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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 22-0951, School Safety Act of 2018 and Bill 22-0967, Student Safety and Consent Education Act of 2018
- D.C. Council schedules a public oversight roundtable on "The District's Response to the September 19, 2018 Fire at the Arthur Capper Senior Apartments"
- D.C. Council schedules a public oversight roundtable on "The Fiscal Year 2019 Winter Plan"
- D.C. Council schedules a public roundtable on the "Department of Small and Local Business Development's Monitoring of Public Private Developments and Subcontracting Plans"
- Office of the Chief Technology Officer solicits proposals for the Gigabit DC Challenge for developing gigabit applications that address complex city mobility and environmental challenges
- Department of Energy and Environment announces funding availability for the Green Bank Development Phase II
- Office of the Secretary requests applications for the Grant to Promote District of Columbia Voting Rights and Statehood

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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

Deadlines for Submission of Documents for Publication

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

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

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The Office of Documents and Administrative Issuances publishes the *D.C. Register* ONLINE every Friday at www.dcregs.dc.gov. The Office of Documents does not offer paid subscriptions to the *D.C. Register*. Copies of the *Register* from April 2003 through July 2010 are also available online in the *D.C. Register* Archive on the website for the Office of the Secretary at www.os.dc.gov. Hardcopies of the Register from 1954 to September 2009 are available at the Martin Luther King, Jr. Memorial Library's Washingtonian Division, 901 G Street, NW, Washington, DC 20001. There are no restrictions on the republication of any portion of the *Register*. News services are encouraged to publish all or part of the *Register*.

Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ROOM 520S – 441 4th STREET, ONE JUDICIARY SQUARE - WASHINGTON, D.C. 20001 - (202) 727-5090

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MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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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

B22-979	Revised Transfer of Jurisdiction over U.S. Reservation 724 (Lots 896 and 897 within Square 620) Act of 2018 Intro. 9-21-18 by Chairman Mendelson and referred to the Committee of the Whole
B22-983	Synthetics Abatement and Full Enforcement Drug Control Amendment Act of 2018 Intro. 9-27-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
B22-985	Arts and Humanities Omnibus Amendment Act of 2018 Intro. 9-28-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue
B22-986	Rhode Island Avenue (RIA) Tax Increment Financing Act of 2018 Intro. 10-1-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

B22-987	Reunion Square Tax Increment Financing Act of 2018 Intro. 10-1-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue
B22-988	Fire and Emergency Medical Services Employee Presumptive Disability Civilian EMS Employees Technical Amendment Act of 2018 Intro. 10-1-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
B22-989	Payment of Costs for the Relocation of Public Utilities on Interstate Highways Amendment Act of 2018 Intro. 10-1-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development with comments from the Committee on Transportation and the Environment
B22-990	Closing of a Portion of South Dakota Avenue, N.E., adjacent to Squares 3760 and 3766 Act of 2018 Intro. 10-1-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PROPOSED RESOLUTIONS

PR22-1013	District of Columbia Board of Ethics and Government Accountability Charles Nottingham Confirmation Resolution of 2018 Intro. 9-24-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
PR22-1014	District of Columbia Board of Ethics and Government Accountability Darrin Sobin Confirmation Resolution of 2018 Intro. 9-24-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

PR22-1015	District of Columbia Board of Ethics and Government Accountability Tameka Collier Confirmation Resolution of 2018 Intro. 9-24-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
PR22-1016	Metropolitan Washington Airports Authority Board of Directors Joslyn Williams Confirmation Resolution of 2018 Intro. 9-24-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
PR22-1017	Metropolitan Washington Airports Authority Board of Directors Judith Batty Confirmation Resolution of 2018 Intro. 9-25-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
PR22-1024	American College of Cardiology Foundation Revenue Bonds Project Approval Resolution of 2018 Intro. 9-27-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue
PR22-1025	District of Columbia Water and Sewer Authority Board of Directors Rachna Butani Bhatt Confirmation Resolution of 2018 Intro. 9-27-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment
PR22-1026	District of Columbia Water and Sewer Authority Board of Directors Rev. Kendrick E. Curry Confirmation Resolution of 2018 Intro. 9-27-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

PR22-1028	Meridian Public Charter School Revenue Bonds Project Approval Resolution of 2018 Intro. 9-28-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue
PR22-1029	Public Charter School Board Lea Crusey Confirmation Resolution of 2018 Intro. 9-28-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education
PR22-1030	Child Development Homes Regulations Approval Resolution of 2018 Intro. 10-1-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
PR22-1031	Technical Amendment Approval Resolution of 2018 Intro. 10-1-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
PR22-1033	Deputy Mayor for Education Paul Kihn Confirmation Resolution of 2018 Intro. 10-2-18 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

B22-619, the Repeat Parking Violations Amendment Act of 2018
B22-841, the Temporary Parking Limitation Regulation Amendment Act of 2018
B22-916, the Southwest Waterfront Park Bus Prohibition Act of 2018

Friday, October 26, 2018 at 1:30 PM
in Room 412 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Friday, October 26, 2018, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B22-619, the Repeat Parking Violations Amendment Act of 2018; B22-841, the Temporary Parking Limitation Regulation Amendment Act of 2018; and B22-916, the Southwest Waterfront Park Bus Prohibition Act of 2018. The hearing will begin at 11:00 AM in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B22-619 would require a facsimile of certain notices of infraction be filed with the Department of Consumer and Regulatory Affairs and would prohibit a hearing examiner from dismissing a notice of infraction because it lacks information that is not required by certain municipal regulations. The bill also allows the Mayor to establish Repeat Parking Violation Pilot Zones and issue escalating fines for identified infractions within the zones. The bill amends regulations to alter the penalty for failure to clearly display a Mobile Roadway Vending ("MRV") Site Permit and increases the distance around an MRV where mobile vending is not permitted. B22-841 would limit the number of days per calendar year for which temporary visitor parking permits may be issued to a single residential address. B22-916 would prohibit buses from operating or parking on certain streets near Southwest Waterfront Park.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on Friday, November 9, 2018.

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

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

ANNOUNCES A PUBLIC HEARING ON

B22-904 –THE "CLEANENERGY DC OMNIBUS AMENDMENT ACT OF 2018"

Monday, October 29, 2018, 10:00 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Monday, October 29, 2018 Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public hearing on Bill 22-904, the "CleanEnergy DC Omnibus Amendment Act of 2018." The stated purpose of Bill 22-904 is to increase the Renewable Portfolio Standard to 100% by 2032; establish a solar energy standard post 2032 and establish standards electricity suppliers must meet regarding purchasing a percentage of their energy from long-term purchase agreements with renewable generators. It removes restrictions on energy efficiency measures. It also expands the uses of the Sustainable Energy Trust Fund and also establishes an energy performance standard program for buildings at the Department of Energy and Environment. Additionally, it authorizes the Mayor to commit the District to participation in regional programs with the purpose of limiting greenhouse gas emissions and requires the Department of Motor Vehicles to issue regulations tying the vehicle excise tax to fuel efficiency.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee on Business and Economic Development via email at cautrey@dccouncil.us or at (202) 724-8053, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Thursday, October 25th.** Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to cautrey@dccouncil.us.

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee on Business and Economic Development at cautrey@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on Friday, November 9th.**

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

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC HEARING

On

B22-0951, the "School Safety Act of 2018,"

And

B22-0967, the "Student Safety and Consent Education Act of 2018"

On

Thursday, November 1, 2018
10:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public hearing of the Committee on Education on B22-0951, the "School Safety Act of 2018"and B22-0967, the "Student Safety and Consent Education Act of 2018." The roundtable will be held at 10:00 a.m. on Thursday, November 1, 2018 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of B22-0951 is to require schools to adapt and implement a policy to prevent and address child sexual abuse, including protocols for responding to and reporting allegations. The stated purpose of B22-0967 is to require schools to adapt and implement a policy to prevent and address peer-to-peer sexual harassment, sexual assault, and dating violence among students.

Those who wish to testify may sign-up online at http://bit.do/EducationHearings or call the Committee on Education at (202) 724-8061 by 5:00pm Tuesday, October 30, 2018. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the 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, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004. The record will close at 5:00 p.m. on Thursday, November 15, 2018.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH
NOTICE OF PUBLIC HEARING
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004

COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON
THE COMMITTEE ON HEALTH

ANNOUNCES A PUBLIC HEARING ON

BILL 22-0959, "EAST END HEALTH EQUITY ACT OF 2018"

BILL 22-0924, "PROGRAM OF ALL-INCLUSIVE FOR THE ELDERLY ESTABLISHMENT ACT OF 2018"

BILL 22-0960, "BREAST DENSITY SCREENING AND NOTIFICATION ACT OF 2018"

BILL 22-0972, "CONVERSION THERAPY FOR CONSUMERS UNDER A CONSERVATORSHIP OR GUARDIANSHIP AMENDMENT ACT OF 2018"

FRIDAY, OCTOBER 26, 2018
10 A.M., ROOM 500, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Councilmember Vincent C. Gray, Chairperson of the Committee on Health, announces a Public Hearing on Bill 22-0959, the "East End Health Equity Act of 2018", Bill 22-0924, the "Program of All-Inclusive for the Elderly Establishment Act of 2018", Bill 22-0960, the "Breast Density Screening and Notification Act of 2018", and Bill 22-0972, the "Conversion Therapy for Consumers Under a Conservatorship or Guardianship Amendment Act of 2018". The hearing will be held on Friday, October 26, 2018, at 10 a.m., in Room 500 of the John A. Wilson Building.

Bill 22-0959, the "East End Health Equity Act of 2018" would exempt certain health care projects of the District of Columbia and District Hospital Partners, LP, doing business as George Washington University Hospital ("GWU Hospital") from the Certificate of Need process to expeditiously move forward with creating a comprehensive, integrated health care system that equitably serves all residents in the District of Columbia.

Bill 22-0924, the "Program of All-Inclusive for the Elderly Establishment Act of 2018" would establish a Program of All-Inclusive Care for the Elderly program in the District.

Bill 22-0960, the "Breast Density Screening and Notification Act of 2018" would require health care facilities to notify patients of mammogram results tending to show high breast density, amend the District of Columbia Cancer Prevention Act of 1990 to include certain preventative screening procedures, and amend the Defending Access to Women's Health Care Services Amendment Act of

2000 to require insurers to cover certain health-care services without cost-sharing and to require insurers to provide information regarding coverage to enrollees and potential enrollees.

Bill 22-0972, the "Conversion Therapy for Consumers Under a Conservatorship or Guardianship Amendment Act of 2018" would amend the Mental Health Service Delivery Reform Act of 2001 to prohibit a provider from engaging in sexual orientation change efforts for a consumer for whom a conservator or guardian has been appointed.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or mcameron@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization, preferably by 5:00 p.m. on Wednesday, October 24, 2018.

Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to mcameron@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 113, Washington D.C. 20004.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 22-963, the "Relocation of a Passageway Easement in Square 696 Act of 2018"
Bill 22-979, the "Revised Transfer of Jurisdiction over U.S. Reservation 724 (Lots 896 and 897 within Square 620) Act of 2018"

on

Tuesday, October 23, 2018, 11:00 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **Bill 22-963**, the "Relocation of a Passageway Easement in Square 696 Act of 2018" and on **Bill 22-979**, the "Revised Transfer of Jurisdiction over U.S. Reservation 724 (Lots 896 and 897 within Square 620) Act of 2018." The hearing will be held at 11:00 a.m. on Tuesday, October 23, 2018 in Room 120 of the John A. Wilson Building.

The stated purpose of Bill 22-963 is to authorize the relocation of a surface easement with in Square 696. This bill is a technical amendment to a public alley closing that was approved by Council in March 2008. The bill allows the Office of the Surveyor to shift a public easement within the property approximately 100 feet to the east. This public easement relocation will facilitate the completion of mixed-use development project which comprises of 37,000 square feet of commercial office and retail space in the Navy Yard neighborhood in Ward 6. The stated purpose of Bill 22-979 is to approve the revised transfer of jurisdiction over U.S. Reservation 724 from the United States of America, acting by and through the Department of the Interior, National Park Service, to the District of Columbia. This bill is a technical amendment to a transfer of jurisdiction resolution that was approved by Council in December 2017. This bill ensures the correct portion of District-owned land is retained by the District of Columbia. This revision to the transfer of jurisdiction will facilitate the Sursum Corda Redevelopment project in Ward 6.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Randi Powell, Legislative Policy Advisor at (202) 724-8196, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, **October 19, 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 October 22, 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 Friday, November 2, 2018.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004 **RECONVENED**

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE

ANNOUNCES A PUBLIC HEARING

on

PR 22-888, Board of Trustees of the University of the District of Columbia General Errol Schwartz Confirmation Resolution of 2018
PR 22-889, Board of Trustees of the University of the District of Columbia Elaine Crider Confirmation Resolution of 2018
PR 22-890, Board of Trustees of the University of the District of Columbia Ken Grossinger Confirmation Resolution of 2018
PR 22-891, Board of Trustees of the University of the District of Columbia Anthony Tardd Confirmation Resolution of 2018
PR 22-892, Board of Trustees of the University of the District of Columbia Carolyn Rudd Confirmation Resolution of 2018
&
PR 22-893, Board of Trustees of the University of the District of Columbia Charlene Drew Jarvis Confirmation Resolution of 2018

on

Thursday, October 18, 2018
10:30 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on **PR 22-888**, Board of Trustees of the University of the District of Columbia General Errol Schwartz Confirmation Resolution of 2018; **PR 22-889**, Board of Trustees of the University of the District of Columbia Elaine Crider Confirmation Resolution of 2018; **PR 22-890**, Board of Trustees of the University of the District of Columbia Ken Grossinger Confirmation Resolution of 2018; **PR 22-891**, Board of Trustees of the University of the District of Columbia Anthony Tardd Confirmation Resolution of 2018; **PR 22-892**, Board of Trustees of the University of the District of Columbia Carolyn Rudd Confirmation Resolution of 2018; and **PR 22-893**, Board of Trustees of the University of the District of Columbia Charlene Drew Jarvis Confirmation Resolution of 2018.. **This hearing was recessed on September 25, 2018 and will reconvene at 10:30 on Thursday, October 18, 2018 at 10:30 a.m. in Hearing Room 412 of the John A. Wilson Building.**

This hearing is being reconvened to hear testimony from Dr. Crider and Mr. Grossinger, as they were unable to attend the hearing on September 25, 2018. The stated purpose of PRs 22-888, 22-889, 22-891, and 22-893 is to confirm the reappointments of General Errol Schwartz, Elaine Crider, Anthony Tardd, and Charlene Drew Jarvis to the University of the District of Columbia (UDC) Board of Trustees. The stated purpose of PRs 22-890 and 22-892 is to confirm the appointment of Ken Grossinger and Carolyn Rudd, respectively, to the UDC Board of Trustees. The purpose of this hearing is to receive testimony from witnesses as to the fitness of these nominees for UDC's Board of Trustees.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Christina Setlow at (202) 724-4865, and to provide your name, address,

telephone number, organizational affiliation and title (if any) by close of business **Tuesday, October 16, 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 October 16, 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 November 1, 2018.

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

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

CHAIRPERSON ELISSA SILVERMAN
COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

ANNOUNCES A PUBLIC HEARING ON

PR22-0982, The "Director of the Department of Employment Services Unique Morris-Hughes Confirmation Resolution of 2018"
on

Monday, November 19, 2018, 10:00 a.m.
Hearing Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Councilmember Elissa Silverman, Chair of the Committee on Labor and Workforce Development, announces a public hearing on PR22-0982, the "Director of the Department of Employment Services Unique Morris-Hughes Confirmation Resolution of 2018." The hearing will be held at 10:00 a.m. on Monday, November 19, 2018, in Room 500 of the John A. Wilson Building.

The purpose of PR 22-0982 is to confirm the appointment of Unique Morris-Hughes as the Director of the Department of Employment Services. The mission of the Department of Employment Services (DOES) is to provide employment and training services to jobseekers and workers, as well as to enforce labor and employment laws within its jurisdiction. The purpose of this hearing is to receive testimony from government and public witnesses on this nominee for appointment as Director.

Those who wish to testify before the Committee are asked to contact Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by 5:00 p.m. on Thursday, November 15, 2018, to provide their name, address, telephone number, organizational affiliation and title (if any), as well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and individuals will have three minutes to present their testimony; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at labor@dccouncil.us or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, November 21, 2018.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC OVERSIGHT HEARING

on

District of Columbia Auditor's Report
"Housing Code Enforcement: A Case Study of Dahlgreen Courts"

on

Wednesday, October 31, 2018, 10:00 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public oversight hearing before the Committee of the Whole on the District of Columbia Auditor's Report, "Housing Code Enforcement: A Case Study of Dahlgreen Courts." The hearing will be held at 10:00 a.m. on Wednesday, October 31, 2018 in Room 412 of the John A. Wilson Building.

Chairman Mendelson requested that Office of the District of Columbia Auditor (ODCA) examine the Department of Consumer and Regulatory Affairs (DCRA) and make recommendations to the Council on how DCRA may improve operations. The Committee is concerned about DCRA's failure to respond quickly and effectively to numerous housing code complaints at Dahlgreen Courts and ODCA used Dahgreen Courts as a case study. ODCA found that DCRA could better protect tenants through more rigorous and timely enforcement of the housing code. The process for responding to housing code violation complaints allows landlords to put off remediation through extensions and delayed re-inspection. Even when fines are levied, these fines may not be sufficient to deter landlords from allowing conditions in their units to deteriorate. The report found that the District government is missing opportunities to protect tenants through other programs that relate to affordable housing. In addition to problems with the enforcement process itself, limited documentation and tracking contribute to a lack of transparency which impedes the accountability needed to consistently protect the health and safety of tenants in the District.

Those who wish to testify are asked to email the Committee of the Whole at cow@dccouncil.us, or call Evan Cash, Committee and Legislative Director at (202) 724-7002, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Monday, **October 29, 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 October 29, 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 report can be obtained through the Auditor's website at http://dcauditor.org/reports/2018. 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 Wednesday, November 14, 2018.

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

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC OVERSIGHT HEARING

On

Issues Facing District of Columbia Youth in the Public Education System

on

Monday, October 15, 2018
4:00 p.m., Hearing Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public oversight hearing of the Committee on Education on student related issues with a focus on Pre-K3 through 12th grade. The roundtable will be held at 4:00 p.m. on Monday, October 15, 2018 in Hearing Room 500s of the John A. Wilson Building.

The purpose of this hearing is to hear testimony from youth regarding issues around school discipline, dress code, attendance, school transportation, and any other issue impacting their access to a quality education in Public Schools and Public Charter Schools in the District of Columbia.

Youth, aged 21 and younger, who wish to testify may sign-up online at http://bit.do/educationhearings or call the Committee on Education at (202) 724-8061 by 5:00p.m. Thursday, October 11, 2018 and provide their name, age, telephone number, school (if applicable), current grade (if applicable), organizational affiliation and title (if any). Each person should limit their testimony to three (3) minutes in order to permit each witness an opportunity to testify.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004. The record will close at 5:00 p.m. on Monday, October 29, 2018.

This revised notice reflects the change in title and the purpose of this hearing.

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

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

AND

COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING & NEIGHBORHOOD REVITALIZATION

ANNOUNCE A JOINT PUBLIC OVERSIGHT ROUNDTABLE ON

THE DISTRICT'S RESPONSE TO THE SEPTEMBER 19, 2018, FIRE AT THE ARTHUR CAPPER SENIOR APARTMENTS

Thursday, October 25, 2018, 10:00 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Thursday, October 25, 2018, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, and Councilmember Anita Bonds, Chairperson of the Committee on Housing and Neighborhood Revitalization, will hold a joint public oversight roundtable to discuss the District's Response to the September 19, 2018, Fire at the Arthur Capper Senior Apartments. The roundtable will take place in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10:00 a.m.

At the roundtable, the Committees will discuss the response efforts of District agencies and the Capper Senior Apartments' building ownership and management during the fire and in the ensuring days and weeks. The Committees will hear from various District agencies, including the Homeland Security and Emergency Management Agency, the Fire and Emergency Medical Services Department, the District of Columbia Housing Authority, the Department of Human Services, and the Office on Aging.

Anyone wishing to testify at the roundtable should contact the Committee via email at judiciary@dccouncil.us or at (202) 724-7808, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, October 22**.

Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **twenty double-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us.

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at judiciary@dccouncil.us. **The record will close at the end of the business day on November 8, 2018.**

Council of the District of Columbia
COMMITTEE ON HUMAN SERVICES
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER BRIANNE K. NADEAU, CHAIRPERSON
COMMITTEE ON HUMAN SERVICES

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

THE FISCAL YEAR 2019 WINTER PLAN

Tuesday, October 23, 2018, 12:00 p.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Tuesday, October 23, 2018, Councilmember Brianne K. Nadeau, Chairperson of the Committee on Human Services, will hold a public oversight roundtable on the District's FY19 Winter Plan. The roundtable will take place in Room 412, of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, at 12:00 p.m.

The District of Columbia provides a legal right to shelter in hypothermic weather conditions. Pursuant to the Homeless Services Reform Act, by September of each year, a Winter Plan is implemented describing how those who are experiencing homelessness will be protected from cold weather injury. The plan sets out to describe how District agencies and providers within the Continuum of Care will coordinate to provide hypothermia shelter and other services for homeless DC residents, consistent with the right to shelter. The committee seeks to more closely review the most recent plan and explore how and why it may differ from previous years.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee on Human Services via email at humanservices@dccouncil.us or at (202) 724-8170, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Friday, October 19, 2018**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony.

For witnesses who are unable to testify, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee on Human Services at humanservices@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on Tuesday, November 6, 2018.**

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

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

ANNOUNCES A PUBLIC ROUNDTABLE ON

THE DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT'S TRIENNIAL REVIEW OF THE CERTIFIED BUSINESS ENTERPRISE PROGRAM; AND

THE DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT'S MONITORING OF PUBLIC PRIVATE DEVELOPMENTS AND SUBCONTRACTING PLANS

Wednesday, October 24, 2018, 10:30 a.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Wednesday, October 24, 2018 Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public roundtable on the Department of Small and Local Business Development's (DSLBD) Triennial Review of the Certified Business Enterprise (CBE) Program and DSLBD's Monitoring of Public Private Developments and Subcontracting Plans.

Every three years, DSLBD is required to submit to the Council and the Mayor the results of an independent evaluation of all eligible programs and activities required under the CBE Program. This evaluation must include the comparison of costs of contracts awarded without use of the set-asides and bid preferences authorized by law. The evaluation must also compare economic outcomes such as revenue, tax payments, and employment of District residents for CBEs to economic outcomes for similar firms that are not certified as CBEs.

The purpose of this roundtable is also to review DSLBD's compliance functions in accordance with DC Official Law 2-218.46, specifically, its oversight over performance and subcontracting requirements for construction and non-construction contracts, and subcontracting plans.

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

via email at bmcclure@dccouncil.us or at (202) 727-3888, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, October 22nd**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to bmcclure@dccouncil.us.

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee on Business and Economic Development at bmcclure@dccouncil.us or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on Wednesday, November 7th.**

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 22-1024, the "American College of Cardiology Foundation Revenue Bonds Project Approval Resolution of 2018"
PR 22-1028, the "Meridian Public Charter School Revenue Bonds Project Approval Resolution of 2018"

Wednesday, October 10, 2018
9:45 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, October 10, 2018 at 9:45 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 22-1024, the "American College of Cardiology Foundation Revenue Bonds Project Approval Resolution of 2018" would authorize and provide for the issuance, sale and delivery in an aggregate principal amount not to exceed $15 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of the bonds to assist the American College of Cardiology Foundation 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. The American College of Cardiology Foundation is located at 2400 N Street, NW, in Ward 2.

PR 22-1028, the "Meridian Public Charter School Revenue Bonds Project Approval Resolution of 2018" would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $8.5 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of the bonds to assist Meridian Public Charter School 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. Meridian Public Charter School is located at 3029 14th Street, NW, in Ward 1.

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 9:45a.m. on Tuesday, October 9, 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

CONSIDERATION OF TEMPORARY LEGISLATION

B22-627, Revised Synthetics Abatement and Full Enforcement Drug Control Temporary Amendment Act of 2018, **B22-939**, Access to Public Benefits Temporary Amendment Act of 2018, **B22-994**, Fiscal Year 2019 Budget Support Clarification Temporary Act of 2018 and **B22-996**, Parent-led Play Cooperative Temporary Amendment Act of 2018 were adopted on first reading on October 2, 2018. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on November 13, 2018.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	October 5, 2018
Protest Petition Deadline:	November 19, 2018
Roll Call Hearing Date:	December 3, 2018

License No.:	ABRA-103856
Licensee:	Waterfront Pizzeria, LLC
Trade Name:	All Purpose
License Class:	Retailer's Class "C" Restaurant
Address:	79 Potomac Avenue, 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 requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on December 3, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Class "C" Restaurant requesting an expansion of their ground floor Summer Garden, to increase seating and Total Occupancy Load from 50 to 125. Total Occupancy Load of the entire establishment will not exceed 280, with a maximum of 105 patrons in the interior of the premises and a maximum of 175 patrons in the two summer gardens.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES)

Sunday through Thursday 8am – 2am
Friday and Saturday 8am – 3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SUMMER GARDENS)

Sunday through Thursday 8am – 12am
Friday and Saturday 8am – 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Placard Posting Date:	September 28, 2018
Protest Petition Deadline:	November 13, 2018
Roll Call Hearing Date:	November 26, 2018
License No.:	ABRA-060138
Licensee:	Café Dupont, LLC
Trade Name:	Café Citron
License Class:	Retailer's Class "C" Restaurant
Address:	1343 Connecticut Avenue, N.W.
Contact:	**Ely Hurwitz, Esq: (202) 483-0001

WARD 2 ANC 2B SMD 2B07

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on November 26, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Class Change from Retailer C Restaurant to Retailer C Tavern.

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

Sunday – Thursday 11 am – 2 am
Friday and Saturday 11 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	September 28, 2018
Protest Petition Deadline:	November 13, 2018
Roll Call Hearing Date:	November 26, 2018

License No.:	ABRA-060138
Licensee:	Café Dupont, LLC
Trade Name:	Café Citron
License Class:	Retailer's Class "C" Restaurant
Address:	1343 Connecticut Avenue, N.W.
Contact:	**Jeff Jackson: (202) 251-1566

WARD 2 ANC 2B SMD 2B07

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on November 26, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE
Class Change from Retailer C Restaurant to Retailer C Tavern.

CURRENT HOURS OF OPERATION, ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION, AND LIVE ENTERTAINMENT
Sunday – Thursday 11 am – 2 am
Friday and Saturday 11 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	October 5, 2018
Protest Petition Deadline:	November 19, 2018
Roll Call Hearing Date:	December 3, 2018
Protest Hearing Date:	January 30, 2019
License No.:	ABRA-110971
Licensee:	701 Second Street, LLC
Trade Name:	Café Fili
License Class:	Retailer's Class "C" Restaurant
Address:	701 2nd Street, N.E.
Contact:	Andrew Kline: (202) 686-7600

WARD 6 ANC 6C SMD 6C04

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 December 3, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **January 30, 2019 at 4:30 p.m.**

NATURE OF OPERATION
New Restaurant serving Mediterranean food. Sidewalk Café with 38 seats. Total Occupancy Load is 89 with seating for 52.

HOURS OF OPERATION INSIDE PREMISES AND FOR SIDEWALK CAFÉ
Sunday through Thursday 7:30am – 2am, Friday and Saturday 7:30am – 3am

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	October 5, 2018
Protest Petition Deadline:	November 19, 2018
Roll Call Hearing Date:	December 3, 2018
Protest Hearing Date:	January 30, 2019
License No.:	ABRA-111360
Licensee:	Cheesemonster Studio, LLC
Trade Name:	Cheesemonster Studio
License Class:	Retailer's Class "C" Restaurant
Address:	713 Kennedy Street, N.W.
Contact:	Hilary Leonard: (202) 285-2722

WARD 4 ANC 4D SMD 4D01

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 December 3, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **January 30, 2019 at 1:30 p.m.**

NATURE OF OPERATION

New Restaurant specializing in creative cheeseboards with accompaniments such as cured meats, nuts, pickled vegetables and sweets. Will also have an array of light fare appetizers available. Cheese classes and wine tastings will be held. Sidewalk Café with 10 seats. Total Occupancy Load is 15 with seating for 14. Requesting an Entertainment Endorsement to provide live entertainment inside the premises only.

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

Sunday 10am – 2am, Monday through Friday 8am – 2am and Saturday 8am – 3am

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

Sunday through Saturday 10am – 11pm

HOURS OF LIVE ENTERTAINMENT INSIDE ONLY

Sunday through Saturday 10am – 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**RESCIND

Placard Posting Date:	September 21, 2018
Protest Petition Deadline:	November 5, 2018
Roll Call Hearing Date:	November 19, 2018
Protest Hearing Date:	January 16, 2019

License No.:	ABRA-111498
Licensee:	Western Dawn, Inc.
Trade Name:	Lily
License Class:	Retailer's Class "C" Restaurant
Address:	2622 P Street, N.W.
Contact:	Andrew J. Kline, Esq.: (202) 686-7600

WARD 2 ANC 2E SMD 2E06

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 November 19, 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 **January 16, 2019 at 1:30 p.m.**

NATURE OF OPERATION

New C Restaurant serving Western Mediterranean Cuisine. Seating Capacity of 60, Total Occupancy Load of 100, and a Summer Garden with 30 Seats.

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

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	October 5, 2018
Protest Petition Deadline:	November 19, 2018
Roll Call Hearing Date:	December 3, 2018
License No.:	ABRA-106709
Licensee:	Shemp, LLC
Trade Name:	St. Anselm
License Class:	Retailer's Class "C" Restaurant
Address:	1250-1274 5th Street, N.E.
Contact:	Stephen J. O'Brien, Esq.: (202) 625-7700

WARD 5 ANC 5D SMD 5D01

Notice is hereby given that this licensee has requested a Substantial Change to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on December 3, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE
Request to add a Sidewalk Cafe with 24 seats.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES AND SUMMER GARDEN)
Sunday through Thursday 8am – 2am
Friday and Saturday 8am – 3am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SIDEWALK CAFE)
Sunday through Thursday 8am – 2am
Friday and Saturday 8am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	October 5, 2018
Protest Petition Deadline:	November 19, 2018
Roll Call Hearing Date:	December 3, 2018
Protest Hearing Date:	January 30, 2019
License No.:	ABRA-110948
Licensee:	777 6th Street NW Tenant, LLC
Trade Name:	WeWork
License Class:	Retailer's Class "C" Tavern
Address:	777 6th Street, N.W.
Contact:	Stephen O'Brien: (202) 625-7700

WARD 2 ANC 2C SMD 2C03

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 December 3, 2018 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **January 30, 2019 at 1:30 p.m.**

NATURE OF OPERATION

New Tavern that will be a shared professional office space with food, non-alcoholic beverages, beer, and wine available for members (tenants) and their guests. Requesting an Entertainment Endorsement. Total Occupancy load is 150 with seating for 75.

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

Monday through Saturday 11am – 10pm (Closed Sundays)

HOURS OF LIVE ENTERTAINMENT

Monday through Saturday 11am – 9pm (Closed Sundays)

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARINGS

The D.C. Historic Preservation Review Board will hold a public hearing to consider an application to amend the landmark designation of the following property, presently listed in the D.C. Inventory of Historic Sites. The Board will also consider forwarding the revised the nomination of the property to the National Register of Historic Places:

Case No. 17-10: Wardman Park Annex (amendment)
2600/2660 Woodley Road NW
Parts of Lots 32 and 850 in Square 2132
Affected Advisory Neighborhood Commission: 3C

The application seeks to designate a portion of the interior and revise the landmark's boundaries, to take in the entry piers to the former hotel's driveway.

The hearing will take place at **9:00 a.m. on Thursday, November 15, 2018**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street SW, Suite E650, Washington, D.C. 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

The Board's hearing is open to all interested parties or persons. Public and governmental agencies, Advisory Neighborhood Commissions, property owners, and interested organizations or individuals are invited to testify before the Board. Written testimony may also be submitted prior to the hearing. All submissions should be sent to the address above.

A copy of the historic designation application is currently on file and posted on the Historic Preservation Office website at We mailed you copies of the application in April 2017 and April 2018. Copies are on file and available to the public at the Historic Preservation Office and on our website at https://planning.dc.gov/node/1269586. A copy of the staff report and recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates a property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may

apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Qualification for Federal Grants for Historic Preservation When Funds Are Available: The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District or Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For further information, contact Tim Dennee, Landmarks Coordinator, at 202-442-8847.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, DECEMBER 5, 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 ONE

19870 ANC 1A — **Application of 727 Kenyon LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion requirements of Subtitle U § 320.2, to convert the existing principal dwelling unit to a three-unit apartment house in the RF-1 Zone at premises 727 Kenyon Street N.W. (Square 2892, Lot 845).

WARD FIVE

19876 ANC 5D — **Application of Kristin Johnson**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E §§ 5007.1 and 5201 from the accessory structure lot occupancy requirements of Subtitle E § 5003.1, to construct an accessory structure in the rear yard of an existing, semi-detached principal dwelling unit in the RF-1 Zone at premises 1258 Florida Avenue N.E. (Square 4069, Lot 13).

WARD FIVE

19878 ANC 5C — **Application of Giulio Girardi**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1402 from the retaining wall requirements of Subtitle C § 1401.3(a) and (b), and under Subtitle D §5201 from the side yard setback requirements of Subtitle D § 307.1 and the pervious surface requirements of Subtitle D § 308.1, to construct a rear yard retaining wall and a rear deck addition to an existing detached principal dwelling unit in the R-1-B Zone at premises 2931 South Dakota Avenue N.E. (Square 4339, Lot 39).

WARD SIX

19879 ANC 6E — **Application of Dominic Puchalla**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, to convert the existing artist studio to a principal dwelling unit in the RF-1 Zone at premises 1518 New Jersey Avenue (Rear). (Square 510, Lot 165).

WARD THREE

19880 ANC 3G — **Application of Deborah Schechter**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.1 and the side yard requirements of Subtitle D § 307.1, to construct a side addition connecting the existing principal dwelling unit to an existing accessory structure in the R-1-B Zone at premises 3802 Jocelyn Street N.W. (Square 1855, Lot 58).

WARD TWO

19881 ANC 2E — **Application of Luis Colemenares**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D §§ 1206.4 and 5201 from the rear addition requirements of Subtitle D § 1206.3, to construct a two-story rear addition to an existing, attached principal dwelling unit in the R-20 Zone at premises 3714 S Street N.W. (Square 1308S, Lot 47).

WARD FOUR

19883 ANC 4C — **Application of 845 Upshur LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle G §§ 409 and 1200 from the lot occupancy requirements of Subtitle G § 404.1, to construct a three-story addition to an existing mixed use building in the MU-4 Zone at premises 845 Upshur Street N.W. (Square 3024, Lot 56).

PLEASE NOTE:

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

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

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

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

Do you need assistance to participate?

Amharic
ለመካተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይምየቋንቋ እርዳታአገልግሎቶች (ትርጉምወይምመስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባውአምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይምበኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

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

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

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

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

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

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

FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER
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: **Monday, December 3, 2018, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 12-08B (Text Amendment to Subtitles K §§ 603, 612, 613 & 614 (StE Zones))

THIS CASE IS OF INTEREST TO ALL ANCs

On September 7, 2018, the Office of Zoning (OZ) received a report that served as a petition from the District of Columbia Office of Planning ("OP") proposing text amendments to Subtitle K §§ 603, 612, and 613[1] of Title 11 DCMR (Zoning Regulations of 2016). The text amendments would impose height limits for buildings within the StE-2 zone, allow emergency shelter uses as a matter-of-right within the StE-2 zone only, and substitute the correct "Medical Care" Use Category for the incorrect current "Health Care" as one of the use categories permitted in all StE zones. On September 17, 2018, the Commission voted to set down the petition for a public hearing. The OP set down report served as a pre-hearing filing.

The following amendments to Title 11 DCMR are proposed (text to be deleted is marked with ~~**strikethrough**~~ text and new text is shown in **bold** and underlined text):

1. Amend Subtitle K § 603.1 as follows:

603 HEIGHT (STE)

603.1 The maximum permitted building height, not including the penthouse, as well as the maximum permitted penthouse height and number of stories, in the StE zones shall be given in the following table:

TABLE K § 603.1: MAXIMUM PERMITTED BUILDING HEIGHT, PENTHOUSE HEIGHT, AND PENTHOUSE STORIES

Zone District	Maximum Building Height (Feet.)	Maximum Penthouse Height	Maximum Penthouse Stories
StE-1	. . .[2]		
StE-2	**Subtitle K § 603.3**	12 ft. except 18 ft. 6 in. for penthouse mechanical space	1; Second story permitted for penthouse mechanical space

[1] After consultation with the Office of the Attorney General, § 614 was added for legal sufficiency.
[2] This ellipse signifies that other paragraphs exist in § 502.1 and that the omission of those paragraphs does not signify an intent to repeal.

2. Add a new Subtitle K § 603.3 as follows:

603.3 **The maximum permitted building height, not including the penthouse, for any portion of a building shall be based on the building's distance from the property line along Martin Luther King, Jr. Avenue as follows:**

(a) **For a distance of two-hundred thirty feet (230 ft.) or less, the maximum permitted building height, not including the penthouse, shall be forty feet (40 ft.);**

(b) **For a distance of more than two-hundred thirty feet (230 ft.) and less than five hundred sixty feet (560 ft.), the maximum permitted building height, not including the penthouse, shall be eighty feet (80 ft.); and**

(c) **For a distance of five hundred sixty feet (560 ft.) or more, the maximum permitted building height, not including the penthouse, shall be ninety feet (90 ft.).**

3. Amend Subtitle K § 612.1 as follows:

612.1 The following ~~uses~~ **use** categories shall be permitted as a matter of right in all of the StE zones, except as limited in Subtitle K §§ 613 and 614, or if specifically prohibited by Subtitle K § 615:

. . .

(m) ~~Health Care~~ **Medical Care**;

4. Add a new Subtitle K § 613.3:

613 USE LIMITATIONS (STE)

. . .

613.3 **Within the StE-2 zone, emergency shelter uses for more than four (4) persons shall be permitted as a matter-of-right.**

5. Amend Subtitle K § 614.1 as follows:

614 USES PERMITTED BY SPECIAL EXCEPTION (STE)

614.1 The uses in this section shall be permitted in the StE zones as a special exception if approved by the Board of Zoning Adjustment pursuant to the general standards of Subtitle X, the criteria set forth in Subtitle K § 615.2, and subject to applicable conditions of each section as stated below:

(a) **Except as provided in Subtitle K § 613.3 for the StE-2 zone, emergency** ~~**Emergency**~~ shelter **uses** for five (5) to fifteen (15) persons, not including resident supervisors or staff and their families, subject to the following conditions:

…

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

This public hearing will be conducted in accordance with the rulemaking case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 5.

How to participate as a witness.

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

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.	Organizations	5 minutes each
2.	Individuals	3 minutes each

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 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.

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, November 29, 2018, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-15 (Square 656 Owner, LLC – Design Review @ Square 656, Lots 35-43 [Property Bounded by a 16-Foot Public Alley to the West, Half Street, SW to the East, Q Street, SW to the South & a 16-Foot Public Alley to the North])

THIS CASE IS OF INTEREST TO ANC 6D

On September 7, 2018, the Office of Zoning received an application from Square 656 Owner, LLC ("Applicant"). The Applicant is requesting design review approval to develop the property with a hotel, including approximately 154 rooms, and approximately 5,559 square feet of commercial use in the CG-4 zone on property located in Square 656, Lots 35-43 ("Property") for hotel use.

The Property that is the subject of this application consists of approximately 13,618 square feet of land area. The Property is bounded by a 16-foot public alley to the west, Half Street, SW to the east, Q Street, SW to the south and a 16-foot public alley to the north. The Property is located in the CG-4 Zone District.

The project will have a floor area ratio ("FAR") of 6.0 and a building height of 90 feet, and will provide approximately eight vehicular parking spaces and 12 bicycle parking spaces. The applicant simultaneously seeks relief from Subtitle K § 504.13 for the public plaza requirement of the CG-4 zone, from Subtitle K § 513.2(c) and Subtitle C § 712.3 for parking space size requirements, and from Subtitle K § 513.2(c) and Subtitle C § 701.5 from parking space number requirements.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 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: https://app.dcoz.dc.gov/Help/Forms.html.** 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 https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FURTHER PUBLIC HEARING

TIME AND PLACE: **Monday, December 3, 2018, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-16 (Text and Map Amendments to Change Certain Zone Names – Mapping Phase)

THIS CASE IS OF INTEREST TO ALL ANCs

On September 7, 2018, the Office of Zoning received a report, which also served as a prehearing filing, from the District of Columbia Office of Planning ("OP") proposing amendments to the Zoning Map to change the names of certain zones. The proposed zone name changes would link a common base zone to a geographic identifier similar to the zoning overlays formerly used in the 1958 regulation zone names. The relevant chapters reflecting the new zone names would be reorganized such that the development standards would be located within the base zone chapter and only those standards that are different would be detailed in the modified zone chapter. The implementing text amendments will be submitted by OP through a subsequent report if the Zoning Commission takes proposed action on these map amendments. The Zoning Commission will then determine whether to set down the proposed text for a hearing. Ultimately, the Commission would simultaneously consider whether to take final action on the proposed map and text amendments On September 17, 2018, the Commission voted to set down the proposed map amendments for a public hearing.

The following amendments to the Zoning Map are proposed.

1958 Name	ZR16 Name	PROPOSED ZONE NAME CHANGE 2018
Subtitle D - Residential House (R)		
R-1A /TSP	R-6	**R-1A /TS**
R-1-B /TSP	R-7	**R-1B /TS**
R-1A /FH-TSP	R-8	**R-1A/FH**
R-1-B /FH-TSP	R-9	**R-1B /FH**
R-2/FH-TSP	R-10	**R-2/FH**
R-1A /NO/TSP	R-11	**R-1A /TS/NO**
R-1-B /NO	R-12	**R-1B /NO**
R-3/NO	R-13	**R-3/NO**
R-1A /WH	R-14	**R-1A /WH**
R-1-B /WH	R-15	**R-1B /WH**
R-1-B /SSH1	R-16	**R-1B /SH**
R-1-B /SSH2	R-16	**R-1B /SH**
R-3/FB	R-17	**R-3/FB**

1958 Name	ZR16 Name	PROPOSED ZONE NAME CHANGE 2018
R-1-B (Gtwn)	R-19	**R-1B /GT**
R-3 (Gtwn)	R-20	**R-3/GT**
R-1A /CBUT	R-21	**R-1A /CBUT**
Subtitle E – Residential Flat (RF)		
R-4/DC	RF-2	**RF-1/DC**
R-4/CAP	RF-3	**RF-1/CAP**
Subtitle F – Residential Apartments (RA)		
R-5-A/NO	RA-6	**RA-1/NO**
R-5-B/CAP	RA-7	**RA-2/CAP**
R-5-B/DC	RA-8	**RA-2/DC**
R-5-D/DC	RA-9	**RA-4/DC**
R-5-E/DC	RA-10	**RA-5/DC**
Subtitle G - Mixed Use (MU)		
C-4	MU-30	**MU-15**
SP-1/DC	MU-15	**MU-1/DC**
SP-2/DC	MU-16	**MU-2/DC**
C-2-A/DC	MU-17	**MU-4/DC**
C-2-B/DC	MU-18	**MU-5A/DC**
C-2-C/DC	MU-19	**MU-6/DC**
C-3-B/DC	MU-20	**MU-8/DC**
C-3-C/DC	MU-21	**MU-9/DC**
CR/DC	MU-22	**MU-10/DC**
SP-2/CAP	MU-23	**MU-2/CAP**
C-2-A/CAP	MU-24	**MU-4/CAP**
C-2-A/CHC	MU-25	**MU-4/CHC**
C-2-A/CAP/CHC	MU-26	**MU-4/CAP/CHC**
C-2-A/NO	MU-27	**MU-4/NO**
C-3-A/FT	MU-28	**MU-7/FT**
CR/FT	MU-29	**MU-10/FT**
Subtitles H – Neighborhood Commercial		
C-1/MW	NC-1	**MU-3A/MW**
C-2-A/TK	NC-2	**MU-4/TK**
C-2-A/CP	NC-3	**MU-4/CP**
C-2-A/WP	NC-4	**MU-4/WP**
C-2-B/WP	NC-5	**MU-5A/WP**
C-3-A/ES	NC-6	**MU-7/ES**
C-2-A/GA	NC-7	**MU-4/GA**
C-3-A/GA	NC-8	**MU-7/GA**
C-2-A/HS-H	NC-9	**MU-4/H-H**
C-2-B /HS-H	NC-10	**MU-5A/H-H**
C-2-C/HS-H	NC-11	**MU-6/H-H**
C-3-A/HS-H	NC-12	**MU-7/H-H**
C-3-B/HS-H	NC-13	**MU-8/H-H**
C-2-A/HS-A	NC-14	**MU-4/H-A**
C-3-A/HS-A	NC-15	**MU-7/H-A**
C-2-A/HS-R	NC-16	**MU-4/H-R**

1958 Name	ZR16 Name	PROPOSED ZONE NAME CHANGE 2018
C-2-B /HS-R	NC-17	**MU-5A/H-R**
Subtitle K – Special Purpose Zones		
R-5-B/RC	RC-1	**RA-2/RC**
C-2-A/RC	RC-2	**MU-4/RC**
C-2-B/RC	RC-3	**MU-5/RC**

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

This public hearing will be conducted in accordance with the rulemaking case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 5.

How to participate as a witness.

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

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. Organizations 5 minutes each
2. Individuals 3 minutes each

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 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

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, December 6, 2018, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-17 (Events DC – 2400 E. Capitol Street, SE [Parcel 149, Lot 66] – Pavilion Design Review)

THIS CASE IS OF INTEREST TO ANC 7D

On September 14, 2018, the Office of Zoning received an application from Events DC ("Applicant"). The Applicant is requesting approval of plans for the construction of an unenclosed pavilion on property located in Parcel 149, Lot 66 to support the redevelopment of a portion of the Robert F. Kennedy ("RFK") Stadium campus with playing fields.

The property that is the subject of this application is located on a portion of a 3,156,731-square-foot parcel that previously served as a parking lot for the RFK Stadium campus and is unzoned. Ordinarily no building permit or certificate of occupancy may be issued until the Zoning Commission ("Commission") has designated Zoning for the property. (11-A DCMR § 209.1.) The application was filed in anticipation of the Commission adopting a text amendment proposed in Z.C. Case No.18-04 which, if approved, would permit the installation and use of three athletic playing fields and associated accessory structures on the property. The proposed amendments would also permit the installation and use of an unenclosed pavilion on the property if the Commission finds that said structure, as designed, meets the standards of Subtitle X, Chapter 6 other than § 604.8. The Commission will not consider acting to approve this application until the amendments in Z.C. Case No. 18-04 have also been approved and have become effective.

The Applicant requests design review to construct an unenclosed pavilion to support the redevelopment of the RFK Stadium campus with three multipurpose playing fields and three accessory structures. The unenclosed pavilion will be approximately 30 feet in height and will cover approximately 6,000 square feet of area. It will be open on all four sides and have a curved roof design.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 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: https://app.dcoz.dc.gov/Help/Forms.html.** 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 https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY;

RM-09-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 9 — NET ENERGY METERING;

RM-13-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 13 — RULES IMPLEMENTING THE PUBLIC UTILITIES REIMBURSEMENT FEE ACT OF 1980;

RM-29-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 29 — RENEWABLE ENERGY PORTFOLIO STANDARD;

RM-36-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 36 — ELECTRICITY QUALITY OF SERVICE STANDARDS;

RM-40-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 40 — DISTRICT OF COLUMBIA SMALL GENERATOR INTERCONNECTION RULES;

RM-41-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 41 — THE DISTRICT OF COLUMBIA STANDARD OFFER SERVICE RULES;

RM-42-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 42 — FUEL MIX AND EMISSIONS DISCLOSURE REPORTS; AND

RM-44-2017-01, IN THE MATTER OF 15 DCMR CHAPTER 44 — SUBMETERING AND ENERGY ALLOCATION,

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Official Code and in accordance with Section 2-505 of the D.C. Official Code,[1] of its intent to amend the following provisions of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR): Chapter 9 (Net Energy Metering); Chapter 13 (Rule Implementing the Public Utilities Reimbursement Fee Act of 1980); Chapter 29 (Renewable Energy Portfolio Standard); Chapter 36 (Electric Quality of Service Standards); Chapter 40 (District of Columbia Small Generator Interconnection Rules); Chapter 41 (The District of Columbia Standard Offer Service Rules); Chapter 42 (Fuel Mix and Emissions Disclosure Reports); and Chapter 44 (Submetering and Energy Allocation). The changes presented in this Notice shall be final upon publication in the *D.C. Register*.

[1] D.C. Official Code §§ 34-802 and 2-505 (2012 Repl.).

2. On November 3, 2017, the Commission published a Notice of Proposed Rulemaking (NOPR) in the *D.C. Register* (64 DCR 11508-11514) amending Chapters 9, 13, 29, 36, 40, 41, 42 and 44. On May 4, 2018, the Commission published a Second NOPR in the *D.C. Register* (65 DCR 4852-4861) the following revisions were made in the Second NOPR based on comments received on the First NOPR: (1) the terms "battery" and "smart inverter" have been deleted; (2) the term "electric storage" has been revised to read "energy storage;" and (3) the definitions for "cogeneration facility" or "combined heat and power (CHP) facility," "demand response," "distributed energy resource" have been revised. The Second NOPR superseded the First NOPR.

3. On August 24, 2018, the Commission caused a limited NOPR to be issued in the *D.C. Register* (65 DCR 8782-8784), amending the definition of "electricity supplier" in the above captioned rules to remove the term "nontraditional marketer." The Commission specified that the change was needed to ensure consistency in our rules, that the limited NOPR did not supersede the Second NOPR in its entirety, and the comments received on all other portions of the Second NOPR were still under consideration by the Commission. Comments on the limited NOPR were due on September 21, 2018. No comments were filed.

4. In Order No. 19692, issued on September 26, 2018, the Commission reviewed and addressed the comments submitted in response to the Second NOPR and directed that this Notice of Final Rulemaking (NOFR), adopting the Second NOPR, with minor clarifying and conforming changes and incorporating the changes proposed in the limited NOPR issued August 24th, be issued in the *D.C. Register*. These rules will become effective upon publication of this notice in the *D.C. Register*.

The following chapters, sections, and subsections are amended to include the following:

Chapter 9, NET ENERGY METERING, Section 999, DEFINITIONS, Subsection 999.1;

Chapter 41, THE DISTRICT OF COLUMBIA STANDARD OFFER SERVICE RULES, Section 4199, DEFINITIONS, Subsection 4199.1; and

Chapter 42, FUEL MIX AND EMISSIONS DISCLOSURE REPORTS, Section 4299, DEFINITIONS, Subsection 4299.1:

"**Electric company**" includes every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers, excluding any person or entity distributing electricity from a behind-the-meter generator to a single retail customer behind the same meter and located on the same premise as the customer's meter. In addition, the term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other electricity related services solely to the occupants of the building for use by the occupants. The term also excludes a Person or entity

that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.

The following chapters, sections, and subsections are amended as follows:

Chapter 9, NET ENERGY METERING, Section 999, DEFINITIONS, Subsection 999.1;

Chapter 13, RULES IMPLEMENTING THE PUBLIC UTILITIES REIMBURSEMENT FEE ACT OF 1980, Section 1399, DEFINITIONS, Subsection 1399.1;

Chapter 29, RENEWABLE ENERGY PORTFOLIO STANDARD, Section 2999, DEFINITIONS, Subsection 2999.1;

Chapter 36, ELECTRICITY QUALITY OF SERVICE STANDARDS, Section 3699, DEFINITIONS, Subsection 3699.1;

Chapter 40, DISTRICT OF COLUMBIA SMALL GENERATOR INTERCONNECTION RULES, Section 4099, DEFINITIONS, Subsection 4099.1;

Chapter 41, THE DISTRICT OF COLUMBIA STANDARD OFFER SERVICE RULES, Section 4199, DEFINITIONS, Subsection 4199.1;

Chapter 42, FUEL MIX AND EMISSIONS DISCLOSURE REPORTS, Section 4299, DEFINITIONS, Subsection 4299.1; and

Chapter 44, SUBMETERING AND ENERGY ALLOCATION, Section 4499, DEFINITIONS, Subsection 4499.1:

The definition for "electricity supplier" is amended as follows:

"**Electricity supplier**" means a person, including an Aggregator, Broker, or Marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets 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 electricity solely to the occupants of the building for use by the occupants;

(B) Any Person who purchases electricity for its own use or for the use of its subsidiaries or affiliates;

(C) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not: (i) Take title to electricity; (ii) Market electric services to the individually-metered tenants of his or her building; or (iii) Engage in the resale of electric services to others;

(D) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property;

(E) Consolidators;

(F) Community Renewable Energy Facilities (CREFs) as defined in Section 4199.1 and as described in Sections 4109.1 through 4109.3 of Title 15, pursuant to the Community Renewable Energy Amendment Act of 2013 (D.C. Law 20-47; D.C. Official Code §§ 34-1518 *et seq.*);

(G) An Electric Company; and

(H) Any Person or entity that owns a behind-the-meter generator and sells or supplies the electricity from that generator to a single retail customer or customers behind the same meter located on the same premise.

The following chapters, sections, and subsections are amended to include the definition for "behind the meter generator" to clarify the meaning of "electricity supplier" as follows as follows:

Chapter 9, NET ENERGY METERING, Section 999, DEFINITIONS, Subsection 999.1;

Chapter 13, RULES IMPLEMENTING THE PUBLIC UTILITIES REIMBURSEMENT FEE ACT OF 1980, Section 1399, DEFINITIONS, Subsection 1399.1;

Chapter 36, ELECTRICITY QUALITY OF SERVICE STANDARDS, Section 3699, DEFINITIONS, Subsection 3699.1;

Chapter 41, THE DISTRICT OF COLUMBIA STANDARD OFFER SERVICE RULES, Section 4199, DEFINITIONS, Subsection 4199.1;

Chapter 42, FUEL MIX AND EMISSIONS DISCLOSURE REPORTS, Section 4299, DEFINITIONS, Subsection 4299.1; and

Chapter 44, SUBMETERING AND ENERGY ALLOCATION, Section 4499, DEFINITIONS, Subsection 4499.1:

"**Behind-the-meter generator**" – an on-site generator that is located behind a retail customer's meter such that no Electric Company-owned transmission or distribution facilities are used to deliver the energy from the generating unit to the on-site load.

The following chapters, sections, and subsections are amended to include the following definitions:

Chapter 9, NET ENERGY METERING, Section 999, DEFINITIONS, Subsection 999.1; and

Chapter 40, DISTRICT OF COLUMBIA SMALL GENERATOR INTERCONNECTION RULES, Section 4099, DEFINITIONS, Subsection 4099.1:

"**Back-up generation**" – Any electric generating facility, as defined in D.C. Official Code Section 34-205, which is connected to the electric distribution system in the District of Columbia and not subject to the Commission's Small Generator Interconnection Rules because it does not operate parallel to the electric distribution system or operates in parallel less than 100 milliseconds.

"**Cogeneration facility**" or "**combined heat and power (CHP) facility**" – A system that produces both electric energy, steam, or other forms of useful energy (such as heat) that are used for industrial, commercial, residential, heating or cooling purposes.

"**Demand response**" – A reduction or modification in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments, or behavioral signals designed to induce lower consumption of electric energy.

"**Distributed energy resource**" **or "DER"** – A resource sited close to the customer's load that can provide all or some of the customer's energy needs, can also be used by the system to either reduce demand (such as demand response) or increase supply to satisfy the energy, capacity, and/or ancillary service needs of the distribution or transmission system. Types of DER include, but are not limited to: photovoltaic solar, wind, cogeneration, energy storage, demand response, electric vehicles, microturbines, biomass, waste-to-energy, generating facilities, and energy efficiency.

"**Distributed generation**" – Any electric generating facility, as defined in D.C. Official Code § 34-205, which is connected to the electric distribution system in the District of Columbia and subject to the Commission's Small Generator Interconnection Rules.

"**Electric vehicle**" – A vehicle which is powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and which may include a non-electrical source of power designed to charge batteries and components thereof.

"**Energy storage**" – A resource capable of absorbing electric energy from the grid, from a behind-the-meter generator, or other DER, storing it for a period of time and thereafter dispatching the energy for use on-site or back to the grid, regardless of where the resource is located on the electric distribution system. These resources include all types of energy storage technologies, regardless of their size, storage medium (*e.g.*, batteries, flywheels, electric vehicles, compressed air), or operational purpose.

"**Fly-wheel**" – A device that is able to store electrical energy in the form of kinetic energy, and convert that energy into electricity.

"**Fossil fuel generator**" – Any electric generating facility that utilizes coal, natural gas, or any petroleum product as a fuel.

"**Fuel cell**" – A device that produces electricity through a chemical reaction between a source fuel and an oxidant.

"**Microgrid**" – A collection of interconnected loads, generation assets, and advanced control equipment, installed across a limited geographic area and within a defined electrical boundary that is capable of disconnecting from the larger electric distribution system. A microgrid may serve a single customer with several structures or serve multiple customers. A microgrid can connect and disconnect from the distribution and or transmission system to enable it to operate in both interconnected or island mode.

"**Microturbine**" – A small combustion turbine with an output of 25 kW to 500 kW.

The definition of "eligible customer generator" in the following chapters, sections, and subsections is amended to clarify that the term is synonymous with the term "net energy metering facility" as follows:

Chapter 9, NET ENERGY METERING, Section 999, DEFINITIONS, Subsection 999.1:

"**Eligible customer-generator**" or "**net energy metering facility**" means a customer-generator whose net energy metering system for renewable resources, cogeneration, fuel cells, and or microturbines meets all applicable safety and performance standards.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF SECOND PROPOSED RULEMAKING

RM27-2016-02, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice pursuant to Sections 34-802, 2-505, 34-2002(g), and 34-2002(n) of the District of Columbia Code [1] of its intent to amend Chapter 27 (Regulation of Telecommunications Service Providers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. The proposed amendments to Sections 2704, 2705, 2706, and 2708 update these sections to require that all telecommunications service providers, not just competitive local exchange carriers, that are withdrawing certification and regulated local exchange services comply with the requirements of Sections 2704, 2705, 2706, or 2708. The proposed amendments also add a new Section 2707 to include notice requirements for telecommunications service providers that are abandoning copper facilities in the District of Columbia. Section 2708 is clarified to apply only to relinquishments of certifications where the telecommunications service provider has never offered regulated telecommunications service to customers. The proposed amendments renumber the current Section 2707, Reports, to Section 2710 and makes amendments to the reporting requirements. Finally, definitions are added to Section 2799, the Definitions section. The rules in this Notice of Proposed Rulemaking differ in some respects from those included in the Notice of Proposed Rulemaking published April 15, 2016.[2]

Chapter 27, REGULATION OF TELECOMMUNICATIONS SERVICE PROVIDERS of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

2704 ABANDONMENT OF CERTIFICATION OR CERTIFICATE OF CONVENIENCE AND PUBLIC NECESSITY

2704.1 Any telecommunications service provider ("TSP") certificated by the Commission that proposes to abandon the CLEC certification or certificate of convenience and public necessity in the District shall file an abandonment of certification application with the Commission no later than ninety (90) days prior to the proposed date of the abandonment of certification or certificate. The

[1] D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2016 Repl. & 2017 Supp.), D.C. Official Code § 34-2002(g) and 34-2002(n) (2012 Repl. & 2017 Supp.).

[2] 63 DCR 5773-5785 (April 15, 2016).

application shall contain, in the following order and specifically identify the following information:

(a) The applicant's name, address, telephone number, fax number, the name under which the applicant is providing service in the District of Columbia, the date and order number of the Commission order that authorized the applicant to provide telecommunications services in the District of Columbia, if applicable, and the proposed abandonment date;

(b) A complete explanation of the reasons for the proposed abandonment of certification;

(c) A description of the arrangements made for payment of any outstanding taxes, fees, or other amounts owed to the Commission or any other agency of the District of Columbia;

(d) A statement as to whether the applicant owns facilities in the District of Columbia, and if so, a plan for the applicant to remove, maintain, or transfer any facilities in the District of Columbia that would otherwise be abandoned; and

(e) An affidavit signed by a company officer verifying that all of the information in the application is true and correct.

2704.2 If, at the time of the filing of the abandonment of certification application, the TSP is providing service to customers, the applicant also shall file an abandonment of service application pursuant to 15 DCMR § 2705 and/or 15 DCMR § 2706, as appropriate.

2704.3 The TSP shall serve a copy of its abandonment of certification or certificate application on the Office of the People's Counsel on the same day that the application is filed with the Commission.

2704.4 The applicant shall return any customer deposits within fifteen (15) days of the abandonment of certification application filing date. Upon full payment of these deposits, the applicant shall notify the Commission that all deposits have been paid by filing an affidavit explaining how and when these payments were made.

2704.5 Within thirty (30) days after receiving the abandonment of certification application, the Commission shall either approve the application, reject the application, or request supplemental information. If the Commission requests supplemental information, the applicant will be afforded fifteen (15) days to provide the Commission with such supplemental information.

2704.6 The Commission shall approve an abandonment of certification or certificate application if:

(a) The TSP has satisfied outstanding debts owed the Commission or any agency of the District of Columbia government;

(b) The TSP has developed and implemented a comprehensive plan for returning customer deposits; and

(c) The approval of the abandonment of certification application or certificate would serve the public interest.

2704.7 No TSP shall abandon its certification or certificate absent Commission approval. Upon receiving Commission approval, the applicant shall void any existing interconnection agreements by notifying the Commission and any TSP with which the applicant has signed an interconnection agreement of the abandonment of certification or certificate. Upon receiving Commission approval, the applicant shall also withdraw all existing tariffs on file with the Commission.

2705 ABANDONMENT, REDUCTION, OR IMPAIRMENT OF SERVICE

2705.1 Any TSP certificated by the Commission that proposes to abandon, reduce or impair the provisioning of telecommunications services in the District of Columbia shall file an application with the Commission no later than ninety (90) days prior to the proposed date of abandonment, reduction or impairment of service. This Section 2705 shall apply if a TSP proposes to abandon, reduce or impair the provisioning of telecommunications services in the District of Columbia, either in whole or in part (including, but not limited to, for a class of customers, such as residential customers or business customers or for customers located in specified geographic areas). However, this section does not apply where a TSP in the ordinary course of business is proposing only to:

(a) Terminate service to an individual customer for reasons applicable to that customer (for instance, because the customer has failed to pay charges due to the TSP);

(b) Withdraw a discretionary custom calling service feature (for instance, caller ID or call waiting);

(c) Limit availability of a service so that the service is available only to the TSP's customers who already subscribe to that service; or

(d) Change a rate, term or condition for a service.

2705.2 The abandonment of service application shall contain, in the following order and specifically identify the following information:

(a) The applicant's name, address, telephone number, fax number, the name under which the applicant is providing service in the District of Columbia, the date and order number of the Commission order that authorized the applicant to provide telecommunications services in the District of Columbia, if applicable, and the proposed abandonment of service date;

(b) Description of the nature of the proposed abandonment, reduction of impairment of service;

(c) A complete explanation of the reasons for the proposed abandonment, reduction or impairment of service, including, but not limited to, a statement as to whether the applicant proposes to abandon the provisioning of telecommunications services in the District of Columbia in whole, or only in part, and if only in part, a description of the proposed abandonment, reduction or impairment of service (for instance, for a class of customers, such as residential customers or business customers, or, customers located in specified geographic areas);

(d) A plan for the refund of any deposits collected from affected customers, with accrued interest less any amounts due to the applicant;

(e) If the applicant proposes to abandon the provisioning of telecommunications services in the District of Columbia in whole, a description of the arrangements made for payment of any outstanding taxes, fees, or other amounts owed to the Commission or any other agency of the District of Columbia;

(f) A statement as to whether the applicant owns facilities in the District of Columbia, and if so, a plan for the applicant to remove, maintain, or transfer any facilities in the District of Columbia that would otherwise be abandoned;

(g) An identification of the geographic area involved and date on which the applicant desires to make the proposed abandonment, reduction, or impairment of service effective,

(h) A statement of the number of customers, classified by residential or business customer, affected by the proposed abandonment, reduction or impairment of service;

(i) A statement of the number of customers affected by the proposed abandonment, reduction or impairment of service for whom the applicant receives universal service support;

(j) A statement of the date on which notice of the proposed abandonment, reduction or impairment of service will be sent to affected customers;

(k) A copy of the notice that will be sent to affected customers;

(l) If the abandonment, reduction or impairment of service application is filed because the applicant is discontinuing TDM-based local exchange service, a copy of the application filed with the Federal Communications Commission pursuant to 47 CFR part 63;

(m) A statement of the factors showing that neither present nor future public interest, convenience and necessity would adversely be affected by the granting of the application; and

(n) An affidavit signed by a company officer verifying that all of the information in the application is true and correct.

2705.3 The applicant shall serve a copy of its abandonment, reduction or impairment of service application on the Office of the People's Counsel on the same day that the application is filed with the Commission.

2705.4 Any TSP that proposes to abandon, reduce, or impair service in the District of Columbia shall notify each customer affected by the proposed abandonment in accordance with the customer notice provisions of Subsection 2706.5. Notice to customers shall be given in accordance with the customer notice provisions of Subsection 2706.5 even if the proposed abandonment, reduction or impairment of service is not otherwise subject to compliance with Section 2706.

2705.5 The applicant shall return all customer deposits affected by the proposed abandonment of service, with accrued interest less any amounts due to the applicant within seventy-five (75) days of the abandonment of service application filing date. Upon full payment of these deposits, the applicant shall notify the Commission that all such deposits have been paid.

2705.6 The applicant shall reimburse its customers affected by the proposed abandonment of service for any carrier charges including, but not limited to, service order charges and service installation charges directly associated with the transfer of those customers to another TSP and otherwise chargeable to the customers, as long as the transfer occurs within thirty (30) days of the notification to the customer of the applicant's abandonment of service. Except where the customer is transferred to an Acquiring Carrier (as defined in Subsection 2706.2) or to an "acquiring carrier" (as such term is used in 47 CFR § 64.1120), the amount of the carrier charges that an applicant shall be required by this subsection to reimburse to a customer shall not exceed:

(a) Fifty dollars ($50) per residence service line; and

(b) One hundred dollars ($100) per business service line.

2705.7 The Commission may by order annually increase the maximum amount of the carrier charges to be reimbursed by the applicant under Subsection 2705.6 by a percentage amount equal to the percentage increase in the Consumer Price Index – All Urban Consumers applicable to the District of Columbia as determined by the United States Government. Upon full payment of these amounts, the applicant shall notify the Commission that all such amounts have been paid.

2705.8 Within thirty (30) days after receiving the abandonment, reduction or impairment of service application, the Commission shall either approve the application, reject the application, or request supplemental information.

2705.9 If, within thirty (30) days after receiving the abandonment, reduction or impairment of service application, the Commission does not either approve the application, reject the application, or request supplemental information, the application shall be deemed approved.

2705.10 If the Commission requests supplemental information, the applicant has fifteen (15) days to provide the Commission with such supplemental information.

2705.11 If the Commission requests supplemental information and, by the later of thirty (30) days after receiving the supplemental information the Commission does not either approve the application, reject the application, or request additional supplemental information, the application shall be deemed approved.

2705.12 Approval of the abandonment**,** reduction or impairment of service application shall be subject to the applicant's compliance with the applicable provisions of Section 2706.

2705.13 The Commission shall approve an abandonment, reduction or impairment of service application if:

(a) The TSP has satisfied outstanding debts owed the Commission or any agency of the District of Columbia government;

(b) The applicant has complied with this Section 2705, the applicable provisions of Section 2706, and all other applicable Commission rules and requirements of applicable law;

(c) The applicant has developed and implemented a comprehensive plan for returning customer deposits to customers affected by the proposed abandonment of service, with accrued interest less any amounts due to the applicant, and, if the applicant proposes to abandon its provisioning of telecommunication services in the District in whole, satisfying outstanding debts owed the Commission and/or other District agencies;

(d) The applicant has satisfied all switchover fees incurred by its customers affected by the proposed abandonment of service as required by Subsection 2705.6; and

(e) The approval of the abandonment, reduction or impairment of service application would serve the public interest. If the applicant is discontinuing TDM-based service, then the public interest consideration will also consider the factors in 47 CFR § 63.602(b).

2705.14 No TSP shall abandon, reduce, or impair service in the District of Columbia without Commission approval. Upon receiving Commission approval for the abandonment of service, the applicant shall void any existing interconnection agreements by informing the Commission and any TSP with which the applicant has signed an interconnection agreement of the abandonment of service.

2706 ABANDONMENT OF SERVICE TO THE LOCAL EXCHANGE VOICE SERVICES MARKET

2706.1 Applicability

This section applies when a TSP that has one (1) or more customers proposes to abandon the provisioning of regulated telecommunications services to the local exchange voice services market or a portion of the local exchange voice services market (including, but not limited to, a class of customers such as residential customers or business customers, or customers located in specified geographic areas). However, this section does not apply where a TSP in the ordinary course of business is proposing only to:

(a) Terminate service to an individual customer for reasons applicable to that customer (for instance, because the customer has failed to pay charges due to the TSP or because the customer is transitioning from regulated to unregulated service);

(b) Withdraw a discretionary custom calling service feature (for instance, caller ID or call waiting);

(c) Limit availability of a service so that the service is available only to the TSP's customers who already subscribe to that service; or

(d) Change a rate, term or condition for a service.

2706.2 Definitions

For the purposes of this section the following terms and phrases shall have the meanings ascribed:

(a) **Acquiring Carrier** - a local exchange carrier that has entered into an

arrangement with an Exiting TSP to acquire the Exiting TSP's customers.

(b) **Cut-Off Date** - the date after which an Exiting TSP's customers will have to wait until their migration to the Acquiring Carrier is completed before they can obtain local exchange service from a different carrier.

(c) **Exiting TSP** - a TSP that proposes to abandon the provisioning of telecommunications services to the local exchange voice services market, or a portion of the local exchange voice services market (including, but not limited to, a class of customers such as residential customers or business customers, or customers located in specified geographic areas).

(d) **Network Service Provider** - a local exchange carrier that provides interconnection, network elements, telecommunications services, collocation, or other services, facilities, equipment or arrangements, that:

(1) Are used by the Exiting TSP to provide service to its customers; or

(2) Will be used by a carrier (including, but not limited to, an Acquiring Carrier) that is acquiring one (1) or more of the Exiting TSP's customers, to provide service to those customers.

(e) **Priority/Essential Customers** - any ambulance, police or fire service, hospital, national security agency, or civil defense organization, or any customer who has obtained Telecommunications Service Priority authorization from the Federal Government.

2706.3 Exit Plan

(a) An Exiting TSP must file an Exit Plan with the Commission, OPC, and the District of Columbia Office of Unified Communications at least ninety (90) days in advance of the Exiting TSP's proposed discontinuance of service date. Upon good cause shown, the Commission may establish an alternative date by which the Exiting TSP must file its Exit Plan.

(b) The Exit Plan filed by the Exiting TSP with the Commission must include:

(1) A statement specifying the Exiting TSP's proposed discontinuance of service date and, if there is an Acquiring Carrier, the proposed Cut-Off Date;

(2) A sample of the initial notice letter that will be sent to the Exiting TSP's customers pursuant to Subsection 2706.5;

(3) Plans for follow-up customer notification arrangements, such as a second letter, phone calls or bill inserts;

(4) A date by which the Exiting TSP's customers must select a new local exchange carrier;

(5) Contact names and telephone numbers for the Exiting TSP's cutover coordinator, regulatory contact and other pertinent contact personnel (such as customer service record ("CSR") and provisioning contacts);

(6) Any arrangements made for an Acquiring Carrier;

(7) Steps to be taken with the number code and/or pooling administrator to transfer NXX and thousand number blocks while preserving number portability for numbers within the code;

(8) The current customer serving arrangements (for example, UNE-Platform, UNE-Loop, resale or full facilities) and the underlying Network Service Providers;

(9) To the extent feasible, a statement as to the following:

(A) whether there are any customers for whom the Exiting TSP is the only provider of facilities;

(B) the number of customers for whom the Exiting TSP is the only provider of facilities; and

(C) the number of lines for which the Exiting TSP is the only provider of facilities;

(10) The number of customers impacted;

(11) A statement setting out:

(A) The format in which the Exiting TSP's CSRs are being kept,

(B) What data elements are in these CSRs; and

(C) How the CSRs can be obtained by other carriers. Data elements include:

(i) Billing telephone number;

(ii) Working telephone number;

(iii) Complete customer billing name and address;

(iv) Directory listing information, including name, address, telephone number and listing type;

(v) Complete service address;

(vi) Current Primary Interexchange Carrier selection (inter/intraLATA toll service), including freeze status;

(vii) Local service freeze status;

(viii) All vertical features (such as, custom calling, hunting);

(ix) Options (such as, Lifeline, 900 blocking, toll blocking, remote call forwarding, off premises extensions);

(x) Tracking number or transaction number (for example, purchase order number);

(xi) Circuit identification information with associated telephone number;

(xii) Service configuration information (such as, UNE-Platform, UNE-Loop, resale or full facilities);

(xiii) Identification of the Network Service Provider(s); and

(xiv) Identification of any line sharing/line splitting on the migrating customer's line;

(12) Any transfer of assets or control that requires Commission approval;

(13) Plans to modify and/or cancel tariff(s);

(14) Plans for reimbursement of switchover fees;

(15) Plans for treatment of customer deposits, credits, and/or termination liabilities or penalties;

(16) A description of the arrangements made for payment of any

outstanding taxes, fees, or other amounts owed to the Commission or any other agency of the District of Columbia;

(17) Plans for the transfer, removal or abandonment of any Exiting TSP equipment or facilities on the customers' premises;

(18) A statement on whether the Acquiring Carrier will be responsible for handling any complaints filed, or otherwise raised, against the Exiting TSP prior to or during the migration of customers to the Acquiring Carrier; and

(19) Plans for unlocking the E911 database, including the letter detailed in Subsection 2706.8.

(20) A copy of any discontinuance of service application filed with the Federal Communications Commission ("FCC") pursuant to 47 USC § 214(a).

(c) If the Exit Plan contains information that the Exiting TSP claims are confidential or proprietary, the Exiting TSP may seek confidential treatment of the confidential or proprietary information in accordance with 15 DCMR § 150. To the extent provided by 15 DCMR § 150 and other provisions of applicable law, copies of the confidential version of the Exit Plan shall be available to the Office of the People's Counsel, carriers, and other interested persons.

(d) If the Exiting TSP seeks confidential treatment of information contained in the Exit Plan, the Exiting TSP shall also file with the Commission a version of the Exit Plan that omits the confidential information. The Exiting TSP shall serve the non-confidential version of the Exit Plan upon the Office of the People's Counsel. The non-confidential version of the Exit Plan shall be available from the Commission to carriers and other interested persons.

Within thirty (30) days after receiving the Exit Plan, the Commission shall either approve the Exit Plan, reject the Exit Plan, or request supplemental information. If within thirty (30) days after receiving the Exit Plan the Commission does not either approve the Exit Plan, reject the Exit Plan, or request supplemental information, the Exit Plan shall be deemed approved. If the Commission requests supplemental information, the Exiting TSP has fifteen (15) days to provide the Commission with such supplemental information. If within thirty (30) days after receiving the supplemental information the Commission does not either approve the Exit Plan, reject the Exit Plan, or request additional supplemental information, the Exit Plan shall be deemed approved.

2706.4 Industry Notification

(a) When the Commission receives notice of the Exiting TSP's proposed discontinuance of service, the Commission Secretary shall post notice of the proposed discontinuance of service on the Commission's website under "Report of Telephone Companies Exiting the Local Exchange Market" at www.dcpsc.org.

(b) On the same date that the Exiting TSP files its Exit Plan with the Commission:

(1) The Exiting TSP shall give notice to its Network Service Providers of its proposed discontinuance of service; and

(2) The Acquiring Carrier shall give notice to its Network Service Providers of its proposed acquisition of the Exiting TSP's customers.

(c) If necessary, a conference call may be established by Commission Staff in order to address potential problem areas and procedures. The persons invited to participate in the conference call shall include all carriers providing service in the District of Columbia, the Exiting TSP's Network Service Providers, the Acquiring Carrier's Network Service Providers, Commission Staff, the Office of the People's Counsel, and such other persons as Commission Staff deems appropriate.

2706.5 Retail Customer Notification

(a) If there is an Acquiring Carrier, the Exiting TSP and the Acquiring Carrier must give written notice to the Exiting TSP's customers of the Exiting TSP's proposed discontinuance of service and the proposed transfer of the customers to the Acquiring Carrier.

(b) If there is not an Acquiring Carrier, the Exiting TSP must give written notice to its customers of its proposed discontinuance of service.

(c) The written notice to be provided pursuant to paragraph (a) or (b) must be given at least sixty (60) days in advance of the Exiting TSP's proposed discontinuance of service date. Upon good cause shown, the Commission may establish an alternative customer notice period; provided that the customer notice must be given at least forty-five (45) days in advance of the Exiting TSP's proposed discontinuance of service date.

(d) Contents

(1) The Commission shall adopt by order model customer notification letters that comply with Commission and FCC regulations. A

customer notice letter issued pursuant to paragraph (a) or (b) must comply with the Commission's applicable model customer notification letter.

(2) The customer notification letter must include the following information:

(A) Statement that the Exiting TSP will no longer be providing the customer's local telephone service;

(B) If there is an Acquiring Carrier, the identity of the Acquiring Carrier;

(C) The customer's right to choose an alternative carrier;

(D) Clear instructions to the customer regarding the choice of an alternative carrier;

(E) The customer's need to take prompt action when there is no Acquiring Carrier;

(F) Time deadlines for customer action in accordance with the Commission's rules;

(G) A statement regarding switchover fees and the Exiting TSP's plans for reimbursement of switchover fees;

(H) The customer's responsibility for payment of telephone bills during the migration period;

(I) When the customer is being transferred to an Acquiring Carrier, information about the lifting and reestablishment of preferred carrier freezes;

(J) Applicable information about long distance service and whether it may be impacted by the change in local exchange carrier;

(K) The Exiting TSP's plans for treatment of customer deposits, credits, and/or termination liabilities or penalties;

(L) The Exiting TSP's plans for transfer, removal or abandonment of any Exiting TSP equipment or facilities on the customer's premises;

(M) Information on the Acquiring Carrier's services and rates, terms and conditions, and on the means by which the Acquiring Carrier will notify the customer of any changes to these rates, terms and conditions;

(N) Whether the Acquiring Carrier will be responsible for handling any complaints filed, or otherwise raised, against the Exiting TSP prior to or during the migration of customers to the Acquiring Carrier;

(O) Any other information required by applicable law (including, but not limited to, any other information required by the Commission or the FCC);

(P) Toll-free telephone numbers for the Exiting TSP and the Acquiring Carrier;

(Q) Contact information for the Commission; and

(R) Contact information for the Office of the People's Counsel.

(3) If there is an Acquiring Carrier, the customer notice letter must contain a Cut-Off Date and a statement that customers who have not selected an alternative carrier by the Cut-Off Date will be transferred to the Acquiring Carrier. When notice is given to the customer sixty (60) days in advance of the proposed discontinuance of service date, the Cut-Off Date shall be thirty (30) days before the proposed discontinuance of service date. When notice is given to the customer less than sixty (60) days in advance of the proposed discontinuance of service date, the Cut-Off Date shall be as specified by the Commission. The notification process must allow the customer thirty (30) days to select a new carrier. The Acquiring Carrier may not migrate the Exiting TSP's customers to the Acquiring Carrier until after the Cut-Off Date.

(4) If there is not an Acquiring Carrier, the Exiting TSP must give at least one (1) additional notice to each customer who, twenty (20) days prior to the proposed discontinuance of service date, has not migrated to a new carrier. This additional notice must be given no later than fifteen (15) days prior to the proposed discontinuance of service date or, upon a showing to the Commission that fifteen (15) days advance notice is not feasible, at the earliest possible date, as approved by the Commission. The form of the additional notice could include a follow-up letter, a telephone call to the customer, a bill insert, or any other means of direct contact with the customer.

2706.6 Mass Migration Process

(a) As soon as is feasible after the Exiting TSP's Exit Plan is filed with the Commission, the Exiting TSP and the Acquiring Carrier shall establish with their applicable Network Service Providers appropriate arrangements for migration of the Exiting TSP's customers to the Acquiring Carrier. The Exiting TSP and the Acquiring Carrier shall submit to their applicable Network Service Providers any service orders and information needed to carry out the migration. Such service orders and information shall be submitted sufficiently in advance of the Exiting TSP's proposed discontinuance of service date so that the migration will be able to be completed by the proposed discontinuance of service date.

(b) Carriers other than the Acquiring Carrier who are acquiring the Exiting TSP's customers shall submit to their applicable Network Service Providers any service orders and information needed to carry out the migration. To the extent feasible, such service orders and information shall be submitted sufficiently in advance of the Exiting TSP's proposed discontinuance of service date so that the migration will be able to be completed by the proposed discontinuance of service date.

(c) The Exiting TSP shall make available to its Network Service Provider, its customers' new carriers and these carriers' Network Service Providers, the CSR information needed to migrate the Exiting TSP's customers, and any other information reasonably needed to migrate the Exiting TSP's customers. Upon request, the Exiting TSP shall also provide to Commission Staff CSR information for customers whose particular serving arrangements may create migration problems.

(d) The Exiting TSP must track the progress of the migration of its customers and provide the Commission with progress reports. The reports shall contain a count of the customers that remain in service with the Exiting TSP and such other information as shall be specified by the Commission. The reports shall be provided at such intervals as shall be specified by the Commission. Subject to 15 DCMR § 150 and other provisions of applicable law, upon request by the Office of the People's Counsel, the Exiting TSP shall provide copies of the progress reports to the Office of the People's Counsel.

(e) Except as authorized by the Commission pursuant to Subsection 2706.3(e) or as otherwise authorized by the Commission, the Exiting TSP shall not discontinue provision of service until all of its customers who will be affected by its discontinuance of service have migrated to other carriers.

2706.7 NXX Code Transfers

If the Exiting TSP has any NXX codes or thousand number blocks assigned, it must make transfer arrangements with the code administrator at least sixty-six (66) days prior to the proposed discontinuance of service date or by such earlier date as shall be specified by the code administrator.

2706.8 E- 911

(a) The Exiting TSP must unlock all of its telephone numbers in the E911 database in accordance with the National Emergency Numbering Association's standards.

(b) The Exiting TSP must submit a letter to the appropriate E911 service provider authorizing the E911 service provider to unlock any remaining E911 records after the Exiting TSP has discontinued provision of service. This letter must be provided at least thirty (30) days prior to the Exiting TSP's discontinuance of service. A copy of such letter shall be filed with the Commission.

(c) The Exiting TSP must provide E911 service to any customer who does not select another local exchange carrier prior to the Cut-Off Date if it is technically possible to provide the service itself or the Exiting TSP may obtain such service from its underlying or any other carrier.

2706.9 Freezes

All customers who have preferred carrier freezes on the services affected by a migration to an Acquiring Carrier will be transferred to the Acquiring Carrier, unless they have selected a different carrier by the Cut-Off Date. The Exiting TSP shall lift existing preferred carrier freezes on services involved in a migration to an Acquiring Carrier. An Acquiring Carrier shall advise the customers that it is acquiring from the Exiting TSP that if they want preferred carrier freezes, they must contact the Acquiring Carrier to arrange for such freezes.

2706.10 Reservation of Rights

Nothing in this Section 2706 shall limit, or delay the right to exercise, any right that an incumbent local exchange carrier, TSP, or other person may have under an interconnection or resale agreement, tariff, or otherwise, to require payment for, to decline to provide, or to suspend or terminate, interconnection, network elements, telecommunications services, collocation, or other services, facilities, equipment, or arrangements.

2707 ABANDONMENT OF COPPER FACILITIES

2707.1 Applicability

This section applies when a TSP that has one (1) or more customers that are provided local exchange services over copper facilities (including, but not limited to, a class of customers such as residential customers or business customers, or customers located in specified geographic areas) proposes to abandon the provisioning of local exchange services over copper facilities. However, this section does not apply where a TSP in the ordinary course of business is proposing only to abandon copper facilities in order to resolve a service quality concern raised and agreed to by the customer with the TSP. Additionally, this section does not apply to an emergency repair situation in which copper facilities are replaced with fiber facilities in order to expedite resolution of out-of-service conditions for multiple customers.

2707.2 Public Notifications

Any TSP that seeks to abandon copper facilities used to provide regulated local exchange service shall file a notification of this abandonment with the Commission, OPC, and with:

(a) The electric and gas public utilities, competitive electricity suppliers, and competitive natural gas suppliers in the affected service area at least two hundred seventy (270) days before the proposed abandonment of copper facilities;

(b) Any other TSPs that provides regulated local exchange service to residential or business customers in the affected service area at least one hundred eighty (180) days before the proposed abandonment of copper facilities;

(c) Business customers in the affected service area at least one hundred eighty (180) days before the proposed abandonment of copper facilities; and

(d) Residential customers in the affected service area at least ninety (90) days before the proposed abandonment of copper facilities.

2707.3 The notice to customers, which the TSP shall file with the Commission and OPC, shall include

(a) The TSP's name and address;

(b) The name, telephone number, and email address of a contact person who can supply additional information about the proposed copper facilities abandonment;

(c) The implementation date of the copper facilities abandonment;

(d) The location, by geographic area, of the copper facilities abandonment;

(e) A statement indicating whether the copper facilities will be abandoned or removed; and

(f) A description of the reasonably foreseeable impact of the copper facilities abandonment, including changes to rates, and terms and conditions of service.

2707.4 In addition to the information required by Subsection 2707.3, the notice to business and residential customers shall include:

(a) A statement that the customer will still be able to purchase the existing local exchange service(s) to which he or she subscribes with the same functionalities and features as the service he or she currently purchases from the TSP, except that if this statement would be inaccurate, the TSP must include a statement identifying any changes to the service(s) and the quality, reliability, functionality and features thereof; and

(b) A toll-free telephone number for a customer help line, a URL for a related Web page on the TSP's Web site with relevant information, contact information for the Commission's Office of Consumer Services, including the URL for the Commission's consumer complaint portal.

2707.5 The notice to each business and retail customer shall be in writing unless the Commission authorizes in advance, for good cause shown, another form of notice. The notice shall:

(a) Be uniformly translated into another language when such notice is not written in the English language;

(b) Not include any statement attempting to encourage a customer to purchase a service other than the service to which the customer currently subscribes;

(c) Not include any marketing materials for unregulated services in the postal mail envelope containing the notice of copper facilities abandonment; and

(d) Not identify the existing services in the notice by a brand or name used for any unregulated fiber-based services.

2707.6 If the proposed abandonment of copper facilities will result in the discontinuance of regulated local exchange service, then an application for abandonment of service to the local exchange services market required by Section 2706 must be filed ninety (90) days before the abandonment of local exchange service.

2707.7 A TSP shall file with the Commission any notice of abandonment of copper facilities or Section 214(a) application filed with the FCC on the date that it was filed with the FCC.

2708 RELINQUISHMENT OF CERTIFICATION

2708.1 A certificated party that has never had customers or facilities in the District of Columbia may, at any time, relinquish its certification to provide telecommunications service in the District of Columbia by filing an affidavit, signed by a party authorized to act on behalf of the certificated party, with the Commission verifying:

(a) The certificated party's name, address, telephone number, fax number, and any other name(s) under which the certificated party applied for or received the certificate to provide telecommunications service in the District of Columbia that is being relinquished;

(b) That the certificated party has never provided ~~is not providing~~ telecommunications services to any customers and does not have facilities in the District of Columbia;

(c) That the certificated party owes no outstanding debts to the District of Columbia, or a description of the arrangements made for payment of any outstanding debts including taxes, fees, or other amounts owed to the Commission or any other agency of the District of Columbia; and

(d) That the certificated party understands that by relinquishing its certification, it may not provide local exchange service to any customers in the District of Columbia, regardless of the facilities used, and that in order to provide telecommunications services to any customers in the District of Columbia in the future, the certificated party must reapply for a certificate in accordance with Chapter 25 of the Commission's rules.

2708.2 The Commission shall act on any request to relinquish a ~~certificate~~ certification within fifteen (15) days of its filing.

2710 REPORTS

2710.1 All TSPs in the District shall be required to file an annual report with the Commission on the Commission's annual report form by April 1 of each year, including the following information:

(a) Type of services being provided to customers in the District as of the previous year ending December 31;

(b) Number of lines and customers, classified by residential category and non-residential category;

(c) Gross jurisdictional revenue for the previous year ending December 31, in accordance with 47 CFR Part 36;

(d) Name, address, telephone number, fax number, and e-mail address, if available, of the regulatory and customer service contacts;

(e) The means by which the TSP is providing service (such as, resale through the incumbent local exchange carrier, resale through another provider, facilities-based including lease of unbundled network elements, resale, and facilities-based, or other); and

(f) Such other information as the Commission may require.

2710.2 A TSP requesting that its report, or any portion thereof, be treated as confidential shall follow the procedures outlined in 15 DCMR § 150 regarding confidential and proprietary information.

2799 DEFINITIONS

Abandonment of Copper Facilities – removal or disabling of copper facilities; the replacement of copper facilities with fiber-to-the-home loops or fiber-to-the-curb loops; or the failure to maintain copper facilities that is the functional equivalent of removal or disabling these facilities.

Copper Facilities – copper loops, subloops, or the feeder portion of such loops and subloops.

Time Division Multiplexing - is a communications process that transmits two or more streaming digital signals over a common channel. In TDM, incoming signals are divided into equal fixed-length time slots. After multiplexing, these signals are transmitted over a shared medium and reassembled into their original format after de-multiplexing. Time slot selection is directly proportional to overall system efficiency.

3. All persons interested in commenting on the subject matter of this proposed rulemaking action may submit written comments and reply comments, not later than thirty (30) and forty-five (45) days, respectively, after publication of this notice in the *D.C. Register* with Brinda Sedgwick-Westbrook, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 or at the Commission's website at https://edocket.dcpsc.org/public/public_comments. 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 or psc-commissionsecretary@dc.gov.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

The Board of Trustees of the University of the District of Columbia pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.0l(a); 38-1202.06(3),(13) (2012 Repl.), hereby gives notice of its intent to amend Chapter 13 (Leave and Benefits), of Subtitle B (University of the District of Columbia) of Title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

The purpose of the proposed rule is to amend the University's regulations at Section 1332 (Remitted Tuition) is to clarify eligibility requirements, define the duration of the benefit for eligible employees, and extend the benefit to cover courses at the UDC David A. Clarke School of Law.

The Board of Trustees will take final action to adopt these amendments to the University Rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 13, LEAVE AND BENEFITS, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:

Section 1332, REMITTED TUITION, is amended to read as follows:

1332 REMITTED TUITION

1332.1 The University shall provide remitted tuition for "for-credit" courses at the University to eligible regular full-time staff, regular full-time faculty, retirees and their spouses and dependent children, in accordance with the requirements and limits established in the Internal Revenue Code.

1332.2 The following are not eligible for remitted tuition:

(a) Part-time staff;

(b) Employees with a temporary or time-limited appointment;

(c) Adjunct and visiting faculty;

(d) Individuals classified as independent contractors and volunteers; and

(e) Student workers.

1332.3 The University shall provide remitted tuition for courses in the undergraduate and graduate programs, but shall not provide remitted tuition for courses in the doctorate programs.

1332.4 To enroll in a course at the University, an applicant shall be required to meet and maintain all eligibility, admission and academic requirements.

1332.5 If a recipient of remitted tuition drops, withdraws, or fails a course for which remitted tuition had been previously provided by the University, the University shall not provide remitted tuition for the same course if the person decides to retake the course.

1332.6 Regular full-time staff of the University shall be eligible to participate in the remitted tuition program once the staff has been employed by the University for at least one year. Once the full-time staff has met the eligibility requirements, their spouse and dependent child(ren), as defined in the Internal Revenue Code, shall be eligible to participate in the remitted tuition program.

1332.7 The University shall provide remitted tuition for eligible full time staff, for a maximum of six (6) undergraduate credit hours and three (3) graduate credit hours each semester. This limitation on the number of credit hours does not apply to the eligible full-time staff's spouse and dependent children.

1332.8 Regular full-time faculty shall be eligible to participate in the remitted tuition program once the faculty has been employed by the University for at least one academic year. Once the full-time faculty has met the eligibility requirements, their spouse and dependent child(ren), as defined in the Internal Revenue Code, shall be eligible to participate in the remitted tuition program.

1332.9 The University shall provide remitted tuition for eligible full time faculty for a maximum of three (3) credit hours each semester. This limitation on the number of credit hours does not apply to the eligible faculty's spouse and dependent children.

1332.10 If an eligible employee, whether full-time staff or full-time faculty, either converts from regular full-time status to part-time status, or is separated from the University for any reason other than because of a reduction-in-force or retirement, the University shall provide remitted tuition benefits through the end of the applicable semester in which the eligible employee's employment status changed.

1332.11 If an eligible employee is separated from the University due to a reduction-in-force, the University shall provide remitted tuition benefits for such eligible employee (and their spouse and dependent child(ren)), for as long as such employee remains on the University's preferential hiring or reduction-in-force employee list.

1332.12 If an eligible employee separates from the University due to retirement, the University shall provide remitted tuition upon retirement for the eligible retiree and their spouse and dependent child(ren), based on length of service as follows:

(a) Retirees that were eligible employees for fewer than ten (10) years, and their spouses and dependent children, shall not be eligible for remitted tuition.

(b) Retirees that were eligible employees for ten (10) years to twenty (20) years, and their spouses and dependent children, shall be eligible for sixty percent (60%) remitted tuition.

(c) Retirees that were eligible employees for more than twenty (20) years, and their spouses and dependent children, shall be eligible for hundred percent (100%) remitted tuition.

1332.13 Except as provided in subsection 1332.14 below, upon the death of an eligible employee or eligible retiree, the University shall provide remitted tuition for their surviving spouse and surviving dependent child(ren) based on the deceased's length of service as follows:

(a) Following the death of an eligible employee or retiree who was employed by the University for fewer than ten (10) years, the surviving spouse and dependent child(ren) shall not be eligible for remitted tuition.

(b) Following the death of an eligible employee or retiree who was employed by the University for ten (10) years to twenty (20) years, the surviving spouse and dependent child(ren) shall be eligible for two (2) full academic years of remitted tuition.

(c) Following the death of an eligible employee or retiree who was employed by the University for more than twenty (20) years, the surviving spouse and dependent child(ren) shall be eligible for three (3) full academic years of remitted tuition.

1332.14 If at the time of the death of an eligible employee or eligible retiree, both parents of a surviving child are deceased, then the University shall provide continuing remitted tuition at a hundred percent (100%), without regard to length of service, for so long as the surviving child is under the age of twenty-five (25).

1332.15 The University shall develop and implement standard operating procedures for the remitted tuition program.

All persons desiring to comment on the subject matter of the proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Comments should be filed with the Office of General Counsel, Building 39- Room 301-Q, University of the District of Columbia, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008.

Comments may also be submitted by email to OfficeofGC@udc.edu. Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking: Remitted Tuition " in the subject line.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act), effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.0l(a); 38-1202.06(3), (8) and (13) (2012 Repl.), hereby gives notice of its intent to amend Chapter 7 (Admissions and Academic Standards) of Subtitle B (University of the District of Columbia) of Title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

The purpose of the proposed rule is to adjust tuition rates for degree granting programs beginning in the fall semester of 2019.

The Board of Trustees will take final action to adopt these amendments to the University Rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 7, ADMISSIONS AND ACADEMIC STANDARDS, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:

Subsections 728.1 -728.8 of Section 728, TUITION AND FEES: DEGREE-GRANTING PROGRAMS, are amended as follows:

728.1 The following tuition and fees have been approved by the Board of Trustees consistent with D.C. Official Code § 38-1202.06(8):

728.2 COMMUNITY COLLEGE ASSOCIATE DEGREE-GRANTING PROGRAMS

	Per Credit Hour
Washington, D.C. Residents	$114.00
Metropolitan Area Residents	$192.00
All Other Residents	$324.00

728.3 FLAGSHIP BACCALAUREATE DEGREE-GRANTING PROGRAMS

	Per Credit Hour
Washington, D.C. Residents	$316.00
Metropolitan Area Residents	$365.00
All Other Residents	$663.00

728.4 FLAGSHIP GRADUATE DEGREE-GRANTING PROGRAMS

	Per Credit Hour
Washington, D.C. Residents	$500.00
Metropolitan Area Residents	$562.00
All Other Residents	$962.00

728.5 DAVID A. CLARKE SCHOOL OF LAW DEGREE-GRANTING PROGRAMS FULL TIME PROGRAM STUDENTS (FALL & SPRING SEMESTERS ONLY)

	Per Semester
Washington, D.C. Residents	$6,067.00
Metropolitan Area Residents	$9,100.00
All Other Residents	$12,133.00

728.6 DAVID A. CLARKE SCHOOL OF LAW DEGREE-GRANTING PROGRAMS ALL OTHER STUDENTS

	Per Credit Hour
Washington, D.C. Residents	$412.00
Metropolitan Area Residents	$616.00
All Other Residents	$822.00

728.7 SCHOOL OF ENGINEERING BACCALAUREATE DEGREE-GRANTING PROGRAMS

	Per Credit Hour
Washington, D.C. Residents	$337.00
Metropolitan Area Residents	$390.00
All Other Residents	$707.00

728.8 Definitions

(a) **Full-Time Students**. Any undergraduate or community college student enrolled in at least twelve (12) credit hours per semester, or any graduate student enrolled in at least nine (9) credit hours per semester, shall be considered a full-time student for the purposes of calculation of tuition in accordance with this chapter. Full-time undergraduate and community college students shall be charged tuition for each semester in which they are enrolled in the amount of twelve (12) credit hours, regardless of the number of credit hours actually taken. Full-time graduate students shall be charged tuition for each semester in which they are enrolled in the amount of nine (9) credit hours, regardless of the number of credit hours actually taken.

(b) **Metropolitan Area Residents**. Any individual who can establish residency in one of the following counties and cities shall be considered a Metropolitan Area Resident: Montgomery County, Maryland; Prince George's County, Maryland; Arlington County, Virginia; Alexandria County, Virginia; Fairfax County, Virginia; and City of Alexandria,

Virginia. The standards used to establish residency shall be the same standards used to establish residency for District residents.

All persons desiring to comment on the subject matter of the proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Comments should be filed with the Office of General Counsel, Building 39- Room 301-Q, University of the District of Columbia, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008.

Comments may also be submitted by email to OfficeofGC@udc.edu. Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking: Tuition and Fees: Degree-Granting Programs " in the subject line.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF THIRD EMERGENCY RULEMAKING

The Chairperson of the Construction Codes Coordinating Board (Chairperson), pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2012 Repl.)) and Mayor's Order 2009-22, dated February 25, 2009, as amended, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Title 12 (D.C. Construction Codes Supplement of 2013), Subtitles A (Building Code Supplement of 2013), Subtitle B (Residential Code Supplement of 2013), Subtitle F (Plumbing Code Supplement of 2013), and Subtitle H (Fire Code Supplement of 2013), of the District of Columbia Municipal Regulations (DCMR).

This third emergency rulemaking is necessitated by the immediate need to: (1) revise provisions in the 2013 District of Columbia Building Code, the 2013 District of Columbia Residential Code and the 2013 District of Columbia Fire Code to ensure that the fire and life safety regulations for child development homes and expanded child development homes in the District of Columbia apply to those facilities that are operated in dwelling units located within buildings containing one or two dwelling units which are not within the scope of the 2013 District of Columbia Residential Code; (2) revise a provision in the 2013 District of Columbia Plumbing Code to comply with the terms of a District of Columbia commitment to the federal Environmental Protection Agency, in connection with a long-term control plan consent decree, to identify and repeal regulations and guidelines that might impede the development of green infrastructure in the District of Columbia; and (3) to revise provisions in the 2013 District of Columbia Building Code to clarify that applications vested under a prior edition of the Construction Codes (pursuant to Section 123, 12-A DCMR) have the same rights as issued permits. Identical language was adopted in a Notice of Second Emergency Rulemaking and a Notice of Emergency and Proposed Rulemaking. The internal process for the final rulemaking is ongoing.

The Notice of Emergency and Proposed rulemaking was adopted on October 18, 2017 and published January 5, 2018 at 65 DCR 61. A Notice of Second Emergency rulemaking was adopted on April 11, 2018 and published on July 27, 2018 at 65 DCR 7870. This Notice of Third Emergency rulemaking was adopted on August 8, 2018 and shall remain in effect for up to one hundred twenty (120) days, expiring December 6, 2018, unless earlier superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

To clearly show the changes being made to the Construction Codes Supplement, additions are shown in <u>underlined</u> text and deletions are shown in ~~strikethrough~~ text.

Title 12-A DCMR, BUILDING CODE SUPPLEMENT OF 2013, is amended as follows:

Chapter 1, ADMINISTRATION AND ENFORCEMENT, is amended as follows:

Section 101, GENERAL, is amended as follows:

Insert a new Section 101.2.5 in the 2013 District of Columbia Building Code to read as follows:

101.2.5 Home Day Care in Group R-3 Buildings. Day care homes in Group R-3 *dwellings* shall comply with Appendix M of the *Residential Code* or meet the corresponding provisions of the *Building Code*.

Amend Section 101.3.3.1 in the 2013 District of Columbia Building Code to read as follows:

101.3.3.1 Home Day Care. Appendix M of the *Residential Code* shall apply to home day care in detached one- and two-family *dwellings* or townhouses within the scope of the *Residential Code* or in R-3 *dwellings*, including Child Development Homes where oversight is provided by the Office of the State Superintendent of Education or a successor agency. ~~where~~

~~1. The home day care is provided in *dwelling units* within (1) detached one and two family *dwellings* or townhouses within the scope of the *Residential Code;*~~
~~2. The home day care is legally operated as a home occupation under the *Zoning Regulations.*~~

Section 102, APPLICABILITY, is amended as follows:

Revise Section 102.6 of the 2013 District of Columbia Building Code to read as follows:

102.6 Continuation of Legal Use and Occupancy. The legal use and occupancy of any *structure* existing on the effective date of the *Construction Codes*, ~~or~~ for which a permit has already been *approved*, or, pursuant to Section 123, an application vested under a prior edition of the *Construction Codes*, shall be permitted to continue without change.

Exceptions:

1. Provisions of the *Building Code*, the *Property Maintenance Code*, or the *Fire Code* that are specifically required to be applied retroactively.

2. Provisions of the *Construction Codes* deemed necessary by the *code official*, as defined in Section 103.1 of the *Building Code*, for the general safety, health and welfare of the occupants and the public.

Chapter 3, USE AND OCCUPANCY CLASSIFICATION, is amended as follows:

Section 308, INSTITUTIONAL GROUP I, is amended as follows:

Amend Section 308.6.3 in the 2013 District of Columbia Building Code to read as follows:

308.6.3 Five or fewer persons receiving care. A facility having five or fewer persons receiving *custodial care* in a facility other than a *dwelling unit* within the scope of Section 308.6.4 shall be classified as part of the primary occupancy.

Strike Section 308.6.4 in the 2013 District of Columbia Building Code in its entirety and insert new Section 308.6.4 in its place to read as follows:

308.6.4 Persons receiving custodial care in a dwelling unit. A facility providing custodial care in a *dwelling unit* within either (1) a detached one- or two-family *dwelling* or townhouse within the scope of the *Residential Code* or (2) an R-3 *dwelling*, shall comply with Appendix M of the *Residential Code.*

Title 12-B DCMR, RESIDENTIAL CODE SUPPLEMENT OF 2013, is amended as follows:

Appendix M, HOME DAY CARE, is amended as follows:

Section M101, GENERAL, is amended as follows:

Amend Section M101.1, Appendix M, of the 2013 District of Columbia Residential Code, to read as follows:

M101.1 General.

This appendix shall apply to ~~a home~~ day care facilities (a) operated within ~~existing~~ detached one- and two-family *dwellings* and townhouses within the scope of the *Residential Code* and in *dwelling units* within R-3 *dwellings*, and (b) occupied by persons of any age who receive custodial care (i) for less than 24 hours per day (ii) provided by individuals other than parents or guardians or relatives by blood, marriage, or adoption (iii) in a place other than the home of the person cared for. Appendix M does not apply to the following:

1. Day care facilities that are classified as Group E or Group I-4 under the *Building Code.*

2. Adult day care where any of the clients is incapable of self-preservation, unless such persons are cared for in rooms located on a *level of exit discharge* serving such rooms and each room has an exit door directly to the exterior.

3. A child day care facility within a *dwelling unit* that is located in a multi-family building classified as an R-2 occupancy.

Strike Section M103.1.6, Appendix M of the 2013 District of Columbia Residential Code, in its entirety, and insert new Section M103.1.6 in its place to read as follows:

M103.1.6 Dwellings with Three or More Stories. Home day care shall not be provided above the second story in *dwellings* with three or more stories.

Exception: The third story is allowed to be used for home day care where the *dwelling* is equipped throughout with an automatic sprinkler system in accordance with Section R313 and the third story is provided with a means of *exit access* and a means of escape in compliance with Section R310.

Title 12-H DCMR, FIRE CODE SUPPLEMENT OF 2013, is amended as follows:

Chapter 3, GENERAL REQUIREMENTS, is amended as follows:

Section 319, DAY CARE FACILITIES IN DWELLING UNITS, is amended as follows:

Amend Section 319.2 in the 2013 District of Columbia Fire Code to read as follows:

319.2 Day care homes in 1- or 2-family homes or townhouses. Day care facilities that are operated in *dwelling units* within existing detached one- and two-family *dwellings* and townhouses within the scope of the *Residential Code*, or within R-3 *dwellings*, shall comply with the fire safety provisions in Appendix K. Appendix K does not apply to the following:

~~1. Day care facilities in a *dwelling unit* which is not the primary residence of the person operating the facility;~~

1. Day care facilities that are classified as Group E or Group I-4 under the *Building Code*.

2. Adult day care where any of the clients are *incapable of self-preservation*, unless such persons are cared for in rooms located on a *level of exit discharge* serving such rooms and each room has an *exit* door directly to the exterior.

Appendix K, HOME DAY CARE, is amended as follows:

Section K101, GENERAL, is amended as follows:

Amend Section K101.1 of Appendix K in the 2013 District of Columbia Fire Code to read as follows:

K101.1 General.
This appendix shall apply to~~home~~ day care facilities (a) operated in *dwelling units* within existing detached one- and two-family *dwellings* and townhouses within the scope of the *Residential Code* or within R-3 *dwellings*, and (b) occupied by

persons of any age who receive custodial care (i) for less than 24 hours per day (ii) provided by individuals other than parents or guardians or relatives by blood, marriage, or adoption, and (iii) in a place other than the home of the person cared for. Appendix K does not apply to the following:

1. Day care facilities that are classified as Group E or Group I-4 under the *Building Code*.

2. Adult day care where any of the clients is *incapable of self-preservation*, unless such persons are cared for in rooms located on a *level of exit discharge* serving such rooms and each room has an *exit* door directly to the exterior.

3. A child day care facility within a *dwelling unit* that is located in a multi-family building classified as an R-2 occupancy.

Section K103, MEANS OF EGRESS, is amended as follows:

Strike Section K103.1.6, Appendix K of the 2013 District of Columbia Fire Code in its entirety and insert new Section K103.1.6 in its place to read as follows:

K103.1.6 Dwellings with three or more stories. Day care shall not be provided above the second story in *dwellings* with three or more stories.

Exception: The third story is allowed to be used for day care where the *dwelling* is equipped throughout with an automatic sprinkler system in accordance with Section R313 of the *Residential Code* or Section 903.2.8 of the *Fire Code*, as applicable, and the third story is provided with a means of *exit access* and a means of escape in compliance with Section R310 of the *Residential Code*.

Title 12-F DCMR, PLUMBING CODE SUPPLEMENT, is amended as follows:

Chapter 11, STORM DRAINAGE, is amended as follows:

Section 1115, RAINWATER COLLECTION AND DISTRIBUTION SYSTEMS, is amended as follows:

Amend Section 1115.11.1 of the 2013 District of Columbia Plumbing Code to read as follows:

1115.11.1 Collection surface. Rainwater shall be collected only from above-ground impervious roofing surfaces constructed from *approved* materials. Collection of water from vehicular parking, pedestrian, or other surfaces shall be prohibited except where the water is used exclusively for landscape irrigation or where water quality treatment measures that are adequate for any *non-potable* water ~~the~~ end use have been approved. ~~Overflow and bleed-off pipes from roof-~~

~~mounted appliances including but not limited to evaporative coolers, water heaters and solar water heaters shall not discharge onto rainwater collection surfaces.~~

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND SECOND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance ("DHCF" or the "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 (the 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. & 2017 Supp.)), 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 an amendment to Chapter 95 ("Medicaid Eligibility") by adding a new Section 9512 ("Non-MAGI Eligibility Group: TEFRA/Katie Beckett"), of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations ("DCMR"), and to amend Section 9599 ("Definitions") of Chapter 95 ("Medicaid Eligibility") of Title 29 DCMR to add definitions.

DHCF is the single state agency responsible for the administration of the State Medicaid program under Title XIX of the Act and the Children's Health Insurance Program under Title XXI of the Act in the District. Pursuant to Section 1902(e) of the Act and Section 134 of the Tax Equity and Fiscal Responsibility Act of 1982, approved September 3, 1982 (Pub. L. 97-248; 42 USC § 1396a)(TEFRA), children with disabilities, who would not be eligible for Medicaid benefits due to their parent's income, may become eligible for Medicaid under the TEFRA/Katie Beckett eligibility group.

Eligibility under the TEFRA/Katie Beckett eligibility group allows the District to waive the deeming of parental income and resources for children who meet certain criteria. To be found eligible for Medicaid through the TEFRA/Katie Beckett eligibility group, a child must meet the following criteria: be age zero (0) through eighteen (18) years old; have income at or below three hundred (300%) of the Supplemental Security Income ("SSI") federal benefit rate; have resources equal to or less than four thousand dollars ($4,000); have a disability which can be expected to result in death or to last for more than twelve (12) months in accordance with Section 1614(a) of the Act; have a level of care ("LOC") that is typically provided in either a hospital, intermediate care facility, or skilled nursing facility; be able to safely live at home; not be otherwise eligible for Medicaid; have estimated Medicaid costs of care received at home that do not exceed the estimated Medicaid costs of care received in an institution pursuant to the District's cost effectiveness methodology; and meet non-financial eligibility factors in accordance with Subsection 9506.9 of this chapter.

Accordingly, these proposed amended rules establish the eligibility factors and standards governing eligibility determinations for children aged zero (0) through eighteen (18) years old who are disabled, and enable them to receive medical care outside of a hospital, intermediate care facility, or nursing facility. Additionally, these rules allow these children to have access to the same set of services, such as early and periodic screening, diagnosis, and treatment (EPSDT) services, which are available to children who are eligible for Medicaid on another basis.

A Notice of Proposed Rulemaking was published on February 5, 2016 at 63 DCR 1335. Comments were received from Health Services for Children with Special Needs, Inc. (HSCSN) and substantive changes were made as follows.

Eligibility Criteria Regarding Individuals Diagnosed with Autism Spectrum Disorder

HSCSN commented that there are no express criteria in the proposed rules addressing the eligibility of individuals receiving Applied Behavioral Analysis (ABA) therapy services, and that it is common for individuals receiving ABA therapy services to have a diagnosis of autism spectrum disorder (ASD). HSCSN further explained that individuals with a single diagnosis of ASD would not be eligible for Medicaid through the TEFRA/Katie Beckett eligibility group because institutionalized care is unnecessary by virtue of having a single diagnosis of ASD. HSCSN recommends that if it is the District's intention to exclude from eligibility individuals with a single diagnosis of ASD, the regulation should expressly memorialize this exclusion.

HSCSN's observation that there is no special provision made for individuals with ASD is correct. Instead, the rules generally provide eligibility requirements for the TEFRA/Katie Beckett eligibility group. Under the eligibility criteria provided in the rules at Subsection 9512.4, any child seeking eligibility must at least have a disability as defined under the Act and require services that meet an institutional LOC. Under Subsection 9512.7, children seeking eligibility due to a LOC need associated with an intermediate care facility must meet the requirements of Subsection 1902.4 of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 DCMR *and* be referred for an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) LOC based on a medical evaluation by a physician. If a child only has a single diagnosis of ASD, or a single diagnosis of any of the other diagnoses listed under Subsection 1902.4(d) (*i.e.*, cerebral palsy, prader willi syndrome, or spina bifida) and does not meet the other criteria under Subsection 1902.4(c), then the child will not meet the criteria for a diagnosis of intellectual disability and the child would be ineligible for Medicaid under the TEFRA/Katie Beckett eligibility group. DHCF believes it is unnecessary to single out children with an ASD diagnosis given the general applicability of these requirements to that and other conditions. For these reasons, DHCF is not proposing any revisions at this time.

Financial Impact Study

HSCSN recommends that DHCF conduct a financial impact study since enrollment in the Medicaid program may swell due to the proposed criteria in the proposed rules, and that such growth will necessitate an increased investment of financial resources to be used, in part, to attract and retain health care providers.

No substantive changes to the rules are requested in this comment. A fiscal impact analysis was previously completed for the corresponding amendment to the District's State Plan for Medical Assistance (State Plan). DHCF does not expect the number of enrollees to change significantly. Therefore, no substantive changes are included.

Nursing Facility Level of Care Criteria

HSCSN commented that the proposed rules as drafted can be read to require individuals to meet eligibility criteria regarding the nursing facility LOC if those individuals show significant behavioral dyscontrol. HSCSN recommended that the criteria should be revised to reflect eligibility based solely on clinical indications, and that the rules should address whether rehabilitation is inclusive of psychiatric rehabilitation, Intensive Outpatient Program (IOP), Psychiatric Rehabilitation Program (PRP), or Partial Hospitalization Program (PHP) levels of service. HSCSN further recommended that the rules address whether individuals will be eligible to meet the nursing facility LOC if such individuals have significant behavioral concerns that are in need of a psychiatric residential treatment facility placement with services delivered by a social worker.

DHCF is revising the criteria for the nursing facility LOC in this proposal to reflect that the child must require services that are inherently complex based on clinical indications due to a physical disability, and that "rehabilitation needs" refer to physical rehabilitation needs. All of the criteria included for the nursing facility LOC are suited for individuals with physical disabilities rather than mental illness or significant behavioral controls in need of a psychiatric treatment facility. DHCF is also revising Subsection 9512.7(c) to clarify that the social workers referred to in the rules that may be necessary for a child's supervision are "clinical social workers" in order to appropriately narrow the scope of care necessary for the child's treatment for psychosocial factors that result from physical illness or disabilities. DHCF believes the proposed clarifications provide sufficient detail and does not believe additional changes are needed to specifically address whether the behavioral services listed above are applicable to the nursing facility LOC.

Frequency of Assessment of Cost of Care

HSCSN recommends that DHCF consider conducting assessments more frequently than annually because things may change that affect beneficiaries' eligibility.

As written, the proposed rules require that if there are additions or changes to the child's care plan before the end of the certification period, DHCF will conduct a new cost effectiveness review. DHCF is not proposing any revisions at this time since the rules already address this exception to the frequency of annual assessments.

Licensing Requirements of Psychiatrists and Professionals Rendering Services in Other Jurisdictions

HSCSN recommends that services delivered by psychiatrists should include a requirement that they be licensed by a medical board. The reasoning was that this is essential for psychiatrists who provide service to enrollees receiving residential placement care outside of the District.

DHCF agrees that additional standards are needed. In this revised version, DHCF is clarifying that psychiatrists must be certified by a Board of Medicine and licensed by DC Health in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2012 Repl.)), or in accordance with licensing requirements in the jurisdiction in which services are provided. Additionally,

DHCF is adding this clarification for other health care professionals that may furnish services outside of the District.

Changes in Beneficiary's Circumstances

HSCSN recommends that in regard to the provision requiring a beneficiary to report any change in circumstance that affects the beneficiary's Medicaid eligibility, DHCF should either list examples of changes in circumstances or issue separate guidance. HSCSN additionally recommends that the proposed rule should expressly require health care providers to notify the District of changes in circumstances.

In this revised version, DHCF is adding a cross-reference to the eligibility factors listed in Subsection 9512.4 of this section in order to clarify that "change in circumstances" relates to anything that may affect a child's Medicaid eligibility. In regard to the recommendation that health care providers notify the District, DHCF will not require health care providers to notify of a change in circumstances. Under these rules, and under Chapter 95 generally, the applicant/beneficiary must provide all documents and information relevant for eligibility determinations, and it should remain the responsibility of the applicant/beneficiary to notify of any changes that would affect their Medicaid eligibility. For these reasons, the proposed changes regarding provider notification are not being made in this proposal.

Definitions

HSCSN recommends that the following terms be defined: (1) nursing assistive personnel; (2) streamlined application; and (3) therapy within the context of high-intermediate treatment criteria for nursing facility LOC.

DHCF agrees that additional definitions are needed. As outlined in this revised version, DHCF is adding the following definition of nursing assistive personnel, consistent with the definition set forth in D.C. Official Code § 3-1201.02 (2012 Repl.) : the performance by unlicensed personnel of assigned patient care tasks that do not require professional skill or judgment within a health care, residential, or community support setting; provided, that the patient care tasks are performed under the general supervision of a licensed health care professional. A definition for "streamlined application for provider enrollment" has been added to mean an enrollment application available for providers whose relationship with the Medicaid program is ordering, referring, and/or prescribing services to Medicaid-eligible beneficiaries. Additionally, a definition for "maintenance therapy" has been added to mean treatment typically furnished to individuals with chronic diseases, which are designed to keep a condition stable, to keep the individual in a disease-free state, or to help an original, primary treatment to succeed.

DHCF has made additional technical changes to this emergency and second proposed rulemaking. The changes are as follows: (1) the term "Katie Beckett Pathway" is revised to "TEFRA/Katie Beckett eligibility group" in order to reference the federal tax law that authorizes the District to disregard the parents' income in determining the applicant's financial eligibility,

and to achieve consistency with the State Plan Amendment ("SPA") that corresponds to this rule; (2) a TEFRA/Katie Beckett Application Form is added to the list of documents that an applicant is required to submit in order for the Department to determine Medicaid eligibility under the TEFRA/Katie Beckett eligibility group; (3) each LOC criteria is revised to clarify that a child's needs, rather than the child, meets the respective LOC; (4) the description of the purpose of active treatment is moved from the definitions section to the intermediate care facility LOC criteria in order to add more description to the purpose of active treatment; (5) the LOC criteria under intermediate care facility was revised by deleting "recreational therapist" from the list of providers from whom a child may require active treatment services since appropriate active treatment services may be achieved through the other delineated practitioners within the same subparagraph; (6) the nursing facility LOC criteria is further divided into separate subsections for each of the three (3) categories of services a child may need, and are given descriptions ("extensive treatment," "high intermediate treatment," and "intermediate treatment") in order to make the nursing facility LOC language less dense and easier to follow; (7) the cost effectiveness methodology is revised in order to clarify that acuity level and severity of illness, for which adjustments are made to estimated costs of care, are supported in the beneficiary's Care Plan and LOC forms; (8) the cost effectiveness methodology is further revised for annual renewal calculations, using either estimated costs of care or actual costs of care when comparing costs of care at home versus costs of care in an institution, in order to clarify that estimated costs may be used if changes to a child's Care Plan occurs; (9) the annual renewal process is clarified to include that a cost effectiveness review is conducted if there is a significant change to the Care Plan; (10) the process for re-evaluating the beneficiary's Medicaid eligibility under another eligibility category is clarified to specify that the process would begin prior to the beneficiary's nineteenth (19^{th}) birthday; and (11) other existing language was clarified in order to simplify interpretation.

The emergency and second proposed rules also amend Chapter 95 (Medicaid Eligibility) by amending the definitions section (Section 9599) and propose to add new definitions for the terms active treatment, activities of daily living, acuity level, federal benefit rate, TEFRA/Katie Beckett eligibility group, nursing assistive personnel, single case agreement, skilled nursing, skilled rehabilitation services, and streamlined application for provider enrollment.

The rules also achieve consistency with the District of Columbia State Plan to reflect the methodology in determining cost effectiveness of providing care for the child at home instead of an institution. The corresponding SPA was approved by the Council of the District of Columbia on March 18, 2016 (PR 21-0560), and the U.S. Department of Health and Human Services Centers for Medicaid and Medicare Services on May 27, 2016. This emergency and second proposed rule amends Chapter 95 of Title 29 DCMR by incorporating the Medicaid eligibility requirements for children to receive reimbursable services through the TEFRA/Katie Beckett eligibility group. The District approximates that there will be no fiscal impact related to these updates.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of children that are eligible under the TEFRA/Katie Beckett eligibility group and are in need of Medicaid coverage of health care services. This emergency rulemaking will ensure that Medicaid

eligibility and Medicaid-reimbursable coverage may be established timely and maintained for this fragile population in the District.

The emergency rulemaking was adopted on September 19, 2018 became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until January 17, 2019, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt this emergency and proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 95, MEDICAID ELIGIBILITY, of Title 29 DCMR, PUBLIC WELFARE, is amended by adding a new Section 9512 to read as follows:

9512 NON-MAGI ELIGIBLITY GROUP: TEFRA/KATIE BECKETT

9512.1 A child below the age of nineteen (19) years old that applies for Medicaid eligibility under the "TEFRA/Katie Beckett eligibility group" shall comply with the following requirements:

(a) Submit a complete application for Medicaid, in accordance with Subsection 9501.5 of this chapter, which shall include but not be limited to supplying information on household income; and

(b) Be evaluated for Medicaid eligibility based on Modified Adjusted Gross Income ("MAGI Medicaid") pursuant to the requirements set forth under Subsection 9506.6 of this chapter.

9512.2 The District of Columbia (District) shall provide Medicaid benefits under the TEFRA/Katie Beckett eligibility group to eligible children with disabilities who do not qualify for MAGI Medicaid because their income is over the MAGI Medicaid income threshold for children in the District set forth in this section.

9512.3 If an applicant is deemed to be ineligible for MAGI Medicaid because his or her income is over the income threshold set forth in Subsection 9506.6(b), then the Department shall submit notice to the applicant of the applicant's ineligibility for MAGI Medicaid and the applicant's opportunity to be evaluated for Medicaid through the TEFRA/Katie Beckett eligibility group. The Department shall also submit the following documents to the applicant for the applicant's completion to determine the applicant's eligibility for Medicaid under the TEFRA/Katie Beckett eligibility group:

(a) A TEFRA/Katie Beckett Application Form to be completed by the applicant;

(b) A Care Plan to be completed by the applicant and the applicant's physician, containing the prescribed or ordered services for the child; and

(c) Level of Care ("LOC") forms to be completed by the applicant's physician which must be accompanied with documentation that supports a LOC in accordance with Subsection 9512.4(e).

9512.4 In order to be eligible for Medicaid through the TEFRA/Katie Beckett eligibility group, a child shall meet the following non-financial and financial requirements:

(a) Be age zero (0) through eighteen (18) years old;

(b) Have individual income at or below three hundred percent (300%) of the Supplemental Security Income ("SSI") federal benefit rate;

(c) Have individual resources equal to or less than two thousand and six hundred dollars ($2,600) after application of a disregard of all countable resources between two thousand and six hundred dollars ($2,600) and four thousand dollars ($4,000);

(d) Have a disability which can be expected to result in death or to last for at least twelve (12) months in accordance with Section 1614(a) of the Social Security Act;

(e) Have a LOC that is typically provided in one of the following settings:

(1) A hospital, as described in 42 CFR § 440.10, pursuant to the criteria set forth under Subsection 9512.6;

(2) An intermediate care facility, as described in 42 CFR § 440. 150, pursuant to the criteria set forth under Subsection 9512.7; or

(3) A nursing facility, as described in the "Health Care and Community Residence License Act of 1983, approved October 28, 1983 (D.C. Law 5-48; D.C. Official Code § 44-501), pursuant to the criteria set forth under Subsection 9512.9;

(f) Be able to safely live at home;

(g) Not otherwise be eligible for Medicaid;

(h) Have estimated Medicaid costs of care received at home that do not exceed the estimated Medicaid costs of care received in an institution pursuant to the cost effectiveness methodology set forth in Subsection 9512.13; and

(i) Meet non-financial eligibility factors in accordance with Subsection

9506.9.

9512.5 Only the income and assets of the child shall be considered in determining financial eligibility under Subsection 9512.4. The parents' income and assets shall not be deemed to be income and assets of the child.

9512.6 A child's needs shall meet a hospital LOC if a child meets all of the following criteria:

(a) The child has a condition for which room, board, and professional services furnished under the direction of a physician is expected to be medically necessary for a period of forty eight (48) hours or longer;

(b) The professional services needed are something other than intermediate care facility and nursing facility services, under Subsections 9512.7 and 9512.9, respectively;

(c) The child's condition is such that it requires treatment which is ordinarily furnished in an inpatient setting;

(d) The service that the child needs has been ordered by a physician who is licensed in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code Sections §§ 3-1201 *et seq*. (2016 Repl. & 2017 Supp.)) ("HORA") or the licensing requirements of the jurisdiction in which services are furnished, and complies with screening and enrollment requirements set forth under Subsection 9512.17;

(e) The service that the child receives is furnished either directly by, or under the supervision of, a physician who is licensed pursuant to HORA or the licensing requirements of the jurisdiction in which services are furnished, and is in compliance with screening and enrollment requirements set forth under Subsection 9512.18; and

(f) The service that the child receives is ordinarily furnished, as a practical matter, in a hospital, certified by the Health Regulation and Licensing Administration ("HRLA") in the Department of Health pursuant to Sections 2000 – 2099 of Title 22-B of the District of Columbia Municipal Regulations (DCMR), for the care and treatment of individuals with disorders other than mental diseases.

9512.7 A child's needs shall meet an intermediate care facility's LOC if a child's needs meet all of the following criteria:

(a) The child has the diagnosis of an intellectual disability that meets one of the criteria set forth under Subsection 1902.4 of Title 29 DCMR;

(b) The child is referred for an Intermediate Care Facility for Individuals with Intellectual Disabilities ("ICF/IID") LOC based on a medical evaluation by a physician who is licensed pursuant to HORA or the licensing requirements of the jurisdiction in which services are furnished, and who complies with screening and enrollment requirements set forth under Subsection 9512.17;

(c) The child requires active treatment that is designed to prevent or decelerate the regression or loss of current optimal functional status and address a child's need for a combination and sequence of interdisciplinary supports that are individually planned, coordinated, and are of lifelong or extended duration. The child shall be deemed to require active treatment by meeting the following requirements:

(1) The child's needs have not been met with the child's current plan of treatment, *i.e.*, wraparound services in school and in the community;

(2) The child requires twenty-four (24) hour supervision by a licensed practical nurse or nursing assistive personnel, as appropriate, who are acting within the scope of practice authorized under HORA or the licensing requirements of the jurisdiction in which services are furnished;

(3) The child requires ongoing care, either directly or on-call, by one or more of the following, as appropriate:

(A) A physician who is licensed in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished;

(B) A psychiatrist who is licensed by a Board of Medicine in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished;

(C) An advanced practice registered nurse who is licensed in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished;

(D) A registered nurse who is licensed in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished;

(E) A psychologist who is licensed to practice psychology in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished;

(F) A social worker who is a licensed independent social worker, a licensed graduate social worker, or a licensed independent clinical social worker, in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished;

(G) A physical therapist who is licensed in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished;

(H) An occupational therapist who is licensed in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished;

(I) A speech pathologist who is licensed in accordance with HORA or the licensing requirements of the jurisdiction in which services are furnished; or

(J) An audiologist who is licensed in accordance with HORA or in accordance with the licensing requirements of the jurisdiction in which services are furnished;

(4) Subject to limitations under Subsection 9512.8 of this chapter, the child requires specialized services through an integrated program of therapies and other activities that are developed and supervised by medical and rehabilitative professionals, as appropriate, in order to improve the child's ability to function at a higher, less dependent level;

(5) The child requires more behavior modification than is provided in a six (6) hour school day;

(6) The child has severe functional limitations in three (3) or more of the following areas of major life activities:

(A) Self-care;

(B) Understanding the use of language;

(C) Learning;

(D) Mobility;

(E) Self-direction; and

(F) Capacity for independent living;

(d) The services that the child requires will be furnished either directly by, or under the supervision of, appropriately qualified professionals that are licensed and practicing within the scope of their license pursuant to HORA or the licensing requirements of the jurisdiction in which services are furnished, and in compliance with screening and enrollment requirements set forth under Subsection 9512.18; and

(e) The services that the child requires would have ordinarily been provided in an intermediate care facility, licensed by HRLA pursuant to Sections 3100 – 3199 of Title 22-B DCMR (Public Health and Medicine), in the absence of community services.

9512.8 Specialized services under Subsection 9512.7(c)(4) shall not include:

(a) Interventions that address age-appropriate limitations;

(b) General supervision of children whose age is such that supervision is required for all children of the same age; or

(c) Physical assistance for children who are unable to physically perform tasks but who understand the process needed to do them.

9512.9 A child's needs shall meet a nursing facility LOC if a child's needs meet all of the following criteria:

(a) The child requires service that is inherently complex based on clinical indications due to a physical disability (e.g., treatment for cystic fibrosis, osteogensis imperfecta, sickle cell, spina bifida, etc.) and can only be safely and effectively performed by, or under the supervision of, professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, licensed clinical social workers, and speech pathologists or audiologists, who are licensed pursuant to HORA or the licensing requirements of the jurisdiction in which services are furnished, and in compliance with screening and enrollment requirements set forth under Subsection 9512.18;

(b) The child requires one (1) of the following three (3) categories of services:
(1) Extensive treatment as set forth under Subsection 9512.10;

(2) High-intermediate treatment as set forth under Subsection 9512.11; or

(3) Intermediate treatment as set forth under Subsection 9512.12;

(c) The service needed has been ordered by a physician who is licensed pursuant to HORA or the licensing requirements of the jurisdiction in which services are furnished, and complies with screening and enrollment requirements set forth under Subsection 9512.17;

(d) The service is furnished either directly by, or under the supervision of, qualified professionals who are licensed pursuant to HORA or the licensing requirements of the jurisdiction in which services are furnished, and in compliance with screening and enrollment requirements set forth under Subsection 9512.18; and

(e) The beneficiary requires skilled nursing or skilled rehabilitation services, or both, at a minimum of five (5) days per week.

9512.10 Extensive treatment, described under Subsection 9512.9 (b)(1), shall mean the child requires a service seven (7) days per week and involves, or is similar to, one (1) or more of the following:

(a) Overall management and evaluation of a care plan for a child who is totally dependent in all activities of daily living;

(b) Observation and assessment of a child's changing condition when the documented instability of his or her medical condition is likely to result in complications, or when the documented instability of his or her mental condition is likely to result in suicidal or hostile behavior;

(c) Intravenous or intramuscular injections or intravenous feeding;

(d) Enteral feeding that comprises at least twenty-six (26) percent of daily calorie requirements and provides at least five hundred and one (501) milliliters of fluid per day;

(e) Nasopharyngeal or tracheostomy aspiration;

(f) Insertion and sterile irrigation or replacement of suprapubic catheters;

(g) Application of dressings involving prescription medications and aseptic techniques;

(h) Treatment of extensive decubitus ulcers or other widespread skin disorder;

(i) Heat treatments as part of active treatment which requires observation by nurses;

(j) Initial phases of a regimen involving administration of medical gases; or

(k) Rehabilitation nursing procedures, including the related teaching and adaptive aspects of nursing that are part of active treatment.

9512.11 High-intermediate treatment, described under Subsection 9512.9 (b)(2), shall mean the child requires a service five (5) days per week and involves, or is similar to, one (1) or more of the following services:

(a) Ongoing assessment of physical rehabilitation needs and potential services concurrent with the management of a patient care plan;

(b) Therapeutic exercises and activities performed by physical therapy or occupational therapy;

(c) Gait evaluation and training to restore function to a child whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality;

(d) Range of motion exercises which are part of active treatment of a specific condition that has resulted in a loss of or restriction of mobility;

(e) Maintenance therapy when specialized knowledge and judgment is needed to design a program based on initial evaluation;

(f) Ultrasound, short-wave, and microwave therapy treatment;

(g) Hot pack, hydrocollator, infrared treatments, paraffin baths, and whirlpool treatment when the child's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, etc. and specialized knowledge and judgment is required; or

(h) Services of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing;

9512.12 Intermediate treatment, described under Subsection 9512.9(b)(3), shall mean the child, due to an additional medical complication, requires one (1) of the following services, which is performed or supervised by professional personnel:

(a) Administration of routine medications, eye drops, and ointments;

(b) General maintenance care of an ostomy;

(c) General maintenance care in connection with a plaster cast;

(d) Routine services to maintain satisfactory functioning of indwelling bladder catheters;

(e) Changes of dressings for non-infected postoperative or chronic conditions;

(f) Prophylactic and pain relief for skin care, including bathing and application of creams, or treatment of minor skin problems;

(g) Routine care of an incontinent child, including use of diapers and protective sheets;

(h) Use of heat as a pain relief and comfort measure (*e.g.*, whirlpool and hydrocollator);

(i) Routine evaluation of blood gases after a regimen of oxygen therapy has been established;

(j) Assistance in dressing, eating, and toileting;

(k) Periodic turning and positioning of the child; or

(l) General supervision of exercises that were taught to the child and can be safely performed by the child including the actual carrying out of maintenance programs.

9512.13 The Department, or its agent, shall determine whether the estimated Medicaid cost of caring for the child outside of an institution exceeds the estimated cost of appropriate institutional care based on the following methodologies:

(a) Upon initial application, the Department shall:

(1) Identify the services that the child is prescribed or ordered to receive based on forms submitted by the applicant under Subsection 9512.3(b) – (c);

(2) Estimate the annual cost of the services using the established Medicaid Fee Schedule, available at http://www.dc-medicaid.com. The beneficiary's acuity level and severity of illness, as supported in the beneficiary's Care Plan and LOC forms, shall be factored into the estimation;

(3) Estimate the annual costs of services if services were provided in an institution by multiplying the current institutional per diem reimbursement rate, in accordance with Subsection 9512.13(b), with the number of days in one year. The beneficiary's acuity level, severity of illness, and length of stay, as supported in the

beneficiary's Care Plan and LOC forms, shall be factored into the estimation. This estimate shall be the maximum allowable costs; and

(4) Compare the annual costs identified in Subsection 9512.13(a)(2) with the maximum allowable costs identified in Subsection 9512.13(a)(3). If the annual cost is more than the maximum allowable costs, the applicant will be ineligible for Medicaid under the TEFRA/Katie Beckett eligibility group, and the Department shall provide timely and adequate notice of ineligibility to the applicant consistent with the requirements set forth in Section 9508.

(b) The institutional per diem reimbursement rate of services, described in Subsection 9512.13(a)(3), shall be determined as follows:

(1) If the Department determines that the child has a hospital LOC pursuant to Subsection 9512.6, the Department shall use the applicable per-diem reimbursement rates of a specialty hospital provider that most closely meets the medical needs of the child, in accordance with Chapter 48 of Title 29 DCMR, and is enrolled with the Department pursuant to Chapter 94 of Title 29 DCMR;

(2) If the Department determines that the child has an intermediate care facility LOC pursuant to Subsection 9512.7, the Department shall use applicable per-diem reimbursement rates in accordance with the ICF/IID fee schedule, set forth under Subsection 4102.15 of Title 29 DCMR; or

(3) If the Department determines that the child has a nursing facility LOC pursuant to Subsection 9512.9, the Department shall use the applicable per-diem reimbursement rates of the pediatric nursing facility that most closely meets the medical needs of the child, pursuant to Chapter 65 of Title 29 DCMR or pursuant to the Medicaid rates of the jurisdiction in which the facility is located, and is enrolled with the Department pursuant to Chapter 94 of Title 29 DCMR.

(c) The Department shall employ the following methodology during annual renewals, unless Subsection 9512.22 applies:

(1) Calculate the actual or estimated annual costs of care incurred for the child in the preceding year by aggregating the actual monthly costs of care;

(2) Compare actual or estimated annual costs determined under Subsection 9512.13(c)(1) with the maximum allowable costs that was previously determined under Subsection 9512.13(a)(3); and

(3) If the actual or estimated annual cost is more than the maximum allowable costs, the applicant will be ineligible for renewed Medicaid under the TEFRA/Katie Beckett eligibility group.

9512.14 If an applicant is found eligible for Medicaid through the TEFRA/Katie Beckett eligibility group, the Department shall notify the applicant within sixty (60) calendar days of receipt of completed documents set forth in Subsection 9512.3, in accordance with Subsection 9501.9(b) of this chapter. The applicant shall be automatically enrolled in fee-for-service Medicaid. However, the applicant shall have the option to transition his or her enrollment to a managed care plan, subject to the Department's approval.

9512.15 Retroactive eligibility, pursuant to Subsections 9501.10 – 9501.12, shall apply to TEFRA/Katie Beckett eligibility group applicants if the applicant was eligible in accordance with the requirements set forth under Subsection 9512.4 and received covered services during that period.

9512.16 Pursuant to Subsection 9501.18, each beneficiary shall notify the Department within ten (10) calendar days of any change in circumstances that directly affects the beneficiary's eligibility to receive Medicaid pursuant to Subsection 9512.4. Once changes are reported, the Department shall review the beneficiary's eligibility in accordance with the requirements of this chapter to determine if the beneficiary remains eligible for Medicaid under the TEFRA/Katie Beckett eligibility group.

9512.17 The physician that orders or refers services for a child that meets a LOC criteria set forth under Subsections 9512.6, 9512.7, or 9512.9 and is found eligible through the TEFRA/Katie Beckett eligibility group shall be subject to the following screening and enrollment criteria:

(a) If a child enrolls in a managed care plan contracted with the Department, the physician that continues to order or refer services for the child shall be subject to the managed care plan's screening and enrollment requirements pursuant to the managed care contract;

(b) If a child enrolls in fee-for-service Medicaid, the physician that continues to order or refer services for the child shall be subject to screening and enrollment requirements set forth under Chapter 94 of Title 29 DCMR; and

(c) If a physician, who is not already enrolled with the Department, orders or refers services for a child that requires services to be furnished by a

qualified professional who must to enter into a Single Case Agreement with the Department pursuant to Subsection 9512.20, the physician shall submit a streamlined application for enrollment to the Department.

9512.18 The qualified professionals that furnish services to a child that meets a LOC criteria set forth under Subsections 9512.6, 9512.7, or 9512.9 and is found eligible through the TEFRA/Katie Beckett eligibility group shall be subject to the following screening and enrollment criteria:

(a) If a child enrolls in a managed care plan contracted with the Department, the qualified professionals that continue to furnish services for the child shall be subject to the managed care plan's screening and enrollment requirements, unless a Single Case Agreement has been approved subject to Subsection 9512.19; and

(b) If a child enrolls in fee-for-service Medicaid, the qualified professionals that continue to furnish services to the child shall be subject to screening and enrollment requirements set forth under Chapter 94 of Title 29 DCMR, unless a Single Case Agreement has been approved subject to Subsection 9512.20.

9512.19 If a child that is enrolled in a managed care plan requires service(s) from a qualified professional that is not within the managed care plan's network, the managed care plan may enforce conditions under which it will engage in Single Case Agreements with qualified professionals that are reflective of the conditions set forth in Subsection 9512.20 (a) – (b), in addition to any other conditions set forth in the managed care contract with the Department.

9512.20 Services may be delivered to a beneficiary pursuant to a Single Case Agreement between a qualified professional and the Department if all of the following conditions are met:

(a) The child requires a service that is Medicaid-reimbursable pursuant to the District's State Plan for Medical Assistance;

(b) The service is medically necessary based on the submitted supporting documentation; and

(c) The service cannot be delivered by providers that are currently enrolled with the Department pursuant to Chapter 94 of Title 29 DCMR.

9512.21 If a qualified professional is interested in entering into a Single Case Agreement with the Department, the following requirements shall be met:

(a) An ordering, referring, or prescribing physician who is enrolled with the Department pursuant to Chapter 94 of Title 29 DCMR shall submit a

request for a Single Case Agreement with supporting clinical documentation of the required service to be furnished by a non-enrolled qualified professional;

(b) The qualified professional shall submit a separate short application for a Single Case Agreement;

(c) The qualified professional is screened by the Department pursuant to Chapter 94 of Title 29 DCMR; and

(d) Claims are reimbursed pursuant to the Department's fee schedule, available at www.dc-medicaid.com.

9512.22 If upon annual renewal there is a significant change to the services prescribed or ordered for a child in the Care Plan, described in Subsection 9512.3(b), the Department shall conduct a cost effectiveness review using the methodology set forth under Subsection 9512.13(a). A significant change shall include, but not be limited to, a change in the child's condition that would require additional resources or services for the child.

9512.23 If additional or a change of services are prescribed or ordered for the child before the end of the child's certification period, the following shall occur:

(1) If a child is enrolled in fee-for-service Medicaid, the child's physician shall submit a new Care Plan to the Department, and the Department shall conduct a new cost effectiveness review using the methodology set forth under Subsection 9512.13(a); and

(2) If the child is enrolled in a managed care plan, the child's physician shall submit the new Care Plan to the managed care plan in which the child is enrolled. The managed care plan shall submit the Care Plan to the Department, and the Department shall conduct a new cost effectiveness review using the methodology set forth under Subsection 9512.13(a).

9512.24 Each applicant and beneficiary shall be subject to the provisions of Chapter 14 of Title 29 DCMR, including but not limited to providing the Department with written notice of any known or suspected third-party liability at the time the child applies for Medicaid and at all times the beneficiary is receiving Medicaid through the TEFRA/Katie Beckett eligibility group.

9512.25 In addition to the requirements set forth under Subsection 9512.24, if an applicant or beneficiary requires a service that is covered within the applicant's or beneficiary's primary health insurance plan, each applicant or beneficiary shall follow the rules and requirements of the primary health insurance before seeking reimbursement from the Department or managed care plan for the service.

9512.26 For continued Medicaid coverage through the TEFRA/Katie Beckett eligibility group, each beneficiary shall complete and submit the following documents every twelve (12) months in order for the Department to determine all of the eligibility requirements set forth under Subsection 9512.4:

(a) A completed and signed renewal form;

(b) A new Care Plan as described in Subsection 9512.3(b);

(c) A new LOC form with documentation as described in Subsection 9512.3(c); and

(d) Supporting documentation to verify other financial and non-financial eligibility factors described in Subsection 9512.4.

9512.27 The Department shall send a renewal package, containing the documents described in Subsection 9512.26(a) - (c) for the beneficiary's completion, no later than ninety (90) days prior to the end of the eligibility period.

9512.28 If the beneficiary's annual renewal documents reveal that the beneficiary no longer meets all of the eligibility factors set forth under Subsection 9512.4, the beneficiary's Medicaid coverage under the TEFRA/Katie Beckett eligibility group shall be terminated and the Department shall evaluate the beneficiary's eligibility for Medicaid under other eligibility groups pursuant to 42 CFR § 435.916. The Department shall provide notice to the beneficiary or the beneficiary's authorized representative prior to termination in accordance with the provisions under Section 9508 of this chapter. The Department shall also provide notice to the beneficiary of its eligibility determination under other eligibility groups.

9512.29 If a cost effectiveness review conducted pursuant to Subsection 9512.23 reveals that a beneficiary's estimated Medicaid costs of care received at home exceed the estimated Medicaid costs if care is received in an institution, the beneficiary's Medicaid coverage under the TEFRA/Katie Beckett eligibility group shall be terminated. The Department shall provide notice to the beneficiary prior to termination in accordance with the provisions under Section 9508 of this chapter.

9512.30 At all times during the beneficiary's enrollment in Medicaid through the TEFRA/Katie Beckett eligibility group, the beneficiary shall meet all eligibility factors described in Subsection 9512.4.

9512.31 Eligibility through the TEFRA/Katie Beckett eligibility group shall not continue once a beneficiary turns nineteen (19) years old. Prior to the beneficiary's nineteenth (19^{th}) birthday, the Department shall re-evaluate the beneficiary's eligibility for Medicaid under another eligibility category.

Section 9599, DEFINITIONS, Subsection 9599.1, is amended to add the following new definitions:

Active treatment - A continuous program, which includes consistent implementation of training, therapies, health and related services designed to address the child's social, intellectual, and behavioral deficits and, further, that are directed toward the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible.

Activities of Daily Living - Activities including eating, bathing, toileting, grooming, dressing, undressing, mobility, and in place transfers.

Acuity level - The intensity of services required for an applicant or beneficiary. An applicant or beneficiary with a high acuity level requires more care those with lower acuity levels require less care.

Federal Benefit Rate - The share of the Supplemental Security Income grant paid by the federal government, which does not include any applicable State supplement.

Nursing assistive personnel - Unlicensed personnel of assigned patient care tasks that do not require professional skill or judgment within a health care, residential, or community support setting; provided, that the patient care tasks are performed under the general supervision of a licensed health care professional.

Single Case Agreement - An agreement between a non-enrolled Medicaid provider and the Department for Medicaid reimbursement of covered services that are furnished to an eligible D.C. Medicaid beneficiary.

Skilled Nursing- Medical and educational services that address healthcare needs related to prevention and primary healthcare activities.

Skilled Rehabilitation Services - Services delivered in an inpatient or outpatient setting that assists with retention, regaining, or improving skills and functioning for daily living that are lost or impaired due to a new medical condition, an acute exacerbation of a chronic medical condition, sickness, injury, or disability. Services that require the judgment, knowledge and skill of a qualified therapist and may include, but are not limited to, physical and occupational therapy, speech pathology, and audiology.

Streamlined Application for Provider Enrollment - An enrollment application available for providers whose relationship with the Medicaid program is ordering, referring, and/or prescribing services to Medicaid-eligible beneficiaries.

TEFRA/Katie Beckett eligibility group - An eligibility group that provides Medicaid benefits for eligible children with disabilities, who would not ordinarily qualify for Medicaid because their income would be above the Medicaid income threshold for children in the District.

Comments on these rules should be submitted in writing to Angelique Martin, Deputy Director of Finance and Interim Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, N.W., Suite 900, Washington D.C. 20001, via telephone on (202) 442-8742 or via email at DHCFPubliccomments@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.

OFFICE OF THE CHIEF TECHNOLOGY OFFICER

NOTICE OF FUNDING AVAILABILITY

Gigabit DC Challenge
Inspiring Innovative High-Performance Applications to Solve Complex City Challenges

The DC Office of the Chief Technology Officer (OCTO) invites area application developers and entrepreneurs to compete in the Gigabit DC Challenge (GigabitDCx). DC seeks next-gen, high-performance applications that address complex challenges in the areas of **city mobility** and the **environment**. GigabitDCx is a two-phased, reverse pitch competition in which competitors will submit proposals to develop and demonstrate gigabit app solutions in the described focus areas. In phase two, semi-finalists will advance their concepts and build prototypes of proposed solutions for a chance to win one of two final awards.

- Phase 1: Up to six (6) finalists will be invited to advance to phase 2.
- Phase 2: Two (2) winners splitting $34,000 in award funds.

Competitors will have access to mentors and subject matter experts to advise and answer questions throughout the process. Proposals can focus on one or both challenge areas.

With the emergence of gigabit services to the home and 5G wireless networks, capabilities enabled by such speed will rapidly become more main-stream. A next-generation or "gigabit" application is a high-performance application that leverage the power of gigabit-speed networks to address real-world challenges. Gigabit applications often rely on complex interactions of Internet of Things/cyber-physical systems and local cloud computing to enable the efficient processing of big data and low-latency response time.

Example city mobility solutions may include:

- Traffic Safety Solutions that make District streets safer for pedestrians, bicyclists, and drivers, including capabilities such as incident recognition and alerting systems for any form of mobility (in line with DC Vision Zero goals).
- Traffic Management Solutions providing visibility, understanding, and alerting of traffic abnormalities—such as unexpected traffic congestion or an unusual amount of foot traffic in a section of the city—that require immediate city agency response.
- Multi-Modal Solutions providing visibility of modal options to residents, commuters, and visitors, especially more environmentally friendly options (walking, biking, public transit, etc.).

Example environment-related solutions may include:

- Air Quality Sensing Solutions providing actionable insights using urban air quality data; enhanced enforcement capabilities of air quality regulations; or alert systems that better inform residents and visitors on health-related air quality factors.
- Water Quantity and Quality Sensing Solutions providing monitoring, measuring, and alerting on District waterways. This capability could help inform District environmental, planning, and

public safety response agencies with real-time information such as water quality and rising levels (especially in flood plain areas).

- Smart Building Sensing Solutions enhancing building energy and other efficiencies in support of the District's Clean Energy plan and the mission of BuildSmart DC.
- Smart Waste Diversion Solutions that goals of Zero Waste DC and the Office of the Clean City and could enable residents and visitors to quickly locate waste, compost and recycling options based on location through gamification and reward incentives.

Funding
Up to $34,000 in award funds will be split between two (2) winners.

Eligibility
Submissions can be from an individual or a team but the individual or team must be affiliated with a non-profit organization (including educational institutions) or for-profit organization to receive the award. For individuals or teams not already affiliated with a non-profit or for-profit entity, LLC and 501c(3) formation guidance will be offered and temporary affiliation can be made available.

If you are submitting as an individual, you must be age 18 or older at the time of entry and a U.S. citizen or permanent resident of the U.S. or its territories. If you are submitting as a team, at least one team member must be age 18 or older at the time of entry and a U.S. citizen or permanent resident of the U.S. or its territories. This team member will serve as the "team sponsor" and will take responsibility for the team output and any legal agreements.

District of Columbia employees are not eligible to compete in GigabitDCx. However, employees of educational institutions of the District of Columbia Government serving in team advisory capacities may participate.

Availability
Please join us for the GigabitDCx Kickoff Event to be held October 13, 2018:

GigabitDCx Kickoff Event
October 13, 2018, 9 a.m. EDT
WeWork
80 M Street, SE, 20009

Competition overview, terms and conditions, judging criteria, and detailed timeline are available now at https://www.herox.com/gigabitDCx.

Online submission will be available on the portal on October 13, 2018. In addition, the full text of the Request for Applications (RFA) will be available on the Department's website.

All Phase 1 submissions are due by November 12, 2018 at 5 p.m. EST.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Vacant Building Enforcement

Address:	**Square:**	**Lot:**
700 Randolph Street NW	3131	0020

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): **HARDSHIP**

Based on the supporting evidence provided, you are exempt from the vacant tax rate for **2nd Half 2018 tax years 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.

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 permits (Nos. 7232 and 7233) to American University to construct and operate two (2) 6.0 MMBtu/hr Aerco BMK 6000 natural gas-fired condensing boilers to be located at the American University East Campus, Federal Hall, 4400 Massachusetts Avenue NW, Washington DC. The contact person for the facility is Mark A. Freedman, Manager, Energy Utilities Operations, at (202) 885-2378.

The following boilers are to be permitted:

Equipment Location	Emission Unit ID	Model Number	Natural Gas Rating (MMBTU/hr)	Permit Number
Federal Hall, American University East Campus 4400 Massachusetts Ave NW Washington DC	PG-PT-BOILR001	Aerco BMK 6000	6.0	7232
Federal Hall, American University East Campus 4400 Massachusetts Ave NW Washington DC	PG-PT-BOILR002	Aerco BMK 6000	6.0	7233

Emissions:

The estimated maximum annual emissions from the two 6.0 MMBTU/hr natural gas-fired boilers are expected to be as follows:

Pollutant	Maximum Annual Emissions for Each Boiler (tons/yr)	
	Each Boiler	Both Boilers (Sum)
Total Particulate Matter (PM Total)	0.20	0.40
Sulfur Dioxide (SO_2)	0.02	0.04
Nitrogen Oxides (NOx)	0.73	1.46
Volatile Organic Compounds (VOC)	0.14	0.28
Carbon Monoxide (CO)	1.33	2.66

The proposed emission limits are as follows:

a. Each of the boilers (identified as PG-PT-BOILR001and PG-PT-BOILR002) shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

Pollutant	Short-Term Limit (Natural Gas) (lb/hr)
Carbon Monoxide (CO)	0.304
Oxides of Nitrogen (NO_x)	0.167
Total Particulate Matter (PM Total)[1]	0.045
Sulfur Dioxide (SO_2)	0.004

[1]PM Total includes both filterable and condensable fractions.

b. Visible emissions shall not be emitted into the outdoor atmosphere from the boilers, except that 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, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

c. Total suspended particulate matter (TSP) emissions from the each of the boilers shall not be greater than 0.11 pounds per million BTU. [20 DCMR 600.1].

d. 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]

e. NOx and CO emissions shall not exceed those achieved with the performance of annual combustion adjustments on each boiler. To show compliance with this condition, the Permittee shall, each calendar year, perform adjustments of the combustion processes of the boilers with the following characteristics [20 DCMR 805.1(a)(4) and 20 DCMR 805.8(a) and (b)]:

1. Inspection, adjustment, cleaning or replacement of fuel burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer;

2. Inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_x and, to the extent practicable, minimize emissions of CO;

3. Inspection of the air-to-fuel ratio control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer; and

4. Adjustments shall be made such that the maximum emission rate for any contaminant does not exceed the maximum allowable emission rate as set forth in Condition II of this permit.

The applications to construct and operate the boilers and the draft permits and supporting documents 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 permits.

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 November 5, 2018 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FILING OF A REQUEST FOR A VOLUNTARY CLEANUP CERTIFICATE OF COMPLETION

33 Patterson Street, NE and 16-22 M Street, NE
Case No. VCP2011-022

Pursuant to § 601(b) of the Brownfield Revitalization Amendment Act of 2000, D. C. Law 13-312, D.C. Official Code §§ 8-631 *et seq.*, as amended April 8, 2011, D.C. Law 18-369 (herein referred to as the "Act"), the Voluntary Cleanup Program (VCP) in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch (LRDB), is informing the public that it has received a Site Completion Report and a request for a Certificate of Completion to support a Voluntary Cleanup Program (VCP) project at real property addressed as 33 Patterson Street, NE and 16-22 M Street, NE. The applicant for this address is Skanska USA Commercial Development, Inc. 1776 Wilson Boulevard, Suite 250, Arlington, Virginia 22209.

The application identified the presence of metals, petroleum compounds (TPH-DRO and TPH-GRO) and Volatile Organic Compounds in soil and groundwater and proposed a remediation action plan. The applicant is developing the property into a mixed-use commercial office and residential development. A Cleanup Action Plan (CAP) for this site was approved by the Program on November 16, 2016. Based on the cleanup oversight and review of the site completion report, the Voluntary Cleanup Program has determined the issuance of a Certificate of Completion is warranted.

Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-6C) for the area in which the property is located. The Site Completion Report is available for public review at the following location:

Voluntary Cleanup Program
Department of Energy and Environment (DOEE)
1200 First Street, NE, Fifth Floor
Washington, DC 20002

Interested parties may also request a copy of the Site Completion Report and related documents for a charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-2600 or by e-mailing kokeb.tarekegn@dc.gov.

Written comments on the proposed approval of the application must be received by the VCP at the address listed above within twenty one (21) days from the date of this publication. DOEE is required to consider all public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FILING OF A REQUEST FOR A VOLUNTARY CLEANUP CERTIFICATE OF COMPLETION

100 Potomac Avenue SW
Buzzard Point
Case No. VCP2015-031

Pursuant to § 601(b) of the Brownfield Revitalization Amendment Act of 2000, D. C. Law 13-312, D.C. Official Code §§ 8-631 *et seq.*, as amended April 8, 2011, D.C. Law 18-369 (herein referred to as the "Act"), the Voluntary Cleanup Program (VCP) in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch (LRDB), is informing the public that it has received a Site Completion Report and a request for a Certificate of Completion to support a Voluntary Cleanup Program (VCP) project at real property addressed as 100 Potomac Avenue SW, in an area known as Buzzard Point, consisting of Squares/Lots: 661N/0800; 0603S/0800; 0605/0007; 0605/0802, 0607/0013; 0661/0804, 0805; and 0665/0024. The applicant is the District of Columbia Government, John A. Wilson Building, 1350 Pennsylvania Avenue NW, Suite 317, Washington, DC 20004.

The application identified the presence of metals, petroleum compounds (TPH-DRO and TPH-GRO) and Volatile Organic Compounds in soil and groundwater and proposed a remediation action plan. The applicant is developing the property into a stadium for the DC United Major League Soccer. A Cleanup Action Plan (CAP) for this site was approved by the Program on October 01, 2015. Based on the cleanup oversight and review of the site completion report, the Voluntary Cleanup Program has determined the issuance of a Certificate of Completion is warranted.

Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-6D) for the area in which the property is located. The Site Completion Report is available for public review at the following location:

Voluntary Cleanup Program
Department of Energy and Environment (DOEE)
1200 First Street, NE, Fifth Floor
Washington, DC 20002

Interested parties may also request a copy of the Site Completion Report and related documents for a charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-2600 or by e-mailing kokeb.tarekegn@dc.gov.

Written comments on the proposed approval of the application must be received by the VCP at the address listed above within twenty one (21) days from the date of this publication. DOEE is required to consider all public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

Green Bank Development Phase II

The Department of Energy and Environment (the Department) seeks eligible entities to provide support for the launch of the DC Green Bank per the District of Columbia Green Finance Authority Establishment Act of 2017. The effort to establish the DC Green Bank, an independent instrumentality within District Government, is being led by the District's Department of Energy and Environment (DOEE). DOEE is seeking applications from eligible entities for the best solutions to lay a foundation for the DC Green Bank. The amount available for the project is approximately $250,000.00.

Beginning 10/5/2018, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doee.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to 2018GFAdevelopment.grants@dc.gov with "Request copy of RFA 2018-1822-DIR" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Jay Wilson at (202) 535-2266 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Jay Wilson RE:2018-1822-DIR" on the outside of the envelope.

The deadline for application submissions is 11/5/2018, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2018GFAdevelopment.grants@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
☒-Faith-based organizations;
☒-Government agencies
☒-Universities/educational institutions; and
☒-Private Enterprises.

For additional information regarding this RFA, write to: 2018GFAdevelopment.grants@dc.gov.

INGENUITY PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Ingenuity Prep PCS requests proposals for the following:

- **Executive Personnel Search Services**

Full RFP document available by request. Proposals shall be emailed **as PDF documents** no later than 5:00 PM on Friday, October 12, 2018. Contact: bids@ingenuityprep.org

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Architectural Services

KIPP DC is soliciting proposals from qualified vendors for Architectural Services. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 1:00 PM EST, on October 17, 2018. Questions can be addressed to althea.holford@kippdc.org.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
American Federation of Government Employees, AFL-CIO Local 2798 Petitioner	)	PERB Case No. 18-RC-01
	)	Certification No. 164
and	)	
Health and Emergency Preparedness and Response Administration, Department of Health Respondent	)	

CERTIFICATION OF REPRESENTATIVE

A representation proceeding having been conducted in the above-captioned matter by the Public Employee Relations Board, in accordance with the District of Columbia Comprehensive Merit Personnel Act of 1978, the Rules of the Board, and an Election Agreement executed by the parties, and it appearing that the majority of valid ballots have been cast for a representative for the purpose of exclusive recognition; and

Pursuant to the authority vested in the Board by D.C. Official Code § 1-605.02(2) and Section 515.3 of the Board Rules;

IT IS HEREBY CERTIFIED THAT:

The American Federation of Government Employees, AFL-CIO Local 2798 has been designated by the employees of the above-named public employer in the unit described below, as their exclusive representative for the purpose of collective bargaining over terms and conditions of employment, with the named employer.

Unit Description:

> All professional and non-professional employees of the Health Emergency Preparedness and Response Administration, excluding: all management officials, supervisors, confidential employees, employees engaged in personnel work other than in a purely clerical capacity, and employees engaged in administering the

provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

August 22, 2018

/s/ Clarene Phyllis Martin
Clarene Phyllis Martin
Executive Director

CERTIFICATE OF SERVICE

This is to certify that the attached Certification No. 164 in PERB Case No. 18-RC-01 was transmitted to the following parties on this the 22nd day of August, 2018.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
American Federation of State, County and Municipal Employees District Council 20, Local 2921	)	PERB Case No. 18-N-02
Petitioner	)	Opinion No. 1677
and	)	
District of Columbia Public Schools, Office of the State Superintendent of Education, and Department of General Services	)	
Respondents	)	

DECISION AND ORDER

I. Statement of the Case

The American Federation of State, County and Municipal Employees, District Council 20, Local 2921 ("Union") and the District of Columbia Public Schools, Office of the State Superintendent of Education, and the Department of General Services ("Agencies") are engaged in bargaining concerning non-compensation matters. On October 13, 2017, the Union filed this Negotiability Appeal ("Appeal"). The Appeal concerns seven proposals made by the Union and declared nonnegotiable by the Agencies. The Agencies filed a timely Answer to the Appeal.

The Union's Appeal and the Agencies' Answer are before the Board for disposition. The proposals are quoted exactly as they were presented in the negotiability appeal. All language underlined in red is new language proposed by the Union. All language crossed out and in red is language deleted by the Union.

II. Standard of Review

Under sections 1-605.02(5) and 1-617.02(b)(5) of the D.C. Official Code, the Board is authorized to make determinations concerning whether a matter is within the scope of bargaining. The Board's jurisdiction to decide such questions is invoked by the party presenting a proposal that has been declared nonnegotiable by the other party.[1]

[1] *See* PERB Rule 532.1.

The Board applies the U.S. Supreme Court's standard concerning subjects for bargaining established in *National Labor Relations Board v. Borg-Warner Corp.*[2] Under this standard, "the three categories of bargaining subjects are: (1) mandatory subjects, over which the parties must bargain; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain."[3]

Section 1-617.08(b) of the D.C. Official Code provides that "[a]ll matters shall be deemed negotiable, except those that are proscribed by this subchapter." The Board has held that this language creates a presumption of negotiability.[4] The subjects of a negotiability appeal and the context in which their negotiability is appealed are determined by the petitioner, not the party declaring the matters nonnegotiable.[5] The Board reviews the disputed proposals and addresses each in light of the statutory dictates and relevant case law.[6]

III. Analysis of Proposals

Article I: Recognition Coverage

> The District of Columbia Public Schools ("DCPS") recognizes the American Federation of State, County, and Municipal Employees, District Council 20, Local 2921 ("Union") as the sole and exclusive collective bargaining representative for all paraprofessionals and support staff employees of DCPS at or below the Grade EG-6 level. DCPS further recognizes the Union as the sole and exclusive collective bargaining representative for all and for all Educational Schedule personnel classified up to and including grade EG-7, whose job responsibilities are primarily of a secretarial, clerical, or administrative nature. The unit shall include central office and field employees who work full-time, i.e., a forty (40) hour work week and fifty-two (52) weeks a year, in a temporary-indefinite, probationary, or permanent status. The unit does not include employees working in the Office of the Chancellor, Office of the Deputy Chancellor, Office of Teaching and Learning, Office of the General Counsel, and Office of Human Capital.
>
> The DCPS of General Services ("DGS") recognizes the Union as the sole and exclusive collective bargaining representative for all Customer Call Center Representatives employed by DGS.

[2] 356 U.S. 3342 (1975).
[3] *Univ. of D.C. Faculty Ass'n/NEA v. Univ. of D.C.*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 2, PERB Case No. 82-N-01 (1982).
[4] *See Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire & Emergency Med. Servs. Dep't*, 51 D.C. Reg. 4185, Slip Op. No. 742, PERB Case No. 04-N-02 (2004).
[5] *Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire and Emergency Med. Servs. Dep't*, 45 D.C. Reg. 4760, Slip Op. No. 515, PERB Case No. 97-N-01 (1997).
[6] *Fraternal Order of Police/Protective Servs. Police Dep't Labor Comm. v. Dep't of Gen. Servs.*, 62 D.C. Reg. 16505, Slip Op. No. 1551 at p. 2, PERB Case No. 15-N-04 (2015).

> The Office of the State Superintendent of Education ("OSSE") recognizes the Union as the sole and exclusive collective bargaining representative for all clerical employees and administrative support professionals working in OSSE's DCPS of Transportation.

Agencies: The Board has sole and exclusive jurisdiction under section 1-605.02(1) to resolve unit determination questions and other representation issues. The current recognition article references the specific PERB Certification 6R008 and PERB Opinion No. 338 for AFSCME 2921. The current PERB certification names only DCPS and does not reflect the effect of subsequent reorganizations that have resulted in OSSE and DGS as employer agencies for AFSCME 2921 bargaining unit members.[7]

Union: There is no support for the assertion that in order to be negotiable a recognition clause must mirror a PERB certification. The Union's collective bargaining agreement has included a recognition clause that does not match or reference the PERB certification. It is negotiable for the parties' to offer a modern description of the bargaining unit recognized by management. The determination of a bargaining unit or recognition of the unit covered by a collective bargaining agreement is not a management right. The wording of a recognition clause is negotiable.[8]

Board: This proposal is nonnegotiable. According to section 1-605.02 of the D.C. Official Code, the Board has the power to "resolve unit determination questions and other representation issues." If there has been a change to the unit description then either the agency or the labor organization may file a unit clarification petition.[9] Only the labor organization may submit a unit modification petition to add to an existing unit or delete classifications no longer in existence.[10] All changes to the unit description should be reflected in an updated PERB certification.

Article VII: SCHEDULES

> Section A: Full-Time Employees
>
> 1. The regular work day shall consist of eight (8) consecutive hours exclusive of an unpaid thirty (30) minute, duty-free lunch period and two fifteen (15) minute breaks. Eight (8) consecutive hours within the twenty-four (24) hour period beginning at midnight shall constitute a regular work day.
> 2. Consistent with D.C. law, the normal work week shall consist of five (5) consecutive eight (8) hour days, Monday through Friday inclusive. Any applicable changes in law regarding the normal work day shall be applicable to the Union, providing that the Union and employees are given advanced notice of the effective date of such change.

[7] Response at 3.
[8] Appeal at 3.
[9] PERB Rule 506
[10] PERB Rule 504

3. Eight (8) consecutive hours shall constitute a work shift. All employees shall be scheduled to work on a regular work shift, and each shift has a regular beginning and ending time.
4. *
5. *
6. Any employee who is regularly scheduled to report for work, and who presents herself/himself for work as scheduled, except for scheduled overtime, shall be assigned to at least four (4) hours of work.
7. *
8. *
9. This article is intended to define the usual hours of work and shall not be construed to limit the flexibility of work schedules.

Section B: Part-Time Employees

1. The regular work day shall consist of not less than six (6) hours exclusive of an unpaid thirty (30) minute, duty-free lunch period and two breaks, prorated by the number of hours worked by the employee, i.e., 7/8 or .875 for 7 hour employees. Work hours will be consecutive and within a twenty-four (24) hour period beginning at midnight, which shall constitute the regular work day.
2. The normal work week shall consist of five (5) consecutive work days, Monday through Friday inclusive.
3. *
4. *
5. *
6. This Article is intended to define the usual hours of work and shall not be construed to limit the flexibility of the work schedules.
7. Any employee who is regularly scheduled to report for work, and who presents himself or herself for work as scheduled, except for scheduled overtime, shall be assigned to at least a half-day's work prorated by the employee's regular work day schedule (four (4) hours for full time, three hours thirty minutes (3:30) for seven (7) hour employees).

Agencies: Section 1-617.08(a)(5)(A) confers upon agencies the sole right to establish a tour of duty. Tour of duty is used to refer to the hours for which an employee works therefore agencies enjoy the sole statutory right to establish an employee's work hours.[11] The Board has also held and the Court of Appeals has affirmed that management has the right under the CMPA to determine an employee's hours of work.

Union: The proposal is negotiable and contains an assurance that management rights are not being infringed upon. Section A(9) and section B (6) state that the article shall not be construed to limit the flexibility of work schedules.[12]

[11] Response at 6.
[12] Appeal at 5.

Board: This proposal is nonnegotiable. Section 1-617.08(a)(5) states that management has the right to establish the tour of duty. Section A(9) and B(6) specifically state that the purpose of this article is to define the usual hours of work. The Court of Appeals has also upheld the Board's decision that "the basic work week, the basic non-overtime work day, the working hours within each work day, and the prohibition of split shifts" are not mandatory subjects of bargaining.[13]

Article VIII, Leave

a. Full-time employees with less than three (3) years of creditable service shall be credited one hundred four (104) hours or thirteen (13) days of annual leave per year.
b. Full-time employees with three (3) years or more years but less than ~~fifteen~~ ten (~~15~~10) years of credible service shall be credited one hundred sixty (160) hours or twenty (20) days of annual leave per year.
c. Full-time employees with ~~fifteen~~ ten (~~15~~10) or more years of creditable service shall be credited two hundred eight (208) hours or twenty-six (26) days of annual leave per year.
d. Part-time employees with regular pre-scheduled tours of duty shall be credited annual leave at ~~the rate of one (1) hour for each twenty (20) work hours per pay~~ period a pro-rated amount based on the above full-time schedules, based on their years of creditable service.

Agencies: The Union's proposal contravenes the preemptory statutory criteria set forth in section 1-612.03 of the D.C. Official Code. Leave is fixed by law and the Board has held that if an aspect of a subject matter, otherwise generally negotiable in other respects, is fixed by law then it is nonnegotiable.[14] The Agencies also notes the historical context of the leave statute, stating that the Council's intent was purposefully to remove the union's right to bargain over leave entitlement, and restore to management that sole and executive right.[15]

Union: Leave accrual is not a subject removed from negotiations by section 1-617.08(a), therefore it is negotiable. Section 1-612.03 sets a floor for the accrual of leave by public employees but it does not preclude negotiation of a more generous benefit. Other provisions of the Code that preclude negotiation of a more generous benefit are explicit in stating that the employees may receive no more than the statutory benefit.[16]

Board: This proposal is partially negotiable. Section 1-612.03(a) of the D.C. Official Code outlines employee annual and sick leave for employees hired before September 30, 1987. Section 1-612.03(a)(6) states that all employees hired after September 30, 1987 are exempt from that section. In PERB Case No. 17-N-04, the Board found a leave proposal to be negotiable since there is no explicit statutory restriction on employee leave for all employees.[17] The Board also found that employees hired after September 30, 1987 are not under a statutory restriction

[13] *Teamsters Local Union Nos 639 and 730 v. Public Employee Relations Board*, 631 A. 2d 1205, (D.C. 1993).
[14] Answer at 9-10.
[15] Answer at 10.
[16] Appeal at 6.
[17] *AFSCME, District Council 20, Local 1959 v. OSSE*, 65 D.C. Reg. 7657, Slip Op. No. 1659 at 9, PERB Case No. 17-N-04 (2018).

regarding employee leave.[18] The Board now finds, after considering section 1-612.03(a)(6) of the D.C. Official Code, that this proposal is negotiable as it relates to employees hired after September 30, 1987.

Article VIII, Leave

> Section M: Holidays Recognized and Observed
> ***
> Day after Thanksgiving Day
> ***
> One Personal Day as requested in accordance with the annual leave policy described in Article VIII, Section A, ¶ 3.

Agencies: The Union's proposal to establish the day after Thanksgiving as a recognized holiday for all Education Aides and other employees in the bargaining unit would override the exclusive authority of Congress, the D.C. Council and the Mayor to establish legal public holidays.[19] The designation of this particular duty day as a "holiday" for this bargaining unit would have system-wide consequences that could have a significant policy impact on the Agencies.[20] The Union's proposal for one additional personal leave day is nonnegotiable because it alters and contravenes the preemptory statutory criteria for leave set forth in section 1-612.03.[21]

Union: Section 1-612.02 establishes a list of legal public holidays, but it does not foreclose negotiation of a better benefit for employees represented by a labor organization. Furthermore, section 1-612.02(a) addresses unspecified legal private holidays that may exist beyond those authorized as legal public holidays. This is not a subject removed from negotiations by section 1-617.08(a) and it is therefore negotiable pursuant to section 1-617.08(b).[22]

Board: This proposal is partially negotiable. The Agencies relies on *Washington Teachers Union, Local 6 and District of Columbia Public Schools*[23] which stated that the designation of a particular duty day as a holiday was nonnegotiable because it would have system-wide consequences. Since that Opinion, the Board has distinguished that case by stating that it was "not a pronouncement on all negotiability issues in which a date figures."[24] Instead the Board looks to the practical effect of the proposal and whether it would have a system-wide consequence.[25] In this case the effect of designating the day after Thanksgiving as a holiday would have a significant impact system-wide. All paraprofessionals and support staff employees at or below Grade EG-6 would be on leave on the same day possibly resulting in a system-wide closure. Allowing each employee one personal day would not have such a significant impact

[18] *Id.*
[19] Answer at 11.
[20] Answer at 11.
[21] Appeal at 11.
[22] Appeal at 7.
[23] 48 D.C. Reg. 6555, Slip Op. No. 144, PERB Case No. 85-U-28 (1986)
[24] *Teamsters Local Union No. 639 and District of Columbia Public Schools*, 38 D.C. Reg. 6693, Slip Op. No. 263 at p. 18, PERB Case Nos. 90-N-02, 90-N-03 and 90-N-04 (1990).
[25] *Id*.

because it does not require the Agencies to be without all employees in the bargaining unit on one specific day. Therefore the proposal is partially negotiable. Allowing the day after Thanksgiving to be a holiday is nonnegotiable but allowing one personal day as requested is negotiable.

ARTICLE XVIII

> Any and all contracting out of bargaining unit work shall be done in accordance with D.C. Official Code § 2-352. 05.
>
> When contracting out of bargaining unit work is being considered, ~~DCPS~~ the Agencies shall withhold taking such action to provide the Union a reasonable opportunity for discussion of the matter, except in cases of emergency. In any such discussion, ~~DCPS~~ the Agencies shall explain the reason why it is necessary to take the proposed action and the Union shall respond on the merits, including the suggestion of any alternative action, and ~~DCPS~~ Agencies will give due consideration to such suggestion before making a final decision. ~~After considering the Union's alternative suggestions, if any, DCPS may proceed to contract out work.~~

Agencies: The Union's proposal goes beyond the statutory criteria set forth in section 2-352.05 of the D.C. Official Code. The proposed language is nonnegotiable as it specifically prohibits contracting out unless the Union is afforded discussions with the Agencies during which the Agencies must explain the reasons for contracting out and the Union is entitled to present suggestions that must be given due consideration. The proposal infringes on management's right to maintain the efficiency of government operations.[26]

Union: Section 2-352.05 addresses certain procedures that must take place prior to the Agencies making a decision to contract out bargaining unit work. This proposal requires the Agencies to engage in dialogue with the union representing employees affected by contracting out bargaining unit work. This is not a subject removed from negotiation by section 2-352.05.[27]

Board: This proposal is nonnegotiable. Section 1-617.08 reserves to management the right to "maintain the efficiency of the District government operations." This proposal is nonnegotiable as it limits management's ability to make decisions to contract out services. The Board has previously stated that requiring an agency to conduct analysis and share it with the Union before contracting out requires actions by management not required by the statute.[28]

ARTICLE [] TRANSFERS AND WORKFORCE CHANGES

> Section A: Involuntary Transfers

[26] Answer at 13.
[27] Appeal at 7-8.
[28] *AFGE, Local 631 v. District of Columbia DCPS of Public Works*, 59 D.C. Reg. 4968, Slip Op. No. 965 at 15, PERB Case No. 08-N-02 (2009).

***

3. Involuntary transfers shall not be made for disciplinary reasons.
4. An employee who is involuntarily transferred shall carry forward his/her system-wide seniority upon transfer.
5. All decisions regarding the involuntary transfer of bargaining unit members, including all excessing decisions will be based on system-wide seniority. In the event DCPS finds it necessary to excess any bargaining unit position from any school, preference will be given to employees with the greatest amount of system-wide seniority.
6. All excessed employees not placed by July 15 shall be assigned by DCPS to remaining vacancies according to their classification.
7. "System-wide" seniority for the purposes of this Agreement will be determined by comparing the employees' earliest dates of employment with DCPS subsequent to which there was no break in service of one day or more. In the event of a tie between two employees with the same system-wide seniority date, DCPS will break the tie by affording preference to the employee with the greater building-wide seniority.
8. For the purpose of this Agreement, "building-wide seniority" will be determined by comparing the employees' earliest dates of employment in the particular DCPS school building from which the employees are being considered for excessing. If a tie persists, DCPS will compare the last four digits of the employees' Social Security numbers and the employees with the lower number will be considered junior to the employee with the higher number.
9. DCPS and the Union further agree that, notwithstanding the name DCPS or a particular school uses for an individual employee's position, excessing decisions will be made by a seniority competition among employees whose positions share the same official position description. DCPS agrees to take immediate efforts to conform employees' official titles to the titles used in their most recent position descriptions.

Section B: Voluntary Transfers

1. The parties agree that employees may not transfer from school to school without written consent of the principal of the receiving school. Otherwise, the parties agree that employees must submit an application for each vacant position and participate in the interview process.
2. Employees who voluntarily transfer to another school shall maintain their system-wide seniority upon transfer.

Agencies: This proposal is contrary to section 1-617.08, specifically regarding management's right to assign, transfer, RIF and discipline employees. The Board has previously found nonnegotiable a proposal that required involuntary transfers based on seniority.[29]

[29] Answer at 15.

Union: The Board has held that seniority is negotiable and that procedures for using seniority to transfer employees to vacant positions for which they are qualified are negotiable.[30] There is substantively no difference between this proposal and one to allow employees to bid on available routes based on seniority. Furthermore, in the federal sector the subject of bidding procedures based on seniority are treated as a mandatory subject of bargaining that may ultimately be resolved through impasse.[31]

Board: This proposal is partially nonnegotiable. Section A(3) and A(5) are nonnegotiable. The decision to transfer employees is reserved for management; however, the Board has held that management's decision to exercise its sole right to transfer employees is not compromised when the proposal is limited to procedures for implementing transfers, including those which are voluntary, and for handling the impacts and effects of such transfers.[32] Section A(3) is nonnegotiable because it infringes on management's right to transfer employees, as it specifically states that the Agencies cannot transfer employees for disciplinary reasons. This is a management right and nonnegotiable. Section A(5) states that all decisions regarding involuntary transfers will be based on seniority. The Board has previously found limiting management's right to transfer to seniority places an improper restraint on management.[33] Although the principle of seniority is not expressly preempted by section 1-617.2, limiting management's right to transfer to the criteria of seniority places an improper restraint on management.[34] Decision to transfer employees is reserved for management, section A(5) places limitations on that management decision. As to the remaining sections of the proposal, the Board concludes that the Union's proposal regarding voluntary and involuntary transfer procedures are distinguishable from the Agencies' ultimate decision to transfer employees, a matter reserved to management. In this respect, the proposal is negotiable.

ARTICLE []: LIGHT DUTY

> There are no permanent light duty assignment positions within the Agency. However, from time to time, an opportunity may arise for a temporary light duty assignment of limited duration. Assignments to light duty may not be available for every employee who desires it, nor is there any assurance such an assignment will continue as long as the employee's limited circumstances persist. The Employer will make every effort to provide light duty assignments which are temporary in nature as follows:
>
> 1. To be eligible for light duty, the employee's limitations must be certified by the employee's attending physician. The certification must identify the employee's impairment(s); the type of work he or she is capable of performing and; the duration of the impairment.

[30] Appeal at 9.
[31] Appeal at 9.
[32] *UDCFA v. UDC*, PERB Case No. 16-N-01, Slip Op. No. 1617 (2017).
[33] *WTU, Local 6 and D.C. Public Schools*, 46 D.C. Reg. 8090, Slip Op. No. 450 at 9, PERB Case No. 95-N-01 (1995).
[34] *Id*.

2. When there are more requests for light duty than there are light duty assignments available, assignments shall be made in order of the dates the requests were made by employees determined by management to be equally qualified for the assignment.
3. Light duty assignments shall not be considered to be detail assignments.

Agencies: The last sentence of the first paragraph mandates that light duty assignments shall be temporary in nature. This infringes on management's sole right under section 1-617.08(a)(5)(A) to determine the "number, types and grades of positions of employees assigned to an agency's organization, unit, work project or tour of duty." Paragraph 1 infringes on management's right to prescribe the standards and qualifications for eligibility for light duty assignments. Paragraph 2 mandates how assignments shall be made on the basis of when requests are made. Paragraph 3 precludes light duty assignments as details, even though the proposal envisions light duty assignments as temporary.

Union: The proposal merely outlines a process for fairly distributing light duty opportunities if the employer is able to make light duty assignments available. The proposal does not mandate that management do anything.[35]

Board: This proposal is nonnegotiable. The proposal dictates actions to be taken by the Agencies when utilizing light duty, and therefore impacts the Agencies' sole right to assign employees under section 1-618(a)(2).[36] The Board has previously stated that a proposal that mandates that under certain circumstances management must assign light duty is nonnegotiable.[37] This proposal states the agencies must make "every effort" to provide light duty assignments. The proposal is nonnegotiable because it contravenes management's sole right to assign employees.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Union's proposal Article 1: Recognition Coverage is nonnegotiable.
2. The Union's proposal Article VII: Schedules is nonnegotiable.
3. The Union's proposal Article VIII: Leave is partially negotiable.
4. The Union's proposal Article VIII: Leave Section M is partially negotiable.
5. The Union's proposal Article XVIII is nonnegotiable.
6. The Union's proposal concerning "transfer and workforce changes" is partially negotiable. Section A(3) and (5) are nonnegotiable.
7. The Union's proposal concerning "Light Duty" is nonnegotiable.
8. Pursuant to Board Rule 559.1 this Decision and Order is final upon issuance.

[35] Appeal at 11.
[36] *IBPO, Local 446 v. DC General Hospital*. 42 D.C. Reg. 5482, Slip Op. No. 336, PERB Case No. 92-N-05, (1992).
[37] *Id*. at 2.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

August 16, 2018

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-N-02, Op. No. 1677 was transmitted to the following parties on this the 22nd day of August, 2018.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Metropolitan Police Department	
Petitioner	PERB Case No. 18-A-05
v.	Opinion No. 1678
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	
Respondent	

DECISION AND ORDER

I. Introduction

On December 6, 2017, the Metropolitan Police Department ("Department"), filed this Arbitration Review Request ("Request") pursuant to the Comprehensive Merit Personnel Act ("CMPA"), section 1-605.02(6) of the D.C. Official Code, seeking review of an Arbitrator's Opinion and Award ("Award"). The Department claims that the Award is, on its face, contrary to law and public policy.[1] The Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union") filed an Opposition to the Request, asserting that the Department has failed to state any grounds upon which the Board may modify or set aside the Award and that the Request should be dismissed.[2]

In accordance with the CMPA, the Board is permitted to modify or set aside an arbitration award in three narrow circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.[3] Having reviewed the Arbitrator's conclusions, the pleadings of the parties and applicable law, the Board concludes that the Award on its face is not contrary to law and public policy. Therefore, the Board denies the Department's Request.

[1] Request at 2.
[2] Opposition at 2.
[3] D.C. Official Code § 1-605.02(6).

II. Statement of the Case

On March 28, 2010, Officer Paul Lopez ("Grievant") was arrested for solicitation of prostitution. Superior Court granted the Grievant's request to complete a diversion program as a resolution of the criminal matter. On May 19, 2010, Grievant returned to court with proof that he completed the program and the court dismissed the criminal case against him.[4]

On May 27, 2010, an internal affairs officer learned that Grievant's driver's license had been suspended in 2009 and that the suspension was in effect at the time of his arrest.[5] On June 21, 2010, the D.C. Attorney General charged the Grievant with operating a vehicle after license suspension.[6] On September 23, 2010, Grievant was issued a notice of proposed adverse action with two charges. Charge No. 1 referred to the Grievant's March 28, 2010 arrest for solicitation of prostitution. Charge No. 2 referred to the traffic case for operating a vehicle on a suspended license.[7]

On May 17, 2011, an Adverse Action Panel found the Grievant guilty of all charges. The Panel recommended termination for Charge No. 1 and a thirty day suspension for Charge No. 2.[8] A Final Notice of Adverse Action was issued to the Grievant which stated that he should be removed from the Department, effective August 19, 2011.[9] The Union then initiated arbitration proceedings on behalf of the Grievant.

III. Arbitrator's Award

The Department seeks review of the Award based on the Arbitrator's decision with regard to one issue – whether the Department violated section 5-1031 of the D.C. Official Code ("the 90-day rule").[10] Section 5-1031(a) requires that the proposed adverse action should have been issued within 90 days of the date the Department had notice of the conduct giving rise to Charge No.1. The Arbitrator states that the 90-day period began to run on March 28 or 29, the date of the incident or the date the Grievant was charged, respectively.[11]

Section 5-1031(b) states that if the act constituting cause is the subject of a criminal investigation, then the 90-day period shall be tolled until the conclusion of the investigation. Section 5-1031(b) does not specify how the conclusion of any investigation is determined. The Department argued that the court's dismissal of the criminal charge on May 19, 2010, concluded the investigation. The Union argued that the investigation concluded with the filing of the criminal charge on March 29, 2010.

[4] Award at 2.
[5] Award at 2.
[6] Award at 3.
[7] Award at 3.
[8] Award at 4.
[9] Award at 1.
[10] Request at 13.
[11] Award at 7.

The Arbitrator looked to an opinion and award by Arbitrator Kaplan. In that case, the arbitrator found that the investigation predated the date the criminal charges were filed.[12] Arbitrator Kaplan relied on *District of Columbia v. D.C. Office of Employee Appeals and Robert L. Jordan*[13] (hereafter "*Jordan*") which stated that the conclusion of a criminal investigation must involve action taken by an entity with prosecutorial authority and that action by the prosecutorial authority includes the review of evidence and the decision to charge an individual with a crime, or decide that charges should not be filed.[14] Arbitrator Kaplan's decision was appealed to the Board as contrary to law and public policy in *Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Duane Fowler)*[15] (hereafter "*Fowler*"). The Board concluded in *Fowler* that although *Jordan* was not persuasive authority with respect to section 5-1031(b), Arbitrator Kaplan did not act contrary to law and public policy.[16]

In this case, the Arbitrator states that it is not unreasonable to infer that the investigation was completed when the criminal charge was issued, on March 29, 2010.[17] According to the Arbitrator there is no basis in the record to make a factual determination that the investigation continued beyond that date.[18] Based on this finding, the Arbitrator concluded that Charge No.1 was issued more than 90 days after the Department became aware of Grievant's misconduct. The Arbitrator dismissed Charge No. 1 as untimely.[19]

The Arbitrator reversed the termination and ordered Grievant to be reinstated, in addition to ordering the Department to issue back pay and benefits that would have accrued to Grievant had he not been terminated.

IV. Discussion

A. Timeliness of a Request for Review

The Union argues that the Department's request for review of the Award is untimely.[20] Pursuant to Board Rule 538.1, a request for review of an arbitration decision must be filed with the Board no later than twenty-one (21) days after service of the award. The Union relies on previous Board decisions that stated: "Board rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action."[21] The Board has stated that the 21-day period for filing a review of an arbitration award begins to run the day after the event. In

[12] Award at 8. *See Arbitration Opinion and Award* in FMCS Case No. 16-53471-A at p.16 (Arbitrator Roger P. Kaplan) (March 17, 2017).
[13] 883 A.2d 124 (D.C. 2004).
[14] Award at 8.
[15] 64 D.C. Reg. 10115, Slip Op. No. 1635, PERB Case No. 17-A-06 (2017).
[16] *Id*. at 12.
[17] Award at 9-10.
[18] Award at 10.
[19] Award at 10.
[20] Opposition at 8.
[21] Opposition at 8.

addition, 5 more days must be added for service by mail. The Union concludes that the last day to file the arbitration review request was on Monday, December 4, 2017.[22] The Department did not file the Request until December 6, 2017. The Union argues that the Request is untimely and it must be dismissed.

The Department attributes the two-day delay in filing on its miscalculation of the time period within which to file the Request.[23] The Department received the Award on November 16, 2017, with no certificate of service. Since the Award was mailed from Arlington, Virginia, the Department assumed that the Award was mailed no earlier than November 13, 2017. Five additional days are added to the date of service when service is by mail.[24] The Department concluded that the Request would be due on December 11, 2017.[25] Upon further investigation, the Department found that the envelope was post-marked November 6, 2017.[26]

The Board stated in *Jenkins v. Department of Corrections*[27] that "we overrule our prior holdings that filing deadlines established by the Board's rules are mandatory and jurisdictional. Those rules are claim-processing rules and the deadlines they set are waivable."[28] The 21-day deadline is not in the CMPA, nor is it in any other statute; it is in Rule 538.1, a rule adopted by the Board. This is a claim processing rule. The Court of Appeals has found, and the Board has agreed, that deadlines set by claim processing rules may be relaxed or waived.[29] The Board may relax the deadline to allow a case to proceed despite untimely service if there is good cause as to why it should not be dismissed. The two-day delay in filing was the result of a miscalculation and the lack of a certificate of service; it did not prejudice either party. The Board finds the Department's untimely filing in this case does not require dismissal.

B. 90-Day Rule

The Department argues that the Arbitrator acted contrary to law and public policy. The Arbitrator did not cite any binding precedent for the decision and only relied on one arbitration decision, Arbitrator Kaplan's award, to conclude that the Department violated the 90-day rule.[30] The Department's evidence that a criminal investigation was ongoing was the simple fact that the criminal case pending in D.C. Superior Court had not concluded.[31] The Department looks to *Jordan*, where the Court of Appeals addressed a previous statute similar to section 5-1031(b). In that case, the Court of Appeals stated that the conclusion of a criminal investigation "must involve action taken by an entity with prosecutorial authority – that is, the authority to review evidence, and to either charge an individual with commission of a criminal offense, or decide

[22] Opposition at 9.
[23] Request at 3.
[24] PERB Rule 501.4.
[25] Request at 3.
[26] Request at 3.
[27] 65 D.C. Reg. 4046, Slip Op. No. 1652, PERB Case No. 15-U-31 (2018).
[28] *Id*. at 10.
[29] *Id.* at 11(*citing Neill v. D.C. Pub. Emp. Relations Bd.*, 93 A.3d 229, 238 (D.C. 2014)).
[30] Request at 14.
[31] Request at 14.

that charges should not be filed."[32] Contrary to Arbitrator Kaplan's analysis, the court did not mean that the U.S. Attorney's office concludes a criminal investigation when it decides to charge an individual with the commission of a criminal offense. As the Board has acknowledged, the court in *Jordan* was explaining what is meant by "prosecutorial authority" and that only an entity with prosecutorial authority could take an action that would conclude a criminal investigation.[33]

The Department looks to section 22-721(3) of the D.C. Official Code to further define "criminal investigation." This section of the D.C. Official Code applies to Subchapter III of Chapter 7 of Subtitle I (Criminal Offenses) of Title 22 (Criminal Offense and Penalties). A criminal investigation is defined as "an investigation of a violation of any criminal statute in effect in the District of Columbia."[34] The same subchapter states that "criminal investigator" also includes a prosecuting attorney conducting or engaged in a criminal investigation. The Department argues that, if a criminal case is pending against an individual for the violation of any criminal statute in the District of Columbia, and the criminal investigator includes a prosecuting attorney, then a "criminal investigation" does not conclude until the dismissal of the case.[35] The Department concludes that the Arbitrator acted contrary to law and public policy when he found that the criminal investigation concluded before the dismissal of the criminal case.

The Union argues the Department's challenge is nothing more than a disagreement with the Arbitrator's findings.[36] There is nothing in section 5-1031(b), *Jordan*, or Arbitrator Kaplan's award which states that the 90-day period is tolled until the conclusion of the criminal case. The D.C. Official Code provides only that the 90-day rule shall be tolled until the conclusion of the criminal investigation. The Union argues that both the plain language of the statute and the case law are contrary to the Department's argument that the investigation against the Grievant did not end until his case was formally dismissed by D.C. Superior Court.[37] The Department failed to meet its burden of proving circumstances that tolled the statute of limitations.[38]

The issue before the Board is whether the Arbitrator acted contrary to law and public policy. Section 5-1031(b) establishes when the 90-day period is tolled:

> If the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department or any law enforcement agency with jurisdiction within the United States, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General, or is the subject of an investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, or the Office of Police Complaints, the 90-

[32] *Jordan*, 883 A.2d 124 at 128.
[33] Request at 16.
[34] Request at 16.
[35] Request at 17.
[36] Opposition at 9.
[37] Opposition at 13.
[38] Opposition at 14.

> day period for commencing a corrective or adverse action under subsection (a) or (a-1) of this section shall be tolled until the conclusion of the investigation.

The statute does not further explain how an investigation is concluded. The Board has previously stated that the *Jordan* court's interpretation of the predecessor to section 5-1031(b) is not persuasive because the court's decision governed a different statute than the one at issue.[39] The Board also said, in *Fowler*, that nothing in *Jordan* or the statute states that the period of limitation is tolled until the dismissal of the criminal case.[40]

It is insufficient to show that the Arbitrator misinterpreted the precise holding of a case governing a different statute. The Department must show that the Arbitrator misinterpreted the law.[41] The Board has stated that proof of a subsequent investigative activity might compel a conclusion that the criminal investigation did not conclude.[42] The Department does not present any additional proof that the investigation was ongoing. Instead, the Department states that its evidence that a criminal investigation was ongoing was the simple fact that the criminal case pending in D.C. Superior Court had not concluded.[43] Although the Department concedes that there are "virtually no cases that clarify the language in section 5-1031(b)," it states that the Arbitrator's refusal to accept its rival interpretation of the meaning of 5-1031(b) is contrary to law and public policy. In order for the Board to find the Award was, on its face, contrary to law and public policy, the petitioner has the burden to show the applicable law and public policy that mandates a different result.[44] The Department has failed to show that the Arbitrator's disposition of Charge No. 1 is contrary to law and public policy. This is the bargained-for interpretation of the statute and the Board may not modify or set aside the Award because the Department offers a different interpretation of section 5-1031(b).[45]

V. Conclusion

The Board rejects the Department's arguments and finds no cause to set aside or modify the Arbitrator's Award. Accordingly, the Department's request is denied and the matter is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.

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[39] *See D.C. MPD v. FOP/MPD Labor Comm. (on behalf of Sims)*, 60 D.C. Reg. 9201, Slip Op. No. 1390 at 9, PERB Case No. 12-A-07 (2013).
[40] 64 D.C. Reg. 10115, Slip Op. No. 1635 at 10, PERB Case No. 17-A-06 (2017).
[41] *Id*. at 13.
[42] *Id*.
[43] Request at 14.
[44] See *Fraternal Order of Police v. D.C. Pub. Emp. Relations Bd.*, 2015 CA 006517 P(MPA) at p. 8.
[45] *D.C. Metro. Police Dep't and FOP/MPD Labor Committee (re: Fred Johnson)*, PERB Case No. 09-A-02, Slip Op. 961, 59 D.C. Reg. 4936 (2012).

2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

August 16, 2018

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-05, Op. No. 1678 was transmitted to the following parties on this the 22nd day of August, 2018.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 631	
Complainant	PERB Case No. 18-U-17
v.	Opinion No. 1680 **Motion for Reconsideration**
District of Columbia Water and Sewer Authority	
Respondent	

DECISION AND ORDER

I. Introduction

Before the Board is a Motion for Reconsideration ("Motion") filed by the American Federation of Government Employees, Local 631 ("Local 631"), in response to the Board's Decision and Order in Slip Opinion 1665, PERB Case No. 18-U-17 (May 7, 2018). In that decision, the Board dismissed Local 631's allegations that District of Columbia Water and Sewer Authority ("WASA") committed unfair labor practices by refusing to engage in separate negotiations with Local 631 over the impact and effects of a performance management system. The Motion states that the Board's decision is contrary to the Comprehensive Merit Personnel Act ("CMPA") and to Board precedent in *American Federation of Government Employees, Local 1403 v. Office of the Corporation Counsel*[1] and *Teamsters Local Unions 639 and 730 v. D.C. Public Schools.*[2]

For reasons stated herein, the Board finds that Local 631's Motion does not provide authority which compels reversal of the Board's initial decision. Therefore, the Motion is denied.

[1] Slip Op. 709, PERB Case No. 03-N-02 (July 23, 2003).
[2] 43 D.C. Reg. 3545, Slip Op. 377, PERB Case No. 94-N-02 (1994).

II. Background

Local 631 is the exclusive representative of certain employees at WASA and part of Compensation Unit 31.[3] On July 6, 2017, Compensation Unit 31 and WASA entered into a new compensation collective bargaining agreement, which provided for the implementation of a new performance management system effective April 1, 2018.[4]

In its unfair labor practice complaint filed on January 24, 2018, Local 631 alleged that WASA violated the CMPA by refusing to engage in separate negotiations with Local 631 over the impact and effects of the performance management system covered by the recently negotiated compensation agreement. WASA denied that it committed any unfair labor practices. Upon review, the Board determined that the performance evaluation system was a provision of the Master Agreement on Compensation between Compensation Unit 31 and WASA and was not part of the Working Conditions Agreement between Local 631 and WASA. Therefore, the Board concluded that WASA was under no obligation to engage in separate compensation bargaining with Local 631, independent from Compensation Unit 31. Accordingly, the Board found that WASA did not commit an unfair labor practice when it refused Local 631's bargaining request. The Board dismissed Local 631's complaint with prejudice.

III. Discussion

A motion for reconsideration cannot be based upon a mere disagreement with the Board's initial decision.[5] The Board has repeatedly held that a moving party must provide authority which compels reversal of the Board's decision.[6] Absent such authority, the Board will not overturn its decision.[7]

As previously stated, Local 631 seeks reconsideration on the grounds that Slip Opinion 1665 is contrary to the CMPA and to Board precedent in *American Federation of Government Employees, Local 1403 v. Office of the Corporation Counsel* ("Office of the Corporation Counsel") and *Teamsters Local Unions 639 and 730 v. D.C. Public Schools* ("Teamsters"). First, Local 631 contends that "performance evaluations" is not listed among the specific subjects for compensation bargaining defined in the CMPA.[8] Second, Local 631 states that, in *Teamsters*, the Board "rejected an effort to designate proposals as compensation when the proposals did not cover salary; the monetary value of hours of work, or monetary payments for work performed."[9] Third, Local 631 argues that in, *Office of the Corporation Counsel*, the Board held that

[3] Complaint at 2; Answer at 2. Compensation Unit 31 encompasses WASA employees represented by the following five locals: American Federation of Government Employees Locals 631, 872, 2553; American Federation of State, County and Municipal Employees Local 2091; and Nation Association of Government Employees R3-06.
[4] Complaint at 3; Answer at 2.
[5] *Washington Teachers' Union, Local #6 Am. Fed'n of Teachers v. Dist. of Columbia Pub. Schs.*, Slip Op. No. 1657 at 1, PERB Case No. 14-U-02 (Mar. 27, 2018).
[6] *Id*.
[7] *Id*.
[8] Motion at 1, 2.
[9] Motion at 1.

performance evaluations were a noncompensation matter.[10] Finally, Local 631 asserts that, in *American Federation of Government Employees, Local 631 v. D.C. Water and Sewer Authority*,[11] the Board held that Local 630 was entitled to bargain on non-compensation matters separately.[12]

WASA counters that Local 631's Motion merely restates the argument contained in its unfair labor practice complaint, namely, that Local 631 is entitled to negotiate the impact and effects of the performance management system separately from the other unions that represent WASA's employees because performance management is not a compensation matter.[13] WASA contends that the issue presented in the Motion was previously presented in Local 631's unfair labor practice complaint and was considered and rejected by the Board in Slip Opinion 1665.[14] Moreover, WASA argues that Local 631's Motion fails to cite any case law or statutory authority warranting such reversal.[15]

Local 631's Motion is denied. Local 631's Motion seeks the Board's determination that the performance management system, which is an existing provision of Compensation Unit 31 and WASA's Master Agreement on Compensation, is a working conditions issue in order to negotiate separately from Compensation Unit 31 during impact and effects bargaining. The foundation of Local 631's dispute is that performance evaluations are not appropriate for compensation bargaining. Essentially, Local 631's Motion disputes the negotiability of performance evaluations in compensation bargaining. However, the negotiability of Compensation Unit 31 and WASA's performance management system is not before the Board for consideration. Therefore, the Board declines to address whether the performance evaluation system is negotiable in compensation bargaining.

Additionally, Local 631 has not provided any authority which compels reversal of the Board's finding that WASA did not commit an unfair labor practice when it refused Local 631's bargaining request. The cited cases are unrelated to the present matter as they simply address the negotiability of performance evaluations in collective bargaining. As previously stated, the negotiability of Compensation Unit 31 and WASA's performance management system is not before the Board for consideration.

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 631's Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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[10] Motion at 1.
[11] 52 D.C. Reg. 5148, Slip Op. 778 at 5-6, PERB Case No 04-U-02 (2005).
[12] Motion at 1-2.
[13] Response at 2.
[14] Response at 2.
[15] Response at 2.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

August 16, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-U-17, Opinion No. 1680 was sent by File and ServeXpress to the following parties on this the 23rd day of August, 2018.

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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY

1. On September 6, 2018, the Potomac Electric Power Company ("Pepco" or "Company") filed an Application for Approval of its Transportation Electrification Program in the District of Columbia ("TE Program").[1] According to Pepco, the TE Program is designed to achieve the District of Columbia's goal of becoming carbon neutral and climate resilient by 2050, and focuses on expanding transportation electrification in the District. The TE Program consists of 13 offerings with varying options. By this Public Notice, the Public Service Commission of the District of Columbia ("Commission") initiates consideration of Pepco's TE Program Application and seeks comments from interested persons on the Pepco TE Program proposal.

2. While Pepco filed the proposed TE Program in *Formal Case No. 1130*, as directed in Order No. 19143, Pepco requests, for administrative purposes and to allow parties an opportunity to intervene and file formal discovery, that the Commission open a separate and parallel proceeding to consider this matter.[2]

3. Pepco's proposed TE Program proposes "a portfolio of program offerings designed to serve a range of customer types and target multiple segments of the market, including the residential, commercial and public sectors of the market."[3] Pepco's proposed TE Program consists of the following elements:

Offering 1: Residential Whole-House Time of Use ("TOU") Rate for Plug-In Vehicle ("PIV") owners who receive their electricity supply through the Standard Offer Service ("SOS") Program.

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[1] *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability* ("*Formal Case No. 1130*"), Potomac Electric Power Company's ("Pepco") Application for Approval of its Transportation Electrification Program, at 28-40, filed September 6, 2018 ("Pepco's Transportation Electrification Application"). In 2017, Pepco filed its original electric vehicle ("EV") program proposal in *Formal Case No. 1143* but since then the Company engaged in a series of workshops seeking comments from stakeholders. The Company stated that it intends to file an updated proposal in mid-2018. Therefore, the September 6, 2018, TE Program supersedes Pepco's previously proposed program. *See Formal Case No. 1130*, Pepco's Letter, dated April 2, 2018.

[2] *Formal Case No. 1130,* Pepco's Transportation Electrification Application, Transmittal Letter at 1.

[3] *Formal Case No. 1130,* Pepco's Transportation Electrification Application at 26.

Offering 2: Installation credit to up to one hundred and fifty (150) residential customers with existing, installed Electric Vehicle Service Equipment ("EVSE") to install FleetCarma® data loggers and receive monthly bill credit thereafter for participation.

Offering 3: Fifty percent discount on the cost of new Residential Smart Level 2 EVSE and installation for fifty (50) residential customers.

Offering 4: Smart Level 2 EVSE rebates of $500 for five hundred (500) residential customers.

Offering 5: Fifty percent discount on the cost of new Smart Level 2 EVSE for Multi-Dwelling Units ("MDU") and 100% discount on the installation costs for one hundred (100) MDU customers.

Offering 6: Provide fifty percent discount on the cost of new Smart Level 2 EVSE for fifty (50) customer workplace locations.

Offering 7: Install up to thirty-five (35) Public Neighborhood Smart Level 2 EVSE.

Offering 8: Installation of twenty (20) DC Fast Chargers.

Offering 9: Installation of charging infrastructure at a minimum of two (2) locations to support the use of Electric Fleet/Light Duty Charging Infrastructure consisting of up to ten (10) Smart Level 2 EVSE and one (1) DC Fast Charger at each location.

Offering 10: Install up to ten (10) Smart Level 2 EVSE and two (2) DC Fast Chargers to support the Electric Taxi/Rideshare deployment.

Offering 11: Install five (5) bus depot charges and one (1) on-route charger to support the use of Electric Buses.

Offering 12: Establish a $1 million Innovation Fund, to be funded by the Modernizing the Energy Delivery System for Increase Sustainability ("MEDSIS") subaccount, for innovation projects.

Offering 13: Establish a $1.5 million Technology Demonstration program to be funded by the MEDSIS subaccount.[4]

The offerings provide for various levels of cost sharing between ratepayers, Electric Vehicle ("EV") owners, the owner of EV Charging Stations, as well as a variety of different business models. According to Pepco, each offering will have various limitations on the applicable customers, different levels of customer cost sharing for equipment, and will include options for 100% renewable energy for an additional charge. Pepco proposes to supply electricity to some of the proposed project elements under the TE Program through the SOS Program, where Pepco serves as the SOS Administrator.[5] Further, Pepco proposes a total of five (5) new PIV specific rate schedules applicable to seven (7) of the offerings.[6]

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4 *Formal Case No. 1130,* Pepco's Transportation Electrification Application at 28-40.

5 *Formal Case No. 1130,* Pepco's Transportation Electrification Application at 44-46.

6 *Formal Case No. 1130,* Pepco's Transportation Electrification Application at 44, Table 9.

4. Pepco supports the TE Program application with testimony addressing the following topics, Policy Overview, TE Program Elements, Customer Education and Outreach Plan, Rate Design/Cost Recovery, and Benefits Costs Study of the TE Program.

5. Pepco estimates that the total estimated cost for the TE Program, net of costs borne by customers for the 13 offerings will be $15,222,900.[7] After accounting for participant contributions, revenues received through the use of the public EV chargers, and the use of funds from the MEDSIS initiative, the TE Program is projected to cost ratepayers $9,910,400.[8] Pepco also proposes that costs associated with Offerings 12 and 13 be paid using funds from the MEDSIS subaccount. According to the Application, Pepco indicates it would seek recovery of TE Program costs in its next base rate case and proposes the creation of a regulatory asset for Operations and Maintenance costs that would be amortized over five years.[9] Assuming full implementation of the TE Program, Pepco estimates the residential bill impact to be 14 cents per month.[10]

6. On September 24, 2018, the Apartment and Office Building Association of Metropolitan Washington ("AOBA") filed a motion to dismiss Pepco's TE Program Application.[11] AOBA primarily objects to: (a) moving Pepco's TE Program proposal out of the FC 1130 MEDSIS stakeholder process; and (b) treating Pepco's TE Program expenses as a regulatory asset that is shouldered by ratepayers. This proceeding is not adjudicatory and has no formal parties. For that reason, we will treat AOBA's filing as no different than the comments we solicit in this notice. Anyone is free to file a reply to AOBA's filing in accordance with this notice.

7. EVs are an important part of grid modernization but Pepco's proposal raises a threshold question regarding the Commission's jurisdiction. The Commission notes that the "Energy Innovation and Savings Amendment Act of 2012" ("Act"), which, among other things, clarified that EV charging station operators are not public utilities, thus, exempting them from regulation by the Commission and encouraging competition in the EV market.[12] The Commission subsequently acknowledged the effect of the Act on its regulatory authority to regulate EV charging station operators and closed its investigation proceeding regarding the

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7 *Formal Case No. 1130,* Pepco's Transportation Electrification Application at 46.

8 *Formal Case No. 1130,* Pepco's Transportation Electrification Application at 46.

9 *Formal Case No. 1130,* Pepco's Transportation Electrification Application at 46.

10 *Formal Case No. 1130,* Pepco's Transportation Electrification Application at 47.

11 *See e.g. Formal Case No. 1130,* Motion to Dismiss of the Apartment and Office Building Association of Metropolitan Washington, filed September 24, 2018.

12 D.C. Law 19-0252, the "Energy Innovation and Savings Amendment Act of 2012." *See* D.C. Code § 34-207 (Supp. 2018) ("The term "electric company" when used in this subtitle . . . also excludes a person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles."). *See* also, D.C. Code § 34-214 (Supp. 2018) ("The term "public utility" excludes a person or entity that owns or operates electric vehicle supply equipment but does not sell or distribute electricity, an electric vehicle charging station service company, or an electric vehicle charging station service provider.").

regulatory treatment of EV charging stations and related services.[13] We invite comment as to whether, and to what extent, Pepco's proposal is consistent with D.C. Code § 34-1513(a) and the Energy Innovation and Savings Amendment Act of 2012.

8. Any person interested in commenting on Pepco's proposed TE Program may do so by November 5, 2018, and any reply comments should be submitted by November 20, 2018. Responses are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C., 20005. Copies of the Application may be obtained by visiting the Commission's website at www.dcpsc.org. Once at the website, open the "eDocket" tab, click on "Search database" and input "FC 1130" as the case number and "336" as the item number. Copies of Pepco's proposed TE Program may also be purchased, at cost, by contacting the Commission Secretary at (202) 626-5150 or PSC-CommissionSecretary@dc.gov.

[13] *Formal Case No. 1096, In the Matter of the Investigation in to the Regulatory Treatment of Providers of Electric Vehicle Charging Stations and Related Services*, Order No. 18004, ¶ 3, rel. October 16, 2015.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

REQUEST FOR APPLICATIONS

Grant to Promote District of Columbia Voting Rights and Statehood

Release Date: Monday, October 1, 2018
Application Due Date: Monday, October 29, 2018

SECTION 1: FUNDING OPPORTUNITY

Effective October 1, 2018, the Office of the Secretary, pursuant to the City-Wide Grants Manual and Sourcebook (Section 7.2) issues the Request For Application (RFA) entitled Grant to Promote District of Columbia Voting Rights and Statehood to provide all eligible applicants the opportunity to submit specific program activities that educate Americans about Mayor Muriel E. Bowser and the New Columbia Statehood Commission's initiatives to achieve full voting rights in the United States Congress, and, ultimately, statehood for Washington, DC. This RFA will be open on October 1, 2018 and will close on October 29, 2018 at Noon.

Background

The residents of Washington, DC serve in the military and pay federal taxes but continue to lack full democracy and the rights that residents of other states and municipalities enjoy, including autonomy from congressional oversight and obstruction, voting representation in Congress.

The District of Columbia Home Rule Act of 1973 provided limited "Home Rule" for the District by allowing election of a Mayor and Council of the District of Columbia. Since the inception of Home Rule, the District's elected officials and various groups have pursued strategies to raise awareness and work towards achieving voting representation in the U.S. House of Representatives and U.S. Senate and statehood. Yet democracy for the District has been derailed by the Charter itself, the courts, non-germane proposals restricting the District on must-pass Congressional legislation, riders on appropriations bills, and insufficient support for enactment of various budget autonomy and statehood proposals in the United States Congress.

For over a decade, the District has allocated funds to nonprofit organizations for educating citizens around the nation and pursuing strategies that highlight the continued lack of full democracy in the nation's capital. In addition, since 1990, District residents have elected a "shadow" delegation to Congress in order to promote statehood, and District residents have voted for, and the Mayor has supported, amending the Charter to allow for budget autonomy. The DC Council established the New Columbia Statehood Commission in 2014, adding to the District's advocacy for full democracy. In November 2016, over 86% of voters in Washington, DC overwhelmingly approved an advisory referendum, confirming the desire to become the 51st state.

The Office of the Secretary is charged with responsibility for managing the funds allocated for voting rights and statehood initiatives for District residents. The Fiscal Year 2018 Budget authorized $200,000 for the Office of the Secretary to issue competitive grants to promote voting rights and statehood for Washington, DC.

Purpose of the Program
The objective of this grant is to strengthen awareness for statehood for Washington, DC. This effort will require outreach, canvassing, and measurement of support of elected officials and residents across the country and visitors to the nation's capital. The ultimate goal of this program is that the grantee(s) increase congressional and nationwide support for statehood for Washington, DC.

This program is funded with FY2019 funds, which must be expended by September 30, 2019, with a full accounting provided to the Office of the Secretary no later than October 31, 2019.

SECTION II: AWARD INFORMATION

$200,000 in District of Columbia funds will be available on a competitive basis as follows:

A. 50% of the funds will be awarded on a competitive basis to an organization or organizations dedicated specifically to engaging youth (high school, college students and/or graduate students or other young adults) in civics, government, and/or voting rights in innovative ways by raising awareness through campaigns that include a branding and messaging strategy that include social media, digital media, print media, and other forms of communications. Such dedication can be evidenced by the organization's purpose, or through dedicated programming within the organization aimed at youth engagement.

B. 50% of the funds will be awarded to a non-profit organization or organizations that engage in targeted campaigns that educate and raise awareness for the lack of voting rights and statehood for Washington, DC. Educational efforts should focus on outreach in both Washington, DC and states across the nation.

The release date of this Request for Applications (RFA) is October 1, 2018. This grant process conforms to the guidelines established in the District's City-Wide Grants Manual and Sourcebook (which is available at http://opgs.dc.gov).

All funds will be disbursed upon award of the grant, with a report and budget accounting required to be filed by September 30, 2019, and a final report due no later than October 31, 2019. All proposals must include a detailed description of how the funds will be spent, as well as a project plan, timeline, and metrics associated with tasks outlined in the proposal. Creative proposals (which include fresh ideas) that specifically address the requirements for an award are required to ensure success. Proposals that do not contain all requested information will not be considered.

SECTION III: ELIGIBILITY INFORMATION

Eligibility for this grant is restricted to:

A. Nonprofits (with or without a 501(c) (3) certification) and community-based organizations with a current District of Columbia business license, a "Clean Hands" certification that the organization does not owe money to the District or Federal government, and no outstanding or overdue final reports for grants received from the District government for similar purposes.

B. Organizations with a history of advocating for democracy and self-determination for the District of Columbia include, but not limited to, District voting rights and statehood.

C. Organizations with a financial track record and who are not reliant on another organization under a fiscal agent arrangement.

D. If the organization is a past grantee, organization has met all past reporting and accounting requirements set by the Secretary of the District of Columbia.

SECTION IV: APPLICATION AND SUBMISSION INFORMATION

This Request for Applications is posted at http://os.dc.gov and http://opgs.dc.gov. Requests for copies of this RFA and inquiries may be submitted to: Office of the Secretary of the District of Columbia, 1350 Pennsylvania Avenue, NW, Suite 419, Washington, DC 20004 or secretary@dc.gov, or 202-727-6306.

Application Forms and Content
All applications will be judged against the following requirements:

1. All proposals must be written in clear, concise and grammatically correct language. Narratives shall not exceed 2,500 words and must include answers to all the requirements specified in this Request for Applications.
2. There is no set form on which applications must be written, but please be clear and brief.
3. The grant applicant shall focus efforts on education and outreach to residents of the 50 States, and not just members of Congress. Funds shall not be used to lobby directly or through grassroots advocacy, for or against particular pieces of legislation.
4. Grant applicants' efforts shall not significantly consist of paid media advertisements.
5. No more than 25% of awarded funds can go to pay for salaries.
6. Proposal must be specific as to how funds will be expended including:
    a. Names and resumes of all staff and consultants proposed to work on the program.
    b. Justification of the need for grant funds.
    c. Specific activities for which funds will be used.
    d. Proposed line item budget.

e. Agreement to submit all deliverables listed in section VI.
f. Specific performance metrics and evaluation plans.
g. Thorough timeline and benchmarks.

7. All certifications listed in the Application Process section **must** be included or the application will be disqualified.

Application Process & Requirements

Responses to this Request for Application shall be submitted via email to secretary@dc.gov or hard copy delivered to the Office of the Secretary, 1350 Pennsylvania Avenue, NW, Suite 419, Washington, DC 20004. Applications delivered to the Office of the Secretary must be date stamped no later than Noon on October 29, 2018.

The following criteria for all applications must be met. Applications that do not meet the requirements specified below will be disqualified from consideration:

1. All proposals shall include only written narrative without any additional input (such as DVDs, video, etc.).
2. All files submitted shall be in any of the following formats: MS Word2003 or 2007, PDF, MS Excel, HTML, MS Publisher or any format compatible with those mentioned.

3. The following is required, but are not included in the 2,500 word narrative:
   a. The EIN, also called the Federal Tax ID number of the organization;
   b. The website and main contact information for the organization;
   c. A list of the current Board of Directors including affiliation and contact information;
   d. Biography or resume of all proposed project staff; and
   e. A copy of the organization's most recent Form 990 submission to the Internal Revenue Service.

4. Copy of the most recent and complete set of audited financial statements available for the organization. If audited financial statements have never been prepared due to the size or newness of an organization, the applicant must provide an organizational budget, an income statement (or profit and loss statement), and a balance sheet certified by an authorized representative of the organization, and any letters, filings, etc. submitted to the IRS within the three (3) years before the date of the grant application.

5. If the applicant is a 501 (c) (3), evidence of 501(c) (3) status, a current business license, and copies of any correspondence received from the IRS within the three (3) years preceding the grant application that relates to the organization's tax status (*e.g.*, suspension, revocation, recertification, etc.)

6. Application narrative shall be accompanied by a "Statement of Certification," the truth of which is attested to by the Executive Director or the Chair of the Board of Directors of the applicant organization, which states:

a. The individuals, by name, title, address, email, and phone number who are authorized to negotiate with the Office of the Secretary on behalf of the organization;
b. That the applicant is able to maintain adequate files, records, and can meet all reporting requirements;
c. That all fiscal records are kept in accordance with Generally Accepted Accounting Principles (GAAP) and account for all funds, tangible assets, revenue, and expenditure; that all fiscal records are accurate, complete and current at all times; and that these records will be made available for audit and inspection as required;
d. That the applicant is current on payment of all federal and District taxes, including Unemployment Insurance taxes and Workers' Compensation premiums. This statement of certification shall be accompanied by a certificate from the District of Columbia Office of Tax and Revenue (OTR) stating that the entity has complied with the filing requirements of District of Columbia tax laws and has paid taxes due to the District of Columbia or is in compliance with any payment agreement with OTR;
e. That the applicant has the demonstrated administrative and financial capability to provide and manage the proposed services and ensure an adequate administrative, performance and audit trail;
f. That the applicant is not proposed for debarment or presently debarred, suspended, or declared ineligible, as required by Executive Order 12549, "Debarment and Suspension," and implemented by 2 CFR 180, for prospective participants in primary covered transactions and is not proposed debarment or presently debarred as a result of any actions by the District of Columbia Contract Appeals Board, the Office of Contracting and Procurement, or any other District contract regulating Agency;
g. That the applicant has the necessary organization, experience, accounting and operational controls, and technical skills to implement the program, or the ability to obtain them;
h. That the applicant has the ability to comply with the required performance schedule, taking into consideration all existing and reasonably expected commercial and governmental business commitments;
i. That the applicant has a satisfactory record performing similar activities as detailed in the award;
j. That the applicant has a satisfactory record of integrity and business ethics (Clean Hands Certificate);
k. That the applicant is in compliance with the applicable District licensing and tax laws and regulations (Clean Hands Certificate);
l. That, if the applicant has previously won a similar award from the District of Columbia government, it has submitted all reports due and owing;
m. That the applicant complies with provisions of the Drug-Free Workplace Act;
n. That the applicant meets all other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations;
o. The applicant agrees to indemnify, defend, and hold harmless the Government of the District of Columbia and its authorized officers, employees, agents, and

volunteers from any and all claims, actions, losses, damages, and/ or liability arising out of this grant from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the District on account of any claim therefore, except where such indemnification is prohibited by law; and

p. If any of the organization's officers, partners, principals, members, associates or key employees, within the last three (3) years prior to the date of the application, has:

i. Been indicted or had charges brought against them (if still pending) and/or been convicted of (a) any crime or offense arising directly or indirectly from the conduct of the applicant's organization or (b) any crime or offense involving financial misconduct or fraud, or

ii. Been the subject of legal proceedings arising directly from the provision of services by the organization. If the response is in the affirmative, the applicant shall fully describe any such indictments, charges, convictions, or legal proceedings (and the status and disposition thereof) and surrounding circumstances in writing and provide documentation of the circumstances.

Timeline

All applications shall be submitted by email to secretary@dc.gov or delivered to the Office of the Secretary, 1350 Pennsylvania Avenue, NW, Suite 419, Washington, DC 20004 no later than Noon on Monday, October 29, 2018. The Office of the Secretary is not responsible for misdirected email or late deliveries.

Terms and Conditions

1. Funding for this award is contingent on the continued funding from the grantor, including possible funding restrictions pursuant to the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341,1342,1349-51, and 1511-1519 (2004); the District Anti-Deficiency Act, D.C. Official Code §§ 1-206.03(e), 47-105, and 47-355.01-355.08 (2001); and Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2014 Repl.). Nothing in this Request for Applications shall create an obligation of the District in anticipation of an appropriation by Congress and/or the Council of the District of Columbia (the "Council") for such purpose as described herein. The District's legal liability for any payment pursuant to this RFA shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and/or the Council, and shall become null and void upon the lawful unavailability of such funds under these or other applicable statutes and regulations.

2. The Office of the Secretary reserves the right to accept or deny any or all applications if the Secretary determines it is in the best interest of the government to do so. The Secretary shall notify the applicant if it rejects an applicant's proposal. The Secretary may suspend or terminate an outstanding RFA pursuant to the policies set forth in the City-Wide Grants Manual and Sourcebook.

3. The Office of the Secretary reserves the right to issue addenda and/or amendments subsequent to the issuance of the RFA, or to rescind the RFA.

4. The Office of the Secretary shall not be liable for any costs incurred in the preparation of applications in response to the RFA. Applicant agrees that all costs incurred in developing the application are the applicant's sole responsibility.

5. The Office of the Secretary may conduct pre-award on-site visits to verify information submitted in the application and to determine if the applicant's facilities are appropriate for the services intended.

6. The Office of the Secretary may enter into negotiations with an applicant and adopt a firm funding amount or other revision of the applicant's proposal that may result from negotiations.

7. To receive an award, the selected grantee shall provide in writing the name of all of its insurance carriers and the type of insurance provided (e.g., its general liability insurance carrier and automobile insurance carrier, workers' compensation insurance carrier, fidelity bond holder (if applicable), and, before execution of the award, a copy of the binder or cover sheet of their current policy for any policy that covers activities that might be undertaken in connection with performance of the grant, showing the limits of coverage and endorsements. All policies (except the workers' compensation, errors and omissions, and professional liability policies) that cover activities that might be undertaken in connection with the performance of the grant, shall contain additional endorsements naming the Government of the District of Columbia and its officers, employees, agents and volunteers as additional named insured with respect to liability abilities arising out of the performance of services under the award. The grantee shall require their insurance carrier of the required coverage to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors, and subcontractors.

8. To receive an award, the selected grantee must submit a completed IRS Form W-9 and a banking ACH form from the District of Columbia with the signed Notice of Grant Agreement (NOGA).

9. If there are any conflicts between the terms and conditions of the RFA and any applicable federal or local law or regulation, or any ambiguity related thereto, then the provisions of the applicable law or regulation shall control and it shall be the responsibility of the applicant to ensure compliance.

SECTION V: APPLICATION REVIEW INFORMATION

All proposals will be reviewed by a panel selected by the Secretary of the District of Columbia and may include reviewers from the Executive Office of the Mayor as well as outside reviewers. The ratings awarded each applicant shall be public information and shall be made based on the following criteria:

1. Demonstrated ability to make progress toward increasing nationwide awareness of the lack of voting rights and statehood for Washington, DC during the grant period: 50%;
2. Specificity and feasibility of proposed activities: 25%;
3. History of effectively supporting democracy and statehood efforts: 10%; and
4. Specificity of performance measures: 15%.

SECTION VI: AWARD ADMINISTATION INFORMATION

Grant award (s) will be announced on the Office of the Secretary website no later than November 30, 2018. Unsuccessful applicants will be notified by email at the address from which the application was sent (unless otherwise specified) prior to the announcement of the winners. Disbursement of grant funds will occur as soon as practicable following the announcement of the selection of the awardee(s).

Deliverables
Project requirements that must be submitted on or before due dates include:

1. A project plan with detailed expense projections for the amount requested. (Due within 15 calendar days of grant award.)
2. Progress report detailing expenditures to date and summary of work completed shall be included with the final report due October 31, 2019.
3. Expenditure of grant funds before September 30, 2019.
4. A final report provided by the grant recipient(s) no later than October 31, 2019. The close out or final report shall include detailed accounting of all expenditures for each project and summary of work completed under the grant.

SECTION VII: AGENCY CONTACT

All inquiries regarding this Request for Applications should be directed to:

Lauren C. Vaughan
Secretary of the District of Columbia
Office of the Secretary of the District of Columbia
13501 Pennsylvania Avenue, NW, Suite 419
Washington, DC 20004
Secretary@dc.gov
202-727-6306

DISTRICT DEPARTMENT OF TRANSPORTATION

UPDATED MEETING NOTICE:

PUBLIC SPACE COMMITTEE

Please be advised that the Public Space Committee (PSC) will hold a public roundtable meeting to consider guidelines for the deployment of telecommunications equipment ("Small Cell") in public space. The PSC will not take a final action on the guidelines at this meeting; the purpose of the meeting is to hear from all stakeholders, including the general public and ANCs, about the proposed guidelines.

The meeting will be held on Monday, October 15, 2018, at 1 p.m. at 1100 4th Street SW, Room 200, 2nd Floor Hearing Room.

For questions or additional information regarding this notice, please feel free to contact the Public Space Committee at PublicSpace.Committee@dc.gov or the Public Space Regulation Division at (202) 442-4670.

Information on the Small Cell program can be found at https://ddot.dc.gov/smallcell and https://octo.dc.gov/page/small-cells.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 19275 of Advisory Neighborhood Commission 6B, from a February 5, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy No. 1601252, allowing a "general office space" use in a portion of a building located at 201 15th Street, S.E., in the C-2-A zone (Square 1060, Lot 47).

HEARING DATES: June 14, 2016, June 28, 2016, and September 20, 2016
DECISION DATE: September 20, 2016

ORDER DENYING APPEAL

This appeal was submitted by Advisory Neighborhood Commission ("ANC") 6B, to challenge a decision of the Zoning Administrator ("ZA"), at the Department of Consumer and Regulatory Affairs ("DCRA"), made February 5, 2016, to issue Certificate of Occupancy ("C of O") Number 1601252 for a "general office space", allowing Andromeda Transcultural Health ("Andromeda") to operate a substance abuse counseling center at the property. Following a full public hearing, the Board of Zoning Adjustment (the "Board") voted to affirm the decision of the ZA and deny the appeal.

As a preliminary matter, the Board notes that the version of the Zoning Regulations in effect on February 5, 2016, the date of the Zoning Administrator decision complained of, and on the first two hearing dates was repealed as of September 6, 2016 and replaced by new text divided into subtitles. The repealed version was adopted in 1958 and will hereinafter be referred to as "ZR 58", while the replacement version will be referred to as "ZR 16". Because ZR 58 did not have subtitles, citations to its provisions will follow the format 11 DCMR § ___, while a ZR 16 citation will include the relevant subtitle letter as follows, 11-_ DCMR § ___. Under ZR 58, the subject property was zoned C-2-A, which was renamed MU-4 in ZR 16.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on June 14, 2016. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, to DCRA, and to the Owner and Lessee of the subject property. The matter was continued twice and eventually heard on September 20, 2016.

Parties

Appellant
The Appellant is ANC 6B, the ANC for the area within which the property that is the subject of

the appeal is located. In a resolution dated April 12, 2016, issued after a regularly scheduled meeting with a quorum present, the ANC voted to challenge DCRA's decision to issue the C of O. (Ex. 6.) The Appellant was represented by ANC Commissioner Chander Jayaraman.

DCRA
The Appellee, DCRA, is the agency of the government of the District of Columbia that is authorized, among other things, to issue certificates of occupancy. DCRA was represented by its Office of the General Counsel, Maximillian Tondro, Esq. The Zoning Division of DCRA is headed by the Zoning Administrator, Matthew LeGrant, and is charged with administering the Zoning Regulations. Mr. LeGrant testified at the public hearing on behalf of DCRA.

Lessee
Andromeda is a Lessee at the subject property and is the entity that was granted permission to operate pursuant to the C of O. As a Lessee, Andromeda is automatically a party under 11 DCMR § 3199.1, and will be referred to as Andromeda or the Lessee. The Board heard testimony from Alfred Maguigen and Olga Valdiva, both of whom are representatives of Andromeda.

Changes to the Zoning Regulations

The Positions of the Parties

Appellant's Position – The Appellant asserts that DCRA erred in several respects: (1) The C of O application was incomplete and inaccurate because (a) Andromeda did not answer question 14 on the application relating to its "Proposed Occupancy Load", (b) Andromeda did not inform DCRA that it intended to operate a substance abuse treatment clinic, and (c) Andromeda erroneously applied for its C of O based upon an "ownership change"; (2) DCRA erred in granting a C of O for "general office space" when it was clear that Andromeda would operate a substance abuse treatment clinic; and (3) DCRA erred by not requiring Andromeda to satisfy its parking requirement under 11 DCMR § 2101.1 as a substance abuse treatment clinic (the "all other uses" category requirement of one parking space for each 600 square feet of gross floor area and cellar floor area). (See, Ex. 5, Attachments A&B.) The Appellant also asserts that the ZA erred in not categorizing the proposed substance abuse counseling center as being within the "Medical Care" use category of ZR 16. (11-B DCMR § 200.2(q).)

DCRA's Position – DCRA asserts that the ZA properly reviewed and approved the C of O as fully compliant with the Zoning Regulations. First, it asserts that the application was neither incorrect nor incomplete because, contrary to the Appellant's assertions: (a) the C of O application was properly considered an application for an ownership change, and (b) Andromeda was not required to provide occupancy load information because only proposed "assembly uses" are required to provide this information, not "general office uses". Second, DCRA asserts that the ZA properly classified the proposed substance abuse counseling center as a "general office use", and properly determined that no additional parking was required because the proposed use

was a continuation of the prior office use. Finally, DCRA asserts that the C of O was issued under ZR 58 and therefore vested under ZR 58. As a result, the new "Medical Care" use category under ZR 16 was not applicable when the C of O was issued and has no bearing on this appeal.

Andromeda's Position – Andromeda explained the nature of its operations, noting that it provides no medical services, and conducts no medical procedures. Andromeda explained that it conducts counseling to individuals and groups, but makes no diagnoses. The counseling is conducted by certified addiction specialists, not doctors, psychiatrists or psychologists; and the facility is not a "medical office". Finally, Andromeda maintained that the facility in question is not used as a "clinic", noting that it has a "clinic" at a separate location.

FINDINGS OF FACT

The Property

1. The subject property is a portion of a building located at 201 15th Street, S.E.

2. The property is located in the C-2-A medium density community business center zone district.

3. An "office" use is a matter-of-right use under 11 DCMR § 721.1, which incorporates uses permitted by right in the C-1 zone districts under 11 DCMR § 701.6, including (f) "office" use.

4. The owner of the property is Vida Real Estate Properties, LLC.

5. Andromeda Transcultural Health is the Lessee of the 1st and 2nd floors of the building.

The C of O Application

6. On or about February 5, 2016, Andromeda filed an application with DCRA for a C of O to operate "Circulo De Andromeda II" as a "General office space for counseling" on the 1st and 2nd floors of the building. (Ex. 5, Tab B, Question No.12.)

7. The C of O application is identified as a request for an "Ownership Change". Question No. 11 instructs the applicant to identify its application as *one* of the following choices: "Ownership Change", "Use Change", "Load Change", "Revision" or a "New Building". Andromeda checked the box next to the language "Ownership Change".

8. Although certificates of occupancy are required by the Zoning Regulations to establish a use, there is no requirement to apply for a new certificate of occupancy when ownership or tenancy changes. That is a requirement under the Construction Codes, the relevant provision being codified in Title 12A DCMR as follows:

> 110.1.2 Change in Ownership. For changes in ownership of structures, land, or parts thereof with an existing valid Certificate of Occupancy, a new Certificate of Occupancy shall be issued in the name of the new owner without re-inspection, provided there is no proposed change in use, floor layout or occupancy load.

9. Andromeda stated in its application that the premises were previously used for general office space. Question No. 13 instructs the C of O applicant to identify the "Prior use of Premises" and Andromeda states "General office space" – C of O # CO1300266".

10. Question No. 14 instructs the applicant to state what the proposed occupancy load will be. Andromeda left this section of the application form blank. DCRA interpreted Andromeda's answer as if it had written "not applicable".

11. Question No. 23 of the application asks if off-street parking will be provided for this use. Andromeda checked the box "No".

The proposed use

12. Andromeda proposed to operate a substance abuse counseling center.

13. Andromeda proposed to provide both individual counseling sessions and group counseling sessions, limited to 15-20 persons at any given time.

14. The proposed use was to have no residential component.

15. The proposed use was not to contain a diagnostic center.

16. The proposed use was not to provide medical services.

17. The proposed use was not to have any medical doctors on staff, with the exception of the director who would also supervise an affiliated center at another location that would provide medical services. If any client at the subject counseling center were to require medical services in the future, they would be referred to the affiliated center.

18. The ZA determined that the proposed use would not qualify as a "clinic" because it would not include a diagnostic center and medical staff. The relevant portion of the definition of "clinic" is stated in the conclusions of law that follow these findings of fact.

19. The ZA determined that the proposed use would best fall under the "office" use category.

Evidence adduced at the hearing

20. Andromeda received its certification from the District Department of Behavioral Health to provide counseling services. (Transcript, Public Hearing of September 20, 2016, "Tr.",

p. 168). Those counseling services are provided by certified addiction counselors who do not hold medical licenses and who perform no medical diagnosis. (Tr., pp. 198, 203.)

21. Andromeda's counseling services involve "assessment" and "case management" services, such as determining barriers to each client's success, whether the barriers are lack of employment or lack of stable living arrangements. (Tr., p. 199.)

22. The ZA testified that the term "clinic" encompasses a building or part of a building, for members of the medical and dental profession who are involved in conducting the joint practice of medicine or dentistry. (Tr., p. 187-188.)

23. The ZA testified that neither the term "office" nor the term "medical office" was defined in ZR 58. Both uses were allowed in the C-2-A zone at the time the C of O was issued. However, if the proposed use had been designated a "medical office", the change in use from "office use" may have triggered a parking requirement. (Tr., p. 189, 195.)

24. The ZA testified that, unlike the general "office" use, a "medical office" use had additional components, such as the administration of medications, physical examinations, and on-site laboratories. (Tr., p. 190.)

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to hear and decide appeals when it is alleged by the Appellant that there is an error in any decision made by an administrative officer in the administration of the Zoning Regulations. (11 DCMR §§ 3100.2 and 3200.2.) In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. (11 DCMR § 3100.4.) After considering the pleadings, the evidence in the record, and the argument by the parties, the Board is not persuaded by the Appellant that the ZA erred in issuing the C of O. Rather, the Board concludes that the ZA's decision was lawful and proper.

The application was neither incorrect nor incomplete

The ANC claims that DCRA should have known from the face of Andromeda's C of O application that the proposed use was not a "general office" use and that Andromeda's application was inaccurate and incomplete. Contrary to the ANC's assertion, DCRA had no reason to believe that Andromeda had submitted a false or inaccurate application. Indeed, as pointed out by the ANC, the pre-printed C of O application warns that making a false statement on it may result in the denial or revocation of the C of O, criminal penalties, and/or imprisonment.

A change of tenancy triggers the requirement for an ownership change C of O

The Appellant claims that DCRA erroneously required the new lessee to apply for an ownership change certificate of occupancy, arguing that it should only be required when a new owner is taking over an existing use. As a preliminary matter, DCRA's action was based upon its interpretation of the Construction Codes, not the Zoning Regulations. However, neither DCRA or the lessee questioned the Board's jurisdiction to decide the case. Also, even if the DCRA interpretation was erroneous, it would not change the status quo or aggrieve the Appellant. If the Appellant is correct, and the lessee should not have been required to apply for a new certificate of occupancy, then the prior certificate of occupancy would remain in effect and the lessee could legally continue. The only person aggrieved by the error would have been the lessee, who would have spent time and money applying for an unnecessary certificate. But again, neither DCRA or the lessee challenged the Appellant's standing to appeal.

Although the Board has no jurisdiction to interpret the Construction Code, it does have the jurisdiction to interpret the Zoning Regulation that requires certificates of occupancy, and which provides a separate basis for DCRA's position that a change of tenancy requires a new certificate of occupancy. That provision is 11 DCMR § 3203.1 which states that, except for circumstances not applicable here:

> [N]o *person shall use* any structure, land, or part of any structure or land for any purpose until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR.

This provision refers to "no person" being permitted to use land or a structure unless a certificate of occupancy has been issued. Although this could be read as requiring a new certificate of occupancy only when a new use is introduced, the use of the phrase "no person" could be reasonably interpreted as requiring a new certificate of occupancy whenever a new person, whether a new owner or new tenant, takes over an existing use.

The Construction Code provision, therefore, can be viewed as an attempt to reflect the intent of the Zoning Regulations requirement, and DCRA's position that a new tenancy requires a new certificate of occupancy is reasonable.

Andromeda was not required to provide occupancy load information

With regard to the ANC's claim relating to occupancy load information, this too is without merit. There is a space on the C of O application to provide occupancy load information. However, the application form is a general form used in connection with a range of C of Os. Specifically, occupancy load information is used only to evaluate "assembly uses", such as a dance hall or restaurant. There is no specific provision in ZR 58 that required the ZA to evaluate the occupancy load for an "office use".

<u>"General office" is the correct use category for the proposed use</u>

The ANC claims that Andromeda operates a substance abuse treatment facility that was not properly categorized as an "office" use. (T., p. 161). It claims further that the proposed use should have been classified as a "clinic" or a "medical office" under ZR 58 or as being under the "medical care" use category in ZR 16. The Board disagrees.

The C-2-A zone was one of four "Community Business Center Districts" and allowed a large variety of uses for large segments of the District outside of its central core. (11 DCMR § 720.2.) Under 11 DCMR § 721.1, the C-2-A zone allowed uses permitted by right in the C-1 zone, such as "office" uses, which is first permitted in a C-1 zone pursuant to 11 DCMR § 701.6(f). The C-2-A zone also allowed "clinic" uses, which were first allowed in the R-4 zone by 11 DCMR § 330.5(g). A "medical office" was not expressly allowed in the C-2-A zone, and was mentioned only in the Downton Development (DD) zone in 11 DCMR § 1732.3(i) and the Saint Elizabeth East Campus District in 11 DCMR § 3303.1(m).

The Substance Abuse Counseling Center is not a "clinic" under ZR 58

The term "clinic" is defined in ZR 58. However, the definition does not cover the proposed substance abuse counseling use.

> **"Clinic** – a building or part of a building in which members of the *medical* or dental professions are *associated* for the purpose of conducting a joint practice of the professions. Each clinic *shall* contain a *diagnostic center*, and in addition, may contain research, educational, minor surgical, or treatment facilities; provided that all the facilities are limited to the treatment and care of out-patients. The term "clinic" shall be limited to those buildings in which the joint practice of medical or dental professions is conducted in such a manner that all fees for services are established by and paid to a common business office without direct payment of the fees to individual practitioners, and shall not include a building in which the separate and individual practice of the above professions is conducted."

(§ 199.1, emphasis supplied.)

There is no doubt that Andromeda's proposed operation did not fit the definition above. The "clinic" definition contemplates multiple medical (or dental) professionals conducting a joint practice. Andromeda has no medical doctors on staff except for the director, a psychiatrist who has responsibilities at another counseling center and is not at the center on a full-time basis. Also, the counseling center provides no medical services and, in fact, the counseling center refers clients to an affiliated center for any necessary medical services. Finally, Andromeda has no diagnostic center, an essential element of the definition of "clinic" in ZR 58.

The proposed counseling center did not qualify as a "medical office"

The Appellant also argued that the proposed use better fit the "medical office" classification. The Board disagrees. The term "medical office" was not defined under ZR 58.[1] However, the Board relies upon the ZA's testimony in reaching the conclusion that a substance abuse counseling center was not a "medical office" for zoning purposes. The ZA testified that, unlike the general "office" use, a "medical office" use had additional components which are physical in nature. As distinguished from the general "office" use, a "medical office" is typically engaged in the administration of medications and physical examinations, and often has on-site laboratories. Andromeda, in contrast, conducts counseling services by certified addiction counselors who do not hold medical licenses and who perform no medical diagnosis. (Finding of Fact 20.)

Because the C of O vested under ZR 58, the Zoning Administrator did not err in failing to apply the term "medical care" as proposed for ZR 16, which was not in effect on the date of his decision. In fact, it would have been erroneous for him to have done so.

The proposed counseling center was properly classified as general office use

The Board concurs with the ZA's reasoning in finding that general "office use" is the zoning use category that most accurately includes the proposed use as a substance abuse counseling center. As stated in DCRA's filing, the ZA first determined that the proposed use had no residential component and would not be categorized as a "substance abusers' home," defined in § 199.1 as a type of a community based residential facility that is allowed in the C-2-A only by special exception (although now permitted by right under ZR 16 subject to an occupancy limit of eight individuals.) Because Andromeda's proposed counseling center had no staff doctors and did not contain a diagnostic center, the ZA next determined that the proposed use would not qualify as a "clinic". Instead, the ZA determined that the proposed use would fall under the zoning classification of "office". (Ex. 23, p. 3.)

The term "office", though referenced as a permitted use, is not defined in the Zoning Regulations. As a result, the Board must apply the definition in *Webster's Dictionary*. (11 DCMR § 199.2(g).) According to *Webster's*, an office is a "place where a particular kind of business is transacted or a service is supplied; as … the place in which a professional person conducts business" or a "building or room where a doctor, lawyer, etc., works and meets with patients or clients." Thus, the Board agrees with DCRA that a general office use is a broad category that includes uses that have frequent client visits, such as a travel agency, a real estate agency, a law office, a life coach, or a therapist. (Ex. 23, p. 4.)

The Appellant cites BZA Appeal No. 16066 (1997) in support of their position. However, the facts in that case are readily distinguishable from those in this appeal. In the case cited, the Board found that the ZA erred when issuing a C of O for an "office" use where the proposed use was actually a day treatment facility for developmentally disabled individuals, a use that was not

[1] As noted earlier, the term "medical office" was barely mentioned in ZR 58.

described in the Zoning Regulations at that time.[2] In contrast to the activities in an adult day treatment center, Andromeda's use does not serve most of its clients throughout the day. Rather, Andromeda's clients come in for an individual or group counseling session with a maximum number of clients and counselors at any given time. This type of activity is similar to what occurs in many general office uses.

No additional parking was required as the prior use was in the same use category

Under § 2100.4, only a change of use would trigger an additional parking requirement when the C of O was issued. However, as stated in the Findings of Fact, the prior use of the space was also classified as a "general office" use. (See, Andromeda's C of O Application, Ex. 3, listing prior C of O as CO1300266 issued on November 5, 2012.) Thus, no additional parking was required to allow the proposed office use at the property.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC (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.).) In this case, ANC 6B was an Appellant and submitted a resolution in support of the appeal, which the Board interprets as expressing the ANC's issues and concern that the ZA had erred. For the reasons stated above, the Board does not find the ANC's view to be persuasive.

Based on the evidence of record and the submissions of the parties, the Board concludes that DCRA did not err in its decision to issue the C of O authorizing the general office space on the 1st and 2nd floors at the subject property. It is therefore **ORDERED** that the ZA's determination is **SUSTAINED,** and this appeal is **DENIED.**

VOTE: **4-1-0** (Marnique Y. Heath, Frederick L. Hill, Anthony J. Hood, and Jeffrey L. Hinkle to DENY the Appeal, and SUSTAIN the decision of the Zoning Administrator; Anita Butani D'Souza opposed).

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: September 20, 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.

[2] Subsequently, the Zoning Commission added the "adult day treatment facility" use classification.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 19337 of Robert A. Shelton and Mark Flynn, pursuant to 11 DCMR §§ 3100 and 3101,[1] from a June 1, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1604403, allowing the construction of a two-story rear addition with cellar at a one-family dwelling located at 325 5th Street, S.E., in the CAP/R-4 zone (Square 820, Lot 17).

HEARING DATES: October 18, 2016 and October 25, 2016
DECISION DATE: October 25, 2016

ORDER DENYING APPEAL

This appeal was submitted by Robert A. Shelton and Mark Flynn (the "Appellants" or the "Neighbors") challenging a decision of the Zoning Administrator ("ZA"), at the Department of Consumer and Regulatory Affairs ("DCRA"), made June 1, 2016, to issue Building Permit No. B1604403 (the "permit") to Gina Eppolito and Frances Slakey (the "Owners"), allowing them to construct a rear addition at their residence (the "subject property"). Following a full public hearing, the Board of Zoning Adjustment (the "Board" or "BZA") voted to affirm the decision of the ZA and deny the appeal.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on October 18, 2016. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellants, to DCRA, and to the Owners of the subject property. At DCRA's request, and with the consent of all parties, the public hearing was continued to October 25, 2016.

Parties

Appellants

The Appellants, Mr. Shelton and Mr. Flynn, own and reside at the row dwelling adjacent to the subject property, located at 323 5th Street, SE.

[1] All references to Title 11 DCMR within the body of this order are to provisions that were in effect on the date the Zoning Administrator made the decision complained of. That version was repealed as of September 6, 2016 and replaced by new text (Title 11-B DCMR, ZR 16). The repeal and adoption of the replacement text has no effect on the validity of the Board's decisions in this case or of this order.

DCRA

The Appellee, DCRA, is the agency of the government of the District of Columbia that is authorized, among other things, to issue building permits. DCRA was represented by its Office of the General Counsel, Maximillian Tondro, Esq. The Zoning Division of DCRA is headed by the Zoning Administrator, Matthew LeGrant, and is charged with administering the Zoning Regulations. Mr. LeGrant testified at the public hearing on behalf of DCRA.

The Owners

Gina Eppolito and Frances Slakey own and reside at the subject property. Under 11 DCMR § 3199.1, they are automatic parties to this appeal, and will be referred to as the Owners. Gina Eppolito testified during the hearing, and the Owners' architect, Jennifer Fowler, filed a submission on behalf of the Owners. (Ex. 23.)

The Positions of the Parties

Appellants' Position – Appellants claim the ZA's decision to approve the permit is erroneous for three reasons. (Exs. 1 and 2.) First, they claim that the ZA relied on inaccurate statements regarding the existing and proposed lot occupancy at the property. Second, they claim that the ZA relied exclusively on the Board's Order granting a special exception to allow the replacement of the existing open porch with an addition, in violation of §§ 2001.2 and 2001.3, both of which regulate nonconforming structures, such as the dwelling at the subject property. Finally, Appellants claim that Condition No. 1 of the Board's Order required a meeting between them and the Owners relating to the screening of the addition wall. They contend that the permit was erroneously issued because the meeting took place after the permit was issued.

DCRA's Position – DCRA claims that each of the grounds for appeal lack merit. Regarding the alleged inaccuracy of the lot occupancy figures, DCRA asserts that the ZA confirmed the measurements and lot occupancy calculation contained in the Board's Order and the Owners' permit application. Regarding its "exclusive" reliance on the Board's Order, DCRA asserts it was lawful and proper to rely on the Order (although it did not "exclusively" rely on it) because the Order granted special exception relief from § 2001.3, a provision that allows for the expansion of a nonconforming structure. As to the alleged violation of § 2001.2, DCRA asserts that, because the enclosure is a "modernization" within the meaning of that subsection, the enclosure of the nonconforming open porch is permissible as a matter of right, and the ZA made that determination during his review of the permit application. Finally, regarding the alleged lack of compliance with Condition No. 1 of the Board's Order (requiring "consultation" with the Neighbors by the Owners on how to screen the addition), DCRA states that it convened a meeting between the parties (and the Office of Planning ("OP")) wherein an agreement was reached regarding this question. The fact that the agreement was finalized after the permit was issued is immaterial.

The Owners' Position – The Owners claim they have proceeded in good faith and gone to great lengths to satisfy the Neighbors. Their architect filed a submission explaining that the parties met (with DCRA's counsel and OP) to discuss the screening of the first floor wall. All who were present agreed that a "green screen trellis would be problematic". At the Neighbors' request, the parties at the meeting agreed that a brick wall with no trellis was a better solution. (Ex. 23B.) The Owners agreed to revise the plans accordingly.

FINDINGS OF FACT

Background of the Appeal

The BZA Application

1. On December 9, 2014, the Owners filed an application with the Board seeking zoning relief[2] to construct a two-story rear addition at their residence located in the R-4 zone and the Capitol Hill Overlay (CAP).

2. At the time of the application, the lot was improved with a two-story one-family row dwelling with a two-story rear open porch addition.

3. The Owners proposed to demolish the existing open porch addition, build an enclosed first floor addition and, above that, a new second floor covered porch.

The Zoning Relief Sought

4. At that time, § 403 of the Zoning Regulations required that each structure in an R-4 zone have a maximum lot occupancy of 60%. The existing lot occupancy was 60.8% and, with the proposed addition, the lot occupancy would be 63.6%. Therefore, the Owners sought relief from the requirements of § 403.

5. At that time, § 406 of the Zoning Regulations required that an open court in an R-4 zone have a minimum width of six feet. The existing open court was only 4.5 feet, and the proposed addition would result in an open court width that varied between 4.5 feet and 5 feet. Therefore, the Owners sought relief from the requirements of § 406.

6. The existing lot occupancy, at 60.8% was nonconforming and would be increased to 63.6%. The existing open court width, at 4.5 feet was nonconforming and would be increased at certain points to five feet. Subsection 2001.3 of the Zoning Regulations prohibited additions that extended or increased existing nonconformities. Because the nonconforming lot occupancy and nonconforming open court width would be increased or extended by the proposed addition, the Owners sought relief from the requirements of § 2001.3.

[2] The application sought special exception relief under 11 DCMR § 223 where the completed project would not conform to area requirements pertaining to lot occupancy, open court width, and nonconforming structure provisions. (11 DCMR § 223.1.)

The BZA Public Hearing

7. Mr. Shelton and Mr. Flynn (Appellants in this appeal) applied for and were granted party status in opposition to the BZA application. As the "Opposition Party", they claimed generally that the proposed addition would limit their access to light and air and affect the general ambience at the rear of their home.

8. The Owners submitted a shadow study supporting their claim that the impact on the Opposition Party's rear yard would be limited and would not *unduly* impact them.

9. The Office of Planning prepared a report supporting the application, concluding that the proposed addition would not *unduly* affect light and air to the Opposition Party or any neighboring properties.

10. As Opposition Party during the BZA proceeding, Mr. Shelton and Mr. Flynn were represented by counsel, submitted various filings for the Board's consideration, and participated fully in the public hearing.

11. As Opposition Party, they claimed, among other things, that the scale and massing of the proposed addition would not be compatible with the block and would result in a 22-foot long "mass of masonry" along their property line.

12. The OP representative testified at the hearing and suggested that the Owners might install a "green screen wall" on the north side of the proposed addition, to mitigate the impact on the Neighbors. (Hearing Transcript ("Tr."), April 21, 2015, p. 28.)

13. In response, the Owners revised their plans to add a wall trellis on the face of the addition at the north wall, to soften the wall's appearance. (Ex. 54.)

The BZA Decision and Order

14. After careful consideration, the Board voted to approve the application, subject to two conditions, and on October 15, 2015, the Board issued a final order approving the requested special exception relief, subject to the two conditions:

    (1) The Applicant, in consultation with the party in opposition, shall provide suitable screening on the first floor that is acceptable to the Office of Planning.
    (2) There will be no windows on the north wall of the addition.

(Decision, Ex. 55.)

The Neighbors' Motion for Reconsideration

15. On or about November 2, 2015, the Neighbors filed a motion requesting that the Board reconsider its decision granting special exception relief. (Ex. 58.)

16. The Owners filed a "Response" to the Neighbors' Motion for Reconsideration. (Ex. 62), and the Neighbors made an additional filing titled "Further Clarification of Motion for Reconsideration." (Ex. 63.)

17. At a Public Meeting on January 19, 2016, the Board waived the time requirements for both parties, accepted the Neighbors' additional filing (Ex. 63), and addressed the merits of the Motion for Reconsideration.

18. The Neighbors made several claims in the Motion for Reconsideration, all of which were rejected by the Board:

    (a) The Neighbors claimed that the Board erred because the Owners' measurements and lot occupancy calculations (both the existing and proposed lot occupancy) were "inaccurate". However, the Board asserted that its findings in this regard were based upon the revised site plans and revised architectural plans in the record, and the certifications of those measurements and calculations by a licensed architect.

    (b) The Neighbors claimed that the Board erroneously relied upon the Owners' flawed shadow study which looked only at the impacts of a *portion* of the structure, and not the entire proposed structure. The Board rejected this argument, finding that indeed it did assess the impact of the proposed addition in its entirety.

    (c) The Neighbors claimed that the Board erroneously gave "great weight" to the ANC 6B's issues and concerns. However, the ANC's report merely reported the vote of the ANC and the fact that it supported the application. No issues and concerns were raised which were afforded great weight to the ANC.

    (d) The Neighbors claimed that the Board erred because they were not given sufficient time to review the ANC report. The Board rejected this claim of error, noting that the Neighbors never requested a continuance so that it could respond more fully to the ANC report. More importantly though, there was nothing of substance in the report that could have been rebutted that was crucial to the Board's decision.

    (e) The Neighbors claimed that the Board erroneously gave "great weight" to OP's recommendation to approve the application. The Board rejected this claim, noting that the DC Code (§ 6-623.04) and relevant case law requires the Board to give "great weight" to OP's recommendations.

    (f) The Neighbors claimed that the Board erroneously relied upon OP's findings and opinions. The Board rejected this claim, noting that the Neighbors challenged OP's written report and testimony throughout the hearing. Nevertheless, OP continued to believe that the proposed addition would not unduly affect the light or air available to the abutting property or compromise the Neighbors' privacy of use and enjoyment of their property.

(g) The Neighbors claimed the Board erred by imposing a condition requiring the Owners to construct a trellis wall to screen the first floor of the addition. They claimed the Owners did not "consult" with them as required, and that they preferred to construct a trellis wall themselves. The Board rejected these claims, finding that any lack of consultation by the Owner would not represent an error by the Board. Rather, it would represent a violation of the Board's Order, for which the Neighbors could seek enforcement by DCRA. Regarding the Neighbors' claim that *they* be allowed to construct the trellis wall, the Board found that it had no authority to allow construction by the Neighbors on someone else's property. The Board reiterated that it based this condition upon OP's recommendation to install a "green screen wall" so as to mitigate the impact of the proposed addition on their Neighbors. Thus, there was no basis for finding that the Board erred when it imposed this condition in the first place.

Claims of Error During Present Appeal

The Lot Occupancy Calculations

19. The Appellants claim that the lot occupancy calculations relied upon by the ZA were erroneous. They claim that the existing lot occupancy was 63.4%, not 60.8%. They claim that the proposed lot occupancy was 66.21%, not 63.60%.

Exclusive Reliance on BZA Order Issued in Error

20. The Appellants claim that DCRA relied exclusively on the BZA Order when it issued the building permit. They claim that the BZA Order erroneously allowed the "piggy backing of an existing structure with an addition thereto", in violation of § 2000.2 of the Zoning Regulations. They claim further, that because the BZA Order was issued "in error", the issuance of the permit was erroneous. (Ex. 2, pp. 3 and 4.)

Replacement/Enclosure of the Porch

21. The Appellants claim that the porch enclosure approved by the permit may violate 11 DCMR § 2001.2. Appellants seem to claim that the enclosure does not fall under the category of ordinary repairs, modernizations, or alterations (all of which are generally allowed under this provision). The Appellants claim that, at the very least, the ZA failed to "rule" on whether the porch enclosure constituted an ordinary repair, modernization, or alteration. (Tr., October 25, 2016, p. 37.)[3]

22. The ZA testified that the proposed enclosure of the existing porch would be allowed under § 2001.2, as a modernization of a nonconforming structure, and that this has been a long standing interpretation of his office. (Tr., October 25, 2016, p. 20.) He also testified that,

[3] Appellants did not explain why they believe the porch enclosure is not allowed, only that the ZA did not "rule" on this question.

when issuing the permit, he looked to see if the application and plans met matter of right provisions, such as § 2001.2. (Tr., October 25, 2016, p. 23.)

Consultation Pursuant to Condition No. 1 of BZA Order 18938

23. Appellants claim that the permit was improperly issued because DCRA did not require compliance with Condition No. 1 of the Board's Order (consultation between the Owners and Neighbors regarding the screening of the addition) before it issued the building permit.

24. DCRA claims that it ensured the permit corresponded to the plans approved by the Board.

25. DCRA also states that it convened a meeting between the Owners and Neighbors, as well as a representative from OP, to address Condition No. 1 of the Board's Order. At that meeting, the Neighbors indicated they preferred the Owners' original proposal for a brick wall instead of the "green screen" proposed by OP. The parties agreed to this change. (Appellant testified to his agreement during the hearing. (Tr., October 25, 2016, pp. 27-28.))

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to hear and decide appeals when it is alleged by the appellant that there is an error in any decision made by an administrative officer in the administration of the Zoning Regulations. (11 DCMR §§ 3100.2 and 3200.2.) In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. (11 DCMR § 3100.4.) After considering the pleadings, the evidence in the record, and the argument by the parties, the Board is not persuaded by the Appellant that the ZA erred in issuing the permit. Rather, for the reasons discussed below, the Board concludes that the ZA's decision was lawful and proper.

The ZA did not rely on erroneous lot occupancy calculations

Appellants claim, as they did in their Motion for Reconsideration, that the Owners' lot occupancy calculations were incorrect and that the ZA relied upon them. The Board does not agree. As explained above, the Board's Order reflects the Board's finding that the existing lot occupancy was 60.8% and the proposed lot occupancy was 63.4%. The ZA testified that he reviewed the lot occupancy calculations during the permit application process, and concurred with the Board's findings. (Tr., October 25, 2016, p. 22, and Ex. 25, Zoning Technician Summary.)

Appellants claim, however, that the existing lot occupancy was 63.4%, and the proposed lot occupancy was 66.21%, calculations that are slightly higher than those arrived at by the ZA. (Finding of Fact 19.) The Board agrees with DCRA that this claim may stem from their mistaken assumption that the existing 4.5-foot wide court and the proposed five-foot wide court (extending therefrom) count towards lot occupancy. However, only those "open courts *less* than

five feet in width" are included in the definition of "building area"[4], which in turn determines the "percentage of lot occupancy" under the definitions in § 199.1.

The ZA correctly relied upon the Board's order when he issued the permit

Appellant argues that the ZA erred by relying on the Board's Order when he issued the permit. However, Appellant cites no authority which would have allowed him to deny the permit, even were the ZA to have disagreed with the Board's granting of relief. To the contrary, § 3202.6 makes clear that applications for building permits may be *authorized* by orders of the Board. This section states in pertinent part:

> **3202.6** *All applications for building permits authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date those orders are promulgated;* Provided, that all applications for building permits shall be accompanied by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation …

(11 DCMR § 3202.6.) (emphasis supplied)

Moreover, there was no basis for the ZA to question the Board's approval of relief. The relief was granted under § 223.1, which states:

> **223.1** *An addition* to a one-family dwelling or flat, in those Residence Districts where a flat is permitted, or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, *shall be permitted even though the addition* or accessory structure *does not comply with all of the applicable area requirements of §§* 401, 403, 404, 405, 406, *and 2001.3* shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

(11 DCMR § 223.1.) (emphasis supplied.)

The gist of Appellants' argument is that § 2001.3[5] restricts the expansion of nonconforming structures, such as the row dwelling at the subject property. While that is true, Appellants fail to acknowledge that the special exception relief granted under § 223.1 encompasses the nonconforming structure requirements of § 2001.3, thereby allowing the resulting nonconformities, so long as the special exception criteria are met.

[4] The term "Building area" is defined in pertinent part as the maximum horizontal projected area of a building and its accessory buildings. The term *"building area" shall include* all side yards and *open courts less than five feet (5 ft.) in width* … (11 DCMR § 199.1, Definition) (emphasis supplied).

[5] Subsection 2001.3 states: "Enlargements or additions may be made to the structure; provided: (a) The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13; and (b) The addition or enlargement itself shall: (1) Conform to use and structure requirements; and (2) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

The enclosure of the porch did not require zoning relief

Section 2001 governs nonconforming structures that are devoted to a conforming use. As explained above, the lot occupancy and the open court width at the dwelling were both nonconforming under the Zoning Regulations. However, under § 2001.2, an existing nonconforming structure may be modernized. Subsection 2001.2 states:

> Except as provided in §§ 2001.11 and 2001.12, ordinary repairs, alterations, and modernizations to the structure, including structural alterations, shall be permitted.

(11 DCMR § 2001.2.)

The Board agrees with the ZA's long standing interpretation of § 2001.2, that while the porch was nonconforming, its enclosure and replacement is considered a permissible modernization under this provision. The Appellants argue that any "grandfathered" rights under § 2001.2 would be extinguished once the porch was demolished. (Ex.2, p. 4.) However, the Board agrees with DCRA's position, that those rights are only extinguished when the entire building is demolished. (Tr., October 25, 2016, pp. 20-21, 33.)

The ZA ensured that Condition No. 1 of the Board's Order was adhered to

Appellants claim that the ZA erred because the consultation that was required under Condition No. 1 occurred after the permit was issued. Again, Appellant has no basis to claim that the ZA erred. It was the Owners' responsibility to consult with the Neighbors, not the ZA's responsibility, and the Board did not specify a time frame for this consultation. Nevertheless, because Condition No. 1 was a condition of the Board's approval, the ZA convened a meeting between the parties so that the consultation could occur. As a result of this meeting, not only did the Owners consult with the Neighbors, but the two parties agreed to abandon OP's "green wall screen" proposal and allow a continued brick wall as the addition's facade. Appellants stated as much during the hearing. (Finding of Fact 24; Tr., October 25, 2016, pp. 27-28.)

In conclusion, Appellants do not state any specific respects in which the ZA erred. In many instances, they merely restate their opposition to the special exception application. The Board is mindful that Appellants are opposed to the addition that the Board approved and believe it is too large. Indeed, their closing statement in this appeal focused on the fact that their home is half the size of the dwelling next door. (Tr., October 25, 2016, p. 37.) However, the purpose of this appeal is to determine whether the ZA erred in approving the building permit; it is not to re-litigate the special exception application. The Board does not believe the ZA erred.

For the reasons discussed above, it is **ORDERED** that the Appeal is **DENIED** and the decision of the Zoning Administrator is **SUSTAINED.**

VOTE: **4-0-1** (Frederick L. Hill, Jeffrey L. Hinkle, Anita Butani D'Souza, and Anthony J. Hood to DENY the Appeal and SUSTAIN the decision of the Zoning Administrator; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: September 25, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 19370 of Historic Mount Pleasant, Inc., pursuant to 11 DCMR §§ 3100 and 3101, from an August 3, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1605094 for a four-unit apartment house in the R-4 District at premises 1833 Lamont Street, N.W. (Square 2606, Lot 95).[1]

HEARING DATE: November 30, 2016
DECISION DATE: November 30, 2016

ORDER DENYING APPEAL

This appeal was submitted on September 6, 2016 by Historic Mount Pleasant, Inc. (the "Appellant"), a nonprofit organization formed in 1985, to challenge the decision of the Zoning Administrator, at the Department of Consumer and Regulatory Affairs, to issue a building permit that allowed use of a property in the R-4 zone as a four-unit apartment house. Following a public hearing, the Board of Zoning Adjustment ("Board" or "BZA") voted to deny the appeal and to affirm the determination of the Zoning Administrator.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated September 20, 2016, the Office of Zoning provided notice of the appeal to the Zoning Administrator, at the Department of Consumer and Regulatory Affairs ("DCRA"); the Office of Planning; the Councilmember for Ward 1 as well as the Chairman of the Council and the four At-Large Councilmembers; Advisory Neighborhood Commission ("ANC") 1D, the ANC in which the subject property is located; and Single Member District/ANC 1D03. Pursuant to 11 DCMR § 3112.14, on September 22, 2016 the Office of Zoning mailed letters providing notice of the hearing to the Appellant; the Zoning Administrator; Grace Hemmings and Jean-Claude Balcet, the owners of the property that is the subject of the appeal; and ANC 1D. Notice was published in the *D.C. Register* on September 30, 2016 (62 DCR 11853).

Party Status. Parties in this proceeding are the Appellant, DCRA, ANC 1D, and Grace Hemmings and Jean-Claude Balcet ("Property Owner").[2] There were no other requests for party status.

[1] This order refers to provisions and zone districts in effect under the Zoning Regulations of 1958 when the decision was made. The 1958 Regulations were repealed as of September 6, 2016 and replaced by the 2016 Regulations; however, the repeal and adoption of the replacement text has no effect on the validity of the Board's decision in this case or of this order.

[2] The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official

Appellant's Case. The Appellant challenged a decision by the Zoning Administrator to "approve the reconfiguration of the house at 1833 Lamont Street NW as four units" and asked "that the BZA find that this house may not be renovated as more than two units as a matter of right" due to the size of its lot. The Appellant disputed DCRA's conclusion "that the property had 'always' been four units," arguing that a certificate of occupancy issued in 1967 allowed an apartment house but did not specify the number of units and "the most recent actual use of the property (without the benefit of a C of O) was as three units …." According to the Appellant, a subsequent owner's failure to obtain a certificate of occupancy "should be considered to have discontinued the nonconforming use of this structure" as an apartment house because the property was not "certified for use as other than a single family residence during their entire tenure – 1987 to 2015." (Exhibit 7.)

DCRA. The Department of Consumer and Regulatory Affairs asserted that the Zoning Administrator correctly reviewed and approved the building permit at issue as compliant with the Zoning Regulations based on the building's prior certificate of occupancy for an "apartment house," which supporting evidence indicated had four units. DCRA argued that the legally established apartment house use was continued to the date of the building permit and that the requirements to establish a discontinuance of that use had not been met. According to DCRA, the four-unit apartment house at the subject property was a legally existing use that subsequent revisions to the Zoning Regulations had made nonconforming, and was therefore "entitled to be continued, operated, occupied or maintained per Section 2000.4, and ordinary repairs, alterations, modernizations and structural alterations are permitted per Section 2002.4 since the nonconforming use is as an apartment house in a Residence District." (Exhibit 25.)

Property Owner. The owners of the subject property stated that the building existed as a four-unit building immediately before their purchase of the property in 2015. According to the Property Owner, they "underwent a very thorough and careful due diligence process in confirming with DCRA that this property could continue to be used as four units, as provided under the Zoning Regulations and principles regarding nonconforming structures and uses." (Exhibit 24.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 1833 Lamont Street, N.W. (Square 2606, Lot 95). The lot has an area of 2,530 square feet and is improved with a three story plus basement row building.

2. According to the Appellant, the building was in use as a rooming house before July 1951,

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Code § 1-309.10(d) (2001)).) ANC 1D is the "ANC for the area within which the property that is the subject of the appeal is located," and was automatically a party in this proceeding. (*See* 11 DCMR § 3199.1(a)(4), definition of "Party.") However, ANC 1D did not participate in this appeal, and submitted no statement of issues or concerns to which the Board can give great weight.

when the acquisition of the property by John Evans was recorded. His application for a certificate of occupancy – which was issued in October 1951, the oldest certificate of occupancy on file for the subject property – indicated that the building was already in use as a rooming house and that the owner did not intend to live there himself.

3. John Evans obtained a new certificate of occupancy on March 23, 1956 to authorize use of the basement, second, and third floors of the building as a rooming house. The owner apparently used the building as his own residence as well.

4. Another certificate of occupancy, issued to a subsequent owner, Jacqueline W. Young, on November 9, 1967, granted permission to use "all & basement" floors of the building as an apartment house. The number of units was not specified in the 1967 certificate of occupancy.

5. The building was configured as four apartments when the property was acquired by Ellen Kennel and Duane Shank in 1987. During their ownership, until 2015, they reconfigured the building into three apartments, with the owners occupying the first and second floors while renting apartments on the basement and third floors.

6. No evidence was presented to demonstrate that those owners applied for or obtained building permits from DCRA when they reconfigured the building, or that they applied for or obtained a certificate of occupancy to establish the legal use of the building as a three-unit apartment house.

7. When the property was offered for sale in 2015, information provided by the listing agent described the building as three apartments, with three kitchens. (Exhibit 6.)

8. The Property Owner testified that, based on their own "very thorough and careful due diligence process" before buying the subject property in 2015, the Property Owner believed that the building was configured as a four-unit apartment house at the time of the sale. The Property Owner also stated that DCRA had confirmed that "the property could continue to be used as 4 units, as provided under the Zoning Regulations and principles regarding nonconforming structures and uses." (Exhibit 24.)

9. An architect hired by the Property Owner submitted a letter stating that, during the permit review process at DCRA, the architect provided "documentation of the existing building and the (4) units based on the existing C of O on file." Information provided to DCRA by the architect included photographs for the architect's original documentation of each unit and survey drawings of the existing building, which showed four units "compliant with bedroom emergency egress, general occupancy code compliance, as well as baths, kitchens, and an entry door for each unit." The architect concluded that the building was configured as four apartments: a two-bedroom unit in the basement, a one-bedroom unit on the first floor, and two-bedroom units on the second and third floors, with each unit

having its own kitchen, living room, bathroom. The basement unit had a separate entry; the other units had separate entries from a hallway. (Exhibit 26.)

10. The architect also stated that DCRA sent an inspector to the subject property to verify the information provided by the Property Owner. According to the architect, the inspector "had no questions regarding the existence of the (4) units." (Exhibit 26.)

11. The Property Owner testified that the building currently has a gas line to support the kitchen on the second floor. (Transcript of November 30, 2016 ("Tr.") at 258.)

12. Building Permit No. B1605094 was approved by the Zoning Administrator on August 3, 2016 and was issued on August 5, 2016 to authorize renovation of the building as a four-unit apartment house.

13. Before approving issuance of the 2016 permit, the Zoning Administrator reviewed available information to determine the authorized number of units in the apartment house, since that number was not specified on the 1967 certificate of occupancy. The Zoning Administrator concluded that in 1967 the building was likely divided into four apartments, one on each floor. Before the 2016 building permit was issued, DCRA had no knowledge that the building had ever been configured as a three-unit apartment house, since the prior owners had not applied for permits or a certificate of occupancy for that configuration.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by § 8 of the Zoning Act to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal" made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2008 Repl.).) (*See also* 11 DCMR § 3100.2.) Appeals to the Board of Zoning Adjustment "may be taken by any person aggrieved, or organization authorized to represent that person, … affected by any decision of an administrative officer … granting or withholding a certificate of occupancy … based in whole or part upon any zoning regulations or map" adopted pursuant to the Zoning Act. (D.C. Official Code § 6-641.07(f) (2008 Repl.).) (*See also* 11 DCMR § 3200.2.)

The Appellant stated the principal issue in this appeal as whether a single-family house, converted to apartment use many years ago, may now rely on a decades-old certificate of occupancy to allow renovation of the building as a multi-unit dwelling with more units than allowed under the 1958 conversion rules.[3] According to the Appellant, the lack of a valid certificate of occupancy at the time of the most recent sale of the property meant that the prior

[3] In accordance with § 330.7, a residential building existing in the R-4 zone prior to May 12, 1958 could be converted to an apartment house subject to certain conditions, including a requirement of 900 square feet of lot area per apartment unit.

nonconforming apartment house use of the building had been abandoned. The Appellant asserted that, since the prior owners never established the three-unit apartment house as a legal use of the property, the legal status of the building at the time of the 2015 sale was for use only as a single-family residence. "The Zoning Office should have recognized that this use had been discontinued and restricted the property to the two units allowed as a matter of right in an R-4 zone, as required by 11 DCMR 2005." (Exhibit 7.)

The Board does not agree. The apartment house use was legally established and authorized by a certificate of occupancy issued in 1967. The Zoning Regulations were subsequently amended such that a four-unit apartment house could not be established at the subject property as a matter of right. However, by statute, the "lawful use of a building … as existing and lawful at the time of the original adoption of any [zoning] regulation … may be continued although such use does not conform with the provisions of such regulation, provided no structural alteration, except such as may be required by law or regulation, or no enlargement is made or no new building is erected …." (D.C. Official Code § 6-641.06a (2008 Repl.).) The Zoning Regulations defined a "nonconforming use" as "any use of land or of a structure … lawfully in existence at the time this title or any amendment to this title became effective, that does not conform to the use provisions for the district in which the use is located." (11 DCMR § 199.1.) Pursuant to § 2000.4, any nonconforming use of a structure that remains nonconforming "may be continued, operated, occupied, or maintained" subject to certain restrictions. "Ordinary repairs, alterations, or modernizations may be made to a structure … devoted to a nonconforming use." (11 DCMR § 2002.4.)

Pursuant to § 3203.1, "no person shall use any structure … for any purpose until a certificate of occupancy has been issued to that person stating that the use complies" with the Zoning Regulations (subject to certain exceptions not relevant to this appeal). However, the Board finds no merit in the Appellant's assertion that the penalty for failing to maintain a proper certificate of occupancy for a nonconforming apartment house in the R-4 zone should be to "deprive [the owner] of the ability to convey the right to continue that nonconforming use to a subsequent buyer." (Exhibit 27.) Instead, a legally nonconforming use may continue even if "the paperwork supporting the use" – i.e. a new certificate of occupancy issued in the name of the new owner after the sale of a property, with no change in use – is not properly maintained. In a situation where the owner of a property obtained a certificate of occupancy to authorize a particular use but a subsequent, interim owner changed the use of the property without obtaining a new certificate, the practice of the Zoning Administrator has been to recognize the original certificate of occupancy as a baseline statement of the lawful use of the property, in keeping with the District's interest to restore the lawful condition as represented in the certificate of occupancy. (Tr. at 249.) When the current owner of the property applies to DCRA for permits, the Zoning Administrator looks to the certificate of occupancy to determine the permitted use of the property, notwithstanding any period of different use by the interim owner, when the interim owner did not obtain any building permit or certificate of occupancy from DCRA to legally establish a different use. The Board finds no error in the Zoning Administrator's determination

that the most recently issued certificate of occupancy for the subject property authorized its use as an apartment house.

The Appellant argued that the nonconforming apartment house use was interrupted or discontinued, or that, because the prior owners failed to obtain a new certificate of occupancy to authorize use of the property in their name as a three-unit apartment house, "they should be considered to have discontinued the nonconforming use of the structure. According to the Appellant, the prior owners' failure to obtain a new certificate of occupancy authorizing use the building as a three-unit apartment house constituted a "discontinuance" of the prior nonconforming apartment house use for more than 20 years, and "trigger[ed] the requirement that any subsequent use 'shall conform' to the new regulations …. Nor can a new owner claim a right to reestablish a prior nonconforming use after that use has been abandoned by the prior owner." (Exhibit 7.)

The Board does not agree. Pursuant to § 2005.1, the "[d]iscontinuance for any reason of a nonconforming use of a structure or of land … for any period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located." When making a determination as to whether the discontinuance of a nonconforming use has occurred, the Board will consider (1) the intent to abandon, and (2) some overt act or failure to act which carries the implication of abandonment. A discontinuance under § 2005.1 requires "more than mere lapse of time or 'discontinued use.'" The first thing that must be shown is that the nonconforming use has been discontinued for more than three years; then, notwithstanding the discontinuance for more than three years, the owner's intention to discontinue a nonconforming use must be proved by demonstrable, external facts such as actions or other evidence of intent. *See Appeal No. 17902-A* (March 9, 2010) (nonconforming liquor store use was not discontinued where operation of the store, although greatly reduced, never ceased for a period of more than three years; owner's failure "to do what was necessary to keep all aspects of his business viable," such as renewing a basic business license and maintaining water service, did not demonstrate an intent to abandon the nonconforming use where other actions by the owner indicated an intent to continue the nonconforming use). *See also George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342 (D.C. 1981).

In this case, the apartment house use of the property has been continued without interruption since it was established in 1967.[4] The Appellant presented no evidence indicating that the apartment house use was ever discontinued, or that any owner of the building intended to abandon the existing nonconforming use of the subject property. Instead, the Appellant's own testimony traced the use of the building as an apartment house since its conversion from a

[4] The Zoning Regulations defined "apartment house" as "any building or part of a building in which there are three (3) or more apartments…providing accommodation on a monthly or longer basis." (11 DCMR § 199.1.) Therefore, even though the prior owners reconfigured the building by removing a kitchen, the remaining three-unit building was still an apartment house for zoning purposes.

rooming house in 1967, continuing until the sale of the building, advertised as an apartment house, to the Property Owner in 2015. The Property Owner's actions – undertaking a "due diligence process" before buying the property in part to confirm that the building could legally be used as four units, and applying for a building permit to authorize renovation of the building as four units – reflected the intent of the current owner of the property to continue the nonconforming use of the building as an apartment house.

The only evidence of intent to abandon the apartment house use presented by the Appellant was the failure of the prior owners to obtain a certificate of occupancy in their name or to comply with other regulatory requirements unrelated to zoning. That oversight does not constitute an "external" act sufficient to demonstrate intent to abandon a nonconforming use, especially since the prior owners in fact continued the nonconforming apartment house use of the property for almost 30 years.

The Appellant contended that the number of apartments in the building had been reduced from four to three, as the fourth unit had been abandoned because removal of the second-floor kitchen after the 1987 purchase meant that the then owners did not intend to resume use of the second floor as a separate apartment. However, the Property Owner testified that a gas line remained on the second floor of the building, signifying that the kitchen was not completely removed. The Appellant agreed that the 1967 certificate of occupancy likely authorized four units in the apartment house, stating that the application for the certificate of occupancy had "indicated the prior use … as a rooming house of the basement and second and third floors and suggested that the new apartment house would be 4 units, one on each floor including the first." The Appellant also acknowledged that the building was configured as four units at the time of its sale in 1987, although, according to the Appellant, "the configuration of the house when sold in October 2015 … was as three units and not legal ones." (Exhibit 7.)

If a certificate of occupancy does not indicate the number of units permitted in an apartment house, the Zoning Administrator will consider available evidence to determine the configuration of the building when the certificate was issued. Relevant evidence may include representations made in the application for the certificate, photographs of the building interior, and floor plans. Because in this case, the most recent certificate of occupancy, and the application for that certificate, did not indicate the number of units in the building, a DCRA inspector visited the property to verify representations made by the Property Owner that the building had been configured as four apartments. The Board concludes that the Zoning Administrator reasonably determined that the building at the subject property was configured as four apartments at the time of issuance of the 1967 certificate of occupancy that initially authorized the apartment house use. The Board was not persuaded by the Appellant's contention that the fourth unit had been abandoned, in part because the prior owners apparently did not completely remove the gas line to the former kitchen so that it could not be easily reinstalled, and because they did not obtain a new certificate of occupancy reflecting use of the property as a three-unit building, and thus DCRA had no knowledge of any change in the apartment house use of the property.

Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not satisfied the burden of proof in its claims of error in the decision of the Zoning Administrator to issue Building Permit No. B1605094 for a nonconforming four-unit apartment house in the R-4 district at 1833 Lamont Street, N.W. (Square 2606, Lot 95). Accordingly, it is therefore **ORDERED** that the **APPEAL** is **DENIED** and the Zoning Administrator's determination is **SUSTAINED**.

VOTE: **3-1-1** (Frederick L. Hill, Anita Butani D'Souza, and Anthony J. Hood to DENY the Appeal and AFFIRM the Zoning Administrator's determination; Jeffrey L. Hinkle opposed; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: September 24, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19400 of Alabama Avenue, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RA-use requirements of Subtitle U § 421.1, to allow the construction of a 32-unit apartment building in the RA-1 zone at premises 2495 Alabama Avenue, S.E. (Square 5730, Lots 13, 15, 17, 19, 21, 23, and 913).

HEARING DATES: January 11, February 15, March 15, and May 17, 2017[1]
DECISION DATE: May 17, 2017

DECISION AND ORDER

Alabama Avenue, LLC. (the "Applicant"), filed an application with the Board of Zoning Adjustment (the "Board" or "BZA") on October 24, 2016, for a special exception under the RA-use requirements of Subtitle U § 421.1 to construct an apartment building in the RA-1 zone at premises 2495 Alabama Avenue, S.E. (Square 5730, Lots 13, 15, 17, 19, 21, 23, and 913) (the "Subject Property"). For the reasons explained below, the Board voted to deny the application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. (Exhibit 9.)

Notice of Application and Notice of Hearing. By memoranda dated November 3, 2016, the Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 8B, the ANC within which the Property is located, Single Member District 8B02 representative, and the Councilmember for Ward 8, the at-large Councilmembers and the Council Chair. A public hearing was scheduled for January 11, 2017. Pursuant to 11-Y DCMR § 402.1(a), the Office of Zoning published notice of the hearing on the application in the *D.C. Register*. (63 DCR 14115.) On November 10, 2016, the Office of Zoning sent notice of the public hearing to the Applicant, ANC 8B, the Councilmember for Ward 8, and all owners of property within 200 feet of the Property.

Party Status. The Applicant and ANC 8B were automatically parties in this proceeding. There were no requests for party status in this proceeding.

[1] This application was originally scheduled for public hearing on January 11, 2017, and was postponed to February 15, March 15, and May 17, at the Applicant's request. (Exhibits 29, 32, and 33.) The public hearing was held on May 17, 2017.

OP Report. OP filed an initial report dated March 3, 2017, noting that it is unable to make a recommendation and supporting the Applicant's request for postponement of the hearing. (Exhibit 35A.) OP's second report, dated May 5, 2017, recommended denial of the application. (Exhibit 35B.) Specifically, OP indicated that while the proposal is "generally consistent with zoning, questions regarding side yard conformity remain, and the application is sufficiently incomplete that a recommendation of approval is not possible at this time." (Exhibit 35B.)

DDOT Report. DDOT also filed a report dated May 3, 2017, stating that it had no objection to the requested relief with two conditions. (Exhibit 34.) The conditions requested by DDOT would require the Applicant to close the site's existing curb cut, provide site access via the public alley, and provide bicycle parking spaces.

ANC Report. ANC 8B did not file a written report to the record.

FINDINGS OF FACT

1. The property is located at 2495 Alabama Avenue S.E. (Square 5730, Lots 13, 15, 17, 19, 21, 23, and 913) (the "Subject Property") and is zoned RA-1.

2. The Subject Property is improved with remnants of a vacant apartment building, consisting of the building foundation and portions of the front, side, and rear facades.

3. The Applicant proposes to raze the existing structure and construct a four-story, 32-unit apartment building on the Subject Property.

4. Subtitle U § 421.1 provides that in the RA-1 zone all new residential developments, except those comprising all one-family detached and semi-detached dwellings, shall be reviewed by the Board of Zoning Adjustment as special exceptions under Subtitle X, in accordance with the standards and requirements provided in U § 421.

5. Subtitle U § 421 provides the following specific standards and requirements:

    421.2 The Board of Zoning Adjustment shall refer the application to the relevant District of Columbia agencies for comment and recommendation as to the adequacy of the following:

    (a) Existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project; and
    (b) Public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project.

    421.3 The Board of Zoning Adjustment shall refer the application to the Office of Planning for comment and recommendation on the site plan, arrangement

of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood, and the relationship of the proposed project to public plans and projects.

421.4 In addition to other filing requirements, the developer shall submit to the Board of Zoning Adjustment with the application a site plan and set of typical floor plans and elevations, grading plan (existing and final), landscaping plan, and plans for all new rights-of-way and easements.

6. The Applicant did not submit existing or final grading plans, a landscaping plan, nor plans for new rights-of-way and easements, as is required by Subtitle U § 421.4.

7. The Applicant submitted a letter from the Office of the Zoning Administrator (the "ZA") stating that an expansion of the existing apartment building on the Subject Property is permitted as a matter of right, provided that at least 50% of the existing structure is retained. (Exhibit 38.) Therefore, if the Applicant were to build an addition to the existing structure, rather than raze the structure to construct a new apartment building, special exception relief would not be required.

8. At the public hearing on May 17, 2017, the Board notified the Applicant that the information required by Subtitle U § 421 has not been submitted to the record, and indicated that it does not have enough information to make a determination as to whether the application meets the general special exception criteria. (BZA Public Hearing Transcript ("Tr.") of May 17, 2017, pp. 18-19 and 33.)

9. The Board proposed to continue the hearing in order to allow the Applicant additional time to work with OP and submit the requested information. (Tr. at pp. 34-35.)

10. The Applicant declined to continue the hearing, indicating that it instead would pursue the matter-of-right alternative noted in the letter from the ZA. Instead of withdrawing the case, the Applicant requested that the Board vote on the application. (Tr., pp. 35-36.)

CONCLUSIONS OF LAW

The Applicant requests a special exception under the RA-use requirements of Subtitle U § 421.1, to allow the construction of a 32-unit apartment building in the RA-1 zone. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11-X DCMR § 901.2.)

Pursuant to 11-X DCMR § 901.3, "[t]he applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility."

Based on the record, the Board concludes that the Applicant has not provided evidence sufficient to demonstrate that there will be no adverse impact nor has the Applicant met the specific requirements of Subtitle U § 421. Specifically, the Applicant failed to submit a grading plan, a landscaping plan, and plans for all new rights-of-way and easements, as is required by Subtitle U § 421.4. At the public hearing on May 17, 2017, the Board afforded the Applicant the opportunity to continue the hearing in order to work further with OP and to submit the required information, but the Applicant declined to continue the hearing and requested that the Board vote on the application at that time. Thus, the Board must deny the request for special exception relief.

Great Weight

The Board is required to give "great weight" to the recommendation of OP. (D.C. Official Code § 6-623.04 (2012 Repl.).) In this case, OP recommended denial, based on a lack of information submitted by the Applicant. (Exhibit 35B.) The Board voted to deny the application on that basis.

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.)).) In this case, ANC 8B did not submit a written report to the record.

Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **3-0-2** (Peter A. Shapiro, Lesylleé M. White, and Frederick L. Hill to DENY; Carlton E. Hart abstaining; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: September 25, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19633-A of VI 3629 T Street LLC, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance to the relief approved by BZA Order No. 19633 to include a special exception under Subtitle D § 5201 from the front setback requirements of Subtitle D § 1205.2, to construct a three-story rear addition to an existing principal dwelling unit in the R-20 zone at premises 3629 T Street, N.W. (Square 1296, Lot 804) (the "Subject Property").

HEARING DATE (Case No 19633):	December 6, 2017
DECISION DATE (Case No. 19633):	December 13, 2017
ORDER ISSUANCE DATE (Case No. 19633):	December 14, 2017
MODIFICATION HEARING DATE:	May 9, 2018
MODIFICATION DECISION DATE	May 9, 2018

DECISION AND ORDER

On March 1, 2018, the Applicant submitted an application for a minor modification to the relief approved by BZA Order No. 19633. On March 15, 2018, the request was changed to a request for a modification of significance (the "Modification of Significance", "Modification" or the "Application"). Following a public hearing, the Board of Zoning Adjustment ("Board" or "BZA") voted to approve the Application for a modification of significance.

The original application (No. 19633) (the "Original Application") was granted pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear addition requirements of Subtitle D § 1206.4, to construct a three-story rear addition (the "Addition") to an existing principal dwelling unit in the R-20 zone at premises 3629 T Street, N.W. (Square 1296, Lot 804).

BACKGROUND

On December 13, 2017 in Application No. 19633, the Board approved the self-certified request by VI 3629 T Street LLC (the "Applicant") for a special exception pursuant to Subtitle D § 5201 from the rear addition requirements of Subtitle D § 1206.4, to construct a three-story rear addition. The Board issued a Summary Order No. 19633 (the "Original Order" or the "Summary Order") on December 14, 2017, granting approval pursuant to the approved plans (the "Approved Plans") in Exhibits 41A and 42 in Case No. 19633.

After the Summary Order was issued, the Applicant was informed by Department of Consumer and Regulatory Affairs ("DCRA") that the front vestibule — which was included in the BZA-Approved Plans — required front setback relief. Subtitle D § 1205.2 states: "a front setback

consistent with at least one (1) of the immediately adjacent properties on either side shall be provided in the R-20 zone." The Subject Property and the adjacent property have the same setback and the proposed vestibule slightly decreases the Subject Property's front setback by approximately four feet; accordingly, the Applicant needed additional relief as the proposed front setback would be inconsistent with the only adjacent property.

The Applicant originally requested a minor modification to the Summary Order pursuant to 11-Y DCMR § 703.3. However, the Office of Zoning advised the Applicant to apply instead for a Modification of Significance pursuant to Subtitle Y § 704 because the Applicant sought additional relief from that granted.

MODIFICATION OF SIGNIFICANCE

Application. On March 15, 2018, the Applicant submitted its Application for a Modification of Significance to the relief approved by Summary Order No. 19633 to include a special exception under Subtitle D § 5201 from the front setback requirements of Subtitle D § 1205.2. The Applicant is not proposing to alter the Approved Plans, only adding an area of relief that was not included in the Original Application. The Application indicated that the proposed Modification of Significance meets the burden of proof for both the modification and the associated special exception relief.

Notice of Application and Notice of Public Hearing. By memoranda dated March 22, 2018, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); the District Department of Transportation; the Councilmember for Ward 2; Advisory Neighborhood Commission ("ANC") 2E, the ANC for the area within which the Subject Property is located; and the single-member district ANC 2E-01, and the owners of all property within 200 feet of the Subject Property. The public hearing took place on May 9, 2018.

Party Status
The Applicant and ANC 2E were automatically parties in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant provided evidence and testimony that the proposed Modification to include front setback relief satisfied the applicable requirements of the Zoning Regulations under 11-Y DCMR § 704 and 11-D DCMR § 5201.

OP Report. In its memoranda dated April 27, 2017, the Office of Planning recommended approval of the requested relief. In its report, OP determined that the Modification request met the standards of Subtitle D § 5201 as the light and air available to the only adjacent property at 3627 T Street would not be affected with any significant shadowing, the privacy and use of enjoyment of the only adjacent property would not be unduly compromised, and the issue of the altered front façade was discussed at the public hearing for the project as a whole. Specifically, that the Board discussed that the plans would not be out of character with the residential street

and acknowledged that the changes the Applicant made in the Original Application made it more compatible with the street frontage.

DDOT Report. By memoranda dated April 26, 2018, DDOT indicated it had no objection to the approval of the Modification, noting that the proposal will have no adverse impacts on travel conditions of the District's transportation network.

ANC Report. ANC 2E, an automatic party to this proceeding, submitted a report. In its report, dated May 8, 2018, the ANC voted 8-0-0 to advise the Board of Zoning Adjustment to deny the requested Modification because it does not support vestibules. The Applicant presented the same plans to the ANC during the first hearing. The ANC chose to neither support nor deny the Original Application.

Persons in Support. The Board received a letter in support from Sarah Lamb, the owner of the only adjacent property at 3627 T Street, N.W.

Persons in Opposition. The Board received seven letters in opposition. None of the letters were from owners within a 200 foot ("ft.") radius of the Subject Property.

FINDINGS OF FACT

The Subject Property and Nearby Properties

1. The Subject Property is located at 3629 T Street, N.W. (Square 1296, Lot 395).

2. The Subject Property is a small rectangular record lot measuring 2,300 square feet in land area.

3. The Subject Property is located in the R-20 zone district.

4. The Subject Property is currently improved with an attached row dwelling which houses a principal dwelling unit (the "Building").

5. Abutting the Subject Property to the east is a row dwelling.

6. Abutting the Subject Property to the north and west are improved public alleys.

7. Abutting the Subject Property to the south is T Street, N.W.

The Requested Modification and Special Exception

8. The Application originally requested minor modification in order to modify the Original Order.

9. The Applicant amended the requested relief and applied for a modification of significance pursuant to Y § 704.

10. The scope of a hearing for a modification of significance is limited to the impact of the modification on the subject of the original application and does not permit the Board to revisit its original decision.

11. The Applicant did not alter the original—and existing—plans in any way and requested the Modification in order to construct what was previously approved by the Board in the original hearing. At that hearing, the Board determined that the project, which included the vestibule that is the subject of this modification, would not substantially visually intrude upon the character, scale, and pattern of houses along T Street.

12. As part of the modification, the Applicant demonstrated how the proposal continued to meet the standards of Subtitle X, Chapter 9 and the criteria of Subtitle E §§ 5201.3 through 5201.6.

13. The Applicant is permitted to request special exception relief for "yards" pursuant to Subtitle D § 5201.

14. The Original Application was reviewed under the same standards (Subtitle D § 5201) as the special exception relief requested in the Modification, as the Applicant was requesting relief for "yards" in the Original Application (rear yard setback).

15. The Applicant proposes to construct a small entryway vestibule which was included in the Approved Plans in the Original Application.

16. The zoning regulations (Subtitle D § 1205.2) require the front setback to match one of the immediately adjacent properties. The entryway vestibule alters the front setback from 26 ft. 2.4 in., to 21 ft. 10.4 in. As the only adjacent property has a front setback of 26 ft. 2.4 in., the Applicant must ask for relief for the four ft. four in. deviation.

17. The requested Modification and vestibule will not alter the light and air available to the only neighboring property at 3627 T Street, N.W. The vestibule is only on a portion of the Building on the side closest to the alley, not the adjacent property.

18. The Applicant provided evidence in the form of testimony, plans, and elevations demonstrating that because the vestibule would have no windows facing the only adjacent property, the privacy and use of enjoyment of neighboring properties shall not be unduly compromised.

19. The Addition together with the original building as viewed from the street, alley, and other public way, will not substantially visually intrude upon the character, scale, and pattern of houses along T Street.

20. The Applicant provided photographs demonstrating the diversity of character, scale, pattern, and setbacks in the surrounding area.

21. The lot occupancy of the proposed building is 45%, which is less than 70% lot occupancy permitted by special exception.

22. The Applicant provided ample graphical representations such as plans, photographs, elevations, shadow studies, and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways. (See Exhibits 5A1-5A2, 27A, and 41.)

23. The R-20 zone is intended to retain and reinforce the unique mix of housing types, including detached, semi-detached, and attached dwellings, and permit attached row houses on small lots and includes areas where attached houses are mingled with detached houses and semi-detached houses. Accordingly, the proposal is in harmony with the general purpose and intent of the zoning regulations and zoning maps, as the Applicant is providing an addition to an existing row dwelling in a neighborhood with a mix of dwelling types.

24. The difference in impact between the existing front façade and what is proposed is only four feet and four inches, and is only on the side of the Subject Property closest to the alley, not the adjacent property. Accordingly, the proposal does not tend to affect adversely, the use of neighboring property.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests a modification of significance pursuant to Subtitle Y § 704. Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence requires a public hearing and is a modification of significance. The Applicant's request complies with 11 DCMR Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

In the current case, the Applicant submitted a Modification request for an additional area of special exception relief under Subtitle D § 5201—from the front setback requirements of Subtitle D § 1205.2. Since additional relief was requested, the Board finds that it meets the definition of a modification of significance.

Pursuant to Subtitle Y § 704.6, a public hearing on a request for a modification of significance shall be focused on the relevant evidentiary issues requested for modification and any condition

impacted by the requested modification. Pursuant to Subtitle Y § 704.7, the scope of a hearing conducted pursuant to Subtitle Y § 704.1 is limited to the impact of the modification on the subject of the original application and does not permit the Board to revisit its original decision. Pursuant to Subtitle Y § 704.8, a decision on a request for modification of plans shall be made by the Board on the basis of the written request, the plans submitted therewith, and any responses thereto from other parties to the original application. Finally, pursuant to Subtitle Y § 704.9, the filing of any modification request under this section does not act to toll the expiration of the underlying order and the grant of any such modification does not extend the validity of any such order.

As part of the Modification, the Applicant requests special exception relief pursuant to Subtitle D § 5201 from the front setback requirements of Subtitle D § 1205.2.

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant applications for modifications of significance and special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11-Y DCMR § 704 and 11-X DCMR § 901.2.)

Burden of Proof

Pursuant to Subtitle D § 5201 a special exception from the front setback requirements may be granted if the Application meets both the general and specific special exception requirements.

The specific requirements of Subtitle D §§ 5201.3-5201.6 are as follows:

5201.3 (a) The light and air available to neighboring properties shall not be unduly affected

The Applicant presented evidence in the form of elevations, renderings, and shadow studies. The evidence demonstrated that the proposed vestibule and related relief would not unduly affect the light and air available to the neighboring property. (Fact 17.)

The only adjacent neighbor, Sarah Lamb, owner of 3627 T Street, N.W., submitted a letter in support of the Project and Modification. The letter indicated that the proposed front vestibule would not impact the light and air available to her property. (Exhibit 8.)

The ANC report did not specifically address whether the vestibule would unduly affect the light and air available to the neighboring property. (Exhibit 40.)

In its report, the Office of Planning found that the light and air available to neighboring properties would not be unduly affected by the requested modification and relief as the proposed vestibule would be located closest to the alley and not the abutting residence. (Exhibit 34.)

The Board credits the report provided by the Office of Planning, the shadow study, and renderings provided by the Applicant and finds that the proposed vestibule will not unduly affect the light and air available to neighboring properties.

5201.3 (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised

The Applicant provided evidence in the form of testimony, plans, and elevations demonstrating that because the vestibule would have no windows facing the only adjacent property, the privacy of use and enjoyment of neighboring properties will not be unduly compromised. (Facts 17-18.)

The only adjacent neighbor, Sarah Lamb, owner of 3627 T Street, N.W., submitted a letter in support of the Project and modification. The letter indicated that the proposed front vestibule would not impact the light and air available to her property. (Exhibit 8.)

The ANC report did not specifically address whether the privacy and use of enjoyment of neighboring properties would be unduly compromised. (Exhibit 40.)

In its report, the Office of Planning found that the privacy of use and enjoyment of adjacent neighbors should not be unduly compromised by the front vestibule and related front setback relief. (Exhibit 34.)

The Board credits the testimony of the Applicant and the Office of Planning and finds that the privacy of use and enjoyment of neighboring properties will not be compromised by the proposed vestibule and front setback relief.

5201.3(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage

This requirement was discussed at length at the Original Hearing where the Board determined that the Approved Plans and project, which included the vestibule that is the subject of this modification, would not substantially visually intrude upon the character, scale, and pattern of houses along T Street. (Facts 11-15.)

The ANC Report noted that the ANC did not support a vestibule but it provided no explanation as to how the requested relief failed to meet the requirements of Subtitle D § 5201. The ANC Commissioner testified that all vestibules constructed after the 2016 Zoning Regulations went into effect were illegal. (Fact 28). The Board disagrees with this point, as vestibules are not

prohibited pursuant to the Zoning Regulations, only front additions not meeting the front setback requirements of the applicable zone.

Ms. Juppenlatz who testified in opposition asserted that the proposed vestibule would be out of character with the neighborhood. (Fact 29.)

The OP Report found that the proposed vestibule would not visually intrude upon the character, scale, and pattern of houses along T Street.

The Board credits the Applicant's photographic evidence as well as the ANC report in its determination that the proposed vestibule and related relief will not substantially visually intrude upon the character, scale, and pattern of houses along T Street. As demonstrated by the photographs, there is a variety of front setbacks and entryway vestibules on this block of T Street and the surrounding blocks. (Fact 21, Exhibit 41, pp. 9, 15-19, 22-24.)

5201.3 (d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways

The Applicant provided graphical representations such as plans, photographs, elevations, and shadow studies, and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways. (Fact 23; Exhibits 5A1-5A2, 27A, and 41.)

5201.3 (e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%)

The lot occupancy of the proposed building is 45%, which is less than 70% lot occupancy. (Fact 22.)

Neither the ANC, nor the persons in opposition asserted that the lot occupancy was more than 70%.

5201.4 The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.

The Board is not requiring any special treatment.

5201.5 This section shall not be used to permit the introduction or expansion of a nonconforming use as a special exception.

The Applicant did not request the introduction or expansion of a nonconforming use as a special exception.

5201.6 This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.

The Applicant did not request the introduction or expansion of nonconforming height or number of stories as a special exception.

General Special Exception Requirements

The Application must also satisfy the general special exception criteria of Subtitle X § 901.2 which states that the Board is authorized to grant special exception relief where, in the judgement of the Board, the special exception "will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;" and "will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps."

As discussed below, the Application meets the general special exception criteria.

In harmony with the general purpose and intent of the zoning regulations

The R-20 zone is intended to retain and reinforce the unique mix of housing types, including detached, semi-detached, and attached dwellings, and permit attached row houses on small lots and includes areas where attached houses are mingled with detached houses and semi-detached houses. (Fact 24.)

The Board finds that the zoning regulations specifically permit special exceptions and the purpose of the Board is to review such cases. The Applicant is proposing a modest update to a row dwelling. There are a variety of entryways and front setbacks in the area and on this block of T Street. Accordingly, the proposal is in harmony with the general purpose and intent of the zoning regulations and zoning maps, as the Applicant is providing an addition to an existing row dwelling in a neighborhood with a mix of dwelling types.

Will not tend to affect adversely the use of neighboring property.

The second prong of the general special exception requirements is that the requested relief will not tend to affect adversely the use of neighboring property.

The only directly adjacent property is 3627 T Street, N.W. The owner of that property provided a letter in support of the Original Application and the Modification of Significance. (Exhibit 8.) All other properties are separated from the Subject Property by streets or alleys. Accordingly, the Board finds that the proposed vestibule will not affect adversely the use of neighboring properties.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (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) (2001).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted). In this case, ANC 2E submitted a resolution in opposition to the modification. However, the resolution did not address the legal issues related to the requested Modification and special exception relief.

Based on the case record, the testimony at the hearing, the additional submissions by the Applicant, and the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a Modification of Significance to the Original Order to include special exception relief pursuant to 11-D DCMR § 5201, for relief from the front setback requirements of 11-D DCMR § 1205.2

Accordingly, it is **ORDERED** that the Application for modification of significance is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 5A1-5A2, and 27A – APPROVED ARCHITECTURAL PLANS – NO CHANGE REQUESTED (PART 1), APPROVED RENDERINGS – NO CHANGE REQUESTED (PART 2), AND SUPPLEMENTAL DRAWINGS.**

VOTE: **4-1-0** (Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Peter G. May to APPROVE; Frederick L. Hill to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: September 26, 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 § 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. 19677 of Plant the Seed Youth Treatment Services, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 203.1(i) to allow a health care facility for a maximum of 15 persons in the R-2 Zone at premises 5212 Astor Place, S.E. (Square 5308, Lot 25).[1]

HEARING DATES: January 31, February 21, and April 17, 2018
DECISION DATE: April 17, 2018

DECISION AND ORDER

This application was submitted on November 15, 2017 by a representative of Plant the Seed Youth Treatment Services (the "Applicant"), the lessee of the property that is the subject of the application.[2] The application requested special exception relief to allow operation of a health care facility for a maximum of 15 persons in the R-2 district at 5212 Astor Place S.E. (Square 5308, Lot 25). After a public hearing, the Board of Zoning Adjustment ("Board") voted to grant the application subject to one condition.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated December 13, 2017, the Office of Zoning provided notice of the application to the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), the Councilmember for Ward 7, and the chairman as well as the four at-large members of the D.C. Council. Pursuant to 11 DCMR Subtitle Y § 402.1, on December 13, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicant; the owners of all property within 200 feet of the subject property; Advisory Neighborhood Commission ("ANC") 7E, the ANC in which the subject property is located; and

[1] Consistent with a referral memorandum from the Office of the Zoning Administrator dated November 16, 2017, the Applicant initially requested a special exception under Subtitle U § 203.1(e) to allow an increase in the occupant load of an existing community-based institutional facility from six to 15 persons. (Exhibit 12.) A revised memorandum from the Office of the Zoning Administrator, dated February 12, 2018, stated the necessary relief as a special exception pursuant to Subtitle U § 203.1(i) for an increase in the occupant load of an existing health care facility from six to 15 persons. (Exhibit 41.) The application was amended accordingly. (*See* Exhibit 42.) The Applicant has not yet established a health care facility at the subject property, where that use is permitted, with a maximum of as many as eight residents, as a matter of right. (*See* Subtitle U § 202.1(j).) Approval by special exception is required for an increase in the occupant load beyond the number of residents permitted as a matter of right, in accordance with Subtitle U § 203.1(i).

[2] The subject property is owned by Joyce Ukwuani and Godwin Ukwuani, who authorized the application on behalf of Plant the Seed Youth Treatment Services by its representative, Michael Davis. (*See* Exhibit 38.)

Single Member District/ANC 7E06. Notice was published in the *District of Columbia Register* on December 15, 2017 (64 DCR 12672).

Party Status. The Applicant and ANC 7E were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application by the Marshall Heights Civic Association ("MHCV").

Applicant's Case. The Applicant provided evidence and testimony about the planned health care facility use of the subject property, and asserted that the proposal would satisfy all requirements for approval of the requested zoning relief.

OP Report. By memorandum dated February 13, 2018, the Office of Planning recommended approval of a special exception under Subtitle U § 203.1(e)[3] to increase the occupant load of the Applicant's existing health care facility from six to 15 persons, subject to a condition limiting the number of residents to 15, not including supervisors and staff. (Exhibit 43.)

DDOT. By memorandum dated January 17, 2018, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 35.)

ANC Report. At a public meeting on January 9, 2018, with a quorum present, ANC 7E adopted a resolution in opposition to the application citing "community dissatisfaction" and objecting that the Applicant's proposal would be "a city-wide center that wants to be planted in Marshall Heights where we have currently an inundation of service facilities." The ANC also asserted that "the size of the property as well as the amount of people would not be feasible for the safety of the occupancy and the community." (Exhibit 36.)

Party in opposition. The Marshall Heights Civic Association described its members' "dissatisfaction…regarding this program being operated in the neighborhood" and cited the opposition of ANC 7E in testifying against approval of the application. According to MHCA, approval of the Applicant's proposed use of the subject property would create adverse impacts on neighboring properties especially relating to safety concerns, including "congregation of youth and other substance abuser[s] in the immediate area." The party in opposition also commented unfavorably on the prior institutional use of the subject property and the "[p]revalence of non-profit, for-profit and government managed service facilities designed for high risk populations concentrated in one geographical area," and asserted that the Applicant had made "misleading" statements about the purpose of the proposed facility in seeking community support for the application.

Persons in support. The Board received heard testimony from persons in support of the application describing the need for the proposed health care facility use.

[3] In testimony at the hearing, the OP representative referenced the amended relief under Subtitle U § 203.1(i) in recommending approval of the application.

Person in opposition. The Board received a letter from a person in opposition to the application, who complained about the adverse impacts created by a "group home for young boys," apparently unaffiliated with the Applicant and at a different location, and asserted that the neighborhood contains too many such facilities.

FINDINGS OF FACT

1. The subject property is located on the north side of Astor Place, S.E. approximately mid-block between 53rd and 51st Streets. (Square 5308, Lot 25).

2. The subject property is rectangular, 40 feet wide and 100 feet deep, with a lot area of 4,000 square feet.

3. The subject property is improved with a two-story semi-detached building providing approximately 3,400 square feet of space, and containing nine bedrooms. The building is currently unoccupied and was previously used by a residential education program.

4. The Applicant was issued a certificate of occupancy on July 6, 2017 authorizing use of the subject property as a "community based residential facility for 6 residents and 2 staff" but has not yet established any use in the building. The Office of the Zoning Administrator later determined that the use planned by the Applicant will, for zoning purposes, be considered a health care facility. (Exhibit 41.)

5. A health care facility with up to eight residents may be permitted as a matter of right at the subject property.[4] (Subtitle U § 202.1(j).) The Applicant seeks special exception approval, pursuant to Subtitle U § 203.1(i), to operate a health care facility for a maximum of 15 persons to provide residential substance abuse treatment for male youths between the ages of 13 and 20 at the subject property. No employees of the facility will live at the subject property.

6. The Applicant testified that the planned health care facility will operate as a 28-day program with a four-to-one ratio of residents to staff and services provided by licensed social workers as well as medical personnel. At least four employees will be present at all times. The residents will participate in an in-patient treatment program, and will not leave the premises except under the supervision of the facility's staff. The program will utilize security measures in addition to the supervision of residents by employees, including the installation of surveillance cameras both inside (on each floor of the

[4] Pursuant to Subtitle U § 202.1(j), the uses permitted as a matter of right in the R-2 zone include a health care facility for not more than six persons not including resident supervisors or staff and their families; the facility may accommodate up to eight persons, not including resident supervisors or staff and their families, so long as no existing health care facility for seven or more persons is located in the same square or within a radius of 1,000 feet from any portion of the subject property.

facility) and outside the building (at the front entrance, on the side, and at the rear of the property).

7. The Applicant did not propose any enlargement of the existing building, or any change to its current residential appearance.

8. A driveway is located along the western edge of the subject property, leading to a paved area at the rear of the lot. The paved area is sufficiently large to provide at least two parking spaces consistent with the size requirements imposed by the Zoning Regulations. The parking area is not visible from the street. Views from adjoining properties are limited by existing fences and trees.

9. Properties in the vicinity of the subject property are developed primarily with residential uses, generally a mix of detached and semi-detached principal dwellings as well as some small multi-family buildings. Two apartment houses, each three stories in height and containing approximately 12 units, are located immediately to the west of the subject property. The area also contains some institutional uses and several churches, including one located on the abutting property to the north of the subject property.

10. No other health care facility operates in the same square or within 500 feet of the subject property.

11. The subject property is located in an R-2 zone, which like all Residence House (R) zones is designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.)

12. The provisions of the R zones are intended to: (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and dimensions for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 100.2.)

13. The purpose of the R-2 zone is to: (a) provide for areas with semi-detached dwellings; and (b) protect these areas from invasion by denser types of residential development. (Subtitle D § 300.4.) The R-2 zone is intended to provide for areas predominantly developed with semi-detached houses on moderately sized lots that also contain some detached dwellings. (Subtitle D § 300.5.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle U § 203.1(i) to allow operation of a health care facility for a maximum of 15 persons in the R-2 district at 5212 Astor Place, S.E. (Square 5308, Lot 25). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle U § 203.1(i), a health care facility use for nine to 300 persons, not including resident supervisors or staff and their families, may be permitted in the R-2 zone by special exception, subject to conditions.[5] The conditions applicable to this application require that (a) no other property containing a health care facility is located either in the same square or within a radius of 500 feet from any portion of the subject property; (b) adequate, appropriately located and screened off-street parking must be available to provide for the needs of occupants, employees, and visitors to the facility; (c) the proposed facility must meet all applicable code and licensing requirements; and (d) the facility must not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.

Based on the findings of fact, the Board concludes that the application satisfies the requirements for special exception relief in accordance with Subtitle U § 203.1(i) and Subtitle X, chapter 9. The Board finds no evidence that any other property containing a health care facility is located either in the same square or within a radius of 500 feet from any portion of the subject property.

The proposed health care facility will have adequate, appropriately located and screened off-street parking available to provide for the needs of occupants, employees, and visitors to the facility. In this case, the subject property has a parking area large enough for at least two vehicles to park in zoning-compliant off-street spaces at the rear of the building, in satisfaction of the parking requirement for zoning purposes. The parking area is located immediately outside the building, and is screened from view from the street and from other properties. The health care facility is not likely to generate a large demand for parking, since residents will not drive to or maintain vehicles at the facility, and the number of employees, as well as the number of visitors, if any, will be relatively small.

[5] Pursuant to Subtitle U § 200.2, the Applicant's property, which is located in the R-2 zone, is governed by provisions applicable in R-Use Group B. Accordingly, the condition stated in Subtitle U § 203.1(i)(1), which applies to properties subject to provisions applicable in R-Use Group A, does not apply to this application. The condition stated in Subtitle U § 203.1(i)(6), concerning the cumulative effect of facilities, is also inapplicable to this application because no other health care facility is currently in operation in the same square or within 500 feet of the subject property.

The Board concludes that the proposed facility will meet all applicable code and licensing requirements. The Applicant is not proposing any changes to the existing building. As noted by the Office of Planning, the proposed facility must be certified by the D.C. Department of Behavioral Health as a provider of substance use disorder treatment and recovery.

The Board also concludes that the Applicant's proposed health care facility use will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area. As previously noted, the facility is not likely to generate a substantial amount of traffic to the site, given the relatively small size of the planned operation. DDOT concurred that the proposed use would have no adverse impacts on the travel conditions of the District's transportation network. Similarly, the facility is not likely to have any adverse impact related to noise or operations, since the facility will offer in-patient services entirely inside the existing building, and residents will not leave the premises except under the supervision of the facility's staff.

The ANC and party in opposition both argued that the neighborhood has "an inundation of service facilities"[6] but they did not present substantial evidence that would cause the Board to conclude that approval of the requested zoning relief would have an adverse impact on the neighborhood because of the number of similar facilities in the area. The Zoning Regulations permit a health care facility at the subject property with as many as eight residents as a matter of right. No other health care facility is located near the subject property. Based on the evidence in the record, the Board concludes that the Applicant's planned health care facility, with a maximum of 15 residents, will not cause an adverse impact on the neighborhood because of the number of similar facilities in the area. However, the requested zoning relief is approved subject to a four-year term of approval so that conditions may be reassessed in the near future.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. As discussed above, the Board does not find that the planned health care facility will create any adverse impacts on the use of neighboring property. Approval of the requested special exception will be in harmony with the design of the Residence House zones to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses, and consistent with the intent of the R zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; allow for limited compatible accessory and non-residential uses; and allow for the matter-of-right development of existing lots of record. Consistent with the purpose of the R-2

[6] ANC resolution in opposition to the application. (Exhibit 36.)

zone specifically, approval of the requested zoning relief will maintain the existing semi-detached dwelling on the subject property.

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.).) For the reasons discussed above, the Board concurs with OP's recommendation that the application should be approved in this case.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (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)(3)(A) (2012 Repl.)).) In this case ANC 7E expressed opposition to the application, citing "community dissatisfaction" and objecting that the Applicant's proposal would be "a city-wide center that wants to be planted in Marshall Heights where we have currently an inundation of service facilities." The ANC also asserted that "the size of the property as well as the amount of people would not be feasible for the safety of the occupancy and the community." (Exhibit 36.) For the reasons discussed above, the Board did not find the ANC's views persuasive and instead concludes that the Applicant has provided sufficient evidence to demonstrate compliance with zoning requirements for a health care facility with 15 residents at the planned location.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception pursuant to Subtitle U § 203.1(i) to allow operation of a health care facility for a maximum of 15 persons in the R-2 zone at 5212 Astor Place S.E. (Square 5308, Lot 25). Accordingly, it is **ORDERED** that the application is **GRANTED SUBJECT TO THE FOLLOWING CONDITION:**

1. This approval shall be valid for a term of FOUR YEARS, beginning on the effective date of this order.

VOTE: **4-0-1** (Carlton E. Hart, Frederick L. Hill, Lorna L. John, and Peter G. May to APPROVE; Lesylleé M. White not present, not 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: September 24, 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 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 CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19811 of Columbia Heights Partners LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the density requirements of Subtitle E § 201.4, to permit an existing 17-unit apartment house in the RF-1 Zone at premises 4526 13th Street N.W. (Square 2817, Lot 36).

HEARING DATE: September 19, 2018
DECISION DATE: September 19, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 2.) 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") 4C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 12, 2018, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 36.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 34.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 31.)

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 density requirements of Subtitle E § 201.4, to permit an existing 17-unit apartment house in the RF-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 adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle E § 201.4, the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that

creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 4.**

VOTE: **5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Michael G. Turnbull 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: September 26, 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.

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. 19817 of Judith LaValle, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E §§ 205.5 and 5201 from the rear addition requirements of Subtitle E § 205.4, to construct a two-story rear addition to an existing principal dwelling unit in the RF-1 zone at premises 1515 E Street S.E. (Square 1076, Lot 17).

HEARING DATE: September 19, 2018
DECISION DATE: September 19, 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 or provide testimony related to the application. However, at the hearing, the Applicant's representative testified that they met with the ANC and the ANC voted to support the application.

The Office of Planning ("OP") submitted a timely report, dated September 7, 2018, recommending approval of the application. (Exhibit 37.) The District Department of Transportation ("DDOT") submitted a timely report, dated September 7, 2018, indicating that it had no objection to the grant of the application. (Exhibit 38.)

The record contains a petition signed by 11 neighbors in support of the application (Exhibit 34) as well as six letters from neighbors in support of the application. (Exhibits 27, 32, 33, 36, 42, and 43.)

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 and 5201 from the rear addition requirements of Subtitle E § 205.4, to construct a two-story rear addition to an existing principal

dwelling unit 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 averse to any party.

Based upon the record before the Board and having given great weight to the OP[1] report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, Subtitle E §§ 205.5, 5201, 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 9 – ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: **5-0-0** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Michael G. Turnbull 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: September 21, 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

[1] The Board acknowledged the ANC's support, but absent an ANC report, there was nothing to give great weight to.

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. 19819 of Southern Hills LP, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the theoretical subdivision provisions of Subtitle C § 305, under the new residential development requirements of Subtitle U § 421, and the use provisions of Subtitle U § 320.1(b), and pursuant to Subtitle X, Chapter 10, for a variance from the height requirements of Subtitle F § 303.1, to demolish the existing apartment houses and construct five new apartment houses, 42 attached principal dwelling units, and a new community service center in the RA-1 Zone at premises 4201, 4209, 4219, 4333, 4337, and 4347 4th Street S.E. and 304 Livingston Terrace S.E. (Square 6167, Lots 45, 46, 47, 48, 49, 50, and 51).

HEARING DATE: September 19, 2018
DECISION DATE: September 19, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11-Y DCMR § 300.6. (Exhibits 4 (original) and 42 (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") 8D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8D, which is automatically a party to this application. The ANC submitted a timely report in support of the application. The ANC report indicated that at a duly noticed and scheduled public meeting on July 26, 2018, at which a quorum was present, the ANC voted by majority vote to support the application. (Exhibit 43.)

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 39.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 40.)

[1] The original application also included variance relief for side yard under Subtitle F § 306.2 (Exhibit 4), but that request for relief was later withdrawn. (Exhibit 42.) The caption has been changed to reflect the amendment.

At the hearing, Dolores Bushong, community representative on the Urban Forestry Advisory Committee and a volunteer with Casey Trees, and Kristin Taddei, Casey Trees, testified about tree protection at the project. (Exhibits 44 and 45.)

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 a variance from the height requirements of Subtitle F § 303.1, to demolish the existing apartment houses and construct five new apartment houses, 42 attached principal dwelling units, and a new community service center 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 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 an area variance from 11 DCMR Subtitle F § 303.1, 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 special exceptions under the theoretical subdivision provisions of Subtitle C § 305, under the new residential development requirements of Subtitle U § 421, and the use provisions of Subtitle U § 320.1(b). 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, Subtitle C § 305, and Subtitle U §§ 421 and 320.1(b), 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 11A1-11A5.**

VOTE: **5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Michael G. Turnbull 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: September 24, 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.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT

DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 07-08C
(District of Columbia Housing Authority – Text Amendment to Subtitle C)
September 21, 2018

THIS CASE IS OF INTEREST TO ANC 6D

On September 14, 2018, the Office of Zoning received a petition from the District of Columbia Housing Authority (the "Petitioner") for approval of a text amendment to Subtitle C §§ 718.1-718-3 & 718.7(a) to extend the expiration date for certificates of occupancy for temporary surface parking lots in Square 767, Lots 44-47, Square 768, Lots 19-22, and Square 882S, Lot 77 for a period of five years, to April 1, 2023.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.