within the existing distribution system and will be coordinated with DC Water. The infrastructure for the Parkside neighborhood has largely already been constructed.

Stormwater Management. The Project has been designed to achieve high levels of on-site stormwater retention. The proposed bio-retention basin planters, green roofs, and permeable pavement are designed to exceed DOEE stormwater management retention and detention requirements. The requisite inlets and closed pipe system comply with the standards set by DOEE, DC Water, and DDOT.

Solid Waste Services. Solid waste and recycling materials generated by the Project are to be collected regularly by a private trash collection contractor.

Electrical Services. Electricity for the new building is provided by Pepco in accordance with its usual terms and conditions of service. All electrical systems are designed to comply with the D.C. Energy Code. Transformers will be installed on the Property in accordance with Pepco's design guidelines.

Energy Conservation. The Project is designed in full compliance with Article 24 (Energy Conservation) of the Building Code. Conformance to code standards minimize the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building.

Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District law.

XI. Public Benefits

109. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (X § 305.1.)
110. The Project achieves the goals of the PUD process by creating a high quality mixed-use commercial development with significant related public benefits. The

Commission finds that the Project includes the following public benefits, which are not inconsistent with the Plan as a whole with respect to the Property.

111. X, § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the Public Benefits are addressed in the following paragraphs. In general, the Public Benefits relate to the area of the ANC.
112. Superior Urban Design, Architecture, and Landscaping. The Project's urban design and landscaping are superior public benefits. (X §§ 305.5(a), (b).) The Project incorporates numerous design precepts that guide superior urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of Parcels 8 and 10. For instance, the Project prominently fronts on adjacent streets giving the new buildings visual heft and create an urban condition that is hospitable for pedestrians. The Project also appropriately mirrors opposing conditions: the Multifamily Buildings are adjacent from other (planned and under construction) multifamily buildings, and the Project's Townhouses are opposite existing townhouses. This result creates streets that have a unified and harmonious experience on both sides of the street. The Project similarly includes elements of superior architectural and landscape design. For example, the Project presents a thoughtful ground-floor streetscape. The Project utilizes high quality façade materials and finishes. With respect to landscaping, the Project employs a palette of vegetation and fixtures that is simultaneously appropriate for the neighborhood and representative of the Project's place-making objectives. The Project's architecture and landscaping were revised as part of the public process leading to the approval of the Project. These benefits accrue primarily to the area surrounding the Project and within Parkside, and are therefore within the boundaries of the ANC.
113. Site Planning, and Efficient and Economical Land Utilization. The proposed site plan is another superior benefit of the Project. (X § 305.5(c).) The benefits of the Project's site plan and efficient land utilization are captured in the Project's overall density, introduction of commercial uses, and absolute number of new residential units provided. The Project's greater heights and density near transit nodes exemplify economical land utilization. The proposed development serves as a transition from the commercial uses along Kenilworth Avenue, N.E. and the residential uses along Parkside Place, N.E. and its design is of the appropriate massing and height to establish this transition. The Project also improves land that has been vacant for decades, and its development makes it a significant housing contribution for existing and future residents of the community. At an FAR of greater than 3.0, the proposed density is appropriate for the Property given the proximity to transit options while not overbearing the lower-density residential neighborhoods to the north, south, and east of the Project. The Project is designed to benefit from proximity to nearby protected areas, the Anacostia River and perhaps most importantly, the major transportation corridor to the southeast,

including the Minnesota Avenue Metrorail Station and the Anacostia Freeway. The site plan is designed to infill and continue the urban build-out of the Parkside neighborhood. It connects the existing Parkside Townhomes with the fabric of the District and establishes a true mixed-use and transit-oriented development in the heart of Ward 7. These placemaking benefits accrue primarily to the area surrounding the Project and within Parkside, and are therefore within the boundaries of the ANC.

- 114. Housing and Affordable Housing. The Parkside PUD features an extensive housing and affordable housing benefit, and this Project is a vital component of making that overall benefit feasible. (X § 305.3(f) and (g).)

The Project includes a greater number of housing units than could be developed on the site as a matter of right and reserves 20% (approximately five units total) of the Townhouses as workforce housing units plus 20% of the residential units in the Multifamily Buildings as Workforce Units. Pursuant to X §§305.3(f) and 305.3(g), the production of housing that exceeds the amount that would have been required through matter-of-right development under existing zoning and affordable housing above what is required under the inclusionary zoning provisions of the Zoning Regulations is a public benefit.

The District faces a shortage of virtually every kind of housing product, but the need is particularly severe for housing—especially family-sized housing—near transit. The Project makes a significant contribution of new residential, new family-sized townhouse units and new Workforce Units on a site that is transit-accessible, part of an exciting mixed-income development, and well positioned to take advantage of economic opportunities that emerge in the Parkside neighborhood in the future. Significantly, the Project includes the 25 Townhouses, each with three or more bedrooms. The provision of such larger units is specifically identified as a public benefit under the Zoning Regulations.

The housing proposed as part of the Project exceeds the amount possible through a matter-of-right redevelopment pursuant to the applicable limits in the underlying zone (i.e., the R-5-A Zone District district) by up to approximately 209,181 square feet. Under existing zoning there is no residential minimum for the underlying R-5-A zone, which has a maximum FAR of 0.9 (1.08 with the IZ bonus). The following table sets forth the possible housing yield under a matter-of-right R-5-A project relative to the amount of housing proposed in this Application:

R-5-A Zone District – Matter-of-Right	Project’s Proposed Housing
71,719 sf ¹⁰ (86,063 sf w/ IZ bonus)	Up to 295,244 sf
The Project provides up to 209,181 sf of housing above the amount achievable on the Property as a matter of right.	

¹¹ Note: Sheet A 0.06 in Exhibit 38A1 (Vicinity and Tabulations) contains two typographical errors: first, the total Block F FAR is 3.75 (not 3.85) and second, the Parcel 8 FAR is 3.75 (not 3.70).

Although the Project that is the subject of the Applications does not include any affordable housing units, the overall Parkside development approved pursuant to the Parkside PUD includes a significant contribution of affordable housing and Workforce Units. The overall PUD reserves: (i) 20% of the total residential component as affordable units to households having an income not exceeding 80% AMI (adjusted for family size), and (ii) a further 20% of the total residential component for Workforce Units targeted to households that have an income from 80%-120% AMI. While this phase of the overall Parkside PUD includes market-rate units and Workforce Units, the Parkside PUD as a whole provides a diverse number of housing options for households at different price points. This Project, with its addition of retail and other economic development opportunities, and its keystone site plan, is central to making possible the development of affordable units in other phases of the Parkside PUD.

115. Employment Benefits. The Applicant has committed to providing employment benefits, and such commitments constitute public benefits under the Zoning Regulations. (X § 305.5(h).) The development provides the opportunity for commercial uses to bring full time workers and retail options to Parkside. The Applicant has agreed to prioritize hiring of Ward 7 residents, advertise job opportunities, and make reports on the same to the ANC and the Zoning Administrator, all as more fully set forth in the CBA and summarized in the Conditions hereto. Continuing the trend of reversing years of disinvestment in Ward 7, the Project is a potential economic boon for the surrounding area and contributes to the successful creation of a retail market within the boundaries of the ANC.
116. Transportation Infrastructure and Mass Transit Improvements. The Project includes transportation and mass transit infrastructure benefits in the form of a dedicated public easement for pedestrian activity and a significant financial contribution to the Bridge to the Metrorail station. (X § 305.5(o) and (p).) As part of the Parkside PUD application, the Applicant also agreed to contribute to the construction of the Pedestrian Bridge. The Applicant has committed 25% of the cost of the Bridge, not to exceed \$3 million, to ensure that the Bridge is constructed to improve access to this site. The Applicant and DDOT have entered into an agreement, secured by the \$3 million that the Applicant has already posted, fulfilling this obligation. The groundbreaking for the Pedestrian Bridge is anticipated to occur in 2018. The Applicant understands that District funds have been committed in order for construction to begin, but DDOT ultimately controls the construction process and timeline. As part of the Parkside Projects (as hereinafter defined), the Applicant has committed to provide further study of regional traffic and neighborhood parking conditions for the ANC and other community groups. These benefits accrue primarily to the Parkside neighborhood, and are therefore within the boundaries of the ANC.
117. Environmental and Sustainable Benefits. The Project includes innovative sustainable design elements and achieves appropriate levels of environmental

certification. (X § 305.5(k).) The overall Parkside PUD has been designed and certified as LEED-ND Gold, and the Project's Multifamily Buildings are designed to satisfy LEED-Gold for new construction, which per se satisfies the requirements of X § 305.5(k)(6). The Project's Multifamily Buildings have been designed to include rooftop solar electric systems. The Project's Townhouses are each prewired to accommodate solar panel installation. These benefits accrue primarily to the area surrounding the Project and within Parkside, and are therefore within the boundaries of the ANC.

118. Uses of Special Value to the Neighborhood or the District of Columbia as a Whole. As part of the public process leading to the Parkside PUD, the Applicant worked with residents, community members, the ANCs, and OP to identify additional public benefits of special significance to residents and neighbors. (X § 303.5(q).) The Project also serves as an important transition between commercial uses and lower density residential uses throughout Parkside. The proposed development enhances a site that has been vacant for several years and connects the existing Parkside Townhomes, senior housing, Community Green and all completed Parkside PUD developments to the greater community. As part of the package of benefits under the Parkside PUD, the Applicant committed to provide the indoor Community Room in the Parkside neighborhood as well as other benefits outlined in submissions to the Commission. (See Ex. 20A, 27A.) These benefits accrue primarily to the Parkside neighborhood, and are therefore within the boundaries of the ANC.
119. Other Public Benefits Which Substantially Advance the Comprehensive Plan. The proposed second-stage PUD, Map Amendment, and modifications to the Parkside PUD are consistent with, and further, many of the District's policy goals and objectives.
120. Streetscape Improvements. Provision of streetscape improvements is a public benefit. (*Id.* § 305.5(l).) The Project includes new sidewalks and tree planting zones within the Kenilworth Terrace, N.E. and Kenilworth Ave., N.E. right of ways. The Project's setback from Kenilworth Ave., N.E. is not required by the Zoning Regulations, a building restriction line, or any other regulations; it is provided solely as a benefit of the Project. This Public Benefit accrues primarily to the area immediately surrounding the Property and therefore falls within the boundaries of the ANC.
121. Consistency of the Public Benefits with the Plan. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project.
122. Accordingly, the Project satisfies the PUD Evaluation Standards.

CONCLUSIONS OF LAW

PUD Evaluation Standards

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a “well-planned development.” The objectives of the PUD process are to promote “sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities.” (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number of quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.)
2. The Commission finds that the character, scales, uses, and design of the Project are appropriate, and finds that the Project is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits.
3. The Applicant has the burden of showing that the PUD Standards are met. There are three principal standards that apply:
 - 2403.3 The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project;
 - 2403.4 The Commission shall find that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; and
 - 2403.5 In the context of the Comprehensive Plan, the Commission shall also evaluate the specific public benefits and project amenities of the proposed development, which features may in some instance overlap.
4. Finally, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” (11 DCMR § 2403.8.)

The Impact of the Project

5. For the reasons set forth in FF ¶¶ 101-108, the Commission concludes that the Project does not result in unacceptable impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits.

Comprehensive Plan

6. The Commission concludes that approval of the PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. The Commission concurs with the reasons set forth in FF ¶¶ 86-100.

Evaluation of the Public Benefits and Amenities

7. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (X § 305.1.)
8. The Project achieves the goals of the PUD process by creating a high-quality mixed-use commercial development with significant related public benefits. The Commission finds that the Project includes the following public benefits, which are not inconsistent with the Plan as a whole with respect to the Property.
9. Subtitle X § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the public benefits are addressed in the following paragraphs. In general, the public benefits relate to the area of the ANC.
10. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and includes superior public benefits and project amenities relating to superior urban design, architecture, and landscaping, site planning, and efficient and economical land utilization, housing and affordable housing, employment benefits, transportation infrastructure and mass transit improvements, environmental and sustainable benefits, uses of special value to the neighborhood and to the District of Columbia as a whole, other public benefits which substantially advance the comprehensive plan, and streetscape improvements. Each of these constitute acceptable project amenities and public benefits. (See FF ¶¶ 109-122.)

The Degree of Development Incentives Requested

11. The PUD process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under the Zoning Regulations, this Commission retains discretion to grant relief from the development standards of the Zoning Regulations and to allow for project flexibility development incentives. (X §§ 303.1, 303.11, 303.13.) The Zoning Regulations specifically allow the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment. Generally, such relief is available at the discretion of the Commission. (*Id.* § 303.13.) A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (*Id.* § 303.12.)
12. As part of the Applications, the Applicant requested that the Commission grant the Development Incentives addressed and articulated in FF ¶ 85.

13. The Commission finds that, overall, the Project conforms to the Zoning Regulations, except for the modest relief set forth in Zoning Relief. (*See* FF ¶ 85.) Where the Project requires relief and flexibility, the Commission finds that such relief is either minimal in nature or reasonable in light of the proposed uses and public benefits and otherwise does not derogate or impair, but rather is in accordance with, the general intent and purposes of the Zoning Regulations. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.” (11A DCMR (“11A”) § 101.1 (“Zoning Purposes”).)
14. The Project is in harmony with the Zoning Purposes because it protects light and air on the Property and surrounding properties, prevents overcrowding by providing outdoor open spaces and public gathering spaces, and provides a more equitable distribution of business land uses that create favorable conditions with respect to transportation (e.g., transit-oriented employment opportunities) and civic activity. The Project is also consistent with the Zoning Regulations, requiring only modest flexibility with respect to loading and theoretical lot provisions that have been removed from the currently effective Zoning Regulations. For the reasons set forth above, the Commission finds the Applicant has satisfied the standards necessary for the Commission to grant the requested Development Incentives.

Judging, Balancing, and Reconciling

15. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of X § 304. The Applicant has the burden of proof to justify the granting of the Applications according to such standards. (X § 304.2.)
16. The Commission’s findings in relation to a PUD must be supported by substantial evidence. *See Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (DC 2014). The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding. (Ex. 2, 10, 12, 13, 27, 33, 34, 35, 38, 41 (plus exhibits thereto).) This Commission, in its reasonable determination, accepts such filings as containing evidence adequate to support the findings contained herein.
17. Pursuant to X § 304.3, in deciding on the Applications, the Commission has, according to the specific circumstances of the Applications, judged, balanced, and reconciled the relative value of: (a) the public benefits and other project amenities offered as part of the Project, (b) the Development Incentives requested by the Applicant (where, pursuant to

Subtitle X § 303.12, the requested Map Amendment is a type of PUD incentive), and (c) any potential adverse effects: (collectively, the “PUD Balancing Test”).

- a. The public benefits are numerous and of a high quality. In sum, the Project provides the numerous and high-quality public benefits. A full accounting of the quality of the public benefits is provided above; (FF ¶¶ 109-122.)
 - b. The Project’s Development Incentives are comparatively minor and appropriately granted in light of the public benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project. The Project’s individual Development Incentives are described above. (FF ¶ 85.) The most significant, by far, of the Development Incentives is the Map Amendment, which allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter of right. The Map Amendment was previously approved as part of the Parkside PUD and is not inconsistent with the Comprehensive Plan. The Development Incentives underlie and indeed make possible the Public Benefits, and the Public Benefits (plus the Parkside Public Benefits) justify the additional height and density afforded by the Map Amendment, as the Commission determined in the Parkside PUD;
 - c. Any potential adverse effects of the Project are appropriately mitigated or outweighed by the public benefits. The ANC listed some potential adverse effects of the Project. (FF ¶ 81-83.) The Applicant separately identified and studied potential adverse impacts of the Project. (FF ¶¶ 101-108.) Such findings are incorporated herein. As this Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the public benefits; and
 - d. The public benefits together outweigh the Project’s potential adverse effects and justify the Development Incentives. The Commission returns to a familiar point in its review of the record in this proceeding: the Project adds much needed housing, including income-restricted and family-sized housing, to Parkside and provides numerous public benefits. These items are the crux of the Project’s trade-off for the reasonable additional height, density, and flexibility of use sought through the Applications.
18. The Commission has reviewed the record, identified the circumstances of the Applications, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the public benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.
 19. The Commission therefore judges that the PUD will promote orderly development of the Property in conformance with the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map of the District of Columbia and therefore grants the Application.

Great Weight

20. The Commission is required to give “great weight” to the written reports of OP. D.C. Code § 6-623.04; Z § 405.8. This Commission has reviewed the OP Setdown Report, OP Final Report, and OP Supplemental Report and heard testimony from OP and finds that OP supports the Applications. (FF ¶¶ 72-77.) The Commission gives great weight to OP’s recommendation to approve the Applications and concurs with OP’s conclusions though it disagrees with certain of OP’s individual recommendations for Project conditions for the reasons set forth above. The Commission concludes that it may grant OP’s reports great weight and nonetheless disagree with individual recommendations within such reports. Because the Commission agrees with the majority of the items in OP’s reports and OP’s overall conclusions and because the Commission has clearly articulated its grounds for disagreeing with OP (i.e., with respect to the control period for the Workforce Units, the option for purchase of solar panels, and the Tenure and Phasing Flexibility), the Commission concludes it has properly granted OP’s reports the great weight they are due. (*Id.*)
21. The Commission is also required to give “great weight” to the written issues and concerns of the affected ANC. D.C. Code § 1-309.10(d)(3)(A). ANC 7D identified several issues and concerns in its first report and indicated that the Applicant had satisfactorily addressed those issues and concerns in its final report. There is this nothing for the Zoning Commission to give Great Weight to.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Applications for review and approval of the second-stage PUD for the Property that are the subject of the Applications, and the related Map Amendment to the C-3-A Zone District. The approval of this PUD is subject to the following guidelines, conditions, and standards (“Conditions”). For the purposes of these Conditions, the term “Applicant” shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an owner.

Several of the Conditions (“Common Conditions”) are also conditions of Z.C. Order Nos. 05-28P, effective September 1, 2017, 05-28Q, effective March 23, 2018, and 05-28T, effective March 23, 2018 (together with Z.C. Order Nos. 05-28R and 05-28S, the “Parkside Projects”). Compliance with each of the Common Conditions is required to be complete prior to a particular development milestone, such as the issuance of the first certificate of occupancy for a building. It is the Commission’s intent that compliance with a Common Condition must be completed by the time whichever of the Parkside Projects is the first to reach the applicable development milestone.

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as Exhibit. 38A1-38A9¹¹ (“Final Plans”), as modified by the guidelines, conditions, and standards herein.
2. The Project shall consist of approximately 295,244 sf of GFA, approximately 141 below-grade vehicular parking spaces in an enclosed garage, and the provision of certain exterior and streetscape improvements, all as shown on the Final Plans and as further described herein. The Project shall comply with the height, yard, setback, and other dimensional requirements set forth in the Final Plans. The Project shall include an overall density of approximately 3.70 FAR, a maximum height of 85 feet, and a maximum lot occupancy of approximately 60%.
3. The Project shall be subject to modifications from the requirements set forth in Z.C. Order No. 05-28 with respect to have flexibility from the use, FAR, lot occupancy, and parking requirements set forth in Z.C. Order No. 05-28, as more particularly noted in the Findings of Fact paragraphs 62-64 and as more particularly shown on the Final Plans. The Project shall further have flexibility from the Zoning Regulations from the loading, inclusionary zoning, and theoretical lot (as pertains to courts and rear yards) requirements as specifically noted described in the Findings of Fact paragraphs 85 and as more particularly shown on the Final Plans.
4. The Applicant shall submit applications for building permits for the Townhouses within two years of the issuance of this Order and shall submit applications for building permits for the two Multifamily Buildings within four years of the issuance of this Order.
5. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - b. To provide a range in the number of residential units and number of parking spaces plus or minus 10% from the number depicted on the Final Plans;
 - c. To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make

¹¹ Note: Sheet A 0.06 in Exhibit 38A1 (Vicinity and Tabulations) contains two typographical errors: first, the total Block F FAR is 3.75 (not 3.85) and second, the Parcel 8 FAR is 3.75 (not 3.70).

minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, louvers and vents, such that the refinements do not substantially change the external configuration or appearance of the building;

- d. To coordinate with DDOT to finalize the streetscape design and materials during the public space process;
- e. To deliver the ground-floor use of the Multifamily Buildings (or portions thereof) as either retail or multifamily residential use, which Retail Flexibility shall also entail the flexibility with respect to retail signage shown on Sheet A3.19 of the Final Plans; and
- f. To deliver the residential units in the Multifamily Buildings as either rental or for-sale tenancy.

B. PUBLIC BENEFITS

1. **Prior to the issuance of the first Certificate of Occupancy for the Multifamily Building on each of Parcels 8 and 10**, the Applicant shall demonstrate the following:
 - a. **For the life of the Project**, the Applicant shall, subject to the Retail Flexibility:
 - i. Provide a total of approximately 98,794-113,156 sf of multifamily residential GFA on Parcel 8;
 - ii. Provide a total of approximately 105,725-120,451 sf of multifamily residential GFA on Parcel 10;
 - iii. Provide a total of approximately 29,594 sf of single family residential GFA on Parcel 8; and
 - iv. Provide a total of approximately 32,043 sf of single family residential GFA on Parcel 10.
 - b. **For the control periods described in Condition B.1(b)(ii) and (iii)**, the Applicant shall:
 - i. Set aside no less than 20% of the total units in each of the Multifamily Buildings as Workforce Units and set aside no less than five of the total number of Townhouses as Workforce Units. The Workforce Units among the Townhouses shall be for sale units. The Workforce Units in the Multifamily Buildings may be either for sale or rental;

- ii. For the five Workforce Units among the Townhouses and any for sale Workforce Units within the Multifamily Buildings, such income restriction shall apply only to the first purchaser of the Workforce Units; and
 - iii. For any Workforce Units within the Multifamily Buildings that are delivered as rental units, such income restriction shall remain in place for the length of the initial permanent financing applicable to the building in which such Workforce Units are located, not to exceed 30 years;
 - c. The distribution of the Workforce Units shall be in accordance with Sheets A0.08, T5.01, and T5.02 of the Final Plans; and
 - d. The monitoring and enforcement documents required pursuant to X § 311.6 shall include a provision or provisions requiring compliance with all the terms of this Condition.
2. **Prior to the issuance of a certificate of occupancy for the Multifamily Buildings**, the Applicant shall:
- a. Submit evidence to the Zoning Administrator, in the form of a document certified by a LEED Accredited Professional that shows that the Project complies with LEED requirements at the LEED-Gold level, provided, actual LEED certification shall not be required;
 - b. Install solar panels on the roof of such Multifamily Building in accordance with the Final Plans; and
 - c. Provide no fewer than three electric vehicle charging stations (in addition to those provided in the below-grade garage pursuant to Z.C. Order No. 05-28Q) in the below-grade garages for use by residents or other invitees of the Multifamily Buildings.
3. **Prior to the final DCRA building permit zoning compliance inspection of the Townhouses**, the Applicant shall:
- a. Install the wiring and other infrastructure necessary to accommodate the installation of solar panels on the rooftop of each Townhouse; and
 - b. Submit evidence to the Zoning Administrator, which evidence may be in the form of a memorandum and/or affidavit that the Applicant has offered as part of the sale of the Townhouses the installation of solar panels as an optional feature to potential buyers along with information on the benefits of selecting such option.

4. **Prior to issuance of the first building permit for the Project (except as expressly provided below)**, the Applicant shall:
- a. Execute a CMP with terms substantially similar to those proposed in Exhibit 20A;
 - b. Direct the Project's contractors and subcontractors to use reasonable good faith efforts to select new hires from among qualified persons with a goal of at least 51% of all new hires being residents of Ward 7, which commitment shall be included in each contract with Project contractors and subcontractors;
 - c. Provide to the ANC, with a copy to the Zoning Administrator, on a quarterly basis for the duration of construction, an employment report documenting the number of Ward 7 residents hired for the Project. The employment reports shall provide a summary of: (i) the approximate number of employees working on the Project in total; (ii) the number of new hires working on the Project; and (iii) the number of the new hires that are Ward 7 residents, provided the specific contents of such report may be modified by mutual agreement of the Applicant and the ANC;
 - d. In coordination with the ANC, identify a local representative, group, organization, and/or coordinator to facilitate job training for future jobs related to the Project, and to help administer solicitations from Parkside to the Ward 7 community for available jobs. All solicitations shall include details regarding the specifications, requirements and/or skillset desired for the available jobs;
 - e. Host a job fair in coordination and in partnership with the ANC, Ward 7 Business Partnership, DOES and DC DSLBD, to identify: (i) qualified candidates for construction job openings, and (ii) Ward 7-based subcontractors;
 - f. Provide evidence of a payment up to \$7,500.00 (the "Landscape Fund") to an escrow account for use by the ANC to hire a landscape architect to develop a conceptual design for a play and/or athletic field in the National Park Service ("NPS")-owned open space ("NPS Land") behind Neval Thomas Elementary School. Preference for the landscape architect shall be given to qualified Ward 7-based CBE firms. The Landscape Fund shall be used for the following scope and for no other purpose: (i) one community charrette led by the landscape architect and include all involved stakeholders (including but not limited to the ANC, Parkside Civic Association, Neval Thomas Elementary School representatives, Cesar Chavez Middle and High School representatives, Mayfair Tenants Association, Parkside, and any additional community members interested) to identify play space needs, goals, and objectives for the NPS Land; (ii)

development by the landscape architect of a concept design and layout for the NPS Land utilizing the input and feedback generated from the community charrette to guide the design; (iii) one presentation of the conceptual design to community stakeholders by the landscape architect; and (iv) one meeting with the landscape architect, community stakeholders, and the appropriate NPS and/or DC representatives to review the proposed conceptual design and advocate for use of NPS Land, but only to the extent NPS and/or DC representatives agree to attend such a meeting. As NPS owns the NPS Land, the ANC acknowledges and agrees that NPS is solely responsible for the design and use of the NPS Land. The landscape design shall be developed to a concept level only and with the intent to be used as a community tool to show NPS what is possible in the space and promote the conversion of the NPS Land by NPS to a play and/or athletic field for use by the community, and the design shall not include detailed plans that could be used for permitting and/or construction. The Applicant shall provide evidence that such funds were used for intended purpose prior to issuance of final certificate of occupancy;

- g. Provide evidence of a payment up to \$15,000.00 in an escrow account (“Transportation Study Fund”) for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required to mitigate the overall first-stage Parkside PUD (“Parkside Study”). The goal of the Parkside Study is to provide analysis and feasibility regarding potential solutions to larger, regional traffic issues to facilitate discussions with DDOT. The Parkside Study shall include the following scope and the Transportation Study Fund shall be used for no other purpose: (i) schedule a meeting with the traffic consultant and community, including but not limited to the ANC, Parkside Civic Association, Mayfair Tenant’s Association and any additional community associations, parties or members interested, to identify the community’s top traffic issues and/or congested locations; (ii) have the traffic consultant study the top issues and/or locations and develop a few potential solutions that might alleviate some of the issues; (iii) present the findings and potential traffic solutions to the community; and (iv) schedule a meeting between the traffic consultant, the ANC and/or appropriate community representatives, and DDOT to present the potential traffic solutions to DDOT. It is understood that locations and traffic issues reviewed as part of the Parkside Study are ultimately controlled by and subject to the discretion of DDOT, and outside of the scope of any of the Projects, and that Parkside cannot guarantee DDOT’s approval of the scope of the Parkside Study or any of the proposed traffic solutions or other recommendations developed by the traffic consultant. The intention of the Parkside Study is to identify potential traffic solutions for the locations of most concern to the community in a similar way to other DDOT studies that the traffic consultant has advised on to help facilitate DDOT’s review.

The Applicant shall provide evidence that such funds were used for intended purpose prior to issuance of final certificate of occupancy; and

- h. Provide evidence of a payment up to \$5,000.00 in an escrow account for use by the ANC for a traffic consultant to develop a parking and curbside management plan (“Parking Plan”) with and for use by the ANC and community, with the understanding that DDOT is responsible for making and implementing any recommendations in the Parking Plan. The purpose of the Parking Plan is to identify the parking regulations, such as RPP and on-street parking meters, desired for each block within Parkside to provide DDOT and the community a context to develop a parking solution for the whole neighborhood instead of on a block-by-block basis. The boundaries for the Parking Plan shall be the blocks within the area bordered by Foote Street, N.E., Anacostia Street, N.E., Hayes Street, N.E., and Kenilworth Terrace, N.E., plus the portion of Kenilworth Terrace, N.E. between Hayes Street, N.E. and Jay Street, N.E. The Applicant shall provide evidence that such funds were used for intended purpose prior to issuance of final certificate of occupancy.

5. **Prior to issuance of the first certificate of occupancy for the Project**, the Applicant shall provide up to but no more than \$30,000.00 for the renovation and modernization of the existing Parkside neighborhood community room currently under control of the Parkside HOA, the specifics of which renovation, modernization, and future use of the existing community room by the ANC and other community groups is subject to the review and approval of the Parkside HOA, and provide evidence to the Zoning Administrator that such renovation and modernization has been or is being undertaken. The Applicant shall provide evidence that it has entered into a separate agreement with the Parkside HOA and the ANC with additional details regarding the renovation specifics, cost of the renovation, permitted use of the space by the ANC and community groups, and future maintenance of the space resulting from use by the ANC and other community groups.

6. **Prior to issuance of the final certificate of occupancy for the Project’s Multifamily Buildings**, the Applicant shall:

- a. Provide up to but no more than \$20,000.00 to activate the public space around Parkside Parcels 8, 9, and 10 through creative landscaping and “playable art”, which open space activation shall focus around the public space outside the ground-floor retail to make the space more family-friendly and to create a better sense of place within pedestrian realm, provided such funds shall be used for landscape and programmatic elements within the public space in addition to and above the landscape design shown on the Final Plans, all of such improvements in public space to be subject to DDOT approval;

- b. Provide evidence to the Zoning Administrator that it advertised jobs and contracting opportunities with the following: (i) the Project's contractor's website, (ii) the ANC's website, (iii) community message boards, (iv) Project signage, and (v) referral partners, as applicable, and in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;
- c. Provide evidence to the Zoning Administrator that it has used or directed the managers of its residential and retail space to use, reasonable good faith efforts to select permanent new hires from among qualified residents of Ward 7. These positions may include, but are not limited to, marketing positions, facilities management positions, or landscaping positions. The Applicant shall advertise these job opportunities on its website and through referral partners, as applicable, in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;
- d. Provide the Zoning Administrator evidence that it has provided the ANC with a written quarterly update on the number of Ward 7 residents hired for positions within the Project;
- e. Adopt a loading management plan to coordinate resident moving operations, retail deliveries, and trash removal operations;
- f. Adopt the TDM plan, as noted in FF paragraph 79;
- g. Provide evidence to the Zoning Administrator that it has funded, at a cost to the Applicant of up to but no more than \$25,000.00, the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to help alleviate traffic congestion or provide evidence that it has otherwise been funded; and
- h. Convert to two-way travel any portion of Hayes Street, N.E. between Kenilworth Terrace, N.E. and Anacostia Avenue, N.E. not already converted to such travel as part of an earlier second-stage PUD.

C. Transportation and Construction Mitigation

1. Transportation Demand Management. For the life of the Project (except as expressly set forth below), the Applicant shall abide by the terms of the TDM plan, which requires compliance with the following:
 - a. The Applicant shall designate a TDM coordinator, who shall: be responsible for organizing and marketing the TDM plan, act as a point of contact with DDOT, and implement a carpooling system such that employees who wish to carpool can easily locate other employees who live nearby;

- b. All parking on site shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site;
 - c. The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit, except with respect to the Townhouses;
 - d. The Applicant shall install a Transportation Information Center Display (electronic screen) within the lobby of each of the Multifamily Buildings containing information related to local transportation alternatives;
 - e. The Applicant shall meet or exceed Zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;
 - f. The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
 - g. The Applicant shall provide bicycle repair stations to be located within the bicycle storage rooms of the Multifamily Buildings; and
 - h. The Applicant shall dedicate two spaces within the below-grade garages within the Project for car-sharing services to use with right of first refusal, provided that in the event car-sharing services refuse occupancy of the Multifamily Buildings' garages, the Applicant shall provide Capital Bikeshare memberships to the initial occupants of the Multifamily Buildings subject to an overall, not to exceed amount of \$25,000.00.
2. Transportation Mitigation. Prior to the issuance of a building permit for the Project, the Applicant shall fund and install the hardware necessary to implement the proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs, N.E., subject to DDOT approval, with a maximum cost to the Applicant of \$25,000.00, if not already completed at the time such building permit is issued.

D. MISCELLANEOUS

1. The Zoning Regulations Division of DCRA shall not issue any building permits for the PUD until the Applicant has recorded a Covenant ("PUD Covenant") in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The change of zoning to the C-3-A Zone District shall be effective upon the recordation of the PUD Covenant.
3. The PUD is subject to the two separate vesting provisions that follow; the first for the Townhouses and the second for the Multifamily Buildings. Each vesting provisions is independent of the other, such that the failure of any or all townhouse to vest does not affect the vesting of the multifamily buildings and vice versa:
 - a. As to the Townhouses, the PUD shall remain valid for a period of two years from the effective date of this Order. Within such time, applications must be filed for building permits for the construction of all the townhomes and the construction of all of the Townhouses must start three years from the effective date of this Order, except that the failure to file an application or commence construction of one or more townhouses within the time periods set forth above shall not divest any townhouse for which the time periods were met; and
 - b. As to the Multifamily Buildings, the PUD shall remain valid for a period of four years from the effective date of this Order. Within such time, applications must be filed for building permits for the construction of both Multifamily Buildings and the construction of both must start five years from the effective date of this Order, except that the failure to file an application or commence construction of one of the Multifamily Buildings within the time periods set forth above does not divest the other building if the time periods were met.
4. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 25, 2017, upon the motion of Commissioner Shapiro, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the applications at its public meeting by a vote of **5-0-0**.

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 23, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28T
Z.C. Case No. 05-28T
SCCI Parkside One, LLC
(Second-Stage PUD and Modification of a Previously Approved First-Stage PUD
@ Square 5055, portion of Lot 26)
July 24, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing (“Public Hearing”) on June 22, 2017 to consider an application (“Application”) from SCCI Parkside One, LLC (“Applicant”) for review and approval of a second-stage planned unit development and modification of an approved first-stage planned unit development and Zoning Map amendment (collectively, a “PUD”). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), Subtitles X and Z. The Public Hearing was conducted in accordance with the provisions of Chapter 4 of Subtitle Z of the Zoning Regulations. For the reasons stated below, the Commission hereby approves the Application.

FINDINGS OF FACT

I. Procedural Summary

1. The property that is the subject of this PUD includes a portion of Lot 26 in Square 5055 (“Property”), which is located in Ward 7. (Exhibit [“Ex.”] 2 at 1.) The Property is located mid-block on the 600-800 block of Kenilworth Avenue, N.E. and Kenilworth Terrace, N.E. The Property is in the Parkside neighborhood of Northeast DC. (Ex. 2.) The Property is rectangular, contiguous and consists of approximately 69,748 square feet (“sf”), or approximately 1.6 acres. (*Id.*) The Applicant proposes to redevelop the Property with a mixed-used building containing a 10-story office building with at-grade retail, enclosed at-grade parking, a significant new publicly accessible plaza (“Plaza”), and additional public benefits (“Public Benefits”) as described below (collectively, the “Project”) (*Id.*)
2. Effective as of April 13, 2007, the Commission approved the first-stage PUD application in Z.C. Order No. 05-28 (“Parkside PUD”), the first-stage order to which this Application for a second-stage PUD succeeds. (Ex. 2F.)
3. The Parkside PUD approves a plan of development for 10 “building blocks” across the approximately 15.5-acre site that is the subject of such PUD (collectively, “Parkside”). (Ex. 2.) The Parkside PUD authorizes a mix of residential, mixed-use, commercial, and retail buildings, which will contain in the aggregate approximately 3,003,000 sf of gross floor area (“GFA”), including 1,500-2,000 dwelling units, 500,000-750,000 sf of office space, 30,000-50,000 sf of retail, and 43,000 sf of healthcare uses; an overall density of 4.4 floor area ratio (“FAR”); and maximum heights 90 to 110 feet. (Ex. 2 at 1.)

4. In 2008, in Z.C. Case No. 05-28A, the Commission approved a second-stage application for three of the 10 blocks in the Parkside PUD—Blocks A, B, and C. Those three blocks contain a senior living facility consisting of 98 units to be reserved for individuals with an income no greater than 60% of the area median income (“AMI”). On those blocks, the Commission also approved 100 townhouses, 42 of which were reserved for buyers with incomes between 80% and 120% AMI. This proposal was later modified in Z.C. Case No. 05-28G. The senior housing has been constructed on Block A, and the townhouses are now complete on both Blocks B and C. (*Id.*)
5. In 2010, in Z.C. Case Nos. 05-28B and 05-28C, the District of Columbia Primary Care Association (“DCPCA”) and Lano Parcel 12, LLC, working with the University of the District of Columbia’s Community College of the District of Columbia (“CCDC”) submitted second-stage PUD applications for portions of Blocks H and I. The applicants submitted a simultaneous request, Z.C. Case No. 05-28E,¹ to modify the Parkside PUD in order to accommodate the projects proposed in such second-stage applications. The Commission approved both second-stage applications, as well as certain modifications to the Parkside PUD. The DCPCA building has been constructed (subject to modifications approved in Z.C. Case No. 05-28I); however, the second-stage approval for CCDC has lapsed. (*Id.* at 1-2.)
6. In 2011, in Z.C. Case No. 05-28F, the Commission approved a second-stage application for a one-acre park (“Community Green”) located on Block D. The park was included as a benefit and amenity of the Parkside PUD as a whole, provides passive recreation for neighbors, and provides a central gathering place for the community. The Community Green has been constructed. (*Id.* at 2.)
7. In 2013, in Z.C. Case Nos. 05-28J and 05-28K, the Commission approved a modification to the Parkside PUD and second-stage application for Block E. Block E contains a multi-family building consisting of 186 affordable residential units reserved for individuals with an income no greater than 60% of AMI. Construction on Block E is complete and is currently being leased for occupancy. (*Id.* at 2.)
8. In April 2017, in Z.C. Case No. 05-28P, the Commission approved an approximately 191-unit market-rate multi-family residential building with below-grade parking on Block J.
9. Nearly concurrent with the Application, in Z.C. Case Nos. 05-28Q, 05-28R, and 05-28S, affiliates of the Applicant sought approvals for three multi-family residential buildings, an office building, 25 townhouses, and ground-floor retail in

¹ Z.C. Cases 05-28D, 05-28G, 05-28H, 05-28I, 05-28L, 05-28M, and 05-28N consisted of either minor modifications to various of the second-stage PUDs or extensions to the Parkside PUD. (See Ex. 2 at Appendix.)

the multi-family and office buildings, with underground parking and at-grade pedestrian improvements on Block F.

10. On February 3, 2017, the Applicant delivered a notice of its intent (“NOI”) to file a zoning application to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commission (“ANC”) 7D, and the ANC 7D04 single-member, pursuant to § 300.7 of Subtitle Z of the Zoning Regulations.² (Ex. 2C.) The Applicant filed the Application materials (the “Initial Statement”) on March 3, 2017, and the Application was accepted as complete by the Office of Zoning (“OZ”) by letter dated March 15, 2017. (Ex. 1, 4.) The Initial Statement included a request for a further Zoning Map amendment for the Property, which amendment would change the zone designation to the MU-9 zone from the previously approved CR Zone District. (Ex. 2, 2A.) The Applicant certified the Application satisfied the PUD filing requirements. (Ex. 2D.) OZ referred the Application to the ANC, the Councilmember for Ward 7, and the District Office of Planning (“OP”), and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 5-9.)
11. On April 13, 2017, the Applicant filed revised plans for the Project and withdrew its request to further amend the Zoning Map to the MU-9 zone. (Ex. 10.) The Applicant provided materials comparing the Parkside PUD with the second-stage approvals granted and requested to that point. (Ex. 10A.)
12. On April 14, 2017, OP delivered a report (“OP Setdown Report”) on the Application, recommended that this Commission set the Application down for public hearing, and requested additional information from the Applicant. (Ex. 11.) (See Finding of Fact (“FF”) ¶¶ 70-71.)
13. At a Commission public meeting on April 24, 2017 (“Setdown”), OP presented the OP Setdown Report. (See April 24, 2017 Transcript [“Tr. 1”] at 72-78.) The Commission then requested additional information from the Applicant. (*Id.*; see also FF ¶ 66.)
14. On April 27, 2017, the Applicant filed its pre-hearing statement (“PHS”), which included information in response to the requests from OP and this Commission, and paid the requisite hearing fee. (Ex. 12, 15.) On May 22, 2017, the Applicant filed a comprehensive transportation review (“CTR”) for the Project. (Ex. 18.)
15. Notice of the Public Hearing for Z.C. Case No. 05-28T was published in the *D.C. Register* on May 5, 2017 and was mailed to the ANC, ANC 7D and to owners of property within 200 feet of the Property. (Ex. 13, 16; 64 *D.C. Reg.* 67364.) On

² By letter to the Commission, the Applicant requested a reduction from the requirements of the Zoning Regulations to file its initial application less than 45 days after the NOI was mailed. (Ex. 2C.) The Commission granted such request pursuant to Subtitle Z § 101.9 of the Zoning Regulations. (See February 27, 2017 Transcript of the Zoning Commission Regular Public Meeting at 40-42.)

May 9, 2017, the Applicant posted notice of the Public Hearing at the Property. (Ex. 17.) On June 20, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 25.)

16. Pursuant to the Zoning Regulations, 11-X DCMR (“X”) § 405.3,³ OP requested comments on the Project from the District Department of Consumer and Regulatory Affairs (“DCRA”); Department of Employment Services (“DOES”); Department of Energy and the Environment (“DOEE”); Department of Health; the Department of Housing and Community Development (“DHCD”); Department of Parks and Recreation; District of Columbia Office on Aging; District of Columbia Public Schools; District Department of Transportation (“DDOT”); Fire and Emergency Medical Services; Metropolitan Police Department; DC Water; and the Washington Metropolitan Area Transit Authority. (Ex. 11 at 14.) OP noted that it held an interagency meeting before the Public Hearing. (Ex. 22A at 11.)
17. On June 2, 2017, the Applicant filed a supplemental statement (“20-Day Statement”) providing: additional information requested from OP and the Commission; an update on community outreach and engagement; and updated architectural plans, drawings, and renderings. (Ex. 20.)
18. OP and DDOT each submitted a final report (respectively, the “OP Final Report” and “DDOT Report”). (Ex. 22A, 23.) Both OP and DDOT sought waivers to file such reports after the requisite ten days prior to the Public Hearing. (Ex. 21-22.) The Commission granted such waivers. (June 22, 2017 Transcript [“Tr. 2”] at 5.) No written comments were received from other agencies. (Ex. 22A at 11.)
19. On June 22, 2017, the Commission conducted the Public Hearing in accordance with Subtitle Z of the Zoning Regulations. (*Id.* at 3-4.)
20. The ANC is automatically a party to this proceeding. (11-Z DCMR (“Z”) § 403.5(b).) The ANC filed its first report on this Application on June 19, 2017. (Ex. 24.) The Commission accepted the late-filed ANC Report. No requests for party status were filed in this proceeding.
21. As a preliminary matter prior to the Applicant’s testimony, the Commission accepted Mr. Duncan Lyons and Mr. Robert Schiesel, the Applicant’s witnesses in, respectively, architecture and transportation engineering and design, as experts. (*Id.* at 5-6.)
22. At the Public Hearing, the Applicant provided testimony from Jonathan Novak, as a representative of the Applicant, Mr. Lyons, and Mr. Schiesel. (*Id.* at 6-33.) The ANC cross-examined the Applicant’s testimony. (*Id.* at 71-73.)

³ This Application proceeds under the provisions of the Zoning Regulations in effect as of September 6, 2016. Accordingly, the provisions of 11 DCMR §§ 2407.3 and 2408.3 are inapplicable to the instant proceeding.

23. OP presented its report at the Public Hearing. (*Id.* at 75-77.) DDOT presented its report as well. (*Id.* at 77-78.) The ANC cross-examined DDOT. (*Id.* at 78-80.) No other cross-examination of the agencies was undertaken at the Public Hearing. (*Id.*)
24. At the Public Hearing, the ANC presented its resolution supporting the Application, subject to conditions. (*Id.* at 80-85.) There was no cross-examination of the ANC. (*Id.* at 85.)
25. No persons or organizations spoke in support of or in opposition to the Application at the Public Hearing. (*Id.* at 85.)
26. At the conclusion of the Public Hearing, the Commission closed the record except with respect to those items of information requested. (*Id.* at 88.)
27. On June 29, 2017, the Applicant provided draft proffers and conditions pursuant to X § 308.8. (Ex. 29.) On July 3, 2017, the Applicant filed a written post-hearing submission in response to items requested by this Commission (“Post-Hearing Submission”) and requested the opportunity to file a consolidated set of plans and drawings reflecting the final revisions to the Project resulting from discussions at the Public Hearing as described in the Post-Hearing Submission (“Final Plans”). (Ex. 30-30A.) On July 10, 2017, the Applicant filed its draft order. (Ex. 31, 31A.) On July 13, 2017, the Applicant submitted a revised set of plans, and its revised and final list of proffers and conditions pursuant to Section 308.12 (Ex. 32, 33.) On July 24, 2017 the ANC filed an updated report. (Ex. 34.)
28. On July 24, 2017 the Commission took final action to approve this Application. (July 24, 2017 Transcript (“Tr. 3”) at page 25.)

II. Summary of the Property and the Project

29. The Applicant seeks the Commission’s review and approval for the Project as a second-stage PUD with related modifications to the approved Parkside PUD for the development of the Project on the Property. (Ex. 2A.) The Applicant seeks formal adoption of the Zoning Map amendment (“Map Amendment”) approved as part of the Parkside PUD to change the zoning for the Property to the CR Zone District from the current C-2-B Zone District. (*Id.*)

Overview of the Property and Surrounding Area

30. The Parkside PUD is located in Ward 7, northwest of the intersection of Minnesota Avenue, N.E. and Benning Road, N.E. Parkside is surrounded by the Anacostia River and Kenilworth Park to the northwest, the existing Mayfair Mansions residential apartment complex to the northeast, the Anacostia Freeway (Highway 295) and the Orange Line tracks to the southeast, and the former Pepco plant to the southwest. The Property is located midblock along the southeast

boundary of the Parkside PUD and is part the large, currently vacant, “superblock” located between Kenilworth Terrace, N.E. and Kenilworth Avenue, N.E. The Property is currently entirely vacant.

31. The Parkside PUD is partially constructed, with streets and infrastructure largely in place. Approximately 100 townhomes, 186 apartments, nearly 98 senior housing units, and a healthcare clinic were previously built. Four schools have also been constructed in the immediate vicinity of the Parkside PUD area. Approximately nine acres of the Parkside PUD site remains vacant land. (Ex. 2.)
32. The Property is surrounded entirely by currently vacant lots. Such lots are the subject of pending and future second-stage PUD applications. Immediately northeast of the Property, the Parkside PUD contemplated residential and educational uses that have not yet been designed or proposed as part of a second-stage PUD. In the southwest corner of the Property, the Parkside PUD (and this Project) propose the above-grade pedestrian Plaza in the superblock, with as yet proposed office and/or residential uses to the immediate southwest opposite the proposed Plaza. Opposite the Property along Kenilworth Terrace, N.E. is Parkside’s Block F, which is the subject of existing second-stage PUD applications that are expected to contain a mix of residential, office, and retail uses. (*See* Z.C. Case Nos. 05-28Q, 05-28R, and 05-28S.) To the immediate southeast of the Property is the Kenilworth Avenue, N.E./Anacostia Freeway/Orange Line corridor which creates a significant barrier between the Property and other land uses further to the east. The surrounding undeveloped blocks are all controlled by affiliates of the Applicant and are expected to be constructed ahead of or concurrent with the proposed Project.
33. Land uses in the vicinity of the Property include a former Pepco plant, the Educare early-childhood educational facility, Neval Thomas Elementary School, Metrotown apartments and townhomes, and the Parkside townhomes, which were constructed in the 1990s. Two blocks north of the Property are the Mayfair/Paradise multifamily rental communities. Eastland Gardens is located approximately one-half mile to the north of the Property.
34. The Property has vehicular access to the Baltimore/Washington corridor via Highway 295, a six-lane highway that provides convenient access to downtown Washington, to Route 50 and points east, to the Baltimore-Washington Parkway to Howard County and Baltimore, and to the Capital Beltway. The Minnesota Avenue Metrorail Station, with Orange Line service, is located immediately across Highway 295 from the site, within walking distance over a pedestrian bridge (“Bridge”) that connects to the Metrorail Station. The Minnesota Avenue Station is seven stops (i.e., approximately 10 to 15 minutes) on the Orange Line from the Metro Center Station. In the opposite direction, the Orange Line runs to New Carrollton, a major employment center for Prince George’s County,

Maryland. (*Id.*) Two Metrobus lines, the U5 and U6, serve Parkside directly, and numerous other lines serve the nearby Minnesota Avenue, N.E.

35. Parkside is well served by outdoor space, with thousands of acres of nearby protected parkland, including Kenilworth Aquatic Gardens, Anacostia Park, and the National Arboretum and Kingman Island forming a large, continuous, green space and recreational complex. The Anacostia Riverwalk Trail is under expansion, and approximately 15 miles of the 28-mile trail system are open today. The Parkside Community Green is also nearby.
36. Commercial uses predominate along Minnesota Avenue, N.E. to the northeast and southeast of the Property, and the heart of the Benning neighborhood to the southeast contains the East River Park Shopping Center with a public library, a grocery store and pharmacy as well as other shops and restaurants. Parkside itself, like the adjacent residential blocks, contains no significant retail other than a single convenience store along Kenilworth Terrace, N.E.
37. Apart from other blocks of Parkside and the schools mentioned above, several other developments are currently planned or have recently been constructed. These include the construction of the first phase of the DOES Government Center, which Center consists of 230,000 sf of office space and first floor retail. The Park 7 project near the Minnesota Avenue Metrorail Station contains 376 affordable rental units and approximately 20,000 sf of retail space with construction completed in 2014. Also nearby are: (i) a 172-rental-unit development known as Lotus Square, and (ii) a development containing 125 affordable townhouses along with public housing units known as MetroTowns at Parkside, both of which were completed in the recent past.

Parkside PUD

38. Parkside has been adopted by America's Promise Alliance, a coalition of organizations working to bring education and social services to underserved communities based upon the Harlem Children's Zone model. The Parkside community was accepted into the federal Promise Neighborhood Program with a \$25 million grant from the US Department of Education in December 2012, which is the centerpiece of President Barack Obama's urban initiatives. (*Id.* at 10.) The Promise Neighborhoods Program seeks to engage all resident children and their parents into an achievement program based on tangible goals, including matriculation to college for each and every participating student, positive physical and mental health outcomes for children, and parenting classes. The program also seeks to provide employment training and counseling to provide meaningful employment opportunities for the parents. (*Id.* at 10.)
39. The Parkside PUD was approved prior to September 6, 2016, and accordingly, pursuant to Subtitle A of the Zoning Regulations, the substantive requirements of

the 1958 Zoning Regulations (“ZR58”) apply to the Project, except as the Parkside PUD is modified.

40. In sum, once the modifications to the original approval are accounted for, the final Parkside PUD approval allows approximately three million sf of GFA: approximately 43,000 sf of health care uses, 260,000 sf of educational uses, 750,000 sf of commercial uses, and approximately two million sf of residential uses. (Ex. 2 at 2.) Prior to this Order (including the three pending cases cited above), the Commission approved 1.15 million sf of residential use, and approximately 43,000 sf of health care use. (Ex. 2 at Appendix 2.)

The Project

41. The Project contains a 10-story office building, ground-floor retail, and at-grade partially enclosed parking. The Project has been designed to satisfy the needs of a U.S. General Services Administration (“GSA”) tenant under the auspices of a GSA-issued Request for Lease Proposals (“RLP”). In order to be eligible for consideration by the GSA, the Project must satisfy GSA’s technical and timing requirements and moreover must beat all of its competitors on price. The Project makes it possible to locate a major office tenant in Ward 7 in an area with transit and transportation access. The Project also contributes to the retail planned along Kenilworth Terrace, N.E, as part of other stages of the Parkside PUD. The Project supports the overall goals of the Parkside PUD by: adding a major economic engine; addressing Parkside’s frontage and visibility from the Anacostia Freeway; and creating a connection from the Metrorail station into Parkside.
42. Dating back to the Carter administration, there has been an unfulfilled federal commitment to locate a federal agency or installation in Ward 7. The development of the Property with a built-to-suit office building for a federal tenant is an opportunity to realize that commitment and allow Ward 7 residents to share in the economic benefits of the District’s federal presence, a benefit that many other District neighborhoods enjoy. With its contribution of a federal anchor office tenant and the economic engine such use represents, the Project significantly advances the Parkside vision. The Project represents an activating and stabilizing presence that provides daytime users and a customer base to attract a stable pool of neighborhood-serving retailers.
43. The approximately 503,019 sf Project is designed to accommodate an anchor federal office tenant as part of a competitive GSA bid process. The building also includes up to approximately 7,171 sf of retail GFA ground-floor retail uses plus approximately 111 at-grade parking spaces for the office users in a partially enclosed garage (expandable to up to 258 spaces with a second, below-grade level). The Project results in the Property having an overall density of approximately 7.21 FAR.

44. The Project's proposed uses, site planning, and location reinforce the vision for Parkside. One of the foundational elements of the Parkside vision is creating a self-sustaining neighborhood. The Applicant has previously obtained or sought second-stage approval for residential, retail, medium-footprint office, health care, recreational, and educational uses. The Project's office tenant provides daytime patrons for the Project's retail as well as the other retail uses on adjacent blocks. Significantly, the Project provides the type of stable, long-term federal office tenant that has benefitted many neighborhoods around the District, but that has not yet made a home in Ward 7. The Project is the only currently viable site in Ward 7 for an anchor federal office Tenant given GSA's design selection criteria and process requirements.
45. The Project's site plan and the Property's central location in the Parkside neighborhood also advance the certain urban design goals of the Parkside PUD. The Project is at the center of the overall Parkside PUD and adds the pedestrian Plaza that is crucial to creating a meaningful and successful linkage between the forthcoming Bridge leading from the Minnesota Avenue Metrorail Station and into the existing Community Green in the heart of Parkside. The Project presents a strong public face along Kenilworth Avenue, N.E. and the Anacostia Freeway and signifies new investment in the neighborhood. Similar to the objectives of preceding phases, this phase of the Parkside PUD furthers the District's and the Applicant's ongoing goals of infilling and stabilizing the existing neighborhood.
46. The Project's site plan addresses its important context in the Parkside neighborhood. Along Kenilworth Terrace, N.E., the Project includes neighborhood-serving ground floor retail and wide sidewalks with extensive streetscaping improvements and opportunity for pedestrian amenities at grade level along the existing street. The Project introduces a grand staircase and ramp ("Ramp") that link the Bridge to Parkside. The Bridge is designed to cross the Anacostia Freeway and Kenilworth Avenue, N.W. and land on the Property approximately one story above grade. The Plaza similarly sits one story above the grade of the adjacent Kenilworth Avenue, N.E. The Plaza and Ramp step down to Kenilworth Terrace, N.E. where the pedestrian connection into Parkside carries into the adjacent Block F and through to the Community Green. The Project includes an approximately eight-foot-wide sidewalk at grade along the Kenilworth Ave., N.E. façade, with the at-grade parking level screened by a raised planter with intensive landscaping. Because of the grade difference and the adjacency to Kenilworth Ave., N.E. and the Anacostia Freeway beyond that, the Kenilworth Ave., N.E. façade is likely to be a lightly used pedestrian corridor. Rather, at grade level, this boundary is functionally the rear of the building. A new curb cut and alley allow all loading to occur off of the street to the northwest of the new building.
47. Consistent with the Parkside PUD, the Plaza fulfills the function of a front door into Parkside. The proposed building forms the northern-half of the frame of the

Plaza and utilizes the Plaza as the main pedestrian entrance into the office lobby. The connection from the Bridge to the Plaza and from the Plaza to Kenilworth Terrace, N.E. are the Project's primary placemaking gestures. The Project is situated so as to respect the strong rectilinear nature of the Parkside block pattern and accordingly reinforces the nearly uniform grid of the neighborhood's classical street plan. Parking and loading access have been relegated to the periphery of the subject Property block with the primary urban design emphasis being the Plaza connecting the Bridge to the Community Green (via Block F). The Project forms strong edges along the surrounding streets, creating defensible boundaries and a strong sense of place and hierarchy. The lack of a setback along Kenilworth Terrace, N.E., reflects the anticipated commercial nature of that street at ground level. Along Kenilworth Ave., N.E., the Project is set back 10 feet.

48. Because Block G-H-I does not include any existing through-streets, the Plaza creates pedestrian porosity into Parkside that literally elevates arriving pedestrians over vehicles. Vehicles are relegated to a lower entrance off the busier and less-hospitable Kenilworth Avenue, N.E.
49. The primary office entrance to the new building is in a courtyard off of the Plaza. The Plaza-level pedestrian entrance leverages the activity of office users to create pedestrian movement in the public realm. The courtyard also accommodates the GSA's security requirements without imposing them into the more public east-west portion of the Plaza.
50. The orientation of the Project's longest elevation along Kenilworth Avenue, N.E. establishes for Parkside a sense of visual significance when viewed from the adjacent Anacostia Freeway, and serves as an indication of maturation, investment and vitality in the neighborhood. The height and density of the office building is fairly uniform across the Property, which gives Kenilworth Terrace, N.E. a sense of character and significance as an emerging retail corridor.
51. The Project's height and mass are appropriate relative to the existing context and the vision for Parkside's development and are consistent with the Parkside PUD. The Project is intended as a grand gesture of Parkside's emergence as a transit-oriented city center for Ward 7. The Minnesota Avenue Metrorail station is one of only three stations in Ward 7, and, given the convergence of the highway infrastructure, is the one best-suited to become a major employment center east of the Anacostia. Accordingly, the Parkside PUD contemplated the greatest heights for Parkside being adjacent to the highway with the easiest pedestrian access (via the Bridge) to the Metrorail.
52. Practically speaking, the PUD process is the only viable mechanism for attracting a federal office tenant to Ward 7, and Parkside, with its proximity to Metrorail and highway access is the only viable candidate given the GSA criteria. The PUD process affords the Commission the flexibility needed to provide the necessary dimensional zoning accommodations to implement the Comprehensive Plan for

the District of Columbia, 10A DCMR (“10A”) § 100, *et seq.* (the “Comprehensive Plan”).

53. The Project is consistent with the Zoning Regulations and Parkside PUD. The Project requested minor relief, as noted below, which this Commission granted.
54. The “H”-shaped building is designed to maximize interior useable floor area efficiencies as part of the GSA RLP. In addition, the two legs of the building are intentionally asymmetric. The rationale for this design is to increase the amount of light for the office tenant users. The “H” shape optimizes light penetration by adding surface area to the building (relative to a purely square design). The “H” configuration of the floorplate also has positive urban design ramifications. Primarily, the floor configuration reduces the apparent scale of the building from the Plaza. From that elevation, the building reads as two separate buildings and is less overpowering, which is an important urban design consideration for the pedestrian-scaled Plaza. The building has a single point of entry for pedestrians from the Plaza. Occupants arriving via the garage have access to the elevators.
55. Retail uses line the ground floor along Kenilworth Terrace, N.E. across from the proposed retail on Block F to create an active pedestrian streetscape experience. The retail spaces share loading and trash facilities with the office component but there is otherwise no internal circulation, in order to satisfy GSA’s security requirements. Bike storage is provided in an enclosed room in the garage. The rooftop penthouse will provide amenity space for the office occupants. The Project also includes a rooftop terrace.
56. In general, the Project has a contemporary expression with a high degree of glazing at the office levels. Along the Plaza and Kenilworth Terrace, N.E., the Project is almost entirely transparent at the ground level. Along Kenilworth Terrace, N.E. the ground-floor retail has extended floor-to-ceiling heights to accommodate demands of retail tenants. The overall form of the building emphasizes the pattern of the windows while incorporating larger modulations on the longer south and north facades that break down the buildings mass.
57. The Project features two significant opportunities—the Plaza and Kenilworth Terrace, N.E.—for placemaking through public realm landscaping. In addition, the Project features landscaping for a green roof on the rooftop to satisfy environmental performance requirements. The Project’s streetscaping includes street trees and other ground-level vegetation, which serves dual purposes of beautification and stormwater control. Vegetation is also provided at the rooftop level as a green amenity for building occupants and for the environmental benefits. The Project’s lighting plan ensures pedestrian comfort and safety. Innovative and artistic fixtures and finishes are employed to give the Project a unique character. Enhanced landscaping is provided along Kenilworth Ave., N.E. to screen the louvers and ground floor façade along the at-grade parking level. (Ex. 30.)

58. The Project includes a unified at-grade garage expected to contain in total either approximately 111 parking spaces serving the federal office use exclusively in one at-grade level or 258 spaces, with one at-grade level and a second below-grade level. The Applicant requested flexibility with respect to the amount of parking provided pending the ultimate office tenant and its needs. Because the Project is under common control with adjacent blocks, any necessary parking for the retail tenants can be provided elsewhere, understanding that much of the retail demand is generated by the office users. Loading is shared among the building's two uses. N.E.
59. As noted above, Block H currently contains no vehicular penetration or alleyways. Accordingly, any vehicular access necessitates new curb cuts. However, the Project limits the number of curb cuts to two. One curb cut accesses a new alleyway serving the Project's garage and loading from Kenilworth Terrace, N.E. and a second curb cut accesses such alleyway from Kenilworth Ave., N.E. DDOT noted that additional study was required before it would approve the curb cut along Kenilworth Ave., N.E.; however, such additional study can be accomplished during the DDOT public space review process following issuance of this Order.

Modifications to and Consistency with the Parkside PUD

60. As part of the Application, the Applicant simultaneously seeks modification of the Parkside PUD to modify the approved footprint for the Project, the total GFA, lot occupancy, and parking. These proposed modifications are generally consistent with the Parkside PUD, including the overall massing, development envelope, policy objectives, character and appropriateness of the Parkside PUD, and were undertaken in response to satisfying a GSA RLP, which would provide the first federal tenant or installation in Ward 7 and a significant economic boon for the Parkside neighborhood. These changes are also all consistent with the vision for Parkside. The specific elements of the Project that differ from the Parkside PUD are:
- (a) GFA: The Parkside PUD contemplated 750,000 sf for both office towers in Block H, whereas 503,019 sf is now proposed for a single tower for this portion of Block H;
 - (b) Lot Occupancy: The Parkside PUD authorized a block occupancy of 80.6%⁴ for the entirety of Blocks G, H, and I whereas the Project has a lot occupancy of 88% on a portion of Block H; and

⁴ The lot occupancy and FAR in the Parkside PUD were calculated using the block area rather than the lot area for all of Blocks G, H, and I, whereas the Project's FAR is calculated using the lot area for the Property, which is consistent with the provisions of the Zoning Regulations.

- (c) Parking: The Parkside PUD approved 1400 off-street parking spaces for all of Blocks G, H, and I. The Property consists of only a portion of Block H and includes between 111-258 spaces. The Project also requires modest relief from the strict application of the Zoning Regulations with respect to the location and spacing of parking in that some spaces are not set back adequately from the lot line and some compact spaces are provided in groups smaller than five. (See FF ¶¶ 87-94.)
61. The Applicant and the Project are in compliance with the conditions of the Parkside PUD as follows:
- (a) Condition 1: As part of the Application, the Applicant formally confirmed the Map Amendment to rezone the Property from the underlying C-2-B Zone District to the CR Zone District;
- (b) Condition 2: The Application is largely consistent with the concepts the Commission approved in the Parkside PUD, subject to the modifications requested herein;
- (c) Condition 3: The Project demonstrates further development and refinement of the concepts and massing submitted in connection with the Parkside PUD. The Public Benefits are consistent with those proposed during the Parkside PUD;
- (d) Condition 4: The Project is consistent with the overall dimensional limits set forth in the Parkside PUD Conditions, as modified in Z.C. Order No. 05-28E. The Project is consistent with the maximum height limits allowed pursuant to the Parkside PUD. A construction schedule for the Bridge is expected to be issued in 2017. Construction of the Community Green is complete;
- (e) Condition 5: The Applicant is undertaking this Application in anticipation of securing a lead office tenant for the Property;
- (f) Condition 6: Not applicable as the Project does not include any housing. The Applicant has previously provided updates on its provision of affordable housing and is significantly ahead of its obligations with respect to this Condition;
- (g) Condition 7: Not applicable to this Application as no residential uses are included as part of the Project;
- (h) Condition 8: Landscape plans, and detailed architectural plans and elevations are included in the Final Plans;

- (i) Condition 9: Not applicable to this Application. This analysis was addressed in prior first-stage and second-stage applications;
 - (j) Condition 10: The Applicant provided the CTR in fulfillment of this Condition;
 - (k) Condition 11: Not applicable to this Application. The Applicant submitted with its application in Z.C. Case No. 05-28Q, plans for the design and anticipated use of the pedestrian retail plaza at the center of Parkside, as required in (a) of this Condition. The Applicant has previously given to DDOT a 45-foot-wide easement at the center of the site as part of the retail plaza. The Applicant submitted plans in a prior application for buffering the Pepco site;
 - (l) Condition 12: Not applicable to this Application. The Applicant is not including for-sale affordable residential units in connection with this Application;
 - (m) Condition 13: This Application has been filed prior to October 3, 2017. This condition has been satisfied;
 - (n) Condition 14: The Applicant is developing Parkside in phases. The Application is one phase of the 10 building blocks that were approved during the Parkside PUD; and
 - (o) Condition 15: This Condition is restated as a Condition of this Order.
62. The Applicant engaged in significant outreach to the surrounding community prior to and after the Public Hearing. The Project reflects the extensive Applicant-led community outreach. The preferences and desires of numerous community groups and individuals shaped the Project's Public Benefits.
63. This Commission finds that the all of the Applicant's filings and testimony were credible and thorough.

Summary of Public Benefits

64. The Commission approved a package of Public Benefits in its evaluation of the Parkside PUD ("Parkside Public Benefits") and determined those benefits appropriately balanced the flexibility requested during the PUD process. The Parkside Public Benefits include: (a) provision of affordable housing in 20% of all of the residential units of the Parkside PUD; (b) provision of workforce housing in 20% of all of the residential units of the Parkside; (c) superior site planning including the provision of the one-acre Community Green and four additional acres of landscaped and/or hardscaped areas; (d) superior urban design; (e) provision of easements for pedestrian access to the Bridge as well as a

\$ 3 million dollar contribution to the Bridge itself; (f) provision of transit-accessible jobs and training for Parkside residents; (g) conservation of natural resources and completion of the LEED-ND certification; and (h) other uses of special value to the community and the District as a transformational, mixed-use, mixed-income, transit-oriented development in Ward 7. As noted above, the Parkside Public Benefits were approved under ZR58. The Applicant has expanded upon and refined the Parkside Public Benefits in this Application. More specifically, the Applicant has proffered the following Public Benefits: (a) superior urban design, architecture, and landscaping; (b) efficient site planning; (c) transportation infrastructure and mass transit improvements; (d) environmental and sustainable benefits; (e) uses of special value to the neighborhood or the District as a whole; (f) other benefits that substantially advance the Comprehensive Plan; (g) streetscape improvements; and (h) employment benefits. (Ex. 29; *see also* FF ¶¶ 125-137.)

III. Commission Comments and Questions

65. Following review of the Initial Statement, at Setdown the Commission provided comments on the Application and requested that the Applicant: (a) revise the requested design flexibility language; (b) provide an estimate of the fee required for the Project's penthouse contribution to the Housing Production Trust Fund ("HPTF"); (c) provide additional information on the type of retail proposed for the Project; (d) work with DOEE to explore the possibility of including solar panels on the Project or provide justification for why solar does not work for the Project; (e) provide additional information and study on the color selection for the façade and glass; (f) study and revise the proposed Ramp leading to the Plaza from Kenilworth Terrace, N.E. (Tr. 1 at 74-79.)
66. The Applicant provided in its PHS, 20-Day Statement, Post-Hearing Statement, and at the Public Hearing responses to the Commission's questions and comments at Setdown:
- (a) Revisions to Flexibility Language. Prior to the Public Hearing, the Applicant provided revised language regarding design flexibility in response to the Commission's concerns; (Ex. 26A3.)
 - (b) HPTF Fee. The Applicant provided an estimated HPTF fee associated with the Project but added a caveat that the amount is preliminary and based on factors that cannot be finalized until the Project seeks a building permit; (Ex. 12 at 3.)
 - (c) Retail Strategy. In the PHS, the Applicant confirmed that the retail on the ground-floor of the Project would likely include neighborhood-serving tenants. (*Id.* at 4.) The Applicant anticipates that the retail will include fast casual and neighborhood-serving eating and drinking establishments, which are largely absent from the area at present and which serves

primarily Parkside residents during evening and weekend hours and the entire community (including federal workers) during weekday hours;

- (d) Solar. The Applicant confirmed that it met with DOEE prior to the Public Hearing to discuss solar and sustainability measures for the Project. (Ex. 30.) At the Public Hearing and in the Post-Hearing Submission, the Applicant provided its justification for not including solar on the roof of the Project; (*See* FF ¶ 68(d).)
 - (e) Façade Colors. At the Public Hearing, the Applicant provided samples of the Project's materials, which addressed the questions and concerns raised by the Commission at Setdown; and (Ex. 27.)
 - (f) Ramp. At the Public Hearing and in the Post-Hearing Submission, the Applicant provided multiple iterations of design for the Ramp and Plaza. (Ex. 26A, 30.) The Commission noted that the design of the Ramp and Plaza improved.
67. At the Public Hearing, the Commission asked the Applicant: (a) whether the Project was a speculative office building or whether a GSA tenant had been secured; (b) why it required parking flexibility; (c) whether the elevated nature of the Plaza was in response to the Bridge; (d) to provide additional information about the decision not to provide solar panels on the roof of the Project; (e) about the design of the Ramp and Plaza and requested the Applicant study the ability to provide an elevator and to provide additional renderings of the Plaza; (f) to further study the Project's façade and public space along Kenilworth Ave., N.E. and provide additional renderings thereof; (g) about the use of the rooftop above the fitness center for solar or green roof; (h) to reconsider the color of the penthouse cladding; (i) about the placement of the Project's long-term secure bicycle parking; (j) about the location of signage at the retail and office entrances; (k) about the security considerations for the Project imposed by GSA; (l) about the location of a room for use by the ANC and other community organizations; (m) whether the Project included an adequate supply of short term bicycle storage; (n) about estimates of the number of employees in the Project; (o) about the Applicant's commitment to the Project's Transportation Demand Management ("TDM") measures, including whether the TDM subsidy was a one-time or recurring commitment and whether the TDM package included a shuttle; (p) whether seating is built into the Plaza's design; (q) whether there is access to the Plaza from Kenilworth Ave., N.E.; (r) how many people are expected to walk along Kenilworth Ave., N.E.; (s) whether anyone from the Applicant's development team is from the neighborhood surrounding the Project; and (t) whether GSA's space requirements were changing. (Tr. 2 at 34-71, 73.)
68. The Applicant responded completely to the Commission's questions and comments at the Public Hearing. The Applicant's responses are supported by substantial evidence:

- (a) GSA Tenant. The Applicant confirmed that it had responded to a GSA RLP but that GSA had ruled the response technically deficient because the second-stage PUD had not yet been approved. (Tr. 2 at 34.) Upon approval of the Application and issuance of this Order the response will no longer be deficient. (*Id.*) The Applicant clarified that Commission's approval of the Application will make it competitive for other GSA tenants in the event the current bid is not successful;
- (b) Parking Flexibility. The Applicant explained at the Public Hearing that it required parking flexibility for the current RLP it was pursuing because the GSA may increase its parking requirements. (*Id.*) In the alternative, if the Applicant is unsuccessful in pursuing the current bid, a future GSA bid may require a higher amount of parking; (*Id.* at 35.)
- (c) Pedestrian Bridge. At the Public Hearing, the Applicant confirmed that the Bridge designs as already approved by DDOT have the Bridge landing on the Parkside side of the highway at an elevation of 13 feet above grade with stairs and ramps leading to grade. (*Id.* at 35-36.) The Plaza is an elaboration and improvement upon DDOT's design; (*Id.*)
- (d) Solar. In its Post-Hearing Submission, the Applicant articulated the following rationale for not providing solar panels on the roof of the Project: (i) the Project's provision of green roof space is in part mutually exclusive with solar and the Applicant has elected to pursue a LEED-Gold level of design which allows it to employ the sustainability measures that are most impactful from a whole building perspective; (ii) the Applicant's ability to attract a GSA tenant to the Project hinges entirely upon bid once the GSA's requirements are satisfied; (iii) the PUD provisions of the Zoning Regulations do not contemplate that solar panels are a public benefit, whereas enhanced stormwater and LEED-Gold are expressly enumerated Public Benefits; and (iv) there are programmatic uncertainties with a GSA tenant that may limit the ability to provide rooftop solar. More particularly:
- In order to satisfy, in part, stormwater requirements applicable to the Project, the Project includes extensive green roof area rather than rooftop solar. The provision of solar on the roof of the office building reduces by half the stormwater management capacity of the roof and makes it more difficult to achieve the applicable stormwater retention requirements. The Project contains 20,175 sf of green roof area plus outdoor roof terrace as an outdoor amenity space for building occupants. The provision of a green roof provides an overall greater environmental benefit. Moreover, the Project must comply with the District's enhanced stormwater requirements because such requirements are imposed by

regulation. The Project's provision of solar is merely encouraged through financing incentives. The Commission interprets the adoption of the stormwater regulations and the absence of any concomitant regulations requiring solar as a clear policy preference in the District for green roofs ahead of solar. This policy preference is underscored in the Commission's own regulations. Despite these limitations, the Commission finds that the Applicant has not ruled out installing solar on the roof of the Project. It notes that solar prices have dropped significantly, and prior to proceeding to a building permit, the economics of solar may warrant its inclusion in the Project. That is why the Applicant has elected to pursue a whole building sustainability program at the LEED-Gold level of design. The future economics of solar may justify swapping out other sustainable building elements on the LEED-Gold checklist in favor of rooftop solar;

- The rationale for electing not to provide solar also ties directly to the increased cost of providing solar. The Applicant's ability to attract a GSA tenant is contingent exclusively upon submitting the lowest bid price once the GSA's programmatic requirements are satisfied. The GSA does not require solar or renewable energy. The additional cost of providing solar, in light of the marginal environmental benefit and in light of competing environmental priorities as outlined above, would tend to render the Project uncompetitive economically;
- The Applicant cannot commit to provide solar as part of the Project at this stage because its future tenant's rooftop requirements are not clear. Some GSA tenants require additional space for telecommunications and satellite equipment, and others require supplemental HVAC or other building mechanical equipment that occupies roof space. The Applicant cannot dedicate rooftop area to solar facilities that are not required by regulation without knowing its future tenant's needs. The Project's provision of a fitness center, unlike solar, is a programmatic prerequisite of GSA for evaluating the Applicant's bid; and
- Fourth, the Zoning Regulations do not identify solar as a potential public benefit, whereas enhanced stormwater management and design to LEED Gold standards are expressly identified among the categories of public benefits. (*See X § 305.5(k)(1), (5).*) Stormwater runoff controls, and LEED-Gold, as expressly identified categories of public benefits, take clear precedence over potential public benefits on which the Zoning Regulations are silent;

- (e) Ramp and Plaza Design. As noted in the Post-Hearing Submission, the Applicant provided a further refined design of the Ramp and Plaza. (Ex. 30.) At the Public Hearing, the Applicant provided information on the width of the Ramp and the landing and the use of the Ramp and Plaza by cyclists. The Applicant met with OP after the Public Hearing to discuss design solutions for the ramp and other public space aspects of the Project. The Ramp was reconfigured with a wider landing allowing the stairs to be wider, deeper, and to include bleacher seating platforms and an area for cafe seating on the landing. The Applicant described plans to work with the onsite, inline retail vendors to install a coffee/vendor kiosk on the Plaza along with additional cafe seating on the Plaza. The Applicant studied revisions to the Ramp that included an elevator but determined that a ramp was necessary to ensure accessibility at all times given the need to service and maintain elevators. The Applicant also provided information at the Public Hearing on the width and design of the Plaza. (Tr. 2 at 46-47, 64.) The Applicant noted that it was unaware of any applicable GSA restrictions that would impede public access through the plaza or use of the retail spaces along Kenilworth Terrace, N.E.; (Ex. 30.)
- (f) Kenilworth Ave., N.E. Façade. In the Post-Hearing Submission, the Applicant provided revisions to the louvers and landscaping along the Kenilworth Ave., N.E. façade and adjacent public space. (*Id.*) The Post-Hearing Submission also included a rendered perspective view of this street. (*Id.*) The Applicant confirmed that it was providing pedestrian-level lighting along the street; (Tr. 2 at 60, 63.)
- (g) Rooftop. In the Post-Hearing Submission, the Applicant also confirmed that additional green roof would be installed on top of the Project's fitness center; (*Id.*)
- (h) Penthouse Color. Plans included with the Post-Hearing Submission showed that the Applicant changed the color of the penthouse cladding to a darker gray; (*Id.*)
- (i) Long-Term Bicycle Parking. In the Post-Hearing Submission, the Applicant noted that secure bicycle parking is a standard requirement of GSA solicitations and if only one level of parking is provided, the bicycle parking will be located at-grade with access to Kenilworth Terrace, N.E. In the event two levels of parking are provided, the Applicant will also work to provide the bicycle parking at-grade with convenient access to Kenilworth Terrace, N.E.; (*Id.*)
- (j) Signage. The Post-Hearing Submission included updated elevations depicting proposed signage zones on the Project; (*Id.*)

- (k) GSA Security Requirements. At the Public Hearing the Applicant confirmed that GSA prefers retail as an amenity for building occupants, but that such retail was best segregated to a separate level under GSA's requirements. For Parkside, providing retail along Kenilworth Terrace, N.E. was desirable because the effort to create a retail corridor for the neighborhood along that street and into a portion of the adjacent Parcel 9. Retail on the Plaza would be difficult to service and would suffer from lack of street visibility; (Tr. 2 at 58-59.)
- (l) Community Space. In the Post-Hearing Submission, the Applicant noted the ANC's and community's concerns regarding the need for community meeting space in Parkside that does not carry the same time and availability restrictions as the existing options within the neighborhood. To address this concern, the Applicant committed up to \$20,000.00 to renovate and modernize an existing Parkside neighborhood community room currently under control of the Parkside Townhome Home Owner's Association ("Parkside HOA"). The renovation and future use of the existing community room by the ANC and other community groups is subject to the review and approval of the Parkside HOA, and the Applicant and the ANC are in active negotiations with the Parkside HOA regarding the possible renovation and use of this space. Renovating the existing community room is a preferable solution because it would provide a space for the ANC and community groups in the very near term. In the event an agreement cannot be reached with the Parkside HOA regarding the renovation and use of the existing community room, the Applicant will work with the ANC and the community to identify another location for community meeting space within the Parkside PUD. Because such discussions are on-going, the \$20,000.00 renovation is not included as a proffer to this Order. The Applicant also noted that the existing Community Green as well as the retail promenade proposed as part of Parcel 9 (i.e., the subject of Z.C. Case No. 05-28Q) and the elevated plaza proposed as part of the Application create a network of connected pedestrian-oriented public space infrastructure in the Parkside neighborhood. That is, the Applicant has already made a significant commitment to provide public gathering spaces at Parkside. At the request of the ANC, the Applicant is committed to studying additional means of further activating the public gathering spaces through dynamic landscaping and furniture to make the spaces feel more inviting and family-friendly. The proposals to identify and provide a community room and additional activation of the public space are additive relative to the public benefits approved as part of the Parkside PUD;
- (m) Short-Term Bicycle Parking. At the Public Hearing, the Applicant confirmed that the Project included short-term bicycle parking at-grade to serve the Project's retail uses and that such parking was provided in

conformance with the current requirements of the Zoning Regulations; (Tr. 2 at 62-63.)

- (n) Employee Totals. The Applicant provided a total employee capacity based on GSA maximum theoretical design thresholds as well as based on industry-standard trip-generation metrics. (*Id.* at 64-66.) The Commission understands that these analyses are used for different purposes and are only rough estimates for the number of employees who will actually occupy the Project upon completion;
- (o) TDM Measures. At the Public Hearing, the Applicant provided estimates of the number of employees who would be covered by the transit subsidies and confirmed that the subsidy would be provided to each new employee upon hiring. (Tr. 2 at 66, 69-70.) The Applicant also confirmed that there were no plans to include a shuttle to the Metrorail station; (*Id.*)
- (p) Plaza Seating. The Applicant confirmed at the Public Hearing that the Plaza included public seating built into the planters. (*Id.* at 67.)
- (q) Plaza Access from Kenilworth Avenue, N.E. The Applicant also confirmed that there was no pedestrian connection from Kenilworth Avenue, N.E. to the Plaza; (*Id.* at 68.)
- (r) Kenilworth Avenue, NE Pedestrian Traffic Volumes. The Applicant reported that its traffic counts for the intersection of Kenilworth Avenue, N.E. and Foote and Hayes Streets, N.E. indicate that there are fewer than 10 pedestrians per hour using Kenilworth Avenue, N.E. at peak hours; (Ex. 30.)
- (s) Development Team. The Applicant confirmed that no one on the Project team lived in the area around the Project; and (Tr. 2 at 69.)
- (t) GSA Demand. At the Public Hearing, the Applicant confirmed that the GSA's space needs were changing but that GSA was still considering relocating tenants because current spaces might not satisfy current needs. (Tr. 2 at 73-75.)

69. At the Public Hearing, the Commission had no questions for OP, DDOT, or the ANC.

IV. Agency Reports and Testimony

Office of Planning

70. In the OP Setdown Report, OP requested the Applicant: (a) finalize and justify the number of parking levels and the number of automobile and bicycle parking spaces proposed to be provided; (b) request flexibility to provide compact parking

spaces in groups of less than five as required under ZR58; (c) submit additional drawings, including more detailed perspectives and/or elevations, site plans and a refinement of the material colors proposed for the façade, including the penthouse screen wall, and perspectives from within the courtyards and of the grand stairway from Kenilworth Terrace, N.E.; (d) document why it is not feasible to provide below-grade parking on the first level of the garage within the building; and (e) submit a traffic study in advance of the Public Hearing. (Ex. 11.)

71. In response to the OP Setdown Report, the Applicant provided the following information:

- (a) Parking Flexibility. As noted in the PHS, the Application is in response to a GSA RLP and is designed to accommodate a federal tenant. The Application's proposed amount of vehicular and bicycle parking is intended to satisfy the requirements of the RLP as well as the amount of parking required under the current Zoning Regulations. The RLP to which the Applicant is responding requires an amount of parking that can be satisfied at this site with only a single-level garage. However, because the GSA's RLP process to which the Applicant is responding is competitive, there is a chance that the ultimate tenant of the proposed building may not be the tenant set forth in the current RLP. A future GSA tenant might have a different parking requirement. Accordingly, the Applicant seeks flexibility with respect to the amount of vehicular parking to be provided in order to construct the building to accommodate a future tenant in a future bid; (Ex. 12 at 1-2.)
- (b) Parking Relief. The PHS notes that ZR58 provided that "compact car" parking spaces may be provided at a dimension (eight feet by 16 feet) slightly smaller than ordinarily required (i.e., nine feet by 19 feet). However, under § 2115.4 of ZR58, such compact car spaces were to "be placed in groups of at least five (5) contiguous spaces with access from the same aisle." The Project's garage configuration deviates from this requirement: compact car spaces are generally grouped in sets of four contiguous spaces in order to maximize parking space efficiency in light of the column grid of the proposed building. The Applicant therefore, requests relief from § 2115.4 and notes that such relief has no adverse or injurious effect on the zone plan as such requirement is no longer in effect under the now effective Zoning Regulations. The Commission saw fit that the compact car contiguity requirement was of limited purpose and removed it. (*See* 11-C DCMR § 712.10.) The Applicant also seeks relief from the vehicular parking requirements of ZR58 and instead complies with the amount of vehicle parking required under the current Zoning Regulations. The amount of parking that is required for office and retail uses is substantially reduced under the 2016 Zoning Regulations, especially when such uses are within a half-mile of a Metrorail station, as

is the case in the instant Application. However, this Application is proceeding as vested under ZR58. The Applicant generally believes that the appropriate amount of parking for this project is the amount required under the RLP, especially in light of the property's proximity to transit and given the mobility objectives of the neighborhood and the District more generally. Accordingly, the Applicant seeks flexibility to reduce the amount of parking below the amount required under ZR58 in the event it does not construct the below-grade parking to comply with the programmatic requirements of a future GSA tenant;

- (c) Additional Drawings. The 20-Day Submission included the revised and additional plans requested by OP; (Ex. 20A.)
- (d) Below-Grade Parking. The PHS noted that all parking is contained within the building and that no parking is in a surface parking lot. However, the Application does not propose providing parking exclusively below-grade. In sum, the cost of providing below-grade parking is significant and may make the Applicant's bid in response to the RLP less competitive; in addition, the Applicant has proposed a design solution that mitigates any impacts of at-grade parking. The below-grade parking may ultimately not be constructed because the amount of parking in the at-grade garage alone satisfies both the GSA's requirements as well as those in the current Zoning Regulations. The rationale for the proposed amount of parking is because of the cost-savings from avoiding constructing below-grade parking. At-grade parking is significantly less costly than below-grade parking, even when such at-grade parking is entirely within a structure as is proposed in the Application. The Applicant intends to translate the cost-savings from the parking construction to a lower bid to the GSA. Because the RLP is awarded solely on the basis of bid (provided the bidder's building satisfies the RLP programmatic requirements), the cost savings are crucial to winning the bid. Recognizing, however, that the District has a strong desire to avoid at-grade parking, the Applicant has taken design steps to mitigate the appearance and effects of the at-grade parking. Along Kenilworth Terrace, N.E. such parking is hidden from view with street-fronting retail. Along Kenilworth Avenue, N.E.—which is generally not regularly traversed by pedestrians and instead functions as a thoroughfare—the parking is fully enclosed and screened with a planting buffer so as not to be visible from the public realm. The treatment of the parking also solves a design problem related to the connection of the proposed Bridge from the Minnesota Avenue Metrorail station. The Plaza is raised a story above grade so that pedestrians arrive in Parkside above the noise and commotion of Kenilworth Avenue, N.E. and the adjacent Anacostia Freeway. The Plaza elevates pedestrians above the surrounding traffic. As a result, the parking below the Plaza is effectively buried. Because the Plaza and the entrance to the proposed building are above the

grade of Kenilworth Terrace, N.E., any office space at the Kenilworth Terrace, N.E. grade level would be suboptimal. The floorplate would be too small to accommodate any such office space as well as the in-line retail space that is desired for the activation of Kenilworth Terrace, N.E., and at-grade office space would create internal circulation challenges relative to the requirements of the GSA's preferred program; and (Ex. 12 at 2-3.)

- (e) Traffic Study. The CTR was submitted in advance of the Public Hearing. (Ex. 18.)

72. In the OP Final Report, OP requested the Applicant: (a) refine and minimize the design flexibility requested; (b) improve the street level façade along Kenilworth Ave., N.E. to read less as the “rear” elevation; (c) satisfy any DDOT issues arising from the transportation study; and (d) provide solar panels on the roof of the Project or document why the provision of solar panels would not be feasible. (Ex. 22A at 12.) OP noted that the other items requested in the OP Setdown Report had been resolved. (*Id.* at 3.)
73. In response to the OP Final Report, the Applicant provided the following information:
- (a) Flexibility. The Applicant satisfactorily revised the requested design flexibility; (*See* Ex. 26A3.)
- (b) Kenilworth Ave., N.E. Façade. The Applicant also revised the Kenilworth Ave., N.E. façade; (Ex. 30; *see also* FF ¶ 68(f).)
- (c) DDOT Issues. DDOT confirmed that the Applicant satisfied all outstanding issues necessary before the Public Hearing and that it would continue to work with the Applicant through the public space approval process; and (Tr. 2 at 77-78.)
- (d) Solar. The Applicant provided a detailed justification for its decision not to include solar on the Project. (*See* Ex. 30; *see also* FF ¶ 68(d).)
74. This Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions.
75. At the Public Hearing, OP testified in support of the Project and in support of approving the requested flexibility. (Tr. 2 at 75-77.) OP also offered to continue to work with the Applicant on public space design and solar panels and encouraged the Applicant to confirm that the retail space on the ground floor would remain public. (*Id.*) The Applicant and OP met to review the design of the Ramp after the Public Hearing. (Ex. 30.)

76. The Commission finds that OP's reports and testimony were thorough and credible and helpful in considering the Application and accordingly gives such testimony the great weight it is entitled.

District Department of Transportation

77. The DDOT Report noted no objection to the Project provided the TDM program is effectively implemented and subject to DDOT's approvals required during the public space process, which approvals included a requirement for additional study of the Kenilworth Avenue, N.E. curb cut. (Ex. 23 at 4.) The DDOT Report included numerous findings, which the Commission hereby adopts. (*Id.*)
78. The TDM plan includes the following elements. (Ex. 26A.) The Applicant must:
- (a) Designate a TDM coordinator to be responsible for organizing and marketing the TDM plan, to act as a point of contact with DDOT, and to implement a carpooling system such that employees who wish to carpool can easily locate other employees who live nearby;
 - (b) Price all parking at no less than market rates (defined as the average cost for parking in a 0.25-mile radius from the Project) and unbundle parking from the cost of the office leases for any nongovernment tenant(s);
 - (c) Install a transportation information center display (electronic screen) within the building lobby containing information related to local transportation alternatives;
 - (d) Meet or exceed the requirements of the Zoning Regulations for bicycle parking facilities at the Project, including long-term parking located within the Project and short-term bicycle parking around the perimeter of the Property;
 - (e) Dedicate two parking spaces within the Project's garage for car-sharing services to use with right of first refusal (provided security measures for any GSA tenant allow for car-sharing spaces to be located in the garage);
 - (f) Provide showers and corresponding changing facilities for the office use;
 - (g) Provide bicycle repair stations to be located within the bicycle storage room(s);
 - (h) Provide TDM materials to new employees to inform them on alternatives to driving;

- (i) Offer non-auto incentives (e.g., a one-year membership to Capital Bikeshare or SmarTrip) to all new employees subject to a cap of \$120,000.00 in the aggregate;
 - (j) Install two electric vehicle stations in the parking garage; and
 - (k) Fund and install the hardware necessary to implement the proposed traffic signal changes at the intersection of Kenilworth Terrace and Nannie Helen Burroughs N.E., subject to DDOT approval, with a maximum cost to the Applicant of \$25,000, if not already completed.
79. The TDM plan includes additional measures in the event the Project includes the below-grade garage. In such case, the Applicant must also:
- (a) Fund and install an expansion of eight docks at the proposed 19-dock Capital Bikeshare station to be constructed on the adjacent Parcel 9 of the Parkside PUD; and
 - (b) Install an additional three electric vehicle stations in the Project's parking garage (for a total of 5).
80. At the Public Hearing, DDOT confirmed its agreement with the Applicant's revised changes to the TDM package. It also committed to working with the Applicant to determine the viability of a curb cut along Kenilworth Avenue and other public space elements. (Tr. 2 at 77-78.)
81. This Commission finds that DDOT's reports and testimony were thorough and credible and helpful in considering this Application and accordingly gives such testimony its appropriate weight in reviewing the Application.

V. ANC Reports, Testimony, and Cross-Examination

82. ANC 7D submitted two reports. The first report was submitted June 19, 2017. (Ex. 24.) It stated that ANC 7D and the Applicant were engaged in a continuing dialogue to address concerns the ANC had about potential transportation and traffic mitigations, retail strategy and planning, activation of public spaces and parking, and that both parties were committed to continue the dialogue with the goal of a mutual agreement.
83. The second ANC 7D report was submitted July 24, 2017. (Ex. 34.) It stated that the ANC and the Applicant had reached an agreement that addressed all of the ANC's concerns, and that at a properly noticed meeting with a quorum present, the ANC had voted unanimously to support the application without conditions.

VI. Persons in Support or Opposition

84. No persons or organizations submitted written testimony or spoke at the Public Hearing in support of or in opposition to the Project. Accordingly, the Commission finds there were no contested issues in the pendency of the Application apart from those items set forth with respect to the ANC above.

VII. Development Incentives: Map Amendment, Zoning Relief, and Flexibility

85. The PUD process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under the Zoning Regulations, this Commission retains discretion to grant relief from the development standards of the Zoning Regulations and to allow for project flexibility development incentives. (X §§ 303.1, 303.11, 303.13.) The Zoning Regulations specifically allow the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment. Generally, such relief is available at the discretion of the Commission; however, where such relief is available only by special exception ordinarily, the Commission must determine that the relief request satisfies that standard for relief. (*Id.* § 303.13.⁵) A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (*Id.* § 303.12.)
86. As part of the Application, the Applicant requested the Commission grant the following development incentives (collectively, the “Development Incentives”): the Map Amendment; relief from the strict application of the parking requirements (“Parking Relief”); and flexibility with respect to the amount of parking provided (“Parking Flexibility”). (Ex. 22A at 12.) These items are addressed in turn below.

Map Amendment

87. The Property is currently in the C-2-B Zone District, and the Parkside PUD approved the Map Amendment to the CR Zone District for the Property. The Commission previously found as part of the Parkside PUD that the Map Amendment is not inconsistent with the Comprehensive Plan, which finding satisfies the requirements for granting the Map Amendment. (*See* X § 500.3 and Z.C. Case 05-28.) The Commission sees no reason to disturb its previous findings regarding granting the Map Amendment.

⁵ Subtitle X § 303.13 provides in relevant part that “[a]s part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards.”

Parking Relief

88. The Project requires modest relief from certain parking requirements of the Zoning Regulations (including the applicable provisions of ZR58). The Project does not comply with the requirement that compact spaces be clustered in groups nor does it comply with the requirement that at-grade parking be set back a certain distance from the lot line. The compact space clustering requirement was removed from the current Zoning Regulations, and only a small fraction of the Project's parking spaces do not comply with the applicable set back requirements.
89. The Parking Relief is minor in nature, does not have any adverse effects, and, in light of the Project's many Public Benefits, is readily justified.

Parking Flexibility

90. The Applicant seeks flexibility to increase the number of parking spaces by adding an optional below-grade level to the garage in the event tenant demand necessitates such parking. The Commission finds that the Applicant studied the transportation impacts that could be generated by the larger number of parking spaces under the parking scenario with two parking levels. (Ex. 18.) Accordingly, the Applicant is obligated to enhance the Project's TDM measures if it provides the greater number of parking spaces. (*Id.*) The Commission finds the Parking Flexibility warranted in light of the benefits of the Project's consistency with the Comprehensive Plan.

Development Incentives – Summary

91. The Commission finds that, overall, the Project conforms to the Zoning Regulations, except for the modest Parking Relief set forth in the immediately foregoing paragraphs. Where the Project requires relief and flexibility, the Commission finds that such relief is either minimal in nature or reasonable in light of the proposed uses and Public Benefits and otherwise does not derogate or impair, but rather is in accordance with, the general intent and purposes of the Zoning Regulations. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services." (11-A DCMR ("11-A") § 101.1 ["Zoning Purposes"].)
92. The Project is in harmony with the Zoning Purposes because it protects light and air on the Property and surrounding Properties, prevents overcrowding by providing retail uses and public gathering spaces, and provides a more equitable

distribution of business land uses that create favorable conditions with respect to transportation (e.g., transit-oriented employment opportunities) and civic activity (e.g., the Plaza). The Project is also generally consistent with the height, density, and dimensional aspects of the Zoning Regulations, requiring only modest flexibility with respect to parking. For the reasons set forth above, the Commission finds the Applicant has satisfied the standards necessary for the Commission to grant the requested Development Incentives.

VIII. PUD Requirements

93. As set forth in the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; (c) protects and advances the public health, safety, welfare, and convenience; (d) is not inconsistent with the Comprehensive Plan and does not result in action inconsistent therewith; (e) does not circumvent the intent and purposes of the Zoning Regulations; and (f) undergoes a comprehensive public review by the Commission in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits (collectively, the “PUD Requirements”). (X §§ 300.1, 300.2, 300.5.)

(a) For the following reasons, the Project is superior to the development of the Property under the matter-of-right standards:

- Public Space. The Project contributes the Plaza, a significant public space in the Parkside neighborhood. The Plaza is a signature gateway into Parkside and is a privately-owned public space that would not have been constructed for a matter-of-right development on the Property;
- Retail and Office Uses. The Project adds office and retail uses in a transit-oriented location. These types of uses are rarely constructed anew in Ward 7 and would not be possible but for the Project proceeding under a PUD. These make the Project superior to a matter-of-right development;
- Other Public Benefits. The Project includes the other Public Benefits, none of which would be required or feasible under a matter-of-right development; and
- Community Engagement. A matter-of-right development would not have afforded the community as many opportunities to engage with the Applicant and provide feedback;

- (b) The Public Benefits are commendable in number and quality. The Project's public benefits are enumerated above and discussed in detail elsewhere. (See FF ¶¶ 64 and 123-134.) For the reasons set forth more fully in the Public Benefits findings, the Public Benefits are of a commendable quality. There are seven distinct categories of public benefits for the Project not including the Parkside Public Benefits, absolute numbers that the Commission finds to be commendable. Finally, the Commission finds that the Public Benefits are meaningful. The Public Benefits address the preferences, needs and concerns of community residents, were developed following the Applicant's robust community engagement process, supported by OP, and are not inconsistent with the Comprehensive Plan; (See FF ¶¶ 62, 135.)
- (c) The Project protects and advances the public health, safety, welfare, and convenience:
- Public Health. The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. (Ex. 2.) The Project includes a number of mitigation measures, notably the Construction Management Plan ("CMP") and bicycle facilities, which protect and affirmatively advance the public health. The Project also encourages walking and fitness, measures that advance public health. The Project does not entail any unwarranted overcrowding or overpopulation. The Project also complies with all applicable environmental performance standards;
 - Safety. The Project protects and advances safety: the Project has been designed in a manner that puts "eyes on the street" to promote public realm safety. The Project must also undergo future DDOT-supervised study to ensure the Project advances traffic safety measures for its access point along Kenilworth Avenue, N.E.;
 - Welfare. The Project protects and advances the public welfare by bringing much needed economic activity to Ward 7, which has long been overlooked for the purposes of locating new office tenants; and
 - Convenience. Finally, the Project protects and advances the public convenience by adding new neighborhood-serving retail uses. Such retail serves existing Parkside residents and has a strong transit-oriented component. The Project also facilitates the connection of the Bridge in the Parkside neighborhood, and the Bridge improves convenience in access to the Metrorail station;

- (d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project's lack of inconsistency with the Comprehensive Plan are provided below; (*See* FF ¶¶ 100-114.)
- (e) The Project does not circumvent the Zoning Purposes. The Project does not circumvent the Zoning Purposes. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the "public health, safety, morals, convenience, order, prosperity, and general welfare." (11-A § 101.1.) Findings regarding the Project's protection and advancement of the public health, safety, convenience, and welfare are provided above: (FF ¶ 93(c).)
- Morals. The Project promotes morals insofar as the Application was undertaken with extensive community outreach. (FF ¶ 62.) The Commission finds that this community dialogue exemplifies public morals as expressed through the Zoning Regulations and PUD process;
 - Order. The Project exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District with respect to the above-cited objectives. The Project complies with all of the specific development standards set forth in the Zoning Regulations, except where flexibility is hereby requested, which flexibility is minor in this instance and expressly contemplated as part of the PUD process. (X §§ 300.1, 303.1.) The Project allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks and location east of existing residences;
 - Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land that is currently vacant. (FF ¶ 93(c).) The Project also promotes public prosperity with respect to its future provision of tax revenue to the District and its addition of many new employees in Ward 7. It also introduces a new transit-oriented employment opportunity for District residents; and
- (f) The Project has undergone a comprehensive public review by this Commission, which has evaluated the Project's flexibility and incentives in proportion to the Public Benefits. The Commission has reviewed the entirety of the record. The record is complete with multiple detailed briefings from the Applicant and reports from multiple District agencies and the ANC. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, and the

ANC. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to OP, DDOT, and the ANC. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

94. The Commission finds that the Project satisfies the PUD Requirements.

IX. PUD Balancing and Evaluation Standards

PUD Balancing

95. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of § 304 of Subtitle X. The Applicant has the burden of proof to justify the granting of the Application according to such standards. (X § 304.2.)
96. The Commission's findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (DC 2014).) The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding. (Ex. 2, 10, 12, 18, 20, 26, 27, 30 (plus exhibits thereto).) This Commission, in its reasonable determination, accepts such filings as containing evidence adequate to support the findings contained herein.
97. Pursuant to X § 304.3, in deciding this PUD Application the Commission has, according to the specific circumstances of this Application, judged, balanced, and reconciled the relative value of: (a) the Public Benefits and other project amenities offered as part of the Project, (b) the Development Incentives requested by the Applicant (where, pursuant to X § 303.12, the requested Map Amendment is a type of PUD incentive), and (c) any potential adverse effects (collectively, the "PUD Balancing Test"):
- (a) The Public Benefits are numerous and of a high quality. In sum, the Project provides the numerous Public Benefits. A full accounting of the Public Benefits is provided below; (*See* FF ¶¶ 123-134.
- (b) The Project's Development Incentives are comparatively minor and appropriately granted in light of the Public Benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project. The Project's individual Development Incentives are described above; (*See* FF ¶¶ 85-92.) The most significant, by far, of the Development Incentives is the Map Amendment, which allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter-of-right. The Map Amendment was previously approved as part of the Parkside PUD and is not

inconsistent with the Comprehensive Plan. The Development Incentives underlie and indeed make possible the Public Benefits, and the Public Benefits (plus the Parkside Public Benefits) justify the additional height and density afforded by the Map Amendment, as the Commission determined in the Parkside PUD. The Parking Relief and Parking Flexibility are either minor or readily mitigated by the Project's extensive TDM program and proximity to transit;

- (c) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. The ANC lists potential adverse effects of the Project. (*See* FF ¶¶ 82.) The Applicant separately identified and studied potential adverse impacts of the Project. (*See* FF ¶¶ 115-122.) Such findings are incorporated herein. As this Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the Public Benefits; and
- (d) The Public Benefits together outweigh the Project's potential adverse effects and justify the Development Incentives. The Commission returns to a familiar point in its review of the record in this proceeding: the Project adds much needed commercial uses to Parkside and provides numerous Public Benefits. These items are the crux of the Project's trade-off for the reasonable additional density sought through the Application.

98. The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

PUD Evaluation Standards

99. As set forth in the immediately succeeding paragraphs, the Commission hereby also finds that the Project: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the "Plan") related to the Property; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property (collectively, the "PUD Evaluation Standards"). (*See* X § 304.3.)

The Project Is Not Inconsistent with the Plan

100. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly

influence social, economic and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in conservation, stabilization and improvement of each neighborhood and community in the District. (*See* DC Code § 1-306.01(b).) The Project advances these purposes by furthering social and economic development through the construction of new office and retail uses on currently vacant land, investing in a District neighborhood that seeks new investment, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property. The Project assists in the improvement and stabilization of the urban environment in the immediate neighborhood and the District as a whole.

101. OP Findings regarding the Comprehensive Plan. The OP Final Report finds that the Project is not inconsistent with the Comprehensive Plan. (*See* Ex. 11 at 9-14; 22A at 9-11. The Commission gives great weight to these OP findings and incorporates them herein.
102. As part of the Parkside PUD, the Commission found that the proposal for Parkside, including the proposal for the Property (with which the Project hereby complies) was consistent with the Plan and other adopted policies of the District. (*See* Z.C. Order No. 05-28, FF ¶¶ 35, 36, 38, 45, 46 and Conclusions of Law ¶ 8 (“Approval of the first-stage PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning in this case and finds that the proposed project is consistent with and fosters numerous themes and elements of the Comprehensive Plan.”).) Given the findings in the record, the clear conclusions of law in the Parkside PUD, and the consistency between the instant Project and the Parkside PUD, the Commission finds that the Project is not inconsistent with the Comprehensive Plan.
103. Future Land Use Map and Generalized Policy Map.
 - (a) The Future Land Use Map designates the Property as appropriate for High-Density Residential and Medium-Density Commercial uses. The mixed-use designation signifies that both commercial uses and residential uses are desired and the high-density designation confirms that a height greater than eight stories is appropriate. The significance of assigning the high-density designation to the residential uses simply indicates that residential density is preferred in this location, which is consistent with the overall Parkside plan. Providing office in this location is also consistent with the Property’s inclusion in the Central Employment Area (“CEA”). The CEA includes a variety of office users, including major government

offices and draws workers and visitors from across the region. The Future Land Use Map is to be interpreted broadly, and the Future Land Use Map is expressly not a zoning map. It is not inconsistent with the Future Land Use Map that the Property be used for commercial uses (which are expressly contemplated for this area) at the preferred densities in the context of this PUD and given the policy objectives of the Comprehensive Plan, as outlined below; and

- (b) The Comprehensive Plan's Generalized Policy Map designates the Property as Neighborhood Enhancement Area, which is to ensure that new development fits in and responds to the existing character, natural features, and existing/planned infrastructure capacity. As OP noted, the Project is not inconsistent with such designation. (Ex. 11 at 9.)

104. Land Use ("LU") Element. The Project is not inconsistent with the LU Element. The Comprehensive Plan devotes a great deal of attention to the importance of transit-oriented development and mixed-use development and protecting established single-family residential neighborhoods from inappropriate development. The Project is located a short walk to the Minnesota Avenue Metrorail station, which is less than one-half mile from the Property, and it is similarly close to the commercial center proposed along Kenilworth Terrace, N.E. As such, it fulfills the Plan's objective to locate infill development near the existing transportation infrastructure and provides the critical mass needed to support the commercial uses approved for the Project. Moreover, the Project presents a "buffer" between the currently-in-development medium-density residential and office buildings, the existing lower-density townhouse residential uses, and the higher intensity highway and rail corridor. The Plan also seeks to achieve "land use compatibility"—specifically, the enhancement and stabilization of the District's neighborhoods—by the protection of residential neighborhoods from non-residential and disruptive uses. The Property serves as an important transition between the pedestrian-oriented commercial nature of Kenilworth Terrace, N.E. and the more utilitarian vehicular transportation nature of Kenilworth Avenue, N.E.
105. Transportation Element. The Plan emphasizes creation of a multi-modal transportation system that links land use and transportation. The Plan encourages strengthening the linkage between land use and transportation as new development occurs, and the Project precisely strengthens such linkage. Block H fronts on the heart of the commercial center of Kenilworth Terrace and provides a crucial linkage from the nearby Metrorail station. The Project also creates the desired porosity for the Block H superblock. In addition, the Project transforms existing vacant lots into a contributing part of the Parkside community. Further, the Applicant, along with the District, is funding construction of the Bridge in order to facilitate access between the site and the Metro station. In all, the Project facilitates and encourages the use of Metro and is the first phase of Parkside to

add jobs, in addition to housing, near transit. Accordingly, the Project is not inconsistent with the Transportation Element.

106. Housing Element. The Plan's overarching goal for housing in the District is to increase the supply of safe and affordable housing. The Project advances that objective by contributing to the emergence of a stable neighborhood and supporting the creation of housing in ongoing and future phases of the Parkside PUD. The Parkside PUD is a private sector-led redevelopment effort that produces new housing, and particularly workforce housing on a vacant site in an historically underinvested portion of the District. The Project incorporates a mix of commercial uses, including neighborhood-serving retail that supports the affordable and family-sized townhouse units proposed elsewhere in Parkside. Perhaps most significantly, the Project is a crucial part of a comprehensive vision that matches social, housing, healthcare, education, and other programs with real estate development to establish and nurture a fully-functioning neighborhood.
107. Environmental Protection Element. The Project is not inconsistent with this Element as a whole. The Plan's overarching goal for environmental protection is to protect and enhance the manmade and natural environment through environmentally-conscious steps. The Project's landscape plan helps beautify Parkside, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity, thereby advancing these policies. There is an extensive landscape plan providing for trees, sustainable construction, and comprehensive and creative stormwater treatment on the Property. The Project proposes elements to improve water quality through design features to treat runoff from the Property. The Project seeks to be constructed to a level to achieve LEED-Gold for new construction core and shell. Finally, the overall PUD has been selected as a LEED-ND Pilot project (i.e., a demonstration project).
108. Economic Development Element. The overarching goal for economic development in the District is to strengthen the District economy and help District residents find and keep jobs. The Project serves a federal government tenant, an expressly identified core industry in the District. The Project seeks to retain a federal employer in DC and retain the property taxes generated by a privately owned building leased to a government tenant. The Project also introduces retail and job opportunities to an area where such opportunities have traditionally been limited. Moreover, the Project's economic opportunities are all transit-accessible, which is an important feature for retail jobs where employee parking is often limited. This Project is a unique opportunity, and the Parkside PUD is perhaps the only opportunity, to attract the first GSA tenant to Ward 7, the only Ward in the District without a federal tenant or installation. The unique economic justifications for the Project, coupled with the unfortunate history of Ward 7 frequently being overlooked for federal investment warrant the Applicant's extraordinary efforts to land a federal tenant for Parkside. When viewed in the totality of the Comprehensive Plan's numerous objectives, many of which are

internally contradictory, the Commission should find that the Project as a whole is not inconsistent with the Comprehensive Plan.

109. Parks, Recreation, and Open Space Element. The Project is not inconsistent with the Parks, Recreation and Open Space policies in the Plan. The Comprehensive Plan specifically recognizes the value of functional open space. The Parkside PUD contemplated the Community Green, a one-acre park, which was approved by the Commission in Z.C. Case Nos. 05-28A and 05-28F. The Community Green has been constructed and has been well received by the community. The Community Green serves as an amenity for residents and neighbors and create an attractive resting point that District residents can appreciate while they take an evening stroll, walk the dog, or simply read a book outside. The Project enhances that amenity by introducing ground-level activities, well-designed adjacent sidewalks and street uses, and by introducing new residents and officer workers to use and monitor the Community Green. The Project's Plaza also strengthens a key linkage between the Community Green and the nearby Metrorail Station by filling in one of the blocks between such centers of gravity and creating a gateway into Parkside that prioritizes pedestrians.
110. Urban Design ("UD") Element. The Project is not inconsistent with the UD Element. The UD Element seeks to ensure, conserve and strengthen existing neighborhoods' visual character. The development exemplifies superior urban design and is consistent with numerous District policies in that regard. The UD Element also seeks to, among other goals, strengthen civic identity through a renewed focus on public spaces and boulevards; designing for successful neighborhoods and large site reintegration; improving the public realm, particularly street and sidewalk space; and promoting design excellence throughout the District. The Project reflects the beneficial architectural qualities of the surrounding residential neighborhoods. This specific Project includes an appropriate use, density, and height, and the Parkside PUD overall allows for sufficient private and public open space for the residents. The Project provides an important connection between previously approved second-stage applications, providing the unity and cohesion of plan that Parkside needs.
111. Educational Facilities Element. The Comprehensive Plan encourages the development of educational facilities throughout the District in a manner that is compatible with adjacent residential uses. Accordingly, the Project supports this objective by providing a critical infusion of commercial and additional residential uses at a key location in the Parkside neighborhood. Ultimately, the Project helps the educational facilities in existence in and planned for the Parkside neighborhood continue to thrive.
112. Far Northeast and Southeast Area Element. The Property is located in the Far Northeast and Southeast Area of the Comprehensive Plan. It is not located within the boundaries of any Policy Focus Area of that Area Element. The Property is

located in the Far Northeast and Southeast Area Element. The current condition of the Parkside neighborhood, with over nine vacant acres of land, discourages an active connection between the Anacostia waterfront and the Ward 7 community. The development of the Parkside PUD creates a more inviting, accessible and active connection to the Anacostia waterfront. The new Bridge and the urban design of the Project encourages the Ward 7 community to use the waterfront and its new and existing amenities. The Bridge also makes the waterfront accessible to visitors to the area who come from other parts of the District or the Maryland and Virginia suburbs. The increased activity engendered by these first phases of development creates a friendlier, more inviting atmosphere for residents wanting to access the waterfront. The strong visual corridors and pedestrian pathways of the site design encourage use of the waterfront. The Parkside PUD also reflects the District's plan for concentrating a mix of uses at the Minnesota Avenue Metrorail Station. The addition of a significant office and retail building supports the concept of Parkside as a true mixed-use development. The heights and density proposed for development are also appropriate for the PUD's proximity to public transit and its role in transitioning between uses and creating a buffer from the adjacent highway. Finally, the Project's design creates an appropriate transition between the greater heights along Kenilworth Avenue to the lesser heights as the development stretches toward the Anacostia River.

113. Taken as a whole, the Project is not inconsistent with the District or Area Elements of the Plan or with the objectives of other adopted public policies applicable to the Property. There are individual objectives in these site-specific plans that the Project either does not address or does not substantially advance. Planning policy documents by their very nature are comprehensive and occasionally internally contradictory. However, the Project is not inconsistent with the broad public planning objectives for Ward 7 and Parkside specifically.
114. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by the ANC or any other party or person. Therefore, for the reasons set forth more fully above the Commission finds that the Application, including the Map Amendment, is not inconsistent with the Plan.

Project Impacts

115. For the following reasons, the Commission finds that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of Public Benefits.

116. Zoning and Land Use.

- (a) The approved Map Amendment for the property's zoning to the CR Zone District is consistent with the Transit-Oriented Development ("TOD") categories on the Generalized Land Use Map of the Comprehensive Plan and is compatible with the CR and C-2-B zoning approved for adjacent blocks pursuant to the Parkside PUD. The CR designation for the Property is consistent with its development as a mixed-use, TOD node for the Parkside neighborhood; and
- (b) From a land use perspective, the Project creates no unacceptable impacts on surrounding neighborhoods. Any impacts from the Project's proposed land use are either favorable, capable of being mitigated, or acceptable given the quality of the significant Public Benefits. The Project's large floorplate office use is appropriate given the proposed surrounding residential, office, and retail uses, the proximity to transit and highway access, the ongoing development efforts in the neighborhood, and the extensive planning and community support for the Parkside PUD. The Project's proposed ground floor, neighborhood-serving retail use is also appropriate given the ongoing development context, and the Project's introduction of additional retail helps attract and retain a critical mass of commercial uses in the Parkside neighborhood. This effect is a favorable land use impact of the Project. The Project's height and mass are appropriate given the buffer effect it provides from the noise and light impacts of the Anacostia Freeway and the Metrorail station and given the step down to the less intense residential uses to the northwest. The contribution of new office anchor tenant to Ward 7 has the promise of providing the economic investment and job opportunities that have long eluded the area and that advance the economic development objectives of the Parkside PUD development goals. Moreover, the Project's conversion of vacant lots to productive and active uses, and the creation of a thoughtfully designed public pedestrian space also has positive impacts. The Project does not displace any existing businesses or residents. To the extent there are any ancillary unfavorable land use impacts arising out of the Project, such impacts are either mitigated by the Project's design or offset by the quality of the Public Benefits associated with this Project and the Parkside PUD, which as a whole outweigh any negative effect.

117. Construction-Period Impacts on Neighbors. During the development period for the Project, the Project's impacts on neighbors are capable of being mitigated. There are currently no existing residential units on the Property or on any immediately adjacent blocks, and the adjacent blocks are expected to also be under construction as this Project is developed. The availability of open adjacent lots for staging and parking allows the Applicant to readily mitigate any

construction-period impacts. In addition, the Project is subject to the CMP during construction.

118. Open Space, Urban Design and Massing Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the proposed buildings, proposed and existing open spaces, and the urban design of the Project. The existing conditions include vacant blocks that do little to contribute to the nearby Community Green or adjacent residential uses. The Project is effectively the front door of the Parkside neighborhood from the adjacent highway and Metrorail station, and sends a positive urban design signal of investment in the neighborhood. The Project is one half of the future frame of the entrance from the Bridge into the neighborhood and Community Green from the nearby Metrorail station and increases connectivity to the neighborhoods to the east including the Minnesota Ave., N.E. commercial corridor. In addition, the Project has significant buffering benefits for the residential uses at the interior of the Parkside neighborhood. The Project's height and mass shelter those interior residential uses from the noise, light, and commotion of the adjacent highway and rail corridors. Finally, the Project has favorable impacts at the street level on Kenilworth Terrace, N.E. generally by providing ground-level uses and new office users to activate the public realm and additional retail space to create a critical mass of neighborhood-serving retail.
119. Design and Aesthetic Impacts. The Project's design and architecture have a favorable outcome, no unacceptable impacts, and are likely to become a point of resident and community pride. The Project incorporates high-quality architecture and exemplary design. The new building is emblematic of new investment without appearing overly contemporary or out-of-place. Instead, the Project continues the contemporary architectural vocabulary that is emerging in Parkside and that establishes a high baseline of quality of design and finishes expected for future projects in the vicinity. The Project's landscaping and public realm detailing is exemplary and has a favorable impact on surrounding areas. The public spaces around the Project, including the Plaza and Ramp, further contribute to the sense of place in the Parkside neighborhood with the Plaza serving as a link between the Bridge and the Community Green and the Anacostia River open spaces beyond. The addition of ground-floor retail uses also continues to animate the pedestrian realm. The Project's overall design and its details strongly reinforce and strengthen the character of the surrounding residential areas and are favorable for the neighborhood.
120. Transportation and Mobility Impacts. The Project does not have an adverse impact on the public transportation facilities or roadways that it relies on for service. The Project's vehicular traffic impacts are strongly mitigated by nearby transit options, and the Project achieves the right balance of mobility. The Property is well-served by transit and vehicular infrastructure, and the Project's significant reduction in parking (relative to the proposed amount of parking in the

Parkside PUD) does not introduce adverse impacts on either system as described below:

- (a) Transit. The Minnesota Avenue Metrorail station is effectively just a couple hundred feet from the Property, as the Applicant anticipates that the new Bridge will be complete by the time the Project is delivered. The Minnesota Avenue station is underutilized relative to other stations in the WMATA system. Numerous Metrobus lines also service the Property, including a Priority Corridor Network route, and it is expected that many of the Project's occupants will use public transit. The Project's favorable transit access helps mitigate any expected traffic concerns;
- (b) Parking. The Project also contains approximately 111 enclosed at-grade parking spaces (with the possibility to add more depending on the ultimate office tenant) to accommodate parking demand of office users and to avoid spillover into the surrounding neighborhood. Bicycle storage is also coherently integrated into the design of the Project, with long-term spaces in dedicated storage rooms and the required short-term spaces provided as required at ground level. The Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. The Project provides sufficient new off-street parking to serve new building occupants, but not so much parking as to induce unnecessary driving. No open surface parking lots are proposed as part of the Project;
- (c) Curb Cuts. The Project does entail creating two new curb cuts, one each along Kenilworth Terrace, N.E. and Kenilworth Avenue, N.E. to accommodate the Project's parking and loading, respectively. However, given the superblock nature of the existing Block H (which is currently the length of four blocks), such curb cuts are a functional and urban design necessity and ultimately serve to break up the overall massing of Block H and allow modest traffic porosity. All proposed vehicular maneuvers work even if there is no curb cut for the Project on Kenilworth Avenue, N.E. which curb cut will be determined during the public space process. The Project's physical form—loading and garage access from alleys, new construction facing the street, minimal new curb cuts, a tree-lined streetscape—mitigates traffic impacts by promoting and encouraging active mobility over driving;
- (d) Pedestrian Realm. The landscaping and streetscaping improvements proposed as part of Parcel 12 allow the Project to prioritize pedestrian access along each of the surrounding streets and to create a permeable connection through the Property between the Bridge and adjacent blocks. The Project's ground-floor design, site plan, building layout, and the Plaza

and Ramp all prioritize pedestrian access to and interaction with the Project; and

- (e) TDM. The Project includes a robust TDM plan to mitigate any transportation impacts. To the extent the Project creates transportation or mobility impacts on the neighborhood or District more generally, they are either capable of being mitigated through the TDM or acceptable given the quality of the Public Benefits.

121. Project Impacts on City Services and Project Environmental Impacts. The Project does not have any adverse impacts on the public facilities or District services that it relies on for service. Likewise, the Project does not have adverse environmental impacts as described below:

- (a) Water Demand. The proposed project contains approximately 503,019 sf of new GFA. The average daily water demand for this project can be met by the existing District water system. The Project's connection for fire and domestic water supply are made within the existing distribution system and will be coordinated with DC Water. The Project has an individual water meter;
- (b) Sanitary Sewer Demand. The sanitary sewer connections for the Project are within the existing distribution system and will be coordinated with DC Water. The infrastructure for the Parkside neighborhood has largely already been constructed;
- (c) Stormwater Management. The Project has been designed to achieve high levels of on-site stormwater retention. The proposed bio-retention basin planters, green roofs, and permeable pavement are designed to exceed DOEE stormwater management retention and detention requirements. The requisite inlets and closed pipe system comply with the standards set by DOEE, DC Water, and DDOT;
- (d) Solid Waste Services. Solid waste and recycling materials generated by the Project are to be collected regularly by a private trash collection contractor;
- (e) Electrical Services. Electricity for the new building is provided by Pepco in accordance with its usual terms and conditions of service. All electrical systems are designed to comply with the D.C. Energy Code. Transformers will be installed on the Property in accordance with Pepco's design guidelines;
- (f) Energy Conservation. The Project is designed in full compliance with Article 24 (Energy Conservation) of the District of Columbia Building Code. Conformance to code standards minimize the amounts of energy

needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building;

- (g) Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District of Columbia law; and
 - (h) Public Schools. The Project does not have any unacceptable impact on schools in the District because it contains no residential uses.
122. Other Impacts. The findings related to issues raised by the ANC includes additional discussion on the Project's impacts and the Commission's balancing thereof. In sum, the Project's impacts are either capable of being mitigated or not unacceptable in light of the Public Benefits.

Public Benefits

123. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (X § 305.1.)
124. The Project achieves the goals of the PUD process by creating a high-quality mixed-use commercial development with significant related Public Benefits. The Commission finds that the Project includes the following Public Benefits, which are not inconsistent with the Plan as a whole with respect to the Property.
125. Subtitle X § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the Public Benefits are addressed in the following paragraphs. In general, the Public Benefits relate to the area of the ANC.
126. Superior Urban Design, Architecture, and Landscaping. The Project's urban design and landscaping are superior public benefits. (X §§ 305.5(a), (b).) The Project incorporates numerous design precepts that guide superior urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of Block H. For instance, the Project prominently fronts on adjacent streets giving the new buildings visual heft and create an urban condition that is hospitable for pedestrians. The Project also appropriately buffers the adjacent residential and office buildings from the noise, light, and commotion of the highway. The Project includes the new pedestrian Plaza that provides direct access to the Metro and serves as a new entrance to the Parkside community. The Project similarly includes elements of superior architectural and landscape design. For example, the Project presents a thoughtful ground-floor streetscape. The Project utilizes high-quality façade materials and finishes. With respect to landscaping, the Project employs a palette of vegetation and fixtures that is

simultaneously appropriate for the neighborhood and representative of the Project's place-making objectives. The Project's architecture and landscaping were revised as part of the public process leading to the approval of the Project. These benefits accrue primarily to the area surrounding the Project and within Parkside, and are therefore within the boundaries of the ANC.

127. Site Planning, and Efficient and Economical Land Utilization. The proposed site plan is another superior benefit of the Project. (X § 305.5(c).) The benefits of the Project's site plan and efficient land utilization are captured in the Project's overall density, introduction of commercial uses, and provision of public spaces. The Project's greater heights and density near transit nodes exemplify economical land utilization. The Project is truly a smart-growth project that creates "two-way" demand (i.e., arrivals and departures at peak times) for the adjacent transit facilities. The proposed development serves as a transition from the commercial uses along Kenilworth Avenue, N.E. and the residential uses at the interior of the Parkside PUD and its design, massing, and height help establish this transition. The Project also improves land that has been vacant for decades, and its development makes it a significant housing contribution for existing and future residents of the community. At an FAR of greater than 7.0, the proposed density is appropriate for the Property given the immediate proximity to transit options to the east and the medium-density uses immediately to the west of the Property. The Project is designed to benefit from proximity to the Community Green and the Bridge as well as the nearby protected areas, such as the Anacostia River. Perhaps most importantly, the Project leverages the major transportation options serving the Property, including the Minnesota Avenue Metrorail Station and the Anacostia Freeway. The site plan is designed to infill and continue the urban build-out of the Parkside neighborhood. It connects the existing Parkside Townhouses with the fabric of the city and establishes a true mixed-use and transit-oriented development in the heart of Ward 7. These placemaking benefits accrue primarily to the area surrounding the Project and within Parkside, and are therefore within the boundaries of the ANC.
128. Employment Benefits. The Applicant has committed to providing employment benefits at the request of the ANC, and such commitments constitute public benefits under the Zoning Regulations. (X § 305.5(h).) The development provides a commercial development to bring full time workers and retail options to Parkside. Continuing the trend of reversing years of disinvestment in Ward 7, the Project is a potential economic boon for the surrounding area and contributes to the successful creation of a retail market.
129. Transportation Infrastructure and Mass Transit Improvements. The Project includes transportation and mass transit infrastructure benefits in the form of a dedicated public easement for pedestrian activity and a significant financial contribution to the Bridge to the Metrorail station. (X § 305.5(o).) As noted above, a central organizing element of the Block H design is the construction of

the Plaza through the center of the block. This Plaza is reserved as public space pursuant to the Parkside PUD and therefore qualifies as a public benefit. As part of the Parkside PUD application, the Applicant also agreed to contribute to the construction of the Bridge. The Applicant has committed 25% of the cost of the Bridge, not to exceed \$3 million, to ensure that the Bridge is constructed to improve access to this site. The Applicant and DDOT have entered into an agreement, secured by the \$3 million that the Applicant has already posted, fulfilling this obligation. The groundbreaking for the Bridge is anticipated to occur in 2017 or 2018. The Applicant understands that District funds have been committed in order for construction to begin, but DDOT ultimately controls the construction process and timeline. These benefits accrue primarily to the Parkside neighborhood, and are therefore within the boundaries of the ANC.

130. Environmental and Sustainable Benefits. The Project includes innovative sustainable design elements and achieves appropriate levels of environmental certification. (X § 305.5(k).) The overall Parkside PUD has been designed and certified as LEED-ND-Gold, and the Project is designed to satisfy LEED-Gold for new construction core and shell, which per se satisfies the requirements of § 305.5(k)(6). These benefits accrue primarily to the area surrounding the Project and within Parkside, and are therefore within the boundaries of the ANC.
131. Uses of Special Value to the Neighborhood or the District of Columbia as a Whole. As part of the public process leading to the Parkside PUD, the Applicant worked with residents, community members, the ANCs, and OP to identify additional public benefits of special significance to residents and neighbors. (X § 303.5(q).) The Project also serves as an important transition between commercial uses and lower density residential uses throughout Parkside. The proposed development enhances a site that has been vacant for several years and connects the existing Parkside Townhouses, senior housing, Community Green and all completed Parkside PUD developments to the greater community. As part of the package of benefits under the Parkside PUD, the Applicant will work with the ANC and surrounding community to provide an indoor community room in the Parkside neighborhood. These benefits accrue primarily to the Parkside neighborhood, and are therefore within the boundaries of the ANC.
132. Other Public Benefits Which Substantially Advance the Comprehensive Plan. The proposed second-stage PUD, Map Amendment, and modifications to the Parkside PUD are consistent with, and further, many of the District's policy goals and objectives.
133. Streetscape Improvements. Provision of streetscape improvements is a public benefit. (*Id.* § 305.5(l).) The Project includes new sidewalks and tree planting zones within the Kenilworth Terrace, N.E. and Kenilworth Ave., N.E. right-of-ways. The Project's setback from Kenilworth Ave., N.E. is not required by the Zoning Regulations, a building restriction line, or any other regulations; it is

provided solely as a benefit of the Project. This Public Benefit accrues primarily to the area immediately surrounding the Property and therefore falls within the boundaries of the ANC.

134. Housing and Affordable Housing. The Parkside PUD features an extensive housing and affordable housing benefit, and this Project is a vital component of making that overall benefit feasible. (X § 305.3(f), (g).) Although this specific phase of the overall Parkside PUD does not include any housing or affordable housing, it is a significant contribution to making the existing affordable housing successful by providing jobs and contributing retail opportunities that make Parkside's housing part of a complete mixed-use community.

Consistency of the Public Benefits with the Plan

135. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project.
136. Accordingly, the Project satisfies the PUD Evaluation Standards.

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. (X § 307.1; Z §§ 205, 300, 400-408, 600-606, 700-707.) This Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4. (X § 300.3.) This Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements, and (ii) the Applicant, OZ, OP, and this Commission have satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations. (FF ¶¶ 1-28.)
2. The minimum area included within a proposed PUD must be no less than 15,000 sf and all such area must be contiguous. X § 301. The Application satisfies these minimum area and contiguity requirements. (FF ¶ 1.)
3. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act").

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards enumerated above. (X §§ 304.2, 500.2.) The Commission's findings in relation to a PUD must be supported by substantial evidence.

(See *Howell v. District of Columbia Zoning Comm'n.*, 97 A.3d 579 (DC 2014).) Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support” the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm'n.*, 73 A.3d 107, 125 (DC 2013).) The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. (FF ¶¶ 29-64, 68, 71, 73.) Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards.

Consistency with the PUD Process, Zoning Regulations, and Plan

5. Pursuant to the Zoning Regulations, the purpose of the PUD process is “to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.” (X § 300.1.) The Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. (See FF ¶ 95(a).) The Commission has found that the Public Benefits are meaningful and are commendable both in number and quality. (FF ¶ 95(b).) Finally, this Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan. (*Id.* ¶¶ 95 (c),102-116.)
6. The PUD process is intended to “provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.” (X § 300.2.) This Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. (FF ¶ 95(e).) The Project is not inconsistent with the Comprehensive Plan. (*Id.* ¶¶ 102-116.) Therefore, this Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

Evaluation Standards

7. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Plan. (X §§ 500.1, 500.3.) The Commission made extensive findings in the Parkside PUD that the Map Amendment is not inconsistent with the Plan. (FF ¶ 89.) This conclusion is entirely consistent with the Commission’s conclusion in the previously-approved Parkside PUD. Accordingly, the Map Amendment has previously satisfied the relevant standard for approval.

8. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). (X §§ 303.1, 303.11.) The Applicant seeks the Parking Relief pursuant to the Commission's discretion to grant relief from any development standards of the Zoning Regulations. (FF ¶¶ 90-91.) The Commission has found that such item of relief does not impair the Zoning Purposes and is not inconsistent with the Comprehensive Plan. (*Id.*) The Commission concludes it may exercise its discretion to grant such Development Incentives subject to the Conditions (as such term is hereinafter defined) hereof.
9. The Zoning Regulations define public benefits as "superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title." (X § 305.2.) Such public benefits must satisfy the following criteria ("Public Benefit Criteria"): (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4.) Based on this Commission's findings regarding the Public Benefits as well as the Conditions of this Order, this Commission concludes that the Public Benefits benefit the surrounding neighborhood or the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria. (FF ¶¶ 125-37.)
10. The PUD provisions require the Commission to evaluate whether the Application: "(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site." (*Id.* § 304.4.) The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfies the PUD Evaluation Standards. (*See* FF ¶¶ 101-137.) In particular, the Commission concludes the Project is not inconsistent with the Plan as a whole, accepts the entirety of the Applicant's impact analysis contained in the record and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes the Public Benefits, which are also not inconsistent with the Plan. (*See* FF ¶¶ 125-137.)
11. This Commission must undertake a "comprehensive public review" of the PUD application "in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits." (X § 300.5.) In deciding on the Application, this

Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” (X § 304.3.) The Map Amendment is a development incentive against which the Commission previously weighed the benefits of the Parkside PUD as described below: (See Z.C. Order No. 05-28.)

- (a) This Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. (FF ¶¶ 1-28.) This Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and Development Incentives requested and potential adverse effects against the proposed Public Benefits (and with respect to the Map Amendment only, the Parkside Public Benefits in addition to the Project’s Public Benefits), in light of the circumstances of the case;
- (b) The Commission’s review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the concerns and statements about the Project raised by the ANC and District agencies. (See FF ¶¶ 82-85.) The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANC. (See FF ¶¶ 70-85.) There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items; and
- (c) The Project warrants the Development Incentives (including the Map Amendment) and flexibility in light of the Project’s extensive and comprehensive Public Benefits and Parkside Public Benefits with respect to the Map Amendment only. The Development Incentives directly support the Project’s provision of Public Benefits. (FF ¶ 99(b).) The Public Benefit-supporting nature of the Development Incentives affords the Public Benefits ample cushion to offset any potential adverse effects. (FF ¶ 99(c).) The Project has largely been designed to avoid such effects. However, to the extent such effects exist as a result of the Project—for instance with respect to traffic—the magnitude of the Public Benefits and the Applicant’s mitigation efforts provide sufficient justification for the Project notwithstanding such effects. (*Id.*) Moreover, the Public Benefits generally accrue most significantly to the area immediately surrounding the Project. (FF ¶ 127.) Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it. The Commission concludes that the Project’s Development Incentives are warranted in light of the Public Benefits and, with respect to the Map Amendment only, the Parkside Public Benefits, when considering the specific nature of the area surrounding the Project and the Project’s overall consistency with the Comprehensive Plan.

12. Accordingly, the Project's Public Benefits and Parkside Public Benefits justify the Development Incentives requested even in light of the background concerns of the ANC regarding the potential adverse effects of the Project. The Application satisfies the PUD Requirements.
13. The Commission must grant approval to any second-stage PUD application that it finds in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, provided such approval may be subject to conditions. (X § 309.2.) The Commission has found that the Application is in accordance with the Zoning Purposes, the PUD process, and the Parkside PUD. (FF ¶¶ 60-63; 97-137.) Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order.
14. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. While ANC 7D's first report listed four areas of concern, it further stated that it was engaged in an ongoing discussion with the Applicant in an effort to resolve them. ANC 7D's second report stated that it had "reached agreement" on the areas of concern and that its support was without condition. The Commission understands this to mean that the ANC no longer had issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Zoning Commission to give great weight to. (*See* *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
15. The Commission is also required to give great weight to the recommendations of OP under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code 6§-623.04). This Commission has reviewed the OP Setdown Report and OP Final Report and heard testimony from OP and finds that OP supports the Application. The Commission gives OP's recommendation to approve the Application great weight, and concurs with OP's conclusions.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for review and approval of the consolidated PUD and the related Map Amendment to the CR Zone District for the Property that are the subject of the Application. The approval of this PUD is subject to the following guidelines, conditions and standards ("Conditions").

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as (Exhibits 32A1-32A4 ("Final Plans"), as modified by the guidelines, conditions, and standards herein.

2. The Project shall consist of approximately 503,019 sf of GFA, approximately 111 vehicular parking spaces in an enclosed garage (subject to the Parking Flexibility), and the provision of certain exterior and streetscape improvements, all as shown on the Final Plans and as further described herein. The Project shall comply with the height, yard, setback, and other dimensional requirements set forth in the Final Plans. The Project shall include an overall FAR of approximately 7.21, a maximum height of 110 feet, and a maximum lot occupancy of 88%.
3. The Project shall have flexibility from the gross floor area, lot occupancy and parking requirements set forth in Z.C. Order No. 05-28 (as amended), as noted in the Findings of Fact. The Project shall also be subject to the Parking Relief and Parking Flexibility.
4. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - (a) To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - (b) To provide a range in the amount of retail gross floor area and number of parking spaces plus or minus 10% of the number depicted in the Plans, provided that such variations do not change the exterior configuration or appearance of the building;
 - (c) To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, such that the refinements do not substantially change the external configuration or appearance of the building; and
 - (d) To coordinate with DDOT to finalize the streetscape design and materials during the public space process.

B. PUBLIC BENEFITS

1. **Prior to issuance of a building permit**, the Applicant shall:
 - (a) Deliver the CMP to the ANC, which CMP shall include terms substantially similar to those proposed in Tab A of Exhibit 24A;

- (b) Direct the Project's contractors and subcontractors to use reasonable good faith efforts to select new hires from among qualified persons with a goal of at least 51% of all new hires being residents of Ward 7. The Applicant shall provide to the ANC on a quarterly basis for the duration of construction of the Project an employment report documenting the number of Ward 7 residents hired for the Project. The employment reports to the ANC shall provide a summary of: (i) the approximate number of employees working on the Project in total; (ii) the number of new hires working on the Project; and (iii) the number of the new hires that are Ward 7 residents, provided the specific contents of such reports may be modified by mutual agreement of the Applicant and the ANC;
- (c) In coordination with the ANC, identify a local representative, group, organization and/or coordinator to facilitate job training for future jobs related to the Project, and to help administer solicitations from Parkside to the Ward 7 community for available jobs. All solicitations shall include details regarding the specifications, requirements and/or skillset desired for the available jobs;
- (d) Advertise jobs and contracting opportunities with the following: (i) the Project's contractor's website, (ii) the ANC's website, (iii) community message boards, (iv) project signage, and (v) referral partners, as applicable, and in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities; and
- (e) Host a job fair in coordination and in partnership with the ANC, Ward 7 Business Partnership, DC DOES and DC DSLBD, to identify (i) qualified candidates for construction job openings and (ii) Ward 7-based subcontractors.

2. **Prior to the issuance of the office certificate of occupancy, the Applicant shall:**

- (a) Provide the Zoning Administrator evidence that it has provided the ANC with a written quarterly update on the number of Ward 7 residents hired for positions within the Project;
- (b) Provide evidence to the Zoning Administrator that it has used, or directed the managers of its office and retail space to use, reasonable good faith efforts to select permanent new hires from among qualified residents of Ward 7. These positions may include, but are not limited to, marketing positions, facilities management positions, or landscaping positions. The Applicant shall advertise these job opportunities on its website and through referral partners, as applicable, in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities; and

3. Prior to the issuance of a certificate of occupancy, the Applicant shall submit evidence to the Zoning Administrator, in the form of a document certified by a LEED Accredited Professional that shows that the Project will comply with LEED requirements at the LEED-Gold level; however, actual LEED certification shall not be required.

C. Transportation Mitigation

1. Transportation Demand Management. For the life of the Project (except as expressly set forth below), the Applicant shall abide by the terms of the TDM plan:
 - (a) The Applicant shall designate a TDM coordinator, who shall:
 - i. be responsible for organizing and marketing the TDM plan;
 - ii. act as a point of contact with DDOT; and
 - iii. implement a carpooling system such that employees who wish to carpool can easily locate other employees who live nearby;
 - (b) All parking on site shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the Property. The cost of parking shall be unbundled from the cost of the office leases for non-government tenants;
 - (c) The Applicant shall install a Transportation Information Center Display (electronic screen) within the building lobby containing information related to local transportation alternatives;
 - (d) The Applicant shall meet or exceed the requirements of the 2016 Zoning Regulations to provide bicycle parking facilities at the proposed development, which facilities shall include secure parking located on-site and short-term bicycle parking around the perimeter of the site;
 - (e) The Applicant shall dedicate two parking spaces within the garage for car-sharing services to use with right of first refusal, provided the Project's tenant's security measures allow for car-sharing spaces to be located in the garage;
 - (f) The Applicant shall provide showers and corresponding changing facilities for the occupants of the office portion of the Project;
 - (g) The Applicant shall provide a bicycle repair station(s) to be located within the bicycle storage room(s);

- (h) The Applicant shall provide TDM materials to new employees to inform them on alternatives to driving;
 - (i) The Applicant shall offer non-auto incentives (e.g., a one-year membership to Capital Bikeshare or SmarTrip) to all new employees up to a cap of \$120,000.00 in the aggregate;
 - (j) The Applicant shall install two electric vehicle stations in the parking garage; and
 - (k) Provided the Project includes the second level of parking, which second level shall be below-grade, the Applicant shall:
 - i. Fund and install an expansion of eight docks at the proposed 19-dock Capital Bikeshare station on Parcel 9 of the Parkside PUD; and
 - ii. Install an additional three electric vehicle stations in the parking garage (for a total of five).
2. Transportation Mitigation. Prior to the issuance of a building permit for the Project⁶, the Applicant shall fund and install the hardware necessary to implement the proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs, N.E., subject to DDOT approval, with a maximum cost to the Applicant of \$25,000.00, if not already completed at the time such building permit is issued.

D. MISCELLANEOUS

1. The Zoning Regulations Division of DCRA shall not issue any building permits for the PUD until the Applicant has recorded a Covenant (“PUD Covenant”) in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The change of zoning to the CR Zone District shall be effective upon the recordation of the PUD Covenant.
3. The PUD shall remain valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.

⁶ This same requirement was stated in Condition B.2.g of Z.C. Order 05-28P. It is the Commission’s intent that this funding requirement is to be satisfied prior to whichever project’s certificate of occupancy is issued first.

4. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 24, 2017, upon the motion of Commissioner Shapiro, as seconded by Commissioner May, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 23, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

Government of the District of Columbia
Public Employee Relations Board

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In the Matter of:)	
)	
Candi Peterson)	
)	PERB Case No. 16-S-03
	Complainant)	
)	Opinion No. 1649
	v.)	
)	
Elizabeth A. Davis, president, and Washington)	
Teachers' Union, Local 6, AFL-CIO)	
)	
	Respondents.)	
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DECISION AND ORDER

I. Statement of the Case

On December 15, 2015, the complainant Candi Peterson, (“Peterson”) filed a standards of conduct complaint (“Complaint”) against respondents Elizabeth A. Davis, president, and the Washington Teachers’ Union, Local 6, AFL-CIO (“Respondents”). On December 22, 2015, in response to a deficiency letter from the Executive Director, Peterson refiled the Complaint with revisions to its caption and format.

The Complaint alleges three counts of standards of conduct violations.

Count One: Respondent Davis, as soon as she assumed the office of president of the Washington Teachers’ Union, Local 6 (“Union”), marginalized Peterson in the affairs of the Union upon Peterson’s election as the Union’s general vice president “through a *de facto* suspension of her . . . duties and responsibilities to silence her voice of dissent without a Due Process hearing, thereby denying Petitioner Peterson to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings as provided and required by the Standards of Conduct.”¹ The Complaint alleges that Davis did this by assigning the supervisory duties of a general vice president to others in the Union’s staff.

Count Two: Davis deprived Peterson of her duty under the Union’s by-laws to convene the election committee for periodic elections by assigning those duties to others.²

¹ Complaint pp. 6, 12.

² Complaint pp. 9, 13.

Decision and Order
PERB Case Nos. 16-S-03
Page 2

Count Three: Davis paid her executive assistant, Pauline Baker, more than the \$70,000 approved by the Union's executive board. The Complaint states that "it is likely" that difference was paid unlawfully out of the account of the Voluntary Employee Beneficiary Association ("VEBA") or an operating account of the Union.³

The Respondents filed a pleading styled "Answer, Affirmative Defenses, and Motion to Dismiss." Respondents admitted that Davis assigned duties but denied that the assignments effected a suspension of Peterson or deprived her of her duties with respect to the election committee. The Respondents denied that Davis paid Baker more than was authorized and denied the Complaint's allegations regarding the source of the alleged excess payment.⁴

As affirmative defenses, the Respondents asserted that the Complaint is untimely, fails to state a claim, fails to comply with Rule 544.3(c)'s requirement that complainants specify the date of alleged violations, and joins an improper respondent. The Respondents further asserted that Peterson lacks standing to bring her claim because she was not harmed.⁵ In accordance with their affirmative defenses, the Respondents moved to dismiss the Complaint on the grounds that it is untimely or alternatively fails to identify the date of alleged violations, improperly names an individual as a respondent in a standards of conduct case, and fails to state a claim for violation of a union's standards of conduct.⁶

The matter was assigned to a Hearing Examiner, who conducted an evidentiary hearing. On February 13, 2017, the Hearing Examiner submitted a thorough Report and Recommendations ("Report").⁷ In the Report, the Hearing Examiner found that Count One was untimely and that Count Two was abandoned. Regarding Count Three, the Hearing Examiner found that the Union did not use VEBA funds to pay Baker. He further found that Peterson did not allege or prove that she was aggrieved by the Union's disposition of VEBA funds. The Hearing Examiner recommended that the Board dismiss the Complaint in its entirety. No exceptions to the Report were filed.

II. Discussion

The Report incorrectly identifies the date of filing of the Complaint as December 22, 2015. That was the date Peterson filed an amended complaint in response to the Executive Director's deficiency letter. An amended complaint filed in response to a deficiency letter relates back to the filing date of the original pleading,⁸ which in this case was December 15, 2015. The

³ Complaint pp. 11-12.

⁴ Answer, Affirmative Defenses, and Motion to Dismiss ("Answer") pp. 2-3.

⁵ Answer p. 4.

⁶ Answer pp. 5-8.

⁷ In transmitting the Report to the parties, the Executive Director wrote that due to the ill health of complainant's counsel, the case was stayed and a deadline for the filing of exceptions would not be set until a later date. The following July, the Executive Director gave the parties until September 15, 2017, to file exceptions. On that date, complainant's counsel withdrew from the case.

⁸ See *D.C. Metro. Police Dep't v. D.C. Pub. Emp. Relations Bd.*, C.A No. 98-MPA-16 (D.C. Super. Ct. Apr. 13, 1999) (reversing the Board's holding that the opportunity Rule 501.13 provides to cure a deficient pleading cannot

Decision and Order
PERB Case Nos. 16-S-03
Page 3

one-week difference between the two dates does not affect the Hearing Examiner's finding that Count One was brought over two years beyond the 120-day limit established by Rule 544.4.⁹

Otherwise, the Hearing Examiner's findings and recommendations are supported by the record, reasonable, persuasive, and consistent with Board precedent. With the foregoing modification, we adopt the Hearing Examiner's Report as set forth below.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant's Standards of Conduct Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Ann Hoffman, Barbara Somson, Douglas Warshof, and Mary Anne Gibbons

Washington, D.C.
January 18, 2018

extend the period of time to initiate a cause of action); *FOP/MPD Labor Comm. v. MPD*, 52 D.C. Reg. 2517, Slip Op. No. 736 at n.12, PERB Case No. 02-U-14 (2004) ("Consistent with the D.C. Superior Court's Decision in *D.C. Metropolitan Police Department v. D.C. Public Employee Relations Board*, once a deficiency is cured in a filing, the document's official filing date is its original filing date. CA No. 98-MPA-16 (1999).")

⁹ Report p. 11.

Decision and Order
PERB Case Nos. 16-S-03
Page 4

HEARING EXAMINER'S REPORT AND RECOMMENDATIONS

I. Statement of the Case

On December [15], 2015,¹ Candi Peterson (“Complainant”) filed a standards of conduct complaint (“Complaint”) with the Public Employee Relations Board (“PERB”) against the Washington Teachers Union, Local 6, AFL-CIO (“WTU” or “the Union”),² alleging that WTU had violated D.C. Code § 1-617.03 (a) (1), (4), and (5), which state:

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to [PERB] that its operations mandate the following:

(1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings.

...

(4) Fair Elections; and

(5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

Under D.C. Code § 1-605.02(9) the Public Employee Relations Board (PERB) has authority to “[m]ake decisions and take appropriate action on charges of failure to adopt, subscribe, or comply with the internal or national labor organization standards of conduct for labor organizations.” WTU is a labor organization certified by PERB as the exclusive collective-bargaining representative for teachers in the District of Columbia Public School System (DCPS).

I held a hearing in this case on May 4, May 26, and November 1, 2016, in Washington, D.C. My findings of fact, conclusions of law and recommendations, based upon the entire record in this proceeding, including the written transcript of the witnesses’ testimony, the exhibits received in evidence, the Parties’ respective opening statements, my observation of the witnesses’ demeanor as they testified, and WTU’s post-hearing (The Complainant did not file a post-hearing brief.) are set forth below.

¹ Unless otherwise stated, henceforth all dates occurred in 2015.

² The Complainant and WTU, collectively, are referred to below as the “Parties.”

Decision and Order
PERB Case Nos. 16-S-03
Page 5

II. Findings of Fact

[A.] Candi Peterson's WTU General Vice-Presidency

I find from Elizabeth Davis's and Candi Peterson's testimony³ that, on August 1, 2013, following a WTU membership election, WTU member Elizabeth A. Davis began a term as WTU's president, and WTU member Candi Peterson entered upon the office of WTU's general vice-president. Prior to her election as general vice-president, and thereafter, Ms. Peterson established and maintained a reputation, as an educational blogger, who freely criticized District of Columbia school administrators and WTU officers on issues involving educational and WTU policies and practices. In September of 2013, President Davis asked Ms. Peterson to sign a memorandum of agreement which included a provision requiring the general vice-president to surrender her blog. General Vice-President Peterson refused to sign the memorandum of agreement.

The duties of WTU's general vice-president are set forth in Article VIII, Section 2 of WTU's By-Laws (Joint Exhibit 1, pages 12 and 13) as follows:

Section 2. The General Vice-President shall:

- A. Perform other duties as delegated by the President or assigned by the Executive Board.
- B. Oversee and assist the building representatives in their duties.
- C. Supervise the field representatives and other employees as designated by the President.
- D. Co-sign checks and other financial documents in the absence of the President or the Treasurer and serve as a fiduciary of the Union. The General Vice-President shall be bonded and such expense shall be borne by the Union.
- E. Perform all the duties of the President in the absence of the President.
- F. Complete the un-expired term of the president should the office become vacant.
- G. Convene the Elections Committee.

Soon after President Davis and General Vice-President Peterson assumed their respective duties as officers of the Union, they disagreed as to the meaning of subsection C, Section 2, Article VIII of the WTU's By-Laws (Complaint, at page 6). According to President Davis, the WTU General Vice-President oversees the 113 building representatives elected to represent the employees at each of the District of Columbia's public schools. That oversight includes supervision and assistance. The General Vice-President has access to all 113 building representatives using a directory with their cell-phone numbers and e-mail addresses.

³ I based my findings of fact regarding Ms. Peterson's contentions about President Davis's limitations on Ms. Peterson's duties as the Union's general vice-president on their testimony and accompanying exhibits.

Decision and Order
PERB Case Nos. 16-S-03
Page 6

Throughout her tenure as WTU General Vice-President, Ms. Peterson has exercised that authority. (Transcript Vol. I, at pages 17-20)

However, contrary to Ms. Peterson's contention, President Davis has insisted that WTU's 4 field representatives do not come under the WTU General Vice-President's jurisdiction according to WTU's constitution and by-laws. As President Davis reads subsection C, Section 2, Article VIII of WTU's By-Laws, the pre-condition for the WTU General Vice-President's exercise of jurisdiction over the 4 field representatives is a specific assignment of that jurisdiction to the WTU General Vice-President by the WTU President. I find from President Davis's testimony (Transcript Vol. I, at page 18) that at all times material to this complaint, President Davis supervised the 4 field representatives. At the time of the hearing in this matter and since 2014, Ms. Peterson has served as one of the 4 WTU field representatives (Transcript Vol. I, at pages 19 and 34).

Referring to her previous three year term as general vice-president, beginning in 2010, and her earlier observations as a WTU member, Ms. Peterson testified that the supervision of field representatives customarily resided with that position (Transcript Vol. I, at pages 32-35). More important, Ms. Peterson interprets subsection C, Section 2 to specifically require President Davis to assign the supervision of WTU's field representatives to General Vice-President Peterson (Transcript Vol. I, at pages 32 and 33). However, a memorandum dated December 20, 2007, from the American Federation of Teachers (AFT), WTU's immediate parent organization, to George Parker, then WTU's President supports President Davis's view of the General Vice President's duties under "WTU's Constitution and Bylaws and well accepted principles of constitutional interpretation (WTU Exhibit 6, page 1)."

The AFT memorandum, referred to above, originating from its General Counsel, David Strom and Dan McNeil, Assistant Director of its Legal Department, had as its subject, "Request for Legal Interpretation of WTU Constitution (*Ibid.*). The first 2 paragraphs announced its purpose as follows:

The purpose of this memorandum is to answer the written questions posed by the WTU Executive Board regarding the duties, powers and authorities of the WTU governing bodies and its officers. The request from the WTU Executive Board was initiated to resolve questions concerning the authority of the WTU officers to represent the organization and limitations on such authority. This memorandum will address the governance questions of the WTU Executive Board by referring to the WTU Constitution and Bylaws and well accepted principles of constitutional interpretation.

The questions posed by the WTU Executive Board fall into the following broad categories:

Decision and Order
PERB Case Nos. 16-S-03
Page 7

- Which bodies formulate the policies of the WTU?
- Which body/officer is responsible for executing the policies of the organization?
- What is the authority of the President vis-à-vis the General Vice President and constraints on such authority?

Continuing, the memorandum discussed the WTU sources of authority to make policy, including the WTU's Representative Assembly, the WTU's membership and its Executive Board (WTU Exhibit 6, at pages 2 and 3). Regarding the roles and responsibilities of WTU's President and General Vice President, the memorandum recited their respective duties as set forth in Article VIII, Sections 1 and 2 of WTU's Bylaws (*Id.*, at pages 2, 3 and 4). At page 6 of the memorandum, Messrs. Strom and McNeil declared:

The only specific authority that is conferred on the General Vice President is to “[o]verse[e]⁴ and assist the building representatives in their duties” and to [c]onvene the Elections Committee.” These are the two responsibilities that the General Vice President has by virtue of being elected to that position.
(Bold print supplied)

Further, at page 5 of the memorandum, Messrs. Strom and McNeill in a discussion under the heading, “C. Division of Authority between the President and General Vice President,” point out that under Article VIII, Section 1(A) the WTU President “has the day-to-day responsibility to perform the business of WTU, subject to the limitations of the WTU Constitution and Bylaws and the policies set by the membership, Representative Assembly and Executive Board. **These duties include the supervision of WTU employees, including field representatives.**” (Bold print supplied)

On July 25, General Vice President Peterson made a motion at a WTU Executive Board meeting to halt President Davis's interference with Ms. Peterson's claimed authority to supervise WTU field representatives (Complainant's Exhibit 2). In her motion, Ms. Peterson proposed that the Executive Board require that “[President] Davis and/or her designee must cease and desist in the interference and obstruction of the General Vice President's prescribed duties effective July 25, 2015” (*Ibid.*). The Board adopted Ms. Peterson's motion by a vote of 4 to 3 (Transcript Volume I, at pages 45 and 46). However, the record in this case does not disclose whether there was any further action taken by Ms. Peterson or anyone else on the cease and desist requirement.

⁴ The memorandum inadvertently omitted the second “e” in “oversee” in quoting Article VIII, Section 2 B of WTU's Bylaws (See page 3, above.)

Decision and Order
PERB Case Nos. 16-S-03
Page 8

In an email addressed to Ms. Peterson dated July 30, (Joint Exhibit 2, Attachment 1) “Subject: Role General Vice-President of the WTU,” President Davis began her message with: “This is a reminder and re-affirmation of the work assignments and directions I have given you as the General Vice-President of the WTU (*Ibid.*). Continuing, President Davis listed three assigned tasks which Ms. Peterson was to continue performing. There followed two proscriptions:

4. You do not **have any responsibility to supervise or otherwise oversee the Field Representatives or any other employees of the WTU.** (Bold print supplied)

5. You do not have any responsibility or authority to speak or write officially for, or to represent the WTU, before the public, community organizations or the news media”

President Davis concluded the email by inviting General Vice-President Peterson to let her know if Ms. Peterson had any questions about these directions. The record in this case is silent as to whether Ms. Peterson responded to this memorandum.

[B.] WTU’s Elections Committee

As stated above, at page [5], under WTU’s Bylaws, Article VIII, Section 2, General Vice-President Peterson was responsible for convening WTU’s 15 member Elections Committee. Ms. Peterson did so to prepare for an election to be held in May 2015 (Transcript Vol. I, at pages 169-170 and Vol. II, at pages 34, 35, and 42).

WTU’s Bylaws, Article VII Section 1E (2) provides that “It shall be the duty of the Elections Committee to conduct all general and special elections of the organization” (Joint Exhibit 1 at page 10). In this instance, the election was for “Delegates to the convention of the American Federations of Teachers and Maryland State and District of Columbia AFL-CIO...” held biannually (*Supra*, WTU Bylaws Article VII, Section 1 (B)), as well as for the 15 members of WTU’s Elections Committee (Transcript Volume 1, at page 190).

Before preparing notices of the pending elections, the Elections Committee required data from WTU’s records showing the bargaining unit employees who are full dues paying members of the Union and thus eligible to vote in the pending elections (Transcript Vol. II, at page 36). However, in a letter, President Davis expressed concerns to AFT’s Secretary Treasurer about the election process including the release of that information to the Elections Committee because of its confidential nature (Complainant’s Exhibit 6B). AFT’s General Counsel responded to President Davis in a letter delivered to her electronically on June 5, after the scheduled date of the WTU elections. (*Ibid.*)

Decision and Order
PERB Case Nos. 16-S-03
Page 9

Also on June 5, General Vice President Peterson by email to Ann Mitchell, an assistant to AFT President Rand Weingarten, complained as follows (Complainant's Exhibit 6A and Transcript Vol. I, at page 93):

Ann

Please make sure that Randi gets this below as the election process has been thwarted by the WTU President Davis for reasons unclear. Despite numerous attempts by myself as well as the WTU Elections Chair Gillette to facilitate elections, the elections committee has been unable to perform their duties and create a ballot for voting in the 2015 WTU elections for Elections Committee, AFT Convention or AFL-CIO. Typically voting is held in May, however this did not occur and likely won't occur in June since school will shortly be out. If the WTU Elections Committee are provided the necessary documents to perform their functions, they are unable to proceed as an election committee. This violates the WTU Constitution as I know you are aware.

The WTU Elections Committee is requesting the intervention of AFT before they take the next steps. Thanks for your attention.

Candi

The record in this case does not reveal any response to Ms. Peterson's request for AFT's intervention.

In response to a second letter from President Davis dated September 15, AFT's Secretary Treasurer, Dr. Lorretta Johnson, in a letter dated September 22 provided advice regarding WTU's approaching elections (WTU Exhibit 8). Specifically, Dr. Johnson addressed the need for giving WTU members, who submitted nomination petitions, notice of their eligibility to run in those elections so that they have sufficient time to conduct meaningful campaigns (*Id.*, at page 1).

In an email to Elections Committee Chairperson Cheryl Gillette, dated October 2, General Vice President Peterson discussed her so-far unsuccessful efforts to obtain from President Davis WTU's data listing the bargaining unit employees whose dues obligations to the Union were satisfied (Complainant's Exhibit 6 and Transcript Volume I, at pages 91 -93). In the same email, Ms. Peterson encouraged Ms. Gillette and her committee to attend the WTU's ..Executive Board's October 3 meeting and enlist its support in the effort (*Ibid.*).

In accordance with AFT's advice, President Davis ultimately permitted the Elections Committee to see the WTU's membership list showing the bargaining unit employees who were full dues paying members of the Union and thus eligible to vote in the pending elections. (Transcript Volume 1, at page 100). In February 2016, WTU's Elections Committee conducted the elections originally scheduled for May 2015 (*Ibid.*).

Decision and Order
PERB Case Nos. 16-S-03
Page 10

[C.] Voluntary Employee Beneficiary Association (VEBA)

Effective July 1, 2013, WTU and the DCPS established a benefit plan in the form of a trust fund called “Option 2 VEBA” to be financed by DCPS, and administered by a board of trustees as the benefit plan’s “fiduciaries” (Complainant Exhibit 8B, at page 1), to provide supplemental benefits to unemployed WTU members and other welfare benefits and also to provide financial support to the WTU’s Teachers Center to afford DCPS teachers expanded and enhanced professional development opportunities (Complainant Exhibit 8B, at page 1, and Transcript Vol. II, at pages 48-49). DCPS’s annual contribution to VEBA is \$1.7 million (Complainant Exhibit 8 and Transcript Vol. I, at page 102).

In a letter to WTU’s President Davis dated October 17, 2014, DCPS’s Director of Human Capital, Jason Kamras, rejected WTU’s written request for the annual contribution, providing the following explanation:

Please be advised that DCPS cannot comply with the WTU’s request for payment for a number of reasons. As an initial matter, DCPS has not received a full accounting of DCPS’ most recent \$1.7 million contribution to the WTU’s Option 2 VEBA. While the WTU did provide DCPS with a partial accounting of its use of those funds, such accounting suggested that WTU distributed just under half of the \$1.7 million provided last fiscal year to persons who selected Option 2, calling into question how WTU has used the remainder of those funds. Likewise, since there are only three individuals eligible for VEBA funds this year, the WTU should have sufficient funds to cover all of this year’s VEBA costs from last year’s contribution.

I hope you will understand that as stewards of public funds, we cannot provide WTU with another \$1.7 million without a far better understanding of how these funds are being used and why DCPS’ prior contributions are insufficient to cover the teachers who are eligible for Option 2. Accordingly, by October 27, 2014, please let us know whether you will make distributions to this year’s Option 2 selectees from the \$1.7 million DCPS provided last year. If we do not hear from you by October 27, we will process each teacher’s second choice option.

I find from the testimony of WTU’s current chief-of-staff, Dorothy Egbufor that since the inception of the Option 2 VEBA benefit program, WTU’s understanding of DCPS’s obligation under a memorandum of understanding (“MOU”) was to support Option 2 VEBA by annual payments of \$1.7 million to be tendered to WTU without any requirement that the previous year’s payment to WTU be exhausted (Transcript Vol. II, at page 138). I find from Ms. Peterson’s testimony that to resolve this dispute, WTU filed a grievance against DCPS (Transcript Vol. I, at pages 198 -199).

Decision and Order
PERB Case Nos. 16-S-03
Page 11

In a notice to participants in the WTU's Option 2 VEBA, dated October 1, the fund's Board of Trustees announced the suspension of payments to "Excessed Permanent Status Teachers" (Complainant's Exhibit 8A and Transcript Vol. I, at page 199). The same notice announced:

The WTU is aggressively pursuing the funding of the Option 2 VEBA agreed to by DCPS in the MOU and an arbitration is scheduled for hearing later this month. Assuming a successful outcome or resolution and a resumption of Option 2 VEBA funding by DCPS, Benefits payable under the Plan will resume. You will be notified of the outcome or resolution when it occurs.

In negotiations with WTU, DCPS agreed, under a new MOU, to provide the funds necessary to pay the benefits required under Option 2 VEBA (Transcript Vol. I at page 199-200). Further, the same MOU requires DCPS to pay the \$1.7 million, due annually, in October (Transcript Vol. II, at pages 136-139).

On February 1, 2014, WTU's Executive Board approved President Davis's motion to hire Pauline Baker as a special assistant to the President (Complainant's Exhibit 7, Executive Session, at page 4). Prior to this Board action, WTU employed Ms. Baker as a consultant, assisting President Davis, at an annual salary of \$114,400.00 (Complainant's Exhibit 7B and Transcript Vol. II at pages 147-148). WTU's Executive Board, in approving the hiring of Ms. Baker as an employee, accorded her an annual salary of \$70,000 (Complainant's Exhibit 7, Executive Session at page 4, Transcript Vol. I at page 16, and Transcript Vol. II, at page 147).

Naomi Baker, WTU's chief of staff at the time of the Executive Board's approval of the reduced salary for Ms. Baker failed to disseminate notice of the reduction to Ms. Baker, WTU's accounting department and the firm responsible for administering WTU's payroll. (Transcript Vol. I, at page 16 and Transcript Vol. II, at pages 148-149) In June 2015, WTU chief of staff, Dorothy Egbufor discovered that Ms. Baker's annual salary had not been reduced as ordered by WTU's Executive Board (Transcript Vol. II, at pages 148-150 and 154-155)⁵.

Ms. Egbufor immediately reported the failure to implement the reduction in Ms. Baker's wage to WTU's accounting department, and to President Davis, who instructed the chief of staff to correct the situation and to notify Ms. Baker that her annual salary had been reduced to \$70,000 (Transcript Vol. II at pages 149- 150). Ms. Egbufor sent an email to Ms. Baker on June 2, which included a reminder of the reduction of Ms. Baker's annual salary from \$114,000 to \$72,000 (WTU Exhibit 10). I find from Ms. Egbufor's testimony that WTU's accounting department was the source of the dollar amounts shown on this email (Transcript Vol. II, at page 154). Ms. Baker resigned soon after receiving this news (Transcript Vol. I, at page 16 and

⁵ At page 149 of Transcript Volume II, Ms. Egbufor testified that her employment as WTU's chief of staff began in 2014. However, at page 155 of Volume II, she recalls the year of her hire as 2015. See also Transcript Vol. II, at pages 156- 158.

Decision and Order
PERB Case Nos. 16-S-03
Page 12

Transcript Vol. II, at page 155).). I find from Ms. Peterson's testimony that Pauline Baker resigned from her employment at WTU in or about May of 2015 (Transcript Vol. I, at page 202).

Candi Peterson testified, under cross-examination by WTU's counsel, that the Union's finance and building administrator, Ray Moberly, who, she asserted was at an undisclosed time a VEBA administrator, told her that WTU paid Pauline Baker's salary out of VEBA funds (Transcript Vol I, at page 200). Also, Ms. Peterson testified that Mr. Moberly gave a W-2 form to her showing that for the year 2014, WTU paid Ms. Baker wages in the amount of \$114,400.00 (*Id.* at page 201 and Complainant's Exhibit 7B).

Contrary to Ms. Peterson, Ms. Davis and Ms. Egbufor testified that WTU did not use VEBA to pay any of Pauline Baker's wages earned in WTU's employ (Transcript Vol. 1, at page 17, and Transcript Vol. II, at page 146). I have considered the circumstances of the respective witness and their respective demeanors in resolving this conflict in testimony.

Ms. Peterson's testimony on the source of Ms. Baker's WTU wages is based upon Ray Moberly's assertion to her. Mr. Moberly was not a witness at the hearing in this case and thus was not available to WTU for cross-examination. The absence of Mr. Moberly and Ms. Peterson's reluctance to answer questions posed by counsel during cross-examination at pages 194, 197 and 198 and her role here as Complainant cast some doubt on the reliability of her testimony regarding the source of Ms. Baker's wages while employed at WTU. With respect to Ms. Davis and Ms. Egbufor, I recognize that both were involved in the management of WTU at times material to this case. However, I also note that they both testified frankly and in a forthright manner. Accordingly, I have credited their testimony and find the WTU did not use VEBA funding to pay Pauline Baker.

Complainant's witness Emily Y. Washington, a WTU member, testified that at a WTU Executive Board meeting she attended on November 14 or 15, Clem Mueller, on behalf of his accounting firm, presented a financial report about the Union's VEBA account in which he stated that \$266,000 had been spent from that account for the WTU's Teacher's Center and presented an itemized account of how this amount was spent (Transcript Vol. II, at pages 12-13). According to Ms. Washington's testimony on redirect examination, Mr. Mueller also reported at this meeting, that half of WTU employee Ray Mobley's salary was also paid out of VEBA funds (Transcript Vol. II, at pages 23 and 24).

Ms. Washington also testified that in either January or February of 2016, at either a WTU representative assembly or a membership meeting, she could not remember which, Mr. Mueller revisited his earlier report and stated that the \$266,000 came from WTU's operating budget (Transcript Vol. II, at page 14). According to Ms. Washington, at a subsequent meeting she noted an expenditure of \$412,000 from the VEBA account in a WTU financial report (*Id.*, at page 25). On the same page of her testimony, Ms. Washington testified that she had notes of this last meeting. Neither Ms. Washington nor the Complainant offered said notes as evidence at the hearing in this case.

Decision and Order
PERB Case Nos. 16-S-03
Page 13

The record evidence and Mr. Mueller's full and forthright testimony, which I credit, rebut Ms. Washington's testimony. Initially, I note that the last page on WTU's general ledger (WTU Exhibit 2 and Transcript Vol. II, at pages 60-61) shows WTU expenditures from its operating account from July 1, 2013, until June 30, totaling \$266,476.84 (Transcript Vol. II, at pages 27 and 61). Further, in the middle of the 15th page of the report there is a note reporting that on April 30, a check in the amount of \$2,092.50 was issued to "Ray Mobley 50% Salary" (WTU Exhibit 2, at page 15, and Transcript Vol. II, at page 29). At the top of its first page, the financial report announces that WTU expects VEBA to reimburse WTU for the expenses shown on the report (WTU Exhibit 2, at page 1).

I find from the testimony of Clem Mueller, that the \$266,476.84 sum of expenditures shown in his financial report, which he presented to WTU's Executive Board in November 2015, was a receivable which WTU sought to collect from VEBA (Transcript Vol. II, at pages 51-52). In an email to President Davis, sent prior to that meeting, along with the draft audited financial statements constituting that report, Mr. Mueller cautioned that "the largest uncertainty relating to these statements is the future result of negotiations with DCPS relating to the \$266,000 receivable from the VEBA..." (WTU Exhibit 3, at page 2 and Transcript Vol. II at page 52).

I also find from Mr Mueller's testimony that WTU spent the receivable amount on its Teacher Center (Transcript Vol. II, at pages 53-54). WTU's current assets shown on Page 3 of the statements, referred to in Mr. Mueller's testimony, included: "Due from VEBA \$266,477" (WTU Exhibit 3, at page 3, WTU Exhibits 4, and 5, at page 9; Transcript Vol. II, at page 54-58).

I find from Mr. Mueller's testimony that at a WTU meeting in February 2016, referred to in Ms. Washington's testimony above, she remarked to him that he was changing his report about expenditures from the VEBA account (Transcript Vol. II, at page 59). In response, Mr. Mueller said that he had given the same information at the November meeting (*Ibid.*). Further, Mr. Mueller provided the sum of \$266,477, to the D.C. Office of the Inspector General, as the amount due WTU from DCPS (*Id.*, at pages 59-60).

I find from Dorothy Egbufor's testimony, that WTU and DCPS disagree about the latter's obligation under the VEBA agreement to furnish funds for WTU's Teachers' Center (Transcript Vol. II, at pages 139-140). As Ms. Egbufor notes in her testimony, the VEBA agreement supports WTU's claim (Transcript Vol. II, at pages 139-140) In reading the WTU Option 2VEBA Summary Plan Description (Complainant's Exhibit 8B, at page 1), I note that the pertinent part of Section I states: "The new benefit Plan will provide financial support to the Washington Teachers Union Teachers' Center to expand and enhance the professional development opportunities available to DCPS Teachers." Ms. Egbufor's testimony confirmed that WTU has not funded its Teachers' Center using VEBA funds (Transcript Vol. II, at page 140). Instead, WTU has used its general operating funds and accounts to fund its Teachers' Center (Transcript Vol. II, at page 141).

Decision and Order
PERB Case Nos. 16-S-03
Page 14

In 2015, DCPS paid \$576,000 to WTU's Option 2 VEBA to cover payments to beneficiaries of that fund (*Ibid.*). That payment and the underlying dispute were reflected in Note 6, on page 7, of WTU's Option 2 VEBA Financial Statements dated June 30 (WTU Exhibit 9 and Transcript Vol. II, at pages 143-145).

III. Analysis and Conclusions

Candi Peterson complains that WTU violated D.C. Code § 1-617.03 (a) (1), (4), and (5), which state:

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to [PERB] that its operations mandate the following:

(1) The maintenance of democratic provisions for periodic elections to be conducted

subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, to fair process in disciplinary proceedings.

...

(4) Fair Elections; and

(5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

First, General Vice President Peterson's complaint, at pages 5-8, alleges that WTU's President Elizabeth Davis imposed a *de facto* suspension on Ms. Peterson by removing the powers and authority of the General Vice President to oversee WTU's field operations and supervise field representatives and other field service employees and assigned it to personnel who reported to President Davis. Further, the complaint alleges, at page 8, that President Davis also suspended Ms. Peterson's authority to convene WTU's Elections Committee.

Continuing, Ms. Peterson alleges that President Davis prevented the elections for AFT Convention Delegates, Metropolitan Washington Representatives and members of the WTU Election Committee which were scheduled initially for June 2015. According to the complaint, President Davis postponed these elections to September 22; but as of December [15], the filing date of the Standards of Conduct Complaint in this case, those elections had not been held.

Decision and Order
PERB Case Nos. 16-S-03
Page 15

Lastly, Ms. Peterson's complaint contends that WTU hired a personal friend of President Davis and paid her a salary in excess of the \$70,000 annual compensation approved by WTU's Executive Board either out of VEBA funds or from WTU's operating account. Also, the complaint suggested that WTU improperly expended VEBA funds and thereby impaired VEBA ability to provide financial assistance to terminated teachers. As noted above, Ms. Peterson did not file a post-hearing brief.

WTU contends, and I agree, that Ms. Peterson's claim that she suffered a *de facto* suspension of her responsibilities of overseeing WTU's field operations and supervising WTU field representatives is time-barred, having been filed outside the 120-day period of limitation provided by PERB Rule 544.4, as follows:

A complaint alleging a violation under this section [PERB Rules, Section 544-STANDARDS OF CONDUCT COMPLAINTS] shall be filed not later than one hundred and twenty (120) days from the date the alleged violation(s) occurred.

As WTU points out, Ms. Peterson's Complaint, at page 6, asserts that President Davis imposed the alleged *de facto* suspension "from the inception of assuming office." I find from Ms. Peterson's testimony that she and President Davis took their respective offices on August 1, 2013 (Transcript Vol. II, at page 42).

Thus, it is clear that for over 2 years and 4 months, General Vice President Peterson had been aware of the event giving rise to the complaint allegation that responsibilities for overseeing WTU's field operations and supervising WTU field representatives had been kept from her, when she filed her Complaint, on December [15], 2015, well beyond the statutory 120-day filing period. *Brown v. DC Public Schools and AFSCME Dist. Council 20, Local 1959*, PERB Case No. 10-U-34, Opinion No. 1108, at page 5, 59 DCR 6510 (August 10, 2011). . . . Accordingly, I shall recommend dismissal of this allegation. *Brown v. DC Public Schools, Supra*, at page 7.

At page 4 of its post-hearing brief, WTU asserts that Ms. Peterson conceded at the hearing that she was not claiming that President Davis had suspended her authority to convene the Union's election committee. The transcript shows that on cross-examination by WTU's counsel, when he asked Ms. Peterson if she was "claiming that Ms. Davis prevented [Ms. Peterson] from convening the election committee," Ms. Peterson first answered: "I didn't claim that she prevented me." She then testified that she did not think that was the way her claim was written and added her belief "there's some obstruction" related to "[Ms. Peterson] her doing [her] job to convene it." Ms. Peterson ended her answer by conceding that the obstruction was "probably more directed at the elections committee ..." (Transcript Vol. I, at pages 169 and 170).

Decision and Order
PERB Case Nos. 16-S-03
Page 16

Answering further cross-examination by WTU's counsel, asking whether during her tenure she had convened the election committee, Ms. Peterson stated: "Oh, yeah, a million times" (*Id.*, at page 170). I find merit in WTU's contention that Ms. Peterson abandoned her complaint allegation that President Davis suspended the General Vice President's authority to convene the Union's election committee. Moreover, I find from the testimony of Cheryl Gillette, chairperson of WTU's elections committee that Ms. Peterson, as WTU's General Vice President, convened that committee's initial meeting (Transcript Vol./ II, at pages 33-34 and 42). I shall, therefore, recommend dismissal of that allegation.

WTU contends that Ms. Peterson lacks standing to pursue her complaint allegations regarding the VEBA and the WTU elections which were postponed from June 2015 to September 2015, and were finally held in February 2016 (WTU's post-hearing brief at pages 14 and 17). I find merit in these contentions.

Ms. Peterson's complaint alleges that WTU improperly used the VEBA funds to pay the salary of Pauline Baker, a WTU employee and to fund WTU's Teachers Center. However, Ms. Peterson's complaint does not allege that those expenditures injured her financially or otherwise. Nor did she allege in her pleading that she expects that they will harm her financially or otherwise in the future. Further, there is not record evidence showing any harmful impact on her, flowing from WTU's disposition of the VEBA funds.

In her complaint, Ms. Peterson asserts that elections for AFT Convention Delegates, Metropolitan Washington Representatives, and members of the WTU Election Committee, scheduled for June 2015, were postponed to September 2015. According to Ms. Peterson's complaint, at page 10, "no elections were held because [President] Davis refused to provide the WTU Elections Committee chair person the required membership data needed to verify petitions." However Ms. Peterson's complaint does not allege that these postponements harmed her in any way. There is no showing that she was a candidate for any of the positions involved in the proposed elections.

PERB Rule 544.2, in pertinent part states: "Any individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations may file a complaint with the Board for investigation and appropriate action." As WTU argues at page 14 of its post hearing brief, in applying that provision, PERB has recognized that its Rule 544.2 "requires that complainants not only be individuals but also 'aggrieved' individuals. *Richardson v. Fraternal Order of Police D.C. Dep't of Corrections Labor Comm.*, PERB Case No. 11-S-01, Opinion No. 1426, at page 3, 60 DC Reg. 16000 (Sept. 26, 2013). Further PERB has recognized that: "In order to state a claim that they are aggrieved, claimants must allege an actual injury." (*Ibid.*) In the instant case, Ms. Peterson has failed to allege any actual injuries that she has suffered as a result of her allegations regarding the VEBA funds and the WTU

Decision and Order
PERB Case Nos. 16-S-03
Page 17

elections scheduled for June 2015, which were held in February 2016.. I shall therefore recommend dismissal of these complaint allegations.

IV. Recommended Order

It is hereby recommended that PERB dismiss the standards of conduct complaint in its entirety.

Dated, Washington, D.C.
February 13, 2017.

Leonard M. Wagman
Hearing Examiner

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-S-03 was transmitted to the following parties on this the 31st day of January 2018.

Candi Peterson
122 Whitmoor Terrace
Silver Spring, Maryland 20901
saveourcounselors@gmail.com

U.S. Mail and E-Mail

Lee W. Jackson
Daniel M. Rosenthal
James & Hoffman, P.C.
1130 Connecticut Avenue, NW, Suite 950
Washington, DC 20036

File & ServeXpress

/s/ Sheryl V. Harrington
Administrative Assistant

Government of the District of Columbia
Public Employee Relations Board

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In the Matter of:)	
)	
American Federation of Government Employees)	PERB Case No. 16-N-03
Local 3721)	
)	
	Petitioner)	Opinion No. 1650
)	
v.)	Motion for Reconsideration
)	
District of Columbia Fire and Emergency)	
Medical Services Department)	
)	
	Respondent)	
<hr/>)	

DECISION AND ORDER

I. Introduction

The Respondent District of Columbia Fire and Emergency Medical Services Department (“Agency”) filed a motion for reconsideration and a motion for enlargement of time to file its motion for reconsideration. The Agency seeks reconsideration, in part, of the Board’s Decision and Order issued on October 30, 2017, Slip Opinion No. 1641. The Agency requests that the Board reconsider its Decision and Order and declare section 1 of proposal 6 and section 10 of proposal 10 to be nonnegotiable.

For the following reasons, the Agency’s motion for reconsideration is denied.

II. Discussion

Pursuant to PERB Rule 559.2, a party may file a motion for reconsideration within 14 days after issuance of the decision. This motion for reconsideration was filed 20 days after the issuance of the decision. The Agency asks the Board to grant this motion for enlargement of time as counsel for the Agency was ill and absent from work during a portion of the appeals period.¹ Since the Agency presented good cause and in the absence of an objection by the petitioner, the Board grants the Agency’s motion for enlargement of time.

AFGE Local 3721 Proposal 6 – Miscellaneous Conditions of Employment:

MISCELLANEOUS CONDITIONS OF EMPLOYMENT

¹ Motion for Reconsideration at 4.

Decision and Order
PERB Case 16-N-03
Page 2

SECTION 1 – FOOD AT ALARMS OR SPECIAL ASSIGNMENTS

It is agreed that when unusual conditions of service or weather make it necessary, or when an employee is required to work significantly beyond his/her regularly scheduled tour at alarms or special assignments, the Agency shall provide appropriate food, beverages and/or meals to the employees.

The Agency argues that section 1 of proposal 6 is nonnegotiable as a matter of appropriations law.² The Agency requests that the Board reconsider its reasoning and find that the proposal is nonnegotiable because the U.S. Government Accountability Office (GAO) has consistently held that in the absence of statutory authority, the government may not furnish meals or refreshments to employees within their official duty stations.³ The GAO has “held that free food and refreshments normally cannot be justified as a ‘necessary expense’ under an appropriation since such expenses are considered personal expenses that government employees are expected to bear from their own salaries.”⁴

The Board found that the provision of food, as it relates to proposal 6, is not a compensation matter but rather a term and condition of employment. The proposal relates specifically to when “unusual conditions of service or weather make it necessary, or when an employee is required to work significantly beyond his/her regularly scheduled tour at alarms or special assignments.”⁵ The GAO language states that food and refreshments “normally cannot be justified as a necessary expense.” The proposal does not relate to normal conditions but rather to unusual conditions of weather, work significantly beyond regularly scheduled tour, or special assignments. As stated in the Decision and Order, since food and/or beverages will be provided only during these circumstances, it is not a compensation matter but a term and condition of employment.⁶

AFGE Local 3721 Proposal 10 – Union Rights:

UNION RIGHTS

SECTION 10:

The Agency agrees that accredited national representatives of AFGE shall have free access to the premises of the agency during working hours to conduct Union business.⁷

² Motion for Reconsideration at 2.

³ Motion for Reconsideration at 2.

⁴ Motion for Reconsideration at 2.

⁵ *AFGE, Local 3721 and D.C. Dep’t of Fire & Emergency Med. Servs.*, Slip Op. No. 1641, PERB Case No. 16-N-03, (Oct. 19, 2017).

⁶ *Id.*

⁷ Appeal, Ex. 5.

Decision and Order
PERB Case 16-N-03
Page 3

The Agency argues that proposal 10 is made nonnegotiable by its use of the word “free.”⁸ The Agency states that the Board did not address its argument that free access is distinct from access and a person with free access may enter a facility without limitation.⁹

The Board stated in its Decision and Order that section 10 of proposal 10 does not allow AFGE representatives to bypass any internal security practices.¹⁰ Under section 1-617.08(a)(5)(D) of the D.C. Official Code, management retains the sole right to determine the Agency’s internal security practices. The Union’s negotiability appeal states that the “proposal provides that Union representatives will have access to Department facilities, free of charge, in order to perform representation duties and responsibilities.”¹¹ The definition of “free access” may be determined by the parties during negotiations, and the Agency is under no obligation to give up its management right to determine internal security practices and the Union’s proposal did not ask it to do so. Based on the presumption of negotiability, section 10 of the proposal is negotiable.

III. Conclusion

The Agency’s motion for enlargement of time is granted. The Agency’s request that the Board declare section 1 of proposal 6 and section 10 of proposal 10 nonnegotiable is denied. The motion for reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The motion for enlargement of time is granted.
2. The motion for reconsideration is denied.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson and Douglas Warshof.

January 18, 2018

Washington, D.C.

⁸ Motion for Reconsideration at 3.

⁹ Motion for Reconsideration at 3.

¹⁰ *AFGE, Local 3721*, Slip Op. No. 1641 at p. 10.

¹¹ Appeal at 8.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 16-N-03, Op. No. 1650 was sent by File and ServeXpress to the following parties on this the 31st day of January, 2018.

Keisha Williams
Legal Rights Attorney, AFGE, District 14
444 North Capital Street, NW
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Washington, D.C. 20010

Kevin Stokes
Office of Labor Relations and Collective Bargaining
441 4th Street, NW
Suite 820 North
Washington, D.C. 20001

/s/ Sheryl Harrington

PERB

Government of the District of Columbia
Public Employee Relations Board

<hr/>)
In the Matter of:)
)
Fraternal Order of Police/)
Metropolitan Police Department	PERB Case Nos. 17-U-26, 18-U-04)
Labor Committee	18-U-06)
)
Complainant	Opinion No. 1651)
)
v)
)
Metropolitan Police Department)
)
Respondent)
<hr/>)

DECISION AND ORDER

I. Introduction

The Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) filed three unfair labor practice complaints, each alleging that the Metropolitan Police Department (“MPD”) committed an unfair labor practice by refusing to abide by an arbitration award. FOP also named Chief of Police Peter Newsham as a respondent.

Since all three of these cases involve the same parties and similar issues, the Board hereby consolidates the cases. The Board finds that MPD has committed an unfair labor practice by refusing to follow the arbitrators’ awards.

II. Statement of the Facts

PERB Case No. 18-U-04

Officer Aaron Harper was investigated by MPD’s Internal Affairs Division for receiving monetary compensation from MPD and an outside employer, Forza LLC, for overlapping times. An Adverse Action Panel found Officer Harper guilty and he was terminated from his position.¹ On June 28, 2017, Arbitrator Daniel LeClair issued an award reducing Officer Harper’s penalty

¹ Answer at 2.

Decision and Order

PERB Case Nos. 17-U-26, 18-U-04, 18-U-06

Page 2

from termination to a 45-day suspension. The Award stated that Officer Harper should be reinstated with full back pay, and lost benefits, subject to the 45-day suspension without pay, less interim earnings. The Award further stated that MPD shall remove any reference to termination from his personnel file and compensate the Union for 50% of all legal fees in connection with this grievance.² The Arbitrator in a separate opinion also awarded FOP attorney's fees and costs totaling \$12,480.00.³ MPD filed an arbitration review request with the Board but withdrew the petition for review on August 14, 2017.⁴

PERB Case No. 18-U-06

MPD's Adverse Action Hearing Panel found Officer April Gray and Officer Corey Williams guilty of untruthful statements and unauthorized outside employment. The Panel recommended termination for the untruthful statements and a 10-day suspension for the unauthorized outside employment.⁵ On August 16, 2017, Arbitrator Lawrence S. Coburn issued an award directing MPD to reinstate Officer Gray and Officer Williams to their former positions, make them whole, and remove from their personnel files all references to their termination from employment.⁶ MPD filed an arbitration review request with the Board, but withdrew the petition for review on September 12, 2017.⁷

PERB Case No. 17-U-26

In an Adverse Action Hearing, Officer Jay Hong pleaded guilty to driving while intoxicated and having a blood alcohol content of 0.12% or higher. The Panel also found Officer Hong guilty of the remaining charges to which he pled not guilty: sexual assault and displaying his weapon.⁸ The Panel recommended his removal from MPD. On August 18, 2016, Arbitrator Kathleen Miller issued an award reducing Officer Hong's penalty from termination to a 35-day suspension. The Arbitrator directed MPD to include the revocation of termination in Officer Hong's personnel file and make him whole by compensating him with full back pay, less any interim earnings, and lost job benefits.⁹ The Arbitrator issued an award granting FOP attorney's fees and costs in the amount of \$20,587.45.¹⁰ MPD did not elect to file an arbitration review request with the Board regarding the Award or the Award of Attorney's fees.¹¹

III. Discussion

The facts of these cases are undisputed, and therefore they are appropriate for a decision on the pleadings. Board Rule 520.10 states that "if the investigation reveals that there is no issue

² LeClair Award at 11.

³ LeClair Petition for Attorneys' Fees and Expenses

⁴ Complaint at 5.

⁵ Coburn Award at 8.

⁶ Coburn Award at 11.

⁷ Complaint at 4.

⁸ Miller Award at 6-7.

⁹ Complaint at 3-4.

¹⁰ Complaint at 4.

¹¹ Complaint at 4.

Decision and Order
PERB Case Nos. 17-U-26, 18-U-04, 18-U-06
Page 3

of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.”

MPD refused to reinstate these police officers in compliance with the Arbitrators’ Awards. FOP argues that pursuant to the D.C. Official Code, MPD is prohibited from “interfering, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter...refusing to bargain collectively in good faith with the exclusive representative.” FOP argues that MPD violated D.C. Official Code section 1-617.04(a)(1) because its refusal to abide by the arbitrators’ awards ignores the rule of law and interferes with FOP members’ bargained-for arbitration right;¹² and that MPD further violated section 1-617.04(a)(5), failing to bargain in good faith with the Union by ignoring the bargained-for resolution of grievances through arbitration.¹³

MPD requests that the Board deny the Complaints. MPD argues that Chief Newsham is not a proper respondent in these matters and should be dismissed.¹⁴

D.C. Official Code section 1-617.04 provides that the “District, its agents, and representatives” are prohibited from engaging in unfair labor practices. The Board has held that suits against District officials in their official capacity should be treated as suits against the District.¹⁵ Therefore, MPD’s request to dismiss Chief Newsham as a Respondent in these matters is granted.

To establish an unfair labor practice under section 1-617.04(a)(1), the Complainant must prove by a preponderance of the evidence that the Respondent interfered with, restrained or coerced an employee in the exercise of rights guaranteed by this subsection, or that the Respondent refused to bargain in good faith with the union. Failure to implement the terms of an arbitration award where no genuine dispute exists over its terms constitutes a failure to bargain in good faith and, consequently, an unfair labor practice under the D.C. Official Code.¹⁶

MPD does not dispute that it has failed to reinstate the police officers.¹⁷ MPD also does not dispute that for PERB Case Nos. 18-U-06 and 18-U-04 it withdrew its petition for review of the Award before the Board.¹⁸ MPD elected not to invoke its right to file an arbitration review request for the Arbitration Award or the Award of Attorney’s Fees for PERB Case No. 17-U-26.¹⁹ MPD’s failure to comply is not based upon a genuine dispute over the terms of the

¹² Complaint at 7.

¹³ Complaint at 7.

¹⁴ Answer at 8.

¹⁵ See *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 4-5, PERB Case No. 08-U-19 (2011); see also *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013).

¹⁶ *AFGE, Local 383 v. D.C. Dep’t of Youth Rehab. Servs.*, 60 D.C. Reg., 15983, Slip Op. 1423, PERB Case No. 10-U-48 (2013), *Int’l Bhd. of Police Officers, Local 446 v. D.C. Health & Hosps. Pub. Benefit Corp.*, 47 D.C. Reg. 7184, Slip Op. 622 at p. 4, PERB Case No. 99-U-30 (2000).

¹⁷ Answer at 4.

¹⁸ Answer at 4.

¹⁹ Answer at 2.

Decision and Order
PERB Case Nos. 17-U-26, 18-U-04, 18-U-06
Page 4

Awards, but rather a simple refusal to comply. This conduct constitutes a violation of MPD's duty to bargain in good faith under section 1-617.04(a)(5), and interference with bargaining unit employees' rights in violation of section 1-617.04(a)(1).²⁰

Motion to Dismiss for Untimeliness

MPD filed a Motion to Dismiss for Untimeliness regarding 17-U-26. MPD argues that the Complaint is untimely and should be dismissed because it was filed more than 120-days after the date on which the alleged violation occurred.²¹ According to MPD, any violations in the Complaint occurring on or before January 5, 2017 are untimely and should be dismissed.²²

FOP filed an Opposition to the Motion to Dismiss which included the sworn statement and affidavit of Matthew N. Mahl, Chairman of FOP. The Chairman states that it was not until a meeting with Mark Viehmeyer, Director of Labor Relations for MPD, that it was clear MPD had no intention of reinstating Officer Hong. This meeting occurred on April 12, 2017.²³

PERB Rule 520.4 states that an unfair labor practice shall be filed no later than 120 days after the date on which the alleged violation occurred. The 120-day period for filing a complaint begins when the complainant first knew or should have known about the acts giving rise to the alleged violation.²⁴ MPD's motion to dismiss argues that the violation occurred on the day the Arbitrator issued her Award. FOP could not have known that MPD would refuse to follow the Award on the day it was issued, and MPD has presented no evidence that they indicated its intention to FOP. The date the Award was issued, August 8, 2016, cannot be the start date of the 120-day deadline. The date identified by FOP and not disputed by MPD is the only date presented on which the deadline could have attached. MPD's Motion to Dismiss is denied.

IV. Conclusion

MPD violated section 1-617.04(a)(1) and (5) by refusing to implement the terms of arbitration awards. The unfair labor practice complaint is upheld and MPD's motion to dismiss is denied. However, Chief Peter Newsham is dismissed as a respondent. MPD is directed to fully comply with the terms of arbitration awards within ten (10) days of the issuance of this Decision and Order, if it has not done so already. Additionally, MPD will post a notice of the violation.

ORDER

IT IS HEREBY ORDERED THAT:

²⁰ *AFGE, Local 1000 v. D.C. Dep't of Empl. Servs.*, 61 D.C. Reg. 9776, Slip Op. 1486, PERB Case No. 13-U-15 (2014), *See also AFGE, Local 2725 v. D.C. Hous. Auth.*, 46 D.C. Reg. 8356, Slip Op. 597, PERB Case No. 99-U-23 (1999).

²¹ Respondent's Answer to Unfair Labor Practice and Motion to Dismiss at 6.

²² Respondent's Answer to Unfair Labor Practice and Motion to Dismiss at 6.

²³ Affidavit at 1.

²⁴ *Pitt v. D.C. Dep't of Corr.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009).

Decision and Order

PERB Case Nos. 17-U-26, 18-U-04, 18-U-06

Page 5

1. The District of Columbia Metropolitan Police Department's motion to dismiss for untimeliness is denied.
2. The District of Columbia Metropolitan Police Department's request to dismiss Chief Peter Newsham in this matter is granted
3. FOP's unfair labor practice is granted.
4. The District of Columbia Metropolitan Police Department shall cease and desist from violating section 1-617.04(a)(5) of the D.C. Official Code by failing to implement the arbitration awards.
5. Within ten (10) days from the issuance of this Decision and Order, the District of Columbia Metropolitan Police Department shall fully comply with the terms of the arbitration awards, if it has not already done so.
6. The District of Columbia Metropolitan Police Department shall conspicuously post where notices to employees are normally posted two (2) notices that the Board will furnish to MPD in each of the department's buildings. The notice shall be posted within fourteen (14) days from MPD's receipt of the notice and shall remain posted for thirty (30) consecutive days.
7. Within fourteen (14) days from the date of the receipt of the notice, MPD shall notify the Public Employee Relations Board in writing that the attached notice has been posted accordingly and on what date they were posted.
8. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 18, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos 17-U-26, 18-U-04, 18-U-06, Op. No. 1651 was sent by File and ServeXpress to the following parties on this the 31st day of January, 2018.

Marc L. Wilhite
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Nicole L. Lynch
Metropolitan Police Department
300 Indiana Avenue, NW
Room 4126
Washington, D.C. 20001

/s/ Sheryl Harrington
PERB



Public Employee Relations Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA



1100 4th Street, S.W. Suite E630 Washington, D.C. 20024-4451 Business: (202) 727-1822 Fax: (202) 727-9116 Email: perb@dc.gov

NOTICE

TO ALL EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1651, PERB CASE Nos. 17-U-26, 18-U-04, AND 18-U-06 (JANUARY, 18, 2018).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law in the manners alleged in PERB Case Nos. 17-U-26, 18-U-04, and 18-U-06, and has ordered MPD to post this Notice.

WE WILL cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1561, PERB Case Nos 17-U-26, 18-U-04, and 18-U-06.

WE WILL cease and desist from refusing to implement the terms of arbitration awards in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5)

Metropolitan Police Department

Date: _____ By: _____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or MPD's compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 18, 2018

Washington, D.C.

District of Columbia REGISTER – March 23, 2018 – Vol. 65 - No. 12 002823 – 003313